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

\+ CRL.REV.P.(NI) 204/2025 & CRL.M.A. 26852-26853/2025

RAJESH KUMAR SAINI .....Petitioner

Through: Mr. Parvesh Bansal and Mr. Rahul Bansal, Advocates.

versus

SUSHIL GUPTA .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **09.09.2025**

1. The present revision petition under Sections 438 and 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly Sections 397, 401 and Section 482 of the Code of Criminal Procedure, 1973) assails order dated 23rd July, 2025, passed by the Principal District and Sessions Judge, North District, Rohini Courts in Criminal Appeal No. 65/2025, titled ***Rajesh Kumar Saini v. Sushil Gupta***[1]**.** By the impugned order, the Petitioner has been directed to deposit 20% of the fine amount imposed by judgment of conviction dated 13th January, 2025, for the offence under Section 138 of the Negotiable Instruments Act, 1881[2] as condition for suspension of sentence.

2. At the outset, counsel for the Petitioner argues that impugned order suffers from procedural infirmity as no effective opportunity of hearing was

[1] CA No. 65/2025

afforded prior to imposing the direction to deposit 20% of the fine. It is further urged that Section 148(2) of the NI Act itself contemplates a statutory period of 60 days from the date of the order, extendable by a further 30 days, for making the requisite deposit. The Appellate Court, it is argued, erred in directing a deposit to be made within 10 days without granting the benefit of the statutory window. Reliance is also placed on the decision of Supreme Court in ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors.***[3]**,** wherein the Court clarified that the requirement under Section 148(2) is not mandatory in nature and may be relaxed in exceptional cases where insistence on strict compliance may occasion grave hardship.

3. Heard. The record reflects that the Petitioner was present before the Appellate Court through Video Conferencing facility when the impugned order was passed. It is true that a request was made for adjournment on the ground of absence of his counsel, however, the Appellate Court proceeded to impose the statutory condition of pre-deposit while considering suspension of sentence. In the course of the present proceedings, this Court indicated that, should the Petitioner seek only an extension of time to comply, such a request could be sympathetically considered. The insistence of counsel, however, is not on extension but on the proposition that no pre-deposit at all ought to have been directed. It is urged that, owing to the absence of legal representation before the Sessions Court, the Petitioner could not advance submissions on the exceptional circumstances warranting relaxation of Section 148(2) of the NI Act.

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[2] "NI Act"
[3] SLP(CRL.) NO(S) 6336/2023, 2023INSC822

4. Considering the stand noted above, and since the principal grievance rests on denial of an effective hearing, this Court has chosen not to remand the matter but to assess the merits directly. Counsel for the Petitioner was specifically called upon to identify the exceptional circumstances that could justify relaxation from the mandate of Section 148(2). The only factor pointed out is the Petitioner's asserted lack of financial capacity to comply with the requirement of depositing 20% of the fine amount.

5. In the opinion of this Court, the contention that financial incapacity by itself constitutes an "exceptional circumstance" cannot be accepted. The very object of Section 148 of the NI Act is to secure the complainant's interest during the pendency of an appeal and to deter frivolous challenges to convictions under Section 138. The provision is couched in mandatory terms, though courts retain a narrow discretion to relax the requirement in exceptional and demonstrable circumstances. Apart from the assertion of financial difficulty, the Petitioner has failed to disclose any factor that would justify relaxation of the statutory mandate. As underscored by the Supreme Court in a recent decision ***M/S Santana Marketing Services Pvt. Ltd. v JMK Technology Pvt. Ltd. & Anr.***[4], mere financial incapacity does not amount to an exceptional circumstance so as to warrant exemption from the statutory requirement of pre-deposit under Section 148 of the NI Act. The relevant observation reads as follows:

> *3. The respondent was convicted by the trial Court under Section 138 of the Negotiable Instruments Act, 1881 and was awarded two years of imprisonment with a further direction to pay a sum of Rs.8,65,91,420/-. Against the aforesaid order of conviction, an appeal was preferred and an application was moved for the suspension of sentence. The Additional Sessions Judge, Gurugram vide order dated 18.03.2024 directed for the*

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[4] Criminal Appeal No. 3635 of 2025 [arising out of SLP (Crl) No. 1406/2025]

> *suspension of sentence subject to the respondent depositing 20% of the compensation awarded. Since, the amount was not deposited, the order of suspension of sentence was recalled vide order dated 18.07.2024 by the Additional Sessions Judge, Gurugram. On an appeal to the High Court, on the affidavit of the respondent that he is not in a position to deposit 20% of the amount, the High Court exempted him from depositing the said amount and still maintained the order of suspension of sentence.*
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> ***4. The High Court in exempting the respondent from payment of the 20% of the compensation has not assigned any reason whatsoever except that as the respondent is not in a position to make the said deposit, his aforesaid financial incapacity ought not come in the way of his liberty.***
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> ***5. It is true that personal liberty is paramount but when there is suspension of sentence with a direction, the respondent convict has to abide by the condition imposed while protecting his personal liberty. However, if that condition is not followed, the interim protection granted is liable to be revoked as had done in this case. Therefore, the High Court manifestly erred in law in exempting the deposit of 20% of the amount as a condition for suspension of the sentence.***
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> [Emphasis supplied]

6. It also bears noting that the impugned order was passed on 23rd July, 2025. Since the statute mandates the pre-deposit to be made within sixty days from the date of the order, the Petitioner is permitted to deposit the requisite amount within the said statutory period.

7. With the foregoing directions, the present is disposed of along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 9, 2025

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