

CRIMINAL APPEAL NO. 83 OF 2025

ORDER BELOW EXH. 5

1. Perused the application. Heard learned Advocate for the appellant – accused. Considered the provisions of Section 430(1) of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2. The appellant – accused has been convicted by the learned 5th Additional Chief Judicial Magistrate, Jamnagar for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, “*the Act*”) in Criminal Case No. 752 of 2024 by judgment and order dated 16-01-2025. Upon such conviction, he has been sentenced to undergo simple imprisonment for a period of one year and directed to pay compensation of Rs. 20,13,118/- to the complainant, in default of payment of compensation, to undergo simple imprisonment for a period of six months. Against the said judgment and order, the appellant–accused has preferred the present appeal. Along with the appeal, the appellant–accused has made the present application for suspension of sentence imposed upon him.

3. The offence under Section 138 of the Act is bailable. The accused has been sentenced to simple imprisonment for a term of one year. The sentence has been stayed by the learned Trial Court for a period of 30 days from 16-01-2025. In the case of *Atul @ Ashutosh Vs State of Madhya Pradesh*, Criminal Appeal No.579 of 2024, the Hon'ble Supreme Court of India has noted that, when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing the entire period of sentence, normally suspension of sentence and bail should be granted. Moreover, in the case of *Satyendra Kumar Mehra @ Satendera Kumar Mehra Versus State of Jharkhand, 2018 (0) ALJEL-SC 61960*, the Hon'ble Supreme Court of India has clarified that, the Appellate Court, while exercising power under Section 389 of the Code of Criminal Procedure, 1973, can suspend the sentence of imprisonment as well as of fine without any condition or with conditions.

4. Further, as noted earlier, the present application is made in an appeal against the judgment and order of conviction

in an offence punishable under Section 138 of the Act. Under such circumstances, Section 148 of the Act empowers the Appellate Court to order the appellant – accused to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the learned Trial Court within sixty days from the date of the order. In the present case, the compensation awarded by the Trial Court is Rs.20,13,118/-. Therefore, it would be justified if the appellant – accused is directed to deposit 20% of Rs. 20,13,118/-. which comes to around Rs. 4,03,000/- today.

5. Considering the aforesaid discussion, I pass the following order:

ORDER

1. The present application is allowed.
2. The execution of the sentence passed by the learned 5th Additional Chief Judicial Magistrate, Jamnagar, in judgment and order dated 16-01-2025 in Criminal Case No. 752 of 2024 is suspended.

3. The appellant–accused stands released on bail subject to the following conditions:
- (a) He shall furnish bond in the sum of Rs. 5,00,000/- with one surety of like amount before the learned Trial Court.
 - (b) He shall deposit an amount of Rs.4,03,000/- i.e. 20% of the compensation before this Court.
 - (c) He shall remain present on all the dates notified for the appeal either personally or through his authorized Advocate.
 - (d) He shall furnish complete residential address of himself and that of the surety along with the proof like latest electricity bill.
 - (e) He shall furnish the contact number of self as well as that of his surety.

- (f) He shall furnish the details of his nearest police station as well as that of his surety.
- (g) He shall not change his residential address without seeking permission of this Court.
6. The sentence of fine is also suspended.
7. Copy of this order be sent to the learned Trial Court
8. The learned Trial Court would be at liberty to give time to the appellant-accused and the surety for furnishing residential proof and the solvency certificate.

Pronounced in the open Court today i.e.

13th February, 2025.

Place : JAMNAGAR

(SHAMNATH CHANDRAMOHAN VEMULLA)

4th Additional District And Sessions Judge.

Date : 13-02-2025

Code No. GJ00818