

IN THE COURT OF 9th ADDITIONAL SESSIONS JUDGE, GONDAL**ORDER BELOW EX.5 IN CRIMINAL APPEAL NO.43 OF 2026.**

- 1.** Present appeal has been filed against judgment of conviction passed by the Learned Additional Chief Judicial Magistrate, Gondal in Criminal Case No.3128 of 2024 on 05/06/2026 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:-	6 Months.
Compensation:-	Rs.2,25,000/-
Imprisonment in default of Fine/ compensation:-	1 Month.

- 2.** It is submitted by Learned Advocate for the appellant that the appellant has *prima-facie* strong case 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. It is further submitted that, the payment of 20% of fine/compensation amount as per section 148 of N.I.Act, be dispensed with.
- 3.** 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 involved in present appeal which would require appreciation of evidence and at present, the appellant is on bail.

4. So far as the issue of depositing the 20% of the Fine / compensation amount as provided in sec.148 of N.I.Act, is concerned, it would be profitable to refer the Judgment of Hon'ble High Court of Gujarat, in case of Mahadev Enterprise Thro Pruthvi Sanjaybhai Solanki Versus State Of Gujarat, reported in 2025 (0) GUJHC 58000, in which Hon'ble High Court of Gujarat has, by referring the Judgments of Hon'ble Supreme Court of India in case of (i) Muskan Enterprises & Anr. v. The State of Punjab & Anr., reported in 2024 INSC 104, (ii) Jamboo Bhandari Versus M.P.State Industrial Development Corporation Ltd.And Others, reported in 2023 (10) SCC 446 and (iii) Surinder Singh Deswal @ Col.S.S.Deswal Versus Virender Gandhi, reported in 2019 (11) SCC 341, observed that, the word "may" mentioned in the language used for Section 148 of the N.I. Act, is to be construed as the mandatory rule, and thus "may" would be understood as "shall" and the Appellate Court can exercise the discretionary power if the case of the appellant is an exceptional case by assigning the special reasons in the order. Therefore, considering the facts of the present case as well submissions of appellant in this regard, nothing sort of any such material transpires from the record to the satisfaction of this court which make the case of the appellant an exceptional case and hence, it appears necessary to impose the condition of depositing the 20% of the Fine / compensation amount as provided in sec.148 of N.I.Act.

- 5.** Hence, in view of the provision of Sec.389 (1) of the Cr. P.C. (now Sec.430(1) of the B.N.S.S.) read with Section 148 of N.I. Act, following order is passed:

-// ORDER \-

(a) The present application Ex.5 is allowed. The order imposing sentence & fine/compensation passed by learned Trial Court in **Criminal Case No3128 of 2024 on 05/06/2026** 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 this Court subject to following conditions:-

Conditions:-

- 1.** Appellant shall remain present on each and every date of appeal regularly;
- 2.** shall surrender his passport or execute an affidavit declaring that he does not hold a passport, within 7 days from the date of this order;
- 3.** shall not leave the territory of India without prior permission of the concerned appellate court;
- 4.** shall furnish his permanent and present residential address as well as the address of the surety along with authentic proof at the time of execution of bond and shall not change his residence without prior permission of the concerned appellate Court.

5. 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 fine/compensation imposed by the Ld. trial Court **(20% of Rs.2,25,000/-)** before this Court within 60 days from the date of this order.

6. *Yadi to the concerned trial Court.*

Order signed and pronounced in the open Court today
on this **24th Day of JUNE, 2026.**

Date:- 24/06/2026 (RITESHKUMAR KANTILAL MODH)
Place:-Gondal. 9th Additional Sessions Judge,
GONDAL, DISTRICT- RAJKOT
Code No. GJ00825