



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

941 CRIMINAL WRIT PETITION NO. 2033 OF 2024

Raju Sheshrao Jangle
Aged 45 years, Occu.Business
R/o Nakib Chincholi, Tq. Fulambri,
Dist. Chatrapati Sambhajinagar.
(Aurangabad).

... **PETITIONER**

V/s.
Vijay Karbhari Zalte
Aged 31 years, Occu. Business,
R/o. Pundlik Nagar, Lane no.10
Plot no.99, Garkheda Parisar,
Dist. Chatrapati Sambhajinagar.
(Aurangabad).

... **RESPONDENT**

.....
Mr. Patil Nileshsingh J., Advocate for the Petitioner
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CORAM : Y.G. KHOBRAGADE, J.
DATE : 21.01.2025

ORAL JUDGMENT:-

1. Rule. The Rule is made returnable forthwith. Heard finally with the consent of both sides at the admission stage.
2. By the present petition under Article 227 of the Constitution of India, read with Section 482 of the Cr.P.C., the Petitioner challenges the order dated 12.11.2024, passed by the Additional Sessions Judge, Aurangabad, below Exhibit-4 in Criminal Appeal No. 226/2024.

3. Having regard to the submissions canvassed on behalf of both the sides, I have gone through the petition paper book. It is not in dispute that the Respondent has filed a Summary Criminal Case No.5323/2020 before the learned JMFC and prayed for awarding punishment to the Petitioner for the offence punishable under Section 138 of the N.I. Act because the cheque which was issued by the Petitioner came to be dishonoured. After a full-fledged trial, on 24.09.2024, the learned JMFC passed the judgment and held the Petitioner guilty for the offence punishable under section 138 of the NI Act, 1881. The Petitioner was sentenced to six months of simple imprisonment and fined Rs. 6,00,000/-. In default of payment of fine the Petitioner/Accused is required to undergo simple imprisonment for six months.

4. Being dissatisfied with the said judgment of conviction, the present Petitioner/Accused filed Criminal Appeal No.226/2024 before the Sessions Court, Aurangabad and challenged his conviction. The Petitioner also filed Exh.4 an application for suspension of sentence. On 12.11.2024, the learned Additional Sessions Judge, Aurangabad, passed the impugned order, suspending the sentence on the condition that 20% of the cheque amount be deposited as compensation under section 143-A of the NI Act before the learned JMFC within one month from the date of the order. The Petitioner was also directed to furnish a P.B. of Rs. 25,000/- with a surety of the same amount.

5. The learned counsel appearing for the Petitioner canvassed that while passing the order of suspension of sentence, the learned Appellate Court failed to consider that Section 143-A of the NI Act is discretionary, not mandatory. Therefore, impugned order is illegal, bad in law, hence prayed for quashing and setting aside the same.

6. In support of these submissions the learned counsel appearing for the Petitioner relied on the case of **Rakesh Ranjan Shrivastava V/s. State of Jharkhand & Anr., (Criminal Appeal No.741/2024)**, wherein the Hon'ble Supreme Court issued guidelines while exercising the powers under Section 143A of the N.I. Act which reads as under:

“19.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”

7. In the case in hand, the Petitioner/Accused has not disputed that he has been held guilty after conclusion of full-fledged trial. As per guideline ‘C’ outlined in para 19 of cited case, the Court is required to evaluate merit of the case made out by the Complainant and the plausible defence of the accused who is facing the trial for the offence punishable under Section 143A of the N.I. Act. In the present case, it *prima facie* appears that the present Petitioner/Accused was convicted after the conclusion of a full-fledged trial, during which he was given an opportunity to defend the charge. The Petitioner has approached before the Appellate Court challenging his conviction and prayed for suspension of sentence. On 12.11.2024, the learned First Appellate Court passed the impugned order and suspended sentence of the Petitioner/Accused on deposit of 20% of the cheque amount as compensation before the trial Court which does not appear to be illegal, bad in law.

8. Therefore, I do not find that the Petitioner has made out substantial grounds to interfere with the findings. Hence the Petition is dismissed. Accordingly, the Rule is discharged.

[Y.G. KHOBRAGADE, J.]