

Order Below Exh. 5.

1. Heard. Read the application, written arguments in support of application and perused the record available. The appellant has filed this appeal against the order passed in Cri. Case No. 179/2024 by ld. Magi. Court and convicted the accused for the offence U/s 138 of N.I.Act, and awarded the sentence for the simple imprisonment and fine and in default of fine further simple imprisonment as well as compensation. Hence, the present application has been preferred to obtain suspension of the sentence and to be enlarged on bail.

2. Heard, Ld. Advocate for appellant has submitted before the Court that there is chances of success in the appeal and If the accused is not released on bail and if this order is not suspended under sec. 430 of BNSS, the accused has to go to the jail and the purpose of justice would not serve and prayed to suspend the order passed by the Ld. Magi. Court and to release the accused on suitable condition.

Heard online arguments of the Ld. AdPP for the state on this application.

3. Looking to the facts and circumstances, it transpires that Magi. Court has convicted appellant under section 138 of N.I.Act. As there appears a chance of success to the appeal and so, if this application is not allowed then the accused have to wrongly go to the jail.

Moreover, the accused remained absconded and was not present on the day of judgment and except this, there appears no special ground to deny the prayer made in this application. But it is pertinent to note that the lender is the co-op. Society, licensed to finance and to provide loans.

Moreover, it will take a considerable time for final disposal of appeal. Hence, under such circumstances the application of the accused appellant/s deserve/s to be allowed and the following order is, hereby, made.

### **ORDER**

- 1) The present application of the appellant (accused) Dhirubhai Nagjibhai Savaliya is, hereby, conditionally, allowed.
- 2) The execution of the sentence inflicted on present appellant (accused), by Order Dtd: 29/07/2025, passed by the Ld. JMFC, Bagasara, in C.C. No. 179/2024, under section 138 of N.I.Act, is, hereby, suspended till the final disposal of this appeal.
- 3) The accused is directed to remain present on every hearing.
- 4) The accused is also directed furnish his personal bond for Rs. 10,000/- & surety of like amount before this court and to deposit Rs. 1,60,562/- being approx. 40% amount of compensation/fine (RS 4,01,405) within 30 days from the date of this order.
- 5) If both the parties agree, the amount ordered to be deposited above in point. No. 4, can be directly paid to the respondent i.e. being original complainant and who, in turn, shall pass a pursis for the same.
- 6) Yadi be sent to concerned Magi. Court.

Read & Pronounced in open court today.

Date :29/08/2025  
Dhari.

M. N. Shaikh ( GJ00611),  
3<sup>rd</sup> Addl. Sessions Judge, At : Dhari. Dist: Amreli.