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**Order Below Exh.4 In
Criminal Appeal No.4/2025**

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(1) Read the application. Heard learned Advocate Mr. L. R. Sindhi for the appellant/accused and learned Addl. P. P. Mr. J. K. Chauhan for the opponent State. The appellant/accused is convicted by the learned Additional Judicial Magistrate First Class, Dahod for the offence punishable under Section 138 of the Negotiable Instruments Act in Criminal Case No.1849/2024 vide the judgment and order dated 09.12.2024 and the appellant has filed criminal appeal against the judgment and order passed by the learned lower Court. This application is filed by the appellant to suspend the order of conviction passed by the learned lower Court till the final decision of the appeal.

(2) Learned Advocate Ms. L. R. Sindhi for the appellant submitted that the appellant is poor and hardly maintaining his family. He has already paid the disputed amount on the basis of compromise, any-how, the learned trial Court has convicted the present appellant for the offence punishable under Section 138 of the Negotiable Instruments Act but the appellant has a good case in appeal and there are all chances that he may be succeeded in appeal. The learned trial Court has granted bail till the expiry of appeal period and he has furnished the bail before the learned trial Court. It is submitted that the present appeal is likely to take time for its decision and if the appellant is not released on bail, no purpose of his appeal will be served. Hence, the order of conviction and sentence may be suspended till the final disposal of appeal and he may be released on bail.

(3) It appears from the record that vide the impugned judgment and order, the appellant is held guilty of the offence punishable under Section

138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of two years. It is further ordered to deposit double amount of disputed cheque i.e. Rs.6,70,000/- as fine, failing which, to undergo simple imprisonment for a further period of six months. It also transpires from the copy of application and order dated 09.12.2024 produced along with this appeal vide Mark-3/2 that the learned trial Court has suspended the implementation of the order of conviction and sentence till appeal period vide order dated 09.12.2024. The appellant has filed this criminal appeal against the judgment and order of conviction dated 09.12.2024 passed by the learned trial Court in Criminal Case No.1849/2024. No breach of conditions is stated to have been committed by the appellant/accused after his release on bail. The appellant has filed this appeal today on 04.01.2025 and the learned Advocate for the appellant/accused has assured that the appellant will remain present before the Court regularly during the hearing of this appeal.

(4) Looking to the provision as made under Sec.148 of the Negotiable Instruments Act, it is provided that in case of appeal against conviction under Sec.138 of the N. I. Act, the appellate Court may order the appellant to deposit such sum, which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court. Here in this case, as per the order of the trial Court, the appellant is ordered to deposit double amount of disputed cheque of Rs.3,35,000/- = Rs.6,70,000/-. This Court has taken into consideration the principle laid down by the Honourable Apex Court in the case of **Surinder Singh Deswal @ Col. S. S. Deswal & Ors. Vs. Virender Gandhi & Anr.** in Criminal Appeal Nos.1936-1963 of 2019. Considering the ratio laid down by the Honourable Apex Court in the above referred case and also considering the grounds narrated in this application together with the

provision of Sec.148 of the Negotiable Instruments Act, this Court is of the opinion that if the order of conviction of appellant is suspended during the pendency of appeal with condition to deposit 20% of the cheque amount, it will meet with the ends of justice. Therefore, following order is passed.

:- ORDER :-

1. The present application is hereby allowed.
2. The execution and implementation of the order of conviction and sentence dtd.09.12.2024 to appellant-accused passed by the learned Additional Judicial Magistrate First Class, Dahod in **Criminal Case No.1849/2024** is hereby suspended till the final disposal of criminal appeal on following conditions.

Conditions :-

- A) The appellant shall deposit before this Court 20% amount of cheque amount of Rs.3,35,000/- (Rupees Three Lakh and Thirty Five Thousand Only) i.e. **Rs.67,000/- (Rupees Sixty Seven Thousand Only)** within sixty days from the date of this order.
- B) The appellant shall furnish a surety to the tune of Rs.25,000/- (Rupees Twenty Five Thousand Only) and a personal bond of like amount each before this Court.
- C) The appellant shall file an undertaking that he will regularly remain present before the Court during the pendency of this appeal.
- D) The appellant shall furnish at the time of execution of bail bond his full address with authentic proof thereof to the Court and shall not change the same without prior permission of the Court.

3. A copy of this order be sent to the Court of the learned Additional Judicial Magistrate First Class, Dahod.

Signed and pronounced in the open Court on this 04th Day of January, 2025.

Dt.04.01.2025
Place : Dahod

(Jayendrakumar Navnitlal Vyas)
Sessions Judge,
Dahod.
(Code No.GJ00530)

DSS, EA