

BEFORE THE PRINCIPAL DISTRICT & SESSIONS
JUDGE at PORBANDAR

Order Below Exh.4 in Criminal Appeal No.130/2026

1. Present appeal has been filed against judgment of conviction passed by the Learned Forth Additional Chief Judicial Magistrate, Porbandar in Criminal Case No.5171 of 2024 on 30.04.2026 whereby the appellant has been held guilty of having committed offence under Section 138 of Negotiable Instruments Act and the sentence and fine/compensation imposed by Ld. Trial Court is as under:-

Imprisonment & Fine	:	2 Years & Rs.5,50,000/-
Imprisonment in default of fine	:	6 Months.

2. It is submitted by Learned Advocate for the appellant that the appellant has *prima-facie* strong case in appeal and there is high probability on the part of appellant to succeed in appeal, therefore order of trial court is required to be suspended and the appellant may kindly be released on bail till the disposal of this appeal. Learned Advocate for the appellant further submits to allow the present application with appropriate conditions. It is also submitted that the appellant is ready and willing to pay the interim compensation as may be directed in terms of section 148 of the N. I. Act within the time limit stipulated therein. It is further submitted that the appellant has already paid Rs.1,80,000/- to the original complainant.
3. Learned advocate for the original complainant submits that Section-148 of the Negotiable Instruments Act (NI Act), 1881 empowers an Appellate Court to order a convicted person (drawer) challenging conviction under the N. I. Act

to deposit a minimum of 20% of the compensation awarded by the trial court.

4. It would be apt to refer judgment of Hon'ble Supreme Court in ***Criminal Appeal No(s).2741 of 2023 (@ SLP(CRL.) No(s).4927 of 2023) in the case titled Jamboo Bhandari vs M.P. State Industrial Development***, wherein the Hon'ble Supreme Court has held as under.

"6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, Appellate Court will be justified in imposing the condition of deposit as provided in Section 148. However, in a case where the Appellate Court is satisfied that the condition of deposit of 20% will be unjust or imposing such a condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

7. Therefore, when Appellate Court considers the prayer under Section 389 of the Cr.P.C. of an accused who has been convicted for offence under Section 138 of the N.I. Act, it is always open for the Appellate Court to consider whether it is an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. As stated earlier, if the Appellate Court comes to the conclusion that it is an exceptional case, the reasons for coming to the said conclusion must be recorded.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not".

5. In the case at hand, the transaction pertains to friendly loan given by the original complainant to the appellant and the cheque in dispute was issued towards payment of loan of Rs.5,50,000/-. Having regard to the nature of transaction

between the parties and the facts and circumstances of the case, this Court is of the view that the matter at hand cannot be categorized as an exceptional case which warrants grant of suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation amount. So far as the contention of appellant having already paid Rs.1,80,000/- to the original complainant, it is pertinent to note that the Section-148 of the Negotiable Instruments Act suggests that the Appellate Court may order the appellant to deposit an amount which shall be a minimum of twenty percent of the fine or compensation awarded by the Trial Court provided that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under section-143A of the Act. Therefore, the said contention of appellant does not sustain at this stage.

6. I have perused the appeal memo and Judgment passed by the Learned Trial Court. Prima-facie it seems that, mixed questions of law and facts are involved in present appeal which would require re-appreciation of evidence after hearing the matter on merits. The present appellant is in judicial custody at present. Hence, in view of the provision of Sec.430 of BNSS read with Sec.148 of N.I. Act, following order is passed:-

-// O R D E R \-

- (a) The present application Ex.4 is allowed. The order imposing sentence & fine/compensation passed by learned Trial Court in Criminal Case No.5171/2024 on 30.04.2026 is hereby suspended till final disposal of this appeal and the appellant is ordered to be released on bail till the

disposal of this appeal upon furnishing surety of Rs.25,000/- and personal bond of like amount before learned Trial Court subject to following conditions:-

Conditions:-

1. Appellant shall remain present on each and every date of appeal regularly;
2. shall surrender her passport or execute an affidavit declaring that she does not hold a passport, within 7 days from the date of this order;
3. shall furnish her address as well as the address of the surety along with authentic proof & contact number at the time of execution of bond and shall not change her residence without prior permission of the Court.
4. Further, in view of Section 148 of the Negotiable Instruments Act, in addition to any interim compensation that may have been paid by the appellant under section 143A of N.I. Act, the appellant is further directed to deposit 20% of the compensation imposed by the Ld. Trial Court (20% of Rs.5,50,000/-) before this Court within 60 days from the date of this order.

(b) Yadi of this order be sent to the concerned Trial Court and police station.

Signed and pronounced in the open Court today
on this **16th DAY OF MAY, 2026 at PORBANDAR.**

Date:- 16.05.2026
Place:- Porbandar

(**M. A. BHATTI**)
Principal District & Sessions Judge,
P O R B A N D A R
Code No. **GJ01506**