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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment Delivered on 12.02.2025*

+ CRL.M.C. 7905/2024 & CRL.M.A. 30147/2024

SHRI ANIL ARVIND BHAI VAIWALAPetitionerThrough: Mr. V.K. Anand and Mr. Vibhor
Anand, Advs.

versus

STATE OF NCT OF DELHI & ANR.RespondentsThrough: Ms. Kiran Bairwa, APP for State
Mr. Anshuman, Mr. Kunal Bawa and
Mr. Jatin Kalra, Advs. for R-2**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The present petition has been filed impugning the orders dated 01.07.2024 and 07.09.2024, passed by the learned ASJ (SFTC), Dwarka Courts in CRL. A. 1988/2024 titled as '*Sh. Anil Arvind Bhai Vaiwala vs. State of NCT of Delhi*'.
2. The learned Metropolitan Magistrate had convicted the petitioner for the offence under section 138 of NI Act *vide* judgment dated 12.02.2024. Later, *vide* order dated 16.05.2024, the petitioner was sentenced to undergo SI for six months and further sentenced to fine of Rs. 8,50,000/- and in default, further sentence of one month.
3. The present petitioner had preferred an appeal against his conviction

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and sentence under Section 138 of NI Act.

4. The learned ASJ, in appeal, while suspending the sentence of the petitioner under Section 389 CrPC *vide* order dated 01.07.2024 had directed the appellant to deposit an amount of 20% of the total compensation amount awarded by the learned Trial Court within 60 days from the date of said order and the petitioner/accused was admitted to bail subject to his furnishing bail bond in the sum of Rs.20,000/- with one surety in the like amount.

5. As the petitioner/appellant failed to deposit 20% of compensation amount in compliance of aforesaid order dated 01.07.2024, the learned Appellate Court *vide* order dated 07.09.2024 vacated the order of suspension of sentence.

6. The learned counsel appearing on behalf of the petitioner submits that the learned Appellate Court, while directing the petitioner/appellant to deposit 20% of the compensation amount, has failed to appreciate that deposit of 20% amount while directing suspension of sentence is not an absolute rule with no room for accommodating exceptions. He submits that it is obligatory on part of the Appellate Court to consider whether the case falls in the category of an exception or not, irrespective of whether such a plea is made by the appellant that an exception be made and the requirement of deposit of minimum 20% of the amount be dispensed with. To buttress his contention, the learned counsel places reliance on the decision of the Hon'ble Supreme Court in ***Jamboo Bhandari vs Madhya Pradesh State Industrial Development Corporation Ltd. & Ors., (2023) 10 SCC 446.***

7. On the other hand, the learned counsel appearing on behalf of the respondent has opposed the present petition.

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8. Having heard the rival contentions of the parties, the short question which arises for consideration in the present petition is whether the learned Appellate Court was under obligation to consider as to whether the case of the petitioner warrants carving out of an exception before directing deposit of 20% of the compensation amount.

9. The issue is no more *res integra* as the Hon'ble Supreme Court in ***Jamboo Bhandari*** (*supra*) dealt with this question and observed as under:

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 NI Act. Hence, normally, the 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 the appellate court considers the prayer under Section 389 CrPC of an accused who has been convicted for offence under Section 138 NI 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.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no



reasons for the courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the court has to consider whether the case falls in exception or not.

10. In these cases, both the Sessions Courts and the High Court have proceeded on the erroneous premise that deposit of minimum 20% amount is an absolute rule which does not accommodate any exception.

11. The learned counsel appearing for the appellants, at this stage, states that the appellants have deposited 20% of the compensation amount. However, this is the matter to be examined by the High Court.

12. In these circumstances, we set aside the impugned orders of the High Court and restore the revision petitions filed by the appellants before the High Court. We direct the parties to appear before the roster Bench of the High Court on 9-10-2023 in the morning to enable the High Court to fix a date for hearing of the revision petitions. As the contesting parties are before the Court, it will not be necessary for the High Court to issue a notice of the date fixed for hearing. The High Court, after hearing the parties, will consider whether 20% of the amount is already deposited or not. If the Court comes to the conclusion that 20% of the amount is not deposited, the Court will re-examine the revision petitions in the light of what we have observed in this judgment. Till the disposal of the restored revision petitions, the interim order passed by this Court ordering suspension of sentence will continue to operate.”

(emphasis supplied)



10. The decision in ***Jamboo Bhandari*** (*supra*), leaves no manner of doubt that though imposition of condition of deposit as provided in Section 148 of NI Act is a rule, however, exception to this rule could be made by the Appellate Court where it 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 the appeal of the appellant. It goes without saying that for arriving at a decision that it is a case warranting carving out an exception, it is necessary to take a *prima facie* view of the financial condition or wherewithal of the appellant and other relevant factors pleaded by the appellant.

11. The Hon'ble Apex Court had also rejected the submission that a specific plea has to be taken by the appellant that an exception be made to the deposit of 20% of the compensation amount. It was observed that when an accused/appellant applies under Section 389 CrPC for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition, therefore, when a blanket order is sought by the appellant, the Court has to consider whether the case falls in exception or not. This obviously means that even when no specific prayer is made or a plea taken for dispensing with the condition of deposit of minimum 20%, still the Appellate Court will advert to various factors premised on which exception can be granted. However, if the Appellate Court decides to make an exception, it can be done for the reasons to be specifically recorded.

12. A perusal of the impugned order dated 01.07.2024 shows that the learned Appellate Court has not considered as to whether case of the petitioner falls in the exception, rather it straightaway directed the petitioner to deposit 20% of the compensation amount.



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13. In light of the above discussion, the present petition is allowed and the impugned orders passed by the learned Appellate Court, as well as all subsequent steps taken by the learned Appellate Court including coercive action against the petitioner for not having deposited 20% of the compensation amount, are set aside.

14. Consequently, the matter is remanded to the learned Appellate Court to pass a fresh order on an application under Section 389 CrPC in light of the decision of the Hon'ble Supreme Court in *Jamboo Bhandari* (*supra*), as well as in the light of above discussion.

15. The petition is disposed of in the above terms.

16. As both the parties are represented before this Court, it will not be necessary for the learned Appellate Court to issue fresh notice to the parties. Let the parties remain present before the learned Appellate Court on 21.04.2024.

VIKAS MAHAJAN, J

FEBRUARY 12, 2025
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