

ORDER BELOW EXH.5 IN CRIMINAL M.A.NO.13/2025

(Isa Shaikh Vs. Jain Vehicle Finance Company)

This is an application filed by the appellant under Section 389(1) of the Code of Criminal Procedure, seeking suspension of sentence and grant of bail, pending the hearing and final disposal of the criminal appeal.

2. The appellant has been convicted by the Learned Judicial Magistrate First Class, (Court No.3), Vaijapur, in Summons Criminal Case No.228 of 2013 under Section 138 of the Negotiable Instruments Act, and sentenced to undergo Simple Imprisonment for 2 years and fine of Rs.2,76,000/-, in default of payment of fine directed to suffer simple imprisonment for a term of three months. The learned trial Court has also granted compensation, whole fine amount of Rs.2,76,000/- when recovered under section 357(1) of Cr.P.C. and directed to pay the complainant towards compensation.

3. Heard Ld. Counsel of accused. He submitted that he has good case on merit, the accused is sent to jail immediately after the judgment, but he want to prefer this appeal being his statutory right. Even if the conviction warrant is issued against the accused the statutory right of accused does not go in fact, the same can be claimed at any time prior to completion of substantive sentence. To buttress his submission relied on following authorities -

1) **Ikbal Chandulal Shaikh ando others Vs. The State of Maharashtra and others, reported in 2023 (2) Crimes 216.**

2) **Vandana Nursinh Kelkar Vs. State of Maharashtra and another, reported in 2010 (2) Bom. C. R. (Cri.) 227.**

4. Having heard submission canvassed by Ld. Counsel and considering facts of the case, admittedly, the appellant did not prefer appeal within the prescribed period of limitation and has filed the present appeal along with an application for condonation of delay of 12 days.

Inter alia, the applicant has claimed bail and suspension of sentence in delay condonation application. The delay condonation application is required to be decide on merit but meanwhile, the sentence has already started to run against the accused pursuant to the conviction warrant of Ld. J.M.F.C.

5. The appellant has already been taken into custody pursuant to the conviction warrant issued by the Trial Court and is presently undergoing sentence, the application of suspension of sentence is required to be decide.

6. The sentence passed by the Trial Court is of 2 years of simple imprisonment, and the offence isailable and compoundable in nature. Considering that the appeal raises arguable grounds, and the probability that hearing of the appeal may take time, this Court finds it appropriate to suspend the sentence pending disposal of the appeal.

7. It is settled position of law that suspension of sentence can be granted even when the convict is already undergoing sentence, subject to satisfaction of the Court. Thus, merely because the sentence has started against the accused is no ground to reject the bail application and application of suspension of sentence.

8. It appears that accused has not paid the fine amount. The appeal is statutory right. Hence, pending the appeal the substantive sentence of imprisonment needs to be suspended and the appellant needs to be released on bail. Hence, the order :-

ORDER

- 1] Application Exh.5 is allowed.
- 2] The substantive sentence of imprisonment is hereby suspended until the final decision of the present Cri. Misc. Application, subject to the appellant furnishing P.B. & S.B. of Rs.50,000/- and to deposit in the Court 20% of the fine amount awarded by the Trial Court vide Sec.148 of the

N.I.Act within 60 days.

- 3] Issue release warrant to Jail authority.
- 4] Inform Lower Court accordingly.

Date: 09.04.2025

(Smt. S.K. Upadhyay)
Additional Sessions Judge,
Vaijapur.