

Adarsh Behl Vs. The State & Anr.
Criminal Appeal No. 259/2023

04.11.2023

Present : Appellant in J/C with Sh. Luqman S. Hasan, through VC.

Sh.Ashok Goel, through VC and Sh. G.G. Singh, Ld. Counsels for respondent No.2.

1. The issue for consideration before this court is if order for depositing 20% of the fine or compensation awarded by the Ld. Trial court is discretionary or mandatory U/s. 148 NI Act. The other point to be considered is if the request of the appellant for admitting on bail without complying with the order dated 14.09.2023 i.e. deposit of 20% of the compensation amount, can be considered.

2. Heard the arguments of Sh. Luqman S. Hasan, Ld. Counsel for the appellant, Sh. Ashok Goel, Ld. Counsel, through VC, and Sh. G.G. Singh, Ld. Counsel for respondent No.2. Ld. Counsel for respondent No.2 has filed written arguments on this issue.

3. Coming to the first issue, bare reading of Section 148 NI Act provides that appellate court may order the appellant to deposit such sum which shall be minimum of 20% of the final compensation awarded by the Ld. Trial court. The word used is 'may' which show that discretion has been given to the appellate court. If there would have been the mandate of law that appellant is bound to deposit minimum 20% of the compensation awarded, the word used would have been 'shall'. Ld. Counsel for

respondent No.2 has failed to show any judicial pronouncement observing that in appeal the appellant shall be bound to deposit minimum 20% of the fine or compensation awarded by the Ld. Trial court.

4. In support of his submissions, Ld. Counsel for the appellant has relied upon the judgment of the Apex Court in Criminal Appeal No.2741 of 2023 titled **Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Ltd. & Ors.**, decided on 04.09.2023. Here the court has observed in para 6 that 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.

5. Now coming to the facts of this case. Ld. Counsel for respondent No.2 has submitted that appellant is a known orthopaedic surgeon. He is in custody for last three months but before that he had a roaring premises and he must have been earning around Rs.10,00,000/- each month. He used to live with his wife, daughter and son who have good sources of income. Appellant used to have luxury vehicles at his disposal. Appellant has been convicted in similar cases and against all these cases, he has filed the appeals. If this court decides that appellant may be released on bail without deposit of minimum 20% of the compensation awarded, he may use this order in other appeals also. On the other hand, Ld. Counsel for appellant submits that no doubt appellant is a known orthopaedic surgeon, but three years back, his hospital was sold on account of his financial

problems and as a result of that he failed to get any employment anywhere because of his age as he is around 65 years old. He submits that he has filed bank statements of the appellant showing that he has no money in his account to be paid in compliance of the court order or to respondent No.2/complainant.

6. On 01st November, 2023, this court has recorded statement of the appellant wherein he has stated that except his account in Bank of Baroda, he does not have any other bank account. In his reply, Ld. Counsel for respondent No.2 has stated that as per the cheques given by appellant to respondent No.2, he had two accounts in HDFC bank and YES bank and willingly he has not disclosed about these two banks. On this, Ld. Counsel for the appellant submits that both these accounts are lying dormant. There is no reason with this court to doubt this submission made by Ld. Counsel for the appellant regarding these two accounts.

7. Ld. Counsel for respondent No.2 has filed copies of the four judgments of different courts vide which appellant stands convicted. Ld. Counsel for respondent No.2 has urged that appellant is a habitual offender and if 20% ordered by this court is waived off, it will send a wrong message.

8. As admitted by both the parties, appellant is in J/C in this matter for the last three months. As per the impugned order, he has been sentenced to pay compensation of Rs.14,00,000/- with simple imprisonment for 06 months and in default, simple imprisonment for 01 month. At this stage, without detailed examination of the issue, it is not possible to conclude if actually appellant has no money at his disposal to deposit 20% of the

compensation awarded or not. However, fact of the matter is that even after more than 1½ month of the bail order dated 14.09.2023, the appellant has not deposited the desired amount and has pleaded his inability to pay this amount. No evidence has come on record to infer that appellant has resources at his disposal from where he can pay this amount.

9. In view of the aforesaid reasons, it is felt to be in the interest of justice that in this case condition of deposit of 20% of the compensation amount awarded by the Ld. Trial court should be waited off. It is ordered accordingly,

10. Put-up on **15.12.2023** for arguments on appeal.

(Sanjay Garg-I)
Principal District & Sessions Judge
New Delhi District
Patiala House Courts/ND/04.11.2023_(mc)