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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2769 of 2026

1. Santosh Kumar Singh S/o. Rup Singh, Aged About 57 Years Resident Of Ward No. 2, Rajapara, Near Raja Pond, Janjgir, Police Station-Kotwali, District - Janjgir-Champa (Cg)

... Petitioner

versus

1. Laxminarayan Kaushik S/o. Bhagwat Kaushik Aged About 41 Years Resident Of Chakarbhatha, Police Station-Chakarbhatha, District-Bilaspur (CG)

... Respondent

For Petitioner : Mr. Amit Singh Chouhan, Advocate

SB: Hon'ble Mr. Justice Parth Prateem Sahu

Order on Board

30.10.2026

1. Petitioner has preferred this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') feeling partially aggrieved by the order dated 31.8.2026 passed in Criminal Appeal No.265/2026 by which learned appellate Court has stayed the recovery of amount of compensation as awarded by learned Magistrate under Section 148 of the Negotiable Instruments Act, 1881 (for short

'the Act of 1881') subject to petitioner's depositing 20% of the amount of compensation.

2. Facts of the case, in brief, are that the proceedings under Section 138 of the Act of 1881 had been initiated against the petitioner. In the said proceedings, learned Magistrate held the petitioner guilty of having committed offence punishable under Section 138 of the Act of 1881 and accordingly, convicted and sentenced him to undergo simple imprisonment for a period of three months and to pay compensation to the tune of Rs.24,62,875/- to the complainant. Aggrieved therewith, an appeal under Section 415 of the Bharatiya Nagarik Suraksha Sanhita 2023 (for short 'the BNSS'), corresponding to Section 374 of the Code of Criminal Procedure 1973 (for short 'CrPC'), was preferred by petitioner. Along with the appeal, so preferred, an application under Section 430 (1) of the BNSS, corresponding to Section 389 of CrPC, had been moved by petitioner. By the order impugned, the sentence imposed upon petitioner was suspended and he has been directed to be released on bail. However, while staying recovery of amount of compensation awarded by learned Magistrate, petitioner is directed to deposit of 20% of the compensation amount. This condition is to be complied on or before the next date of hearing.

3. Learned counsel for petitioner submits that under Section 143A of the Act of 1881 it is the discretion of the appellate Court to either order the appellant to deposit a portion of the fine/ compensation amount awarded by learned Magistrate or to waive such deposit and this discretion is to be exercised judicially and not mechanically. Petitioner herein has sought waiver of the condition for deposit of 20% of the compensation amount imposed vide judgment dated 1.8.2026 specifically pleading that petitioner is not capable to deposit 20% amount of compensation, therefore if he is not exempted from such deposit, it would lead to deprivation of his right of appeal.

4. Heard learned counsel for the petitioner and perused the documents available in record of petition.

5. Section 148 of the Act of 1881, which is relevant for the adjudication of the present case, reads as under:-

> “148. Power of Appellate Court to order payment pending appeal against conviction.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

6. From perusal of above quoted Section 148 of the Act of 1881, it emerges that in an appeal filed by the drawer against conviction under Section 138, the Appellate Court ‘may’ order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the Magistrate. The use of word ‘may’ in Section 148 makes the

intention of the legislature very clear that any order of deposit by the appellate Court is not compulsory and/ or mandatory and is thus, open to exercise of discretion and relaxation in exceptional cases, as and when need arises. Hence, an order asking an accused, like petitioner herein, to deposit 20% of the compensation awarded by the learned Magistrate in a complaint case under Section 138 of the Act of 1881, has to reflect due application of mind as it ought not to be passed mechanically.

7. In case of **Jamboo Bhandari (supra)**, Hon'ble Supreme Court has observed thus:-

> "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.
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> 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 389 of the Code of Criminal Procedure 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."

8. In case of **Rakesh Ranjan Shrivastava v State of Jharkhand and others,** reported in **(2024) 4 SCC 419,** Hon'ble Supreme Court has observed thus:-

27. Subject to what is held earlier, the main conclusions can be summarized as follows:

27.1. The exercise of power under sub-section (1) of Section 143-A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall".

27.2. While deciding the prayer made under Section 143-A, the court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:

27.3.1. The court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the

defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

27.3.3. If the defence of the accused is found to be prima facie plausible, the court may exercise discretion in refusing to grant interim compensation.

27.3.4. If the court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

9. In case of **Rohit Chaturvedi Vs. State of Uttarakhand & others,** reported in **2026 SCC Online SC 865** Hon'ble Supreme Court has observed thus:

"It is a settled principle of law that any order affecting rights of a person and particularly his liberty must be with reasons and must reflect

> due application of mind. Recording of reasons is not an empty formality, it is a safeguard against arbitrariness and ensures transparency, fairness, and accountability in decision-making. The absence of reasons renders it bald and makes it impossible to ascertain whether relevant factors were duly considered or not."

10. Reading of above statutory provisions coupled with the guidelines laid down by Hon'ble Supreme Court in above decisions, demonstrates that it is always open for the appellate Court to impose or not to impose condition of deposit of a portion of amount of fine/compensation. It is not compulsory and the appellate Court can, depending on the facts and circumstances of the case, determine whether deposit should be ordered at 20%, reduced to a lesser amount or waived altogether. However, the Court must record the reasons in support of such exercise of discretion.

11. Reverting back to the present case. Perusal of the impugned order reveals that the appellate court while considering prayer for stay/exemption from deposit of amount of compensation, has not recorded any reason as to why case of petitioner is not an exception case where condition of deposit of 20% can be exempted. True it is that the Appellate Court was not expected to pass any detailed order, but at least some *prima*

facie reasons ought to have been recorded that why the petitioner's case was not found to be an exceptional case, once specific argument had been raised before the appellate Court by the petitioner that due to financial distress he is unable to fulfill the condition of 20% deposit.

12. For the foregoing, the petition is allowed. The impugned order dated 31.08.2026 to the extent it directs for deposit of 20% amount of compensation is set aside. The matter is remanded back to the Appellate Court with a direction to consider the question of deposit/waiver of amount of compensation afresh within a period of one month from the date of production of copy of this order before the trial Court.

13. Certified copy as per rules.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/