

Criminal Appeal No.312 of 2025

ORDER BELOW Exh.05

1) The present appeal has been preferred under Sec.415 of the Bharatiya Nagarik Suraksha Sanhita, in short, BNSS (Sec.374 of the Criminal Procedure Code) against the Judgment pronounced on dtd.19/04/2025 by Ld. 5th Additional Judicial Magistrate First Class, Mahesana in Criminal Case No.3262/2023, whereby the Ld. 5th Additional Judicial Magistrate First Class, Mahesana has convicted the present appellant for the offence punishable under Sec.138 of the Negotiable Instrument Act,1881 and ordered to suffer six months Simple Imprisonment and also ordered to pay the Compensation to the complainant under Sec.357(3) of the Criminal Procedure code.

2) On service of the notice, Opponent No.1 (Original Complainant) appeared through Ld. advocate Mr.H.M.Rana & he has taken objections against this application. Opponent no.2(State of Gujarat) appeared through Ld. APP Mr.P.K.Dave and he submitted to pass necessary order in the interest of justice.

3) Heard. Ld.advocates for the parties. This application is under sec.430 of the Bharatiya Nagarik Suraksha Sanhita, in short, BNSS, (Sec.389 of the Criminal Procedure Code). By way of this application the appellant prays to suspend the impugned order till final disposal of the appeal & appellant be released on bail. Sec.430 of the BNSS provides that

pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond or bail bond.

4) On going through the certified copy produced by the appellant vide M.4/1, it transpires that the appellant had applied for the stay of the impugned order till the appeal period before Ld. Trial Court & the said application has been allowed. Further, on going through the provision of sec.138 of the Negotiable Instrument Act, 1881, maximum punishment prescribed two years of imprisonment & by nature the said offence is bailable. Further, reasonable time may be passed in final hearing of the appeal. Hence, this Court is of the considered view that the said application is required to be allowed.

5) Moreover, at this stage provisions of Sec.148(1) & 148(2) of the Negotiable Instrument Act, 1881 are required to be considered. The said section provides the Power of Appellate Court to order payment pending appeal against conviction. It is provided in sec.148(1) that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, 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. Further, it is provided in sec.148(2) the amount referred to

in sub-section (1) shall be deposited within sixty days from the date of the order.

6} In light of the above provisions, this Court is of the view that the implementation and execution of impugned order and judgment is stayed till the final disposal of this appeal with the condition that the appellant/accused has to deposit 20% [twenty percent] amount of the compensation amount awarded by Ld. Trial Court before this Court within 60[sixty] days. Also, the appellant is hereby ordered to release on bail if he furnishes surety of Rs.50,000/- [Fifty Thousand] and personal bond of like amount before this Court with usual condition that he has to attend the Court regularly and not to misuse his liberty, further, if the appellant having passport then he has to surrender his original passport before this court & he doesn't have it then he has to declare such fact on oath. On breach of any of the above conditions, the appellant has to bear it's consequences.

Pronounced in open Court today on 22nd May, 2025.

Date : 22.05.2025
Place: Mahesana.

(Sushil Bhagwantray Bhatt)
6th Additional District Judge &
Additional Sessions Judge,
Mahesana. UIC-GJ00857.