

IN THE COURT OF THE SPECIAL JUDGE (NDPS ACT CASES), VATAKARA

Present:-Sri. Biju V G, Special Judge (NDPS Act Cases)

Friday, the 13th day of February, 2026

CRIMINAL MISCELLANEOUS PETITION NO: 1/2026

(Crl. APPEAL. NO. 59/2026)

BETWEEN:-

Muhammed Rafi P S, Aged 52 Years, S/o Sulaiman,	]	Petitioner/
Puthanpeedikayil House, Karimba, Kalladikode Post,	]	Appellant
Palakkad		

AND:-

- | | | | |
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| 1 | Geethabai, Aged 70 Years, D/o Balan, Poorathara, | | |
| | Puthiyottil, Puthur Desom, Elathur amsom, Elathur | | |
| | Village, Puthiyangadi Post, Kozhikde |] | Respondents/ |
| | |] | Complainant |
| 2 | State of Kerala, Represented by Public Prosecutor, | | |
| | Kozhikode | | |

This petition coming on 10th day of February 2026 for hearing before me upon perusing the petition and upon hearing the arguments of Sri. V Hemil Kumar Advocate for Petitioner/Appellant and of Addl. Public Prosecutor on behalf of the State and having stood over to this day for consideration, the court passed the following:

ORDER

The petition is filed under Section 415(3)(a) of the Bharathiya Nagarik Suraksha Sanhita (BNSS) seeking suspension of execution of sentence passed in ST No.79/2023 on the file of the Judicial First-Class Magistrate Court, Koyilandy.

2. Brief facts: The petitioner was convicted and sentenced to pay a fine of ₹14,27,600/- by the Judicial First-Class Magistrate Court, Koyilandy, for the offence punishable under Section 138 of the Negotiable Instruments Act. The

petitioner contends that there is no debt or liability between him and the respondent, and that he has a strong case in appeal with a fair chance of success. Hence, suspension of execution of sentence is sought.

3. Heard the learned counsel for the appellant. Perused the appeal memorandum and the copy of the judgment.

4. On examining the appeal memorandum and the judgment, this Court finds that the petitioner has been able to substantiate circumstances which disclose good grounds to consider the appeal on merits.

5. In view of the principles governing suspension of sentence pending appeal, and considering that the appeal raises arguable points, this Court is satisfied that the petitioner is entitled to suspension of execution of sentence.

6. Learned counsel for the petitioner contended that the petitioner may be exempted from the direction to deposit the fine amount, as he is under financial stringency and there is no legally enforceable liability between him and the first respondent.

7. As per Section 148 of the Negotiable Instruments Act, notwithstanding anything contained in the Code of Criminal Procedure, in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit a minimum of 20% of the fine or compensation awarded by the Trial Court.

8. In *Jamboo Bhandari v. MP State Industrial Development Corporation Ltd.* [2023 (6) KHC 80], the Hon'ble Supreme Court clarified that

where the Appellate Court is satisfied that imposing the condition of deposit of 20% would be unjust or would amount to deprivation of the appellant's right of appeal, an exception can be made, provided reasons are specifically recorded.

9. The Apex Court further held that when the Appellate Court considers suspension of sentence under Section 389 Cr.P.C. in a conviction under Section 138 N.I. Act, it is always open to the Court to consider whether the case is exceptional enough to warrant suspension of sentence without imposing the condition of deposit of 20% of the fine/compensation.

10. In light of the judgment in *Jamboo Bhandari v. MP State Industrial Development Corporation Ltd.* [2023 (6) KHC 80], it is clear that while directing deposit of 20% of the fine/compensation under Section 148 of the N.I. Act, the Appellate Court must apply its mind to the facts of each case. If the accused is able to make out a ground for reduction or exemption, the Court must consider the same before imposing deposit as a condition for suspension of sentence or bail.

11. In the present case, the subject matter is a cheque for ₹11,50,000/- dated 13.01.2023. The Trial Court sentenced the petitioner to pay a fine of ₹14,27,600/-, which represents the cheque amount with interest during the relevant period.

12. Considering the submission of learned counsel for the petitioner that he is under financial stringency, and bearing in mind that the fine amount already reflects the cheque amount with interest, this Court is of the view that directing deposit of the full 20% would be unjust in the circumstances.

13. Therefore, it is reasonable to limit the deposit to 5% of the cheque amount, which sufficiently balances the statutory requirement under Section 148 N.I. Act with the petitioner's financial hardship. The point is found accordingly.

In the result, the petition is allowed. The execution of sentence passed in ST. 79/2023 as per judgment dated 08.01.2026 is suspended till the disposal of appeal on condition that the appellant shall execute a bond for Rs.1,00,000/- with two solvent sureties within 15 days to the satisfaction of the trial court. The petitioner shall deposit 5% of the fine amount (ie. Rs.14,27,600/-) ordered by the trial court within 60 days from the date of this order. Failing which order of suspension of execution of sentence shall stand vacated. Forward a copy of the order to the Judicial First-Class Magistrate, Koyilandy.

(Dictated to the Confidential Assistant, transcribed and typed by her, corrected and pronounced by me in open Court, this the 13th day of February, 2026).

Sd/-

Addl. District & Sessions Judge

//True Copy//

SHERISTADAR

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Compared By: 1 Soumya E V, U. D.Typist
2 Nizamudheen L. D.Typist.