



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Misc(Pet.) No. 7408/2024

Asha Devi W/o Sh. Jivan Singh, Aged About 54 Years, Hadmala, Kacchi Basti, Sabhagar Ke Pass, Bhoikhera, Tehsil And Distt. Chittorgarh.

-----Petitioner

Versus

1. Narayan Keer S/o Sh. Hazari Lal Ji Keer, Keer Kheda, Sinchai Nagar Ke Pass, Teshil And Distt. Chittorgarh.
2. State Of Rajasthan, Through Pp

-----Respondents

For Petitioner(s) : Mr. D.S. Gaur

For Respondent(s) : Mr. S.R. Choudhary, PP

**HON'BLE MR. JUSTICE ARUN MONGA**

**Order (Oral)**

**23/10/2024**

1. Grievance of the petitioner herein is against the order dated 18.09.2024, passed by the learned Sessions Judge, Chittorgarh, in Criminal Appeal No.148/2024, whereby the application filed by petitioner/accused under Section 389 Cr.P.C. in a pending appeal against his conviction under Section 138 of the Negotiable Instruments Act, 1881, was allowed subject to the deposit of 20% amount of fine/compensation amount, failing which, the petitioner was to undergo the sentence awarded by the trial court.
2. The impugned order of learned Sessions Court is primarily premised on the reasoning that as per Section 148 Negotiable Instruments Act, sentence can only be suspended if a minimum of at least 20% of the fine amount is paid to the complainant.



3. A perusal thereof reveals that the learned Sessions court fell in grave error in directing interim payment of the 20% of fine amount under the impression that the provision contained under Section 148 of N.I. Act is absolute in nature and without compliance thereof, the application of the petitioner seeking suspension of her sentence could not have been allowed. In this regard, reference may be had to Apex Court judgment rendered in **Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. & Ors. : (2023) 10 SCC 446**. The relevant thereof of is reproduced here in below :-

*“6. 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.*

*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 4 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 389 of the Cr.P.C. 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.”*

4. Learned counsel for the petitioner submits that the petitioner is a poor lady who works on daily wages as a Sweeper/Cleaner in the houses. Being so, she is not in a position to deposit such a huge amount i.e. 20% of Rs.1,,50,000/-, which comes to Rs.30,000/-.

5. In the premise, she shall have to necessarily surrender for being taken into custody. Therefore, she would not even be able to defend her appeal during the pendency thereof. It is further submitted that the liberty of the petitioner is at stake.

6. While, on the other hand, she is sanguine that she has a good case in appeal. She will succeed in the same, but due to her inability to pay she is not able to defend herself in the further proceedings until she complies with the order impugned herein.

7. Having heard the learned counsel for the petitioner, I am in agreement with the arguments canvassed by him.

8. In the premise, after perusing the impugned order and the case file, I am of the view that looking at the financial condition of the petitioner, directing her to deposit 20% of the amount as per impugned order shall result in jeopardizing her appeal being dismissed on account of non-compliance of the condition of deposit. She seems to be in financial distress and has to be granted indulgence in the larger interest of justice to enable her to defend herself in the pending appeal.

9. As an upshot, keeping in view the ratio of Apex Court judgment in Jamboo Bhandari (supra) and in the light of the facts and circumstances of the case the impugned order dated



18.09.2024 is modified and condition of pre-deposit of 20% of interim compensation, is set aside. Learned Sessions Judge shall proceed with hearing of the appeal without insisting for pre-deposit and dispose of the same in accordance with law.

10. Disposed of accordingly.

11. Pending application(s), if any, also stand(s) disposed of.

**(ARUN MONGA),J**

85-skm/-

