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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3024/2024**

BRIJ BHUSHAN JAIN

..... Petitioner

Through: Mr. Rajat Sharma and Mr. Nalin
Hingorani, Advocates

versus

SITARAM & ANR

..... Respondents

Through: None for R-1.
Mr. Digam Singh Dagar, APP for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **22.04.2024**

CRL.M.A. 11651/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CRL.M.C. 3024/2024 and CRL.M.A. 11650/2024 (stay)

3. This petition has been preferred on behalf of the Petitioner under Section 482 Cr.P.C. seeking setting aside of the impugned order dated 12.03.2024 passed by learned Additional Sessions Judge, South District, Saket Courts, New Delhi, on an application under Section 389 Cr.P.C. filed along with Crl. A. No.98/2024, whereby Appellate Court has directed the Petitioner to deposit 20% of the fine amount of Rs.7 lakhs on conviction under Section 138 of Negotiable Instruments Act, 1881 ('NI Act').
4. Learned counsel for the Petitioner states that Petitioner is a senior citizen aged 65 years and does not have the financial resources to deposit 20% of the fine amount. Reliance is placed on the judgment of the Supreme



Court in ***Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Others, (2023) 10 SCC 446***, to argue that if the condition of deposit of 20% is unjust in a given case and imposing such a condition deprives the Appellant of his right of appeal, exceptions can be made by the Court.

5. Learned counsel further submits that there was a delay in challenging the order since Petitioner was making efforts to arrange for the finances to deposit the 20% amount, which however he has been unable to do. It is argued that the Appellate Court has suspended the sentence subject to 20% deposit of the fine amount within 30 days of the order with a further direction to surrender in case the deposit is not made within the stipulated time and in case the order takes effect, grave prejudice will be caused to the Petitioner who will have to suffer incarceration and his right of appeal will be rendered meaningless and ineffective.

6. Having challenged the impugned order, at this stage, counsel for the Petitioner, on instructions, states that the impugned order be modified to the extent of waiver of 10% of the deposit and time for deposit be extended by a period of two weeks.

7. I have heard learned counsel for the Petitioner.

8. Issue notice.

9. Learned APP accepts notice on behalf of the State.

10. In ***Jamboo Bhandari (supra)***, Supreme Court has observed that deposit of 20% of the fine or compensation amount is not a mandatory condition for grant of suspension of sentence in proceedings under Section 138 of NI Act and where a Court is satisfied that the condition of deposit of 20% will be unjust or will amount to deprivation of the right of appeal,



exceptions can be made. In the present case, Petitioner has pleaded financial distress and takes a position that he will be unable to deposit 20% of the fine amount and therefore, if the order is not modified, as sought on behalf of the Petitioner, it would be unjust and Petitioner will not be able to pursue the remedy of appeal besides the fact that he would have to surrender, since the deposit has been made a pre-condition for suspension of the sentence. Therefore, in view of the binding dictum of the Supreme Court, the impugned order dated 12.03.2024 is modified and as undertaken by the Petitioner, he will deposit 10% of the fine amount within a period of two weeks from today. Direction in the impugned order to the Petitioner to surrender, if the deposit was not made within 30 days, is kept in abeyance for two weeks from today.

11. Petition along with pending application stands disposed of.

JYOTI SINGH, J

APRIL 22, 2024/kks