



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

CRM-M-11056-2025
Date of decision: 27.02.2025

Kewal Krishan KumarPetitioner

Versus

M/s Puran Singh Traders ...Respondent

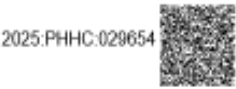
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Minderjeet Yadav, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition is preferred under Section 528 of the Bharatiya Ngaarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') seeking quashing of impugned orders dated 11.03.2024 (Annexure P-3) and dated 29.10.2024 (Annexure P-5) passed by the learned Additional Sessions Judge, Kurukshetra, vide which the petitioner has been directed to deposit 20% of the compensation awarded under Section 148 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act'), in the cases stemming from criminal complaint bearing No. NACT No. 1021/2016 dated 26.10.2016 filed under Section 138 of the NI Act.

2. Briefly, the facts, as alleged, are that the respondent-complainant supplied paddy to the petitioner-accused, per demand and an amount of Rs. 6,27,088/- became due on part of the petitioner. To discharge the said liability, the petitioner issued two cheques i.e. (1) cheque No. 441193 dated 12.07.2016 for Rs. 3,27,088/0 and (2) cheque No. 340458 dated 26.07.2016 for Rs. 3,00,000/-. On presentation for encashment, both the abovementioned cheques



were dishonoured vide memo dated 09.09.2016, with the remarks- ‘funds insufficient.’ Thereafter, a criminal compliant (supra) was filed wherein the petitioner was convicted vide judgment dated 05.02.2024 by the learned Judicial Magistrate Ist Class, Kurukshetra and vide order of sentence dated 12.02.2024, he was sentenced as follows:

Offence under	Sentence
Section 138 NI Act	Simple imprisonment of 01 year and a compensation of Rs. 6,27,088, payable to the complainant-respondent.

3. Aggrieved by the same, the petitioner preferred an appeal before the learned lower Appellate Court. The petitioner also filed an application for suspension of sentence under Section 430 BNSS, which was allowed by learned Court below vide impugned order dated 11.03.2024 (Annexure P-3), subject to payment of 20% of the compensation amount awarded to the respondent-complainant. Thereafter, an application was moved by the petitioner seeking waiving of the said condition, which was dismissed vide impugned order dated 29.10.2024 (Annexure P-5).

4. Learned counsel for the petitioner *inter alia* contends that there are 61 criminal appeals pending against the petitioner before various Courts in Haryana. Cumulatively, the petitioner is liable for a total of Rs. 3.20 crore, and 20% of the same would amount to Rs. 64 lakh. All assets of the petitioner including his bank accounts have been frozen. In fact, the petitioner is a 71 years old man with various medical ailments and does not possess the necessary funds to comply with order dated 11.03.2024 (Annexure P-3). Finally, Section 148, NI Act bestows is discretionary powers on the Courts, therefore, payment of 20% of the compensation awarded is a condition that may be reduced or waived off. Reliance in this regard is placed on ***Jamboo***



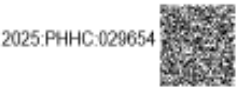
Bhandari vs. M.P. State Industrial Development Corporation Ltd. And others (2023) 10 SCC 446, Gurudatta Sugars Marketing Pvt. Ltd. vs. Prithviraj Sayajirao Deshmukh 2024(3) R.C.R.(Criminal)841, Sanjay Chandra vs. CBI (2012) 1 SCC 40, Data Ram Singh vs. State of U.P. (2018) 3 SCC 22 and Munish Bhasin vs. State (2009) 4 SCC 45.

5. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the learned lower Appellate Court, vide order dated 11.03.2024(Annexure P-3), suspended the sentence of the petitioner in the present case subject to payment of 20% of the compensation i.e. the cheque amount, awarded to the respondent. Thereafter, the petitioner moved an application seeking the said condition to be waived off, which was dismissed by the learned Court below vide impugned order dated 29.10.2024 (Annexure P-5).

6. A two Judge bench of the Hon'ble Supreme Court in *Jamboo Bhandari (supra)*, speaking through Justice Abhay S. Oka, has made the following observations with respect to Section 148 of the NI Act:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, 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 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 N.I. 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.” (emphasis added)



7. A perusal of the impugned order dated 29.10.2024 (Annexure P-5) indicates that the lower Appellate Court has duly considered whether the case of the petitioner is exceptional enough to waive the condition of depositing 20% of the compensation amount for granting suspension of sentence, in keeping with the ratio of *Jamboo Bhandari (supra)*. In fact, the petitioner was directed to deposit the said amount vide order dated 11.03.2024 (Annexure P-3) and sought multiple opportunities to do the same. It was only after a delay of about 6 months that an application dated 15.07.2024 (Annexure P-4) was filed to have the said condition waived off. The learned Court below has passed a detailed order after duly considering the ratio of the judgment of *Jamboo Bhandari (supra)* and highlighting how the stand of the petitioner does not spell out exceptional circumstances and this Court finds no perversity in the same.

8. Therefore, in view of the facts and circumstances of the case, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.02.2025
Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No