IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No. 517 of 2025
With
Criminal Writ Petition No.520 of 2025
With
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With
Criminal Writ Petition No.518 of 2025

Sanjay Kishin Shahani
R/at. Row House No.7,
Kailash Kutir, Tatya Tope Society,
Opp. Old Natraj Enclave,
Wanowrie, Pune 411040. … Petitioner.

V/s.

1. Satbir S. Narang
R/at. Flat No.505, Ground Floor,
Cycle Society, Quarter Gate,
Pune 411002.

2. Jagjit S. Narang,
R/at-Flat No.501, A Building,
Swastik Ganga, Sopan Baug,
Ghorpadi, Pune 411001.

3. State of Maharashtra
Notice to be served
Through Learned APP Writ Cell
High Court of Bombay … Respondents.

LATA SUNIL PANJWANI
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Date: 2025.08.25 19:21:31 +0530

With
Criminal Writ Petition No. 6183 of 2024
With

Criminal Writ Petition No. 6184 of 2024
With
Criminal Writ Petition No.6185 of 2024
With
Criminal Writ Petition No. 84 of 2025

1. Satbir S. Narang
R/at. Flat No.505, Ground Floor,
Cycle Society, Quarter Gate,
Pune 411002.

2. Jagjit S. Narang,
R/at-Flat No.501, A Building,
Swastik Ganga, Sopan Baug,
Ghorpadi, Pune 411001. … Petitioners.

V/s.

1. Sanjay Kishin Shahani
R/at. Row House No.7,
Kailash Kutir, Tatya Tope Society,
Opp. Old Natraj Enclave,
Wanowrie, Pune 411040.

2. State of Maharashtra. … Respondents.

Mr. R.S. Vidyarthi a/w. Mr. Mohit Turakhia, Mr. Tej Lapsiya i/b. Saumen S. Vidyarthi	Advocate for the Petitioners in WP 6183, 6184,6185 of 2024 and 84/25.
Mr. Sanjay Bhojwani a/w. Mr. Naresh Parihar	Advocate for the Petitioner in WP No.517, 518,519,520 of 2025 and for Respondent in WP 6183, 6184,6185 of 2024 and 84/25.
Mr. N.B. Patil	APP for the State.

CORAM : S.M. MODAK, J

DATE : 04th August 2025.

ORAL JUDGMENT :

As directed by this Court on 7th July 2025 both the accused have deposited Rs.5 lakhs before the trial Court i.e Court of JMFC, Cantonment Court. On this background, I have heard learned Advocate for the Complainant as well as learned Advocate for the Accused Nos.1 and 2.

2. The Complainant-Sanjay Shahani has filed 4 petitions thereby praying **for enhancement of amount of compensation** whereas both the accused being aggrieved **by condition to deposit 20% of the compensation amount** have approached this Court. There were four complaints for an offence punishable under Section 138 of the Negotiable Instrument Act (for short 'N.I.Act').

3. After trial both the accused were convicted for that offence by four separate judgments. **The sentence is as follows**:

(i) The substantive sentence of imprisonment for one month.

(ii) **Twice the amount of the cheque by way of compensation.** In every case the compensation amount is different.

4. All these judgments were challenged before the Appellate

Court by way of four separate Criminal Appeals. During pendency, they applied for suspension of the sentence. **By way of four separate orders dated 29th November 2024, the Court of Additional Sessions Judge, Pune directed them to deposit 20% of the compensation amount within 60 days.** As said above there is a challenge to this condition.

5. My attention is invited to the said order on Page 28 of the Writ Petition No.519/2025. The learned Appellate Court Judge has referred to following two judgments:

1. ***Surinder Singh Deswal alias Colonel S.S.Deswal nd others v/s. Virendra Gandhi***[1]

2. ***Jamboo Bhandari vs. M.P. State Industrial development Corporation Limited and others***[2]

While imposing the condition to deposit 20% of the compensation amount, the learned Appellate Court Judge held as follows:

> "So far as the compensation as contemplated under section 148 of the N.I.Act is concerned, in the case law of '**Surinder Singh Deswal**', cited supra, it is observed that, "**the imposing of the payment of sum is mandatory.**"

Further it is held:

1 (2019) 11 Supreme Court Cases 341
2 (2023) 10 Supreme Court Cases 446

"The case law of '**Jamboo Bhandari'** cited supra, is not helpful to the appellant because, it is in respect of the exceptional case and no exceptional circumstances are shown by the appellant."

6. **So issues in all these eight petitions is :--**

a. "whether the appellate court has rightly applied the ratio laid down in above referred judgments while directing the accused to pay compensation of 20 % and additionally whether the quantum fixed is inadequate and it requires enhancement".

b. **whether reasons are required only when exceptional circumstances are made out or they are required to be given even when exceptional circumstance is not made out?**

Correct Ratio

Both the accused through their learned Advocates submitted that the appellate court arrived at a conclusion '*no exceptional case is made out'* but without giving any reason and in fact the submission made for making out exceptional case were neither referred nor adjudicated. In the sense, he is unable to convince this Court about the case for waiver of condition. **Learned advocate for the complainant** relied upon recently pronounced judgement by Hon'ble Supreme Court in case of ***Muskan Enterprises***

and another v/s. State of Punjab and another[3].

7. It is true when impugned orders came to be passed, those observations were not in force. That case was decided on 19th December 2024 whereas impugned orders came to be passed on **29th November 2024**. Learned Advocate for the Complainant has relied upon those observations and particularly observations in Para No. 26 and 27. The learned Advocate for the Complainant also relied upon observations in following two judgments:

1. ***Mohd. Anwaar v/s. State of Uttarakhand and another***[4]
2. ***Mohd. Javad Farooqui v/s. State of U.P. Thru Its Prin. Secretary and others***[5]***.***

8. According to him both the above judgments are delivered by those High Courts after the Supreme Court dealt with ***Jambhoo Bhandari's*** (supra) case. He also placed his reliance on the observations in case of ***Rakesh Ranjan Shrivastava v/s. State of Jharkhand and anr.***[6]

9. While deciding the contentions raised, this Court is required to consider **the correct ratio** laid down in two judgments referred by the appellate court and also required to consider **the correct ratio** in recently delivered judgment in case of ***Muskan Enterprises .***

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3 2024 SCC OnLine SC 4107

4 2024 SCC OnLine Utt 1523

5 2024 SCC OnLine All 4594

6 (2024) 4 Supreme Court Cases 419

10. It is true in case of ***Surinder Deswal*** (supra) which was delivered on 29th May 2019, the Hon'ble Supreme Court had an occasion to interpret the wordings of Section 148 of the N.I. Act. **The word 'may' used in sub-section (1) to Section 148 of the N.I. Act was to be read as 'shall"** and it was held :--

> "*Appellate Court must ordinarily order deposit of minimum 20% of the compensation*."

It was further held:-

> "*not directing deposit of amount is an exception coupled with assignment of special reasons"* (para 8).

Hon'ble Supreme Court has considered the purposive interpretation to give effect to the legislative intent. The object and purpose of the enactment of Section 138 of the NIAct was being frustrated. Parliament has thought it fit to amend Section 148 by which the first appellate court is confered with power to direct to pay compensation (para 7.1).

11. Whereas in case of ***Jambhoo Bhandari*** the Hon'ble Supreme Court on 4th September 2023 (consisting of Abhay S. Oka and Pankaj Mithal JJ) has dealt with a similar issue and held:

> "*Normally, the appellate Court will be justified in imposing condition of deposit as provided in Section 148. However, in a case where appellate court is satisfied that condition of deposit will be unjust or it will be amount to depriivation of or right of appeal of appellant,*

exception can be made for the reasons specifically recorded."

Further in para 7 it is observed:

"Therefore when the appellate court considers prayer under Section 389 Cr.P.C. of an accused who has been convicted for an offence under Section 138 N.I. Act, it is always open to Appellate Court to consider weather it is an exceptional case which warrants grant of suspension of sentence without imposing condition."

There is further observation about giving reason by Hon'ble Supreme Court:

"If Appellate Court comes to conclusion that it is an exceptional case, reason for coming to said conclusion must be recorded."

About Muskan Enterprises

12. When the Appellate Court passed the order, the two judgments referred above were cited before him. Later on, on 19th December 2024 the Supreme Court in case of ***Muskan Enterprises*** has also decided the similar issue. There was also a conviction for an offence punishable under section 138 of N.I. Act. On the basis of observations in case of ***Surinder Singh Deswal***, appellate court imposed a condition to deposit an amount. When the accused approached High Court, the petition was withdrawn (para 8).

However subsequently Supreme Court delivered Jamboo Bhandari. On the basis of those observations, the accused again moved High Court. However, the said petition was dismissed on the ground earlier petition was withdrawn and liberty was not granted for filing petition (para 10). On this background, the matter reached Supreme Court.

13. Both the earlier two judgments are also referred in Para No.7 and Para No.9. Supreme Court noticed cleavage of opinion in those two judgments, but still preferred not to refer the issue to a larger bench. It is simply for the reason, Supreme Court while delivering the judgment in case of ***Jamboo Bhandari*** has considered the ratio in case of ***Surinder Singh Deswal***. That is how Supreme Court shared the ratio laid down in case of ***Jamboo Bhandari*** (para 21 and 22).

14. Then Supreme Court considered how the words **'may'** and **'shall'** shall be interpreted. These words are used at two places. One in subsection (1) and another subsection (3). In **subsection (1)**, the word 'may' and the word 'shall' are used in that sub section itself ('*and distanced from the verb 'may' by 8 eight words'* that is what Supreme Court says in para 26). Whereas the word 'may' is used **in subsection (3)** and the word 'shall' is used in its proviso (para 26). Generally the word 'may' shall be interpreted as optional and the word 'shall' be interpreted as mandatory. But still the Court has to consider the intention of legislatures by carefully analyzing the entire statute.

15. Learned Advocate for the Complainant has invited my attention to the observations in Para No. 26 and 27. His submission is condition to deposit is mandatory and it can be waived only in an exceptional circumstances which are laid down in Para No. 27. **According to him some of the contingencies referred by Hon'ble Supreme Court are as follows:**

A) The conviction and sentence is wholly incorrect and erroneous. That it is only a matter of time for the same to be set aside.

B) Order of deposit would be unnecessarily burdensome on the appellant.

C) The conviction is recorded without adherence to the mandatory procedural requirements referred in the proceedings initiated.

D) Trial Court might have rejected admissible evidence from being raised or relied on inadmissible evidence.

The submission is these are the few circumstances in which the Appellate Court may waive the condition and not in every circumstance. The submission is none of the circumstances exist. Supreme Court observed :--

> " **It would amount to a travesty of justice** if exercise of discretion which is permitted by the Legislature, and could indeed by called for in situations such as these pointed out

above, or in any other appropriate situation, is not permitted to be exercised by the appellate court by judicial interpretation of 'may' being read as 'shall' in sub-section (1) and the aggrieved appellant is compelled to make a deposit of minimum 20% of the fine or compensation awarded by the trial court, notwithstanding any opinion that the appellate court might have formed at the stage of ordering deposit as regards invalidity of the conviction and sentence under challenge on any valid ground."

Supreme Court further observed :-

"**Reading 'may' as 'may' leads to the text matching the context** and, therefore, it seems to be just and proper not to denude the appellate court of a limited discretion conferred by the legislature and that is, exercise of the power of not ordering deposit altogether albeit in a rare, fit and appropriate case which commends to the appellate court as exceptional".

16. **The correct ratio in case of Muskan Enterprises is** there is discretion available to the appellate court but it can be exercised by waiving the condition only in exceptionl cases,the word 'may' has to be interpreted as 'may'."

17. It is true in case of ***Rakesh Srivastava***, there are certain observation about the interpretation of Section 148 of the N.I. Act.

They find place in Para No.20 but primarily the Hon'ble Supreme Court is dealing with the power of Court to direct interim compensation as per the provisions of Section 143-A of the N.I. Act. While doing that exercise Hon'ble Supreme Court has referred provisions of section 148 of the N.I. Act. **The primary question about interpretation of Section 148 of the N.I. Act was not involved in that case. Even it is observed the word 'may' can never be construed as 'shall' (para 18)**.

18. In case of ***Mohd. Anwar*** and in case of ***Mohd. Javed*** (supra), the High Court of Uttarakhand and High Court of Allahabad has dealt with the similar issue. My attention is invited to the observations in case of Para No. 10, 11 and 12 from ***Mohd. Anwar*** and observations in Para No.21 onwards in case of ***Mohd. Javed.***

19. On this background, when the provisions of Section 148 of the N.I. Act are perused, what we find is sub-section (1) empowers the Appellate Court to put a condition on the Appellant to deposit certain sum. Sub-section (1) uses both the words 'may' as well as 'shall'. It is true the word 'may' is used at the beginning in sub-section (1) and word 'shall' is used subsequently.

20. If we consider the ratios laid down in all the three judgments, what we may find is Supreme Court in case of ***Surinder Singh Deswal*** interpreted word 'may' as 'shall' and put a rider that by giving special reasons, the condition can be waived. Whereas in case of

Jamboo Bhandari, Supreme Court observed normally the appellate Court will be justified in imposing condition but condition can be waived by giving special reasons. Whereas in case of ***Muskan Enterprises***, it is held the word 'may' has to be interpreted as 'may' only. But there can be waiver if the case falls under circumstances some of them are enumerated in that judgment which is rare, fit and appropriate cases.

21. In nutshell what we gather is the appellate court should not start deciding the issue with presumption that there has to be a condition to deposit the amount but the appellate Court to hear the parties and then arrive at a conclusion that exceptional case is or is not made for waiving the condition and then impose it. Once that finding is arrived at then the appellate Court may rule on quantum as per wordings of section 138(1).

Making out an exceptional case for waiver of deposit

22. Now coming to the findings given by the Appellate Court that exceptional circumstances are not shown by the Appellant (Para-8), submission on behalf of Accused is that their theory of payment of Rs.59 lacs was not at all considered and even not at all referred by the Appellate Court. They have pleaded that the finding by the trial Court in all the complaints is erroneous. It is for the reason the trial Court has not accepted the defence put up by the Accused for payment of amount of cheques prior to filing of complaint. According to him the bank statements showing the transfer was also

filed but the Appellate Court in one sentence opined "*no exceptional circumstance is made out.*" According to him reasons are required to be given even while refusing to accept an exceptional case.

23. **Learned Advocate for the Complainant** made a submission that when exceptional case for relaxing the condition of deposit is made out then only reasons are required. He mean to say if such condition has to be imposed, no special reasons are required to be assigned. He relied upon ***Jambhoo Bhandari.***

24. There is a observation that if the condition is to be waived, special reasoning has to be given (para 8). This has to be understood in the context of submission advanced and not as universal rule that *'for refusing to accept exceptional case, reasoning is not required'.* I do not accept to the submission made on behalf of the Complainant. Reasons have to be given even while refusing to waive the condition.

25. The general law of adjudicating the issue is the Court has got a discretion to give a finding on a particular issue but before giving finding, it has to be supported by some reasoning. The judgments by the Supreme Court is nothing but interpretation of the law. In a case before a particular Court, whether the benefit of that interpretation can be given or not, for that purpose, reasoning for arriving at a particular conclusion is absolutely necessary. Because it gives an opportunity to the higher court to verify correctness of the findings.

26. It is clear Appellate Court has not given reasons prior to

arriving at conclusion that no exceptional circumstances are shown by the Appellant. If it is so, then it will not be proper for this Court to give findings on the submission made on behalf of the Accused that their theory of payment of Rs.59 lacs has to be considered while taking the decision on waiver. **For these reasons the matter needs to be remanded before the Appellate Court.**

27. According to learned Advocate for the Complainant the Accused has always played dilatory tactics. Every order passed by the trial Court was taken to the Appellate Court and upto Hon'ble Supreme Court. Even Complainant has not insisted for grant of interim compensation even though there was interim order only for expediting the trial. The submission of Mr. Bhojwani is let the condition to deposit the amount of 20% to remain as it is.

28. It is also important that the Complainant has filed four writ petitions claiming enhancement in the compensation awarded by the Appellate Court. To justify their claim they are heavily relying upon the observations in case of ***Muskan Enterprises*** (supra). When I am remanding the matter, it will be better if Complainant is permitted to raise a plea for enhancement before the Appellate Court.

29. In nutshell, let the Appellate Court to hear both the parties and to decide the issue again. Both the parties are at liberty to raise their plea for condition to deposit 20% and also the enhanced amount and also the plea for waiver of that condition. The Appellate Court can

decide both these pleas.

30. It is true without prejudice to that condition the accused have already deposited Rs.5 lacs before the trial Court. The total amount of compensation of the four of the orders is Rs.1,28,00,000/- (Rupees One Crore Twenty Eight Lakhs only). So 20% of this amount comes to Rs. 25,60,000/- approximately. It is true that now the issue is open for both the parties to argue before the Appellate Court. When the matter is remanded, I am of the view that the accused should deposit certain more amount before the trial Court. After all the right of the Complainant to insist for deposit will have to be heard again. On the basis of instructions, learned Advocate for the Accused submitted that without prejudice his client will deposit Rs.5 lacs more. I have considered it as reasonable. In view of that all the writ petitions are disposed of and following order is passed:

ORDER

(i) The orders dated 29th November 2024 passed in Criminal Appeal Nos.64/2024, 65/2024, 62/2024, 63/2024 by the Court of Additional Sessions Judge, Pune are set aside.

(ii) Let the Court of Additional Sessions Judge, Pune to hear both the parties again on condition to deposit the compensation amount and the percentage.

(iii) There are no observations about merits of that claim.

(iv) Both the accused jointly and severally are directed to

deposit Rs.5 lacs within a period of two weeks from the date of uploading the reasoned order before the Court of JMFC, Cantonment, Pune.

(v) If the amount is not deposited the Appellate Court is at liberty to decide the issue only on hearing the Complainant.

(vi) The total amount deposited will be subject to final decision on that issue.

(vii) The Appellate Court to decide this issue as early as possible.

(viii) The Complainant is at liberty to apply for withdrawal before the Appellate Court. The Appellate Court to decide it as per merits.

(S.M. MODAK, J.)