

GJVD220000872025



ORDER BELOW EXH.1 and 14 IN
Cri. Appeal NO.4/2025

APPEARANCE:

Ld. Advocate Shri. A. H. Makrani for the appellant.

Appellant not present.

None for the respondents.

[1] The present Appeal has been filed by the appellant against the judgment dated 05.03.2025 passed by the Ld. Additional Chief Judicial Magistrate, Dabhoi in CC No.106/2024 vide which appellant/accused Sukhdevbhai Budhiyabhai Rathodiya has been convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as NI Act) and he has been sentenced to undergo simple imprisonment for one year and also to pay compensation of Rs.1,08,489/- to the complainant of CC No.106/24 and in default of payment of fine/compensation, the appellant is to further undergo a simple imprisonment of one year.

[2] The perusal of the record of the present Appeal shows that after filing of the Appeal vide order dated 21.03.2025 passed below Exh.4, the Ld. Predecessor of this Court, had suspended the sentence passed in CC No.106/24 till the disposal of the present Appeal and the appellant was also granted bail on furnishing a personal bond of Rs.10,000/- with one surety of the like amount, on the condition that the appellant shall deposit 20% of the cheque amount before the Nazir of this Court till next returnable date.

[3] The perusal of the record of the present Appeal shows that the appellant has not deposited the 20% amount of the cheque till date and he has not been appearing since 03.05.2025 to attend the proceedings of the present Appeal. On the last date of hearing, due to the non appearance of the appellant/accused, bailable warrant to the tune of the amount of Rs.5,000/- was issued against him. Today, Ld. Advocate for the appellant has appeared before this Court and filed purshis vide Exh.14 wherein he has submitted that the appellant is not in contact with him and he has not received any instructions from the appellant. The Ld. Advocate for the appellant has also orally submitted that, the 20% amount of the cheque which was to be deposited in pursuance to the order passed below Exh.4 has not been deposited yet.

[4] Section 148 of the NI Act provides about the powers of Appellate Court to order payment pending the Appeal against the conviction. This provision provides that in cases of Appeal against order of conviction for the offence pending u/s.148 of NI Act, the appellate Court may order the appellant to deposit minimum of 20% of the compensation awarded by the Ld. Trial Court, within 60 days from the date of order. Section 148(2) of the NI Act further provides that the appellate Court may extend that time for above 30 days on sufficient cause being shown by the appellant.

[5] In the instant case, the order of deposit the 20% amount u/s.148 of NI Act was passed by Ld. Predecessor of this Court on 21.03.2025 but the appellant has failed to comply with that order till today. Further, the appellant had stopped appearing before this Court and consequent to that bailable warrant had been issued against him.

[6] The period which is provided u/s.148 of NI Act to deposit the amount has elapsed. Further, u/s.148(2) of the NI Act, said period can be extended up to 30 days but in the instant case, more than 90 days

have elapsed since passing the order below Exh.4, but still the appellant has not deposited the 20% of the cheque amount. In the judgment of Surinder Singh Deshwal vs. Virendra Gandhi, Hon'ble Supreme Court had discussed the effect of not depositing the amount in pursuance of section 148 of N.I. Act.

[7] The sentence passed against the appellant/accused in CC No.106/2024 had been suspended and bail was granted to him by the Ld. Predecessor of this Court with the condition that he will deposit 20% of the cheque amount before the Nazir of this Court till the next returnable date. The appellant has violated this mandatory condition. Therefore, the relief granted vide order dated 21.03.2025 passed below Exh.4 in the present case is withdrawn and the suspension of the sentence is removed and the bail bond and surety bond of the appellant are forfeited.

[8] The appellant is not present before this Court today, therefore, the Ld. Trial Court is directed to issue necessary warrant against the appellant for taking him into the custody to undergo the sentence passed in CC No.106/24.

[9] A copy of this order be sent to Ld. Trial Court for compliance.

DABHOI
DATE : 07/07/2025

Sd/-
(RAHUL SHARMA)
4th ADDITIONAL SESSIONS JUDGE,
VADODARA @ DABHOI.
CODE No. 01588.