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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3908/2025**

BANDHU BABA KHAD BHANDARPetitioner
Through: Mr. Abhik Kumar and Mr. Rinku
Mathur, Advocates.

versus

STATE OF NCT OF DELHI AND ANRRespondents
Through: Mr. Hemant Mehla, APP for State.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **29.05.2025**

1. The present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 assails order dated 13th May, 2025,¹ passed in CA No. 148/2025 titled as “*Bandhu Baba Khad Bhandar Vs. UPL Limited*”, which is pending before the Court of Special Judge (NDPS), Patiala House Courts, New Delhi.
2. Mr. Rakesh Kumar, is the proprietor of M/s Bandhu Baba Khad Bhandar,² and was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 *vide* order dated 26th March, 2025, passed by the JMFC (NI Act), Patiala House Court, Digital Court-1, New Delhi. Further, by order on sentence dated 5th April, 2025, the Petitioner was directed to pay the compensation of Rs 7,25,000/- and in default, he is directed to undergo simple imprisonment for 05 months.
3. The Petitioner assailed the aforementioned order in appeal, wherein upon

¹ “Impugned order”

² Hereinafter referred to as the Petitioner



consideration of the facts and circumstances, the ASJ passed the Impugned order, suspending the sentence awarded by the Trial Court and admitting the Petitioner on bail, subject to deposit of 20% of the fine amount, in the form of an FDR, in the name of the Principal District and Sessions Judge, Patiala House Court, New Delhi.

4. Counsel for the Petitioner submits that the direction to deposit 20% of the fine amount under Section 148 of the NI Act is arbitrary and causes undue hardship, particularly given the Petitioner's limited financial means. It is submitted that such an order effectively curtails the Petitioner's right to appeal. Reliance is placed on ***Muskan Enterprises and Another v. State of Punjab and Another***,³ wherein the Supreme Court emphasized the need for appellate courts to exercise discretion under Section 148 of the NI Act judiciously, taking into account factors such as the strength of the conviction, procedural irregularities, and the existence of any *prima facie* perversity.

5. Building on the principles laid down in ***Muskan Enterprises*** (supra), counsel for the Petitioner submits that during cross-examination, the Complainant's own witness admitted that the ledger account reflected no outstanding dues against the Petitioner. It is contended that this admission clearly indicates the absence of any legally enforceable debt in respect of the cheque in question. In such circumstances, it is argued that the conviction rendered by the Trial Court is manifestly erroneous and liable to be set aside. Counsel for the Petitioner submits that despite the existence of these exceptional circumstances, the Appellate Court failed to consider the same while directing the Petitioner to deposit 20% of the fine amount, thereby



warranting a waiver of such a direction.

6. This Court has considered the submissions advanced by the Petitioner and perused the record. While reliance on ***Muskan Enterprises (Supra)*** is not misplaced, it is crucial to appreciate the threshold envisaged therein. The relevant portion of the said judgement reads as follows:

“27. We may take the discussion a little forward to emphasize our point of view. There could arise a case before the Appellate Court where such court is capable of forming an opinion, even in course of considering as to what would be the appropriate quantum of fine or compensation to be kept in deposit, that the impugned conviction and the consequent sentence recorded/imposed by the trial court is so wholly incorrect and erroneous that it is only a matter of time for the same to be set aside and that ordering a deposit would be unnecessarily burdensome for the appellant. Such firm opinion could be formed on a plain reading of the order, such as, the conviction might have been recorded and sentence imposed without adherence to the mandatory procedural requirements of the N.I. Act prior to/at the time lodging of the complaint by the complainant rendering the proceedings vitiated, or the trial court might have rejected admissible evidence from being led and/or relied on inadmissible evidence which was permitted to be led, or the trial court might have recorded an order of conviction which is its ipse dixit, without any assessment/analysis of the evidence and/or totally misappreciating the evidence on record, or the trial court might have passed an order failing to disclose application of mind and/or sufficient reasons thereby establishing the link between the appellant and the offence, alleged and found to be proved, or that the compensation awarded is so excessive and outrageous that it fails to meet the proportionality test : all that, which would evince an order to be in defiance of the applicable law and, thus, liable to be labelled as perverse. These instances, which are merely illustrative and not exhaustive, may not arise too frequently but its possibility cannot be completely ruled out.”

[Emphasis Supplied]

The aforementioned makes it clear that the appellate court must be satisfied,

³ 2024 SCC OnLine SC 4107



prima facie, that the conviction is so manifestly flawed, be it due to procedural lapses, misappreciation of evidence, or other glaring legal infirmities, that the conviction is likely to be set aside, and that imposing a condition of deposit would amount to an unwarranted burden. The judgment in ***Muskan Enterprises***, however, refers to rare and exceptional cases. It does not lay down a blanket exemption from the statutory mandate of Section 148 of the NI Act.

7. Thus, at the stage of suspension of sentence, the Appellate Court is not expected to undertake a detailed re-evaluation of the merits of the conviction. The argument that the ledger reflects no outstanding dues would require detailed scrutiny and appreciation of evidence - an exercise beyond the scope of appeal consideration at this preliminary stage.

8. Further, the Petitioner has merely pleaded financial hardship without producing any supporting material to substantiate his claim. Bare assertions, devoid of documentation or any effort to demonstrate incapacity to comply with the statutory requirement, cannot justify exemption. Moreover, financial hardship, in the opinion of the court, in and of itself, is insufficient to override the statutory scheme, unless accompanied by compelling and demonstrable injustice or miscarriage.

9. For the foregoing reasons, the Appellate Court, in the opinion of this Court, has exercised its jurisdiction well within the bounds of law and the Court is not inclined to entertain the present petition.

10. Accordingly, the petition is dismissed along with pending application(s).

SANJEEV NARULA, J

MAY 29, 2025/nk