



CRM-M-63820-2024

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**130 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-63820-2024

Date of Decision: 18.12.2024

Pardeep Kumar Tewatia

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Rakesh Sobti, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

1. Prayer in the present petition filed under Section 528 of BNSS is for quashing of the impugned order dated 03.05.2024 (Annexure P-2), passed by learned Additional Sessions Judge, Palwal, in Criminal Appeal No.166 of 2024 arising out of Criminal Complaint No.NI Act-304-2021 dated 04.08.2021, under Section 138 of the Negotiable Instruments Act, whereby the sentence of the petitioner was suspended subject to his depositing 20% of the compensation amount as awarded by learned trial Court and order dated 23.08.2024 (Annexure P-3), whereby, bail granted to the petitioner was cancelled and bonds were forfeited to the State and warrant of arrest against the petitioner were issued for non-compliance of order dated 03.05.2024.

2. Learned counsel for the petitioner has stated that petitioner was prosecuted in a complaint under Section 138 of the Act and he was convicted by learned Judicial Magistrate Ist Class, Panchkula under Section 138 of the Negotiable Instrument Act, 1881, vide judgment dated 05.04.2024 and sentenced to undergo rigorous imprisonment for two years and was ordered to pay compensation of Rs.60,00,000/-. It is further



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submitted that against the order dated 05.04.2024, the petitioner filed an appeal before the Court of learned Additional Sessions Judge at Palwal and learned Appellate Court vide its impugned order dated 03.05.2024 (Annexure P-2) suspended the sentence of petitioner subject to deposit of 20% of the compensation amount with aid of Section 148 of the NI Act. However, due to financial constraints, the petitioner failed to comply with the order dated 03.05.2024 and his bail was cancelled and his bail/surety bonds were forfeited to the State and warrants of arrest were issued against him. He submits that even otherwise, the impugned order dated 03.05.2024 passed by the learned Appellate Court is in violation of the law settled by Hon'ble Supreme Court in Jamboo Bhandari vs M.P.State Industrial Development Corporation Ltd. and others, 2024(1) SCC (Cri) 90 wherein it has been held that when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the NI Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded, which is missing in the present case. It is submitted that learned trial Court has not appreciated the case and circumstances of the petitioner as per mandate of Hon'ble Supreme Court in Jamboo Bhandari's case (supra). He further submits that the petitioner is ready to appear before the Appellate Court and abide by all the terms and condition, if any imposed by this Court.



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3. Notice of motion.

4. Mr. Sumit Jain, Addl. AG, Haryana, accepts notice on behalf of the State. He has submitted that the bail of the petitioner was rightly cancelled as he failed to comply with the order dated 03.05.2024.

5. After hearing learned counsel for the parties and perusing the record, it is apparent that sentence of the petitioner was suspended by learned Appellate Court vide order dated 03.05.2024 subject to deposit of 20% of the compensation amount awarded by learned trial Court. However, the petitioner did not comply with the order dated 03.05.2024 and his bail was cancelled and his bail/surety bonds were forfeited to the State and warrants of arrest were issued against him vide order dated 23.08.2024. The case of the petitioner is that learned Appellate Court has not considered the observation made by Hon'ble Apex Court in **Jamboo Bhandari's** case (supra) and without appreciating the law settled, has passed the order dated 03.05.2024 allowing the suspension of sentence of the petitioner subject to deposit of 20% of the compensation amount within a period of one month, and ultimately on 23.08.2024 due to failure of the petitioner to deposit 20% of the compensation, learned Appellate Court declined the application for personal exemption of the petitioner and cancelled his bail and ordered him to be summoned through warrants of arrest.

6. Keeping in view the fact that learned Appellate Court has not considered the observations made by Hon'ble Apex Court in **Jamboo Bhandari's** case (supra) and straightway passed order for deposit of 20% of the compensation amount without taking into consideration the case/defence of the petitioner, the condition of deposit of 20% of compensation amount, is



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not sustainable. Accordingly, order dated 23.08.2024 is set aside and condition imposed vide order dated 03.05.2024 regarding deposit of 20% of amount of compensation, is also set aside subject to payment of Rs.10,000/- as costs to be paid to the complainant by the petitioner.

7. The petitioner is directed to appear before the Appellate Court within a period of ten days from today and file a detailed application and the Court concerned would decide the same by taking into consideration the law laid down by the Hon’ble Apex Court in **Jamboo Bhandari’s** case (supra) within a period of one month from the date of its filing. Till the decision of the said application, sentence of the petitioner will remain suspended.

8. The petition is disposed of in above terms subject to payment of Rs.10,000/- as costs to be deposited in the Court by the petitioner at the time of filing of the application before the Court concerned and the same shall be released to the complainant forthwith.

9. In case, the petitioner fails to comply with the aforesaid direction within the stipulated period, then he will have no benefit of this order and the petition shall be deemed to have been dismissed.

18.12.2024
sharmila

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No

(RAJESH BHARDWAJ)
JUDGE