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**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS  
JUDGE (MR.R.T.PANCHAL), AT PORBANDAR.**

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**Order below Exh.4 in Criminal Appeal No.17/2022**

- [1] The appellant has preferred this application to suspend the Judgment dated 10.11.2022 passed by the learned Second Additional Judicial Magistrate First Class, Porbandar in Criminal Case No.1303/2022 and to release him on bail till final disposal of the appeal.
- [2] Learned advocate Mr. V. G. Parmar for the appellant has mainly relied on the contentions raised in the present application and has argued that the appellant has preferred present appeal challenging the Judgment dated 10.11.2022 passed by the learned Second Additional Judicial Magistrate First Class, Porbandar in Criminal Case No.1303/2022, whereby the appellant has been held guilty of the offence punishable under Section-138 of the Negotiable Instrument Act, 1888 (hereinafter referred N. I. Act') and ordered sentence of one year simple imprisonment and also ordered to pay compensation of Rs.3,00,000/- to the original complainant within one month of date of judgment of conviction and in default, simple imprisonment of six months. It is also submitted that the appellant has

sufficient ground to set aside the conviction order and therefore he has preferred the present appeal against the said order and it is also submitted that the learned Trial Court has suspended the sentence order till appeal period and released the appellant on bail for 30 days to prefer an Appeal. It is further submitted that the appellant was on bail on whole period for trial and followed the conditions scrupulously laid down by the learned Trial Court. It is further submitted that the offence is non-cognizable and bailable and hence the present application deserves to be allowed. It is further submitted that the appellant is ready to furnish believable sureties of Hon'ble Court and he is also ready to accept the conditions imposed by the Hon'ble Court. Lastly, it is prayed to allow the present application and to suspend the Judgment dated 10.11.2022 passed by the learned Trial Court in Criminal Case No.1303/2022 and to release him on bail till final disposal of the appeal.

- [3] Ld. AGP for the opponent No.1 State has argued and opposed the present application and prayed to reject the same in the interest of justice.
- [4] Ld. Advocate Mr. H. H. Modhavadiya appeared on behalf of the opponent No.2, but he has not filed any reply in the matter.

[5] Considering the fact that the appellant/accused has been convicted by the learned Trial Court for the offence committed U/s.138 of the Negotiable Instrument Act, 1881 and the learned Trial Court has sentenced to undergo one year simple imprisonment and also ordered to pay compensation, the appellant/accused has filed the present appeal. The appellant/accused was also granted bail till appeal period by the learned Trial Court to prefer an Appeal. Hence, it is necessary to consider the provision of Sec.148 of the Negotiable Instrument Act, 1881. Therefore, considering the facts and circumstances of the case as well as the provision of Sec.148 of the Negotiable Instrument Act, 1881, it appears that the appellant/accused is required to be released on bail with condition. Therefore, following order is passed in the interest of justice.

### **ORDER**

- [1] The present application Exh.4 is hereby partly allowed.
- [2] The Judgment dated 10.11.2022 passed by the learned Second Additional Judicial Magistrate First Class, Porbandar in Criminal Case No.1303/2022 is hereby suspended till the final disposal of present appeal.
- [3] The appellant is directed to pay 20% of the compensation awarded by the Trial Court to the original complainant or to deposit the same before this Court within 60 days.

- [4] Pending hearing of the criminal appeal, the appellant (original accused of Criminal Case No.1303/2022) shall be released on bail, on executing personal bond of **Rs.15,000/- (Rupees Fifteen Thousand Only)**, with surety of the like amount to the satisfaction of the Trial Court on the following conditions that he:
- (a) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
  - (b) shall furnish his permanent address with suitable supporting documentary evidence before the concerned Court and shall not change the residence without prior permission of the concerned Court;
  - (c) shall surrender his passport, if any, and in case of not having the same, file an affidavit declaring that fact before the concerned Court;
  - (d) shall not take undue advantage of his liberty.
  - (e) shall not leave the limits of India without prior permission of the concerned Court.
  - (f) present before the Appeal Court on each and every adjournment till final disposal of the appeal.
- [5] Bail bond be executed before the concerned Court.

[6] Copy of this order is to be sent to the Trial Court for information and compliance thereof.

Signed and pronounced in the open Court today on 28<sup>th</sup> day of November, 2022.

Date: 28/11/2022  
Place: Porbandar

(Rameshkumar Thakorbbhai Panchal)  
(GJ00413)  
Principal District & Sessions Judge,  
Porbandar.