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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.164 OF 2025

Sachin Ramrao Sapkal,
Aged 47 Years,
Occupation : Business,
R/o Umala,
Taluka and District Buldhana.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through D. G. P. Buldhana,
Tauka and District Buldhana.

2. Kapil Prakash Bondre,
Aged 49 Years,
Occupation : Business,
R/o. Bondre Petrol Pump,
Chikhali, Taluka Chikhali,
District Buldhana.

....NON-APPLICANTS

Mr. S. S. Deshpande, Advocate for applicant.

Ms. M. A. Barabde, APP for non-applicant No.1/State.

Ms. Anjali A. Agrawal, Advocate for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13/03/2026

ORAL JUDGMENT :

1. Heard.

2. **Admit.**

3. Heard finally with the consent of the learned Counsel
for the applicant, learned APP for the State and learned counsel
for the non-applicant No.2.

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4. By this criminal revision application, the applicant has challenged the order of the learned Additional Sessions Judge, Buldhana, directing the present applicant to deposit the amount of Rs.2,20,000/- which is 20% of the fine amount towards the interim compensation as contemplated under Section 148 of the Negotiable Instruments Act (for short 'N.I.Act') and subject to executing the personal bond and furnishing the surety bond of Rs.50,000/-.

5. The respondent No.2 has filed a Summary Criminal Case No.354/2020 before the learned Judicial Magistrate First Class, Chikhali. According to the respondent No.2 – complainant, he is the Proprietor of R. R. Bondre Petrol Pump and doing a business of petrol and diesel selling. The accused has purchased the diesel from the complainant on credit basis of Rs.5,50,000/-. Against the said credit, the applicant has issued a cheque bearing 000028 of Rs.5,50,000/-. The cheque was deposited by the respondent No.2 in his account, which was returned with an endorsement "Insufficient Fund". After following the due process and after mandatory compliance, he preferred the complaint before the learned Judicial Magistrate First Class. The complainant has also adduced his evidence in support of his contention and the opportunity of cross-examination was also granted to the present applicant. After appreciation of the evidence, the learned trial Court

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convicted the present applicant. Against the said conviction, he has preferred an Appeal bearing No.41/2025 along with application for suspension of sentence and releasing him on bail. The Appellate Court i.e. Additional Sessions Judge, Buldhana, directed the present applicant to deposit the amount of Rs.2,20,000/- which is 20% of the compensation amount, in view of Section 148 of the N.I. Act.

6. Being aggrieved and dissatisfied with the said order, present revision application is preferred by the applicant on the ground that the Sessions Judge cannot impose a precondition for releasing the present applicant on bail. He submitted that it is the discretion of the Court and while using the discretion, the Sessions Court has to give the reasoning, and without giving any reasoning, the said order was passed. In support of his contention he placed reliance on **Rakesh Ranjan Shrivastava vs State of Jharkhand and another** reported in **2024(4) SCC 419** as well as the Judgment of **Punjab and Haryana High Court in CRM-M-7799-2025 and 8498-2025 [M/s Coromandel International Limited vs. Shri Ambica Sales Corporation]**.

7. Per contra, learned counsel for the respondent No.2 submitted that in view of Section 148 of the N.I. Act, that is the Appellate Court's power to impose the condition and in view of

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that the discretion is used by the Appellate Court and no illegality is committed by the Appellate Court. In view of that, the revision application being devoid of merits and liable to be dismissed.

8. After hearing both sides and on perusal of the order passed by the Appellate Court only issue involved in the present revision is whether the order passed by the learned Additional Sessions Judge is a reasoned order by using the power under Section 148 of the N.I. Act. It would be appropriate to refer the section and reproduce the same for the purpose of the reference:

Section 148 deals with power of Appellate Court to order payment pending appeal against conviction, which reads as notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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:

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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.]

9. Thus, in view of Section 148, power is given to the Appellate Court to order payment pending appeal against conviction. This aspect is also considered by the Hon'ble Apex Court in the case of **Surinder Singh Deswal @ Col. S. S. Deswal vs Virender Gandhi** reported **(2019) 11 SCC 341** wherein the Hon'ble Supreme Court of India has held that an order for deposit under Section 148 of Negotiable Instruments Act, 1881 is mandatory and a plain reading of the WEB of Section 148 of the Act, it is clear that it is only 20% of the compensation/fine amount and not the cheque amount and therefore the Trial Court ought to have ordered deposit of a total sum of Rs.8,64,000/-, being 20% of the compensation amount and therefore, he would pray to the extent this Court should interfere in the order of the learned Principal Sessions Judge. This aspect is also considered in another judgment in **Rakesh Ranjan Shrivastava vs State of Jharkhand and another** (supra) while considering whether the Appellate Court can direct such type of the directions and whether it is mandatory, the

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Hon'ble Aepx Court in para 11 observed that "there is no doubt that the word "may" ordinarily does not mean "must". Ordinarily, "may" will not be construed as "shall". But this is not an inflexible rule. The use of the word "may" in certain legislations can be construed as "shall", and the word "shall" can be construed as "may". It all depends on the nature of the power conferred by the relevant provision of the statute and the effect of the exercise of the power. The legislative intent also plays a role in the interpretation of such provisions. Even the context in which the word "may" has been used is also relevant.

10. It is further held that the power under Section 143A sub-section (1) to direct the payment of interim compensation in a summary trial or a summons case upon the recording of the plea of the accused that he was not guilty and, in other cases, upon framing of charge. As the maximum punishment under Section 138 of the N.I. Act is of imprisonment up to 2 years, in view of clause (w) read with clause (x) of Section 2 of the Code of Criminal Procedure, 1973, the cases under Section 138 of the N.I. Act are triable as summons cases. However, sub-section (1) of section 143 provides that notwithstanding anything contained in Cr.P.C., the learned Magistrate shall try the complaint by adopting a summary procedure under Sections 262 to 265 of Cr.P.C. However, when at the commencement of the trial or during the course of a summary trial, it appears to the Court that

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a sentence of imprisonment for a term exceeding one year may have to be passed or for any other reason it is undesirable to try the case summarily, the case shall be tried in the manner provided by Cr.P.C. Therefore, the complaint under Section 138 becomes a summons case in such a contingency. We may note here that under Section 259 of Cr.P.C, subject to what is provided in the said Section, the learned Magistrate has the discretion to convert a summons case into a warrant case. Only in a warrant case, there is a question of framing charge. Therefore, clause (b) of sub-section (1) of Section 143A will apply only when the case is being tried as a warrant case. In the case of a summary or summons trial, the power under sub-section (1) of Section 143A can be exercised after the plea of the accused is recorded.

11. While dealing with the provision under Section 148, the Apex Court observed that even sub-section (1) of Section 148 uses the word 'may'. In **Surinder Singh Deswal @ Col. S. S. Deswal vs Virender Gandhi** (supra) this Court after considering the provisions of Section 148 held that word "may" used therein will have to be generally construed as "rule" or "shall". It was further observed that when the appellate Court decides not to direct the deposit by the accused it must record the reasons. After considering the said decision in **Surinder Singh Deswal @ Col. S. S. Deswal vs Virender Gandhi** (supra) this Court in **Jamboo Bhandari vs M.P. State**

Industrial Development Corporation Limited in para No.6 held "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."

12. In view of the above observations, if the order passed by the learned Additional Sessions Judge is taken into consideration admittedly, he has assigned the reasons while passing order. He specifically mentioned that Section 148 of the N.I. Act provides that at the time of suspension of under Section 138 of the said Act, the Court shall impose the interim compensation, which shall not be less than 20% of the fine amount as a condition precedent for suspension of the sentence. He has also considered the submissions made by the learned counsel for the applicant, therefore I do not find any illegality is committed by the learned Additional Sessions Judge, Buldhana. In view of that, the revision being devoid of merits and liable to be dismissed. Accordingly, I proceed to pass following order:

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ORDER

The revision is **dismissed**.

(URMILA JOSHI-PHALKE, J)

Sarkate.