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

+ **CRL.M.C. 4567/2024 & CRL.M.A. 17177/2024**

DHARMENDRA KUMAR

..... Petitioner

Through:
versus

ASHA ARYA

..... Respondent

Through: Mr. Anand Khatri, ASC for State.

**CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN**

ORDER
19.06.2024

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1. The present petition seeking quashing of order dated 23.04.2024 and 07.05.2024, whereby the petitioner herein has been sent to the custody for non compliance of the Appellate Court's order directing deposit of 20% of the fine amount.
2. The facts lie in a narrow compass.
3. The petitioner herein has been convicted for committing offence punishable under Section 138 of Negotiable Instruments Act (NIA) and as per the order on sentence dated 17.10.2023, he was sentenced to pay a fine of Rs. 14,00,000/-. It was also ordered that such amount be paid to complainant as compensation and in default of making payment of such compensation, learned Trial Court directed him to undergo SI for a period of six months.
4. Feeling aggrieved, petitioner preferred an appeal against such order of conviction and order on sentence.

CRL.M.C. 4567/2024

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5. The Appellate Court considered the application moved by the petitioner under Section 389 Cr.P.C and vide order dated 18.11.2023, it suspended the sentence subject to deposit of 20% of the fine amount in terms of Section 148 of NIA.

6. Such amount comes to Rs. 2,80,000/-.

7. Learned counsel for the petitioner has informed that out of aforesaid sum of Rs. 2,80,000/-, a sum of Rs. 1,80,000/- was paid in cash directly to the concerned complainant (respondent herein) and the balance amount was secured by way of submitting one FDR in a sum of Rs. 1,00,000/-. However, since, such FDR was found to be “on hold”, the Appellate Court observed that there was non-compliance of the order and, therefore, the petitioner was taken into custody on 23.04.2024.

8. On 07.05.2024, the petitioner moved an application seeking his release. However, the learned Appellate Court observed that there was a deliberate and willful contempt and, therefore, the petitioner did not deserve any sympathy and dismissed such application.

9. Notice was issued and Shri. R K Barman, learned counsel for respondent appears through *video-conferencing*.

10. Legal position is no longer *res integra*. The condition stipulated under Section 148 of NIA is not to be taken as a rigid one and the same can be relaxed under certain circumstances. Reference be made to *Jamboo Bhandari v. M.P. SIDC Ltd.* 2023 SCC OnLine SC 1144 wherein the Hon’ble Supreme Court has observed as under: -

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the appellate



court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when the appellate court considers the prayer under Section 389CrPC of an accused who has been convicted for offence under Section 138 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.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.”

11. During the course of the arguments, it has also been apprised that the learned Appellate Court has already heard the final arguments



on the main appeal as such and the matter is now fixed on 11.07.2024 for pronouncement of judgment.

12. As noted already, there was no substantive sentence awarded in the present matter as the learned Trial Court had merely burdened the petitioner with a fine of Rs. 14,00,000/-.

13. Apparently, the petitioner had tried to secure the deposit of entire 20% of the fine amount but one FDR of Rs. 1,00,000/- was found to be 'on hold' and, therefore, the learned Trial Court formed the view that there was no compliance of the order passed under Section 148 of the NIA.

14. It also cannot be lost sight of the fact that the learned Appellate Court has chosen to hear final arguments and the matter is now reserved for judgment. In view of peculiar factual matrix, the Appellate Court should have, instead, relaxed the condition envisaged under 148 of NIA.

15. Keeping in mind the overall facts and circumstances of the case and the fact that the petitioner is already in custody since 23.04.2024 and that there was no substantive sentence ordered by the learned Trial Court, the petition is hereby allowed with the direction that the sentence of the petitioner shall remain suspended till disposal of said appeal on his furnishing personal bond in a sum of Rs.25,000/- with one surety of like amount to the satisfaction of the learned Vacation Judge/Duty MM.

16. Needless to emphasise that the petitioner would appear before the learned Appellate Court on the date fixed for pronouncement of judgment.



17. The petition stands disposed of.
18. Copy of order be given *dasti* under signatures of Court Master.

MANOJ JAIN,J
(VACATION JUDGE)

JUNE 19, 2024/sw



This is a digitally signed order.

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