

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
PAITHAN.**

CRIMINAL APPEAL No. 02/2026

Shivay Enterprises

vs.

Aditya Uttam Rathod

Order below Exh.07

01] This is an application under Section 430 of BNSS for suspension of sentence and for releasing the appellant on bail.

02] Heard learned counsel for the appellant. Perused the application, appeal memo and the paper-book.

03] It is the submission of learned counsel for the appellant that the appellant is likely to succeed in appeal and therefore the substantive sentence of imprisonment needs to be suspended and accused needs to be released on bail.

04] It is his further submission that the provisions of Section 148 of N.I. Act are discretionary and since the case of the appellant falls in an exception, the appellant may not be directed to deposit 20% of the compensation amount while suspending the sentence. In this regard, he has invited my attention to the observations of the learned trial Court in paragraph no.32 of its judgment, wherein the learned trial Court has observed that "Crucially, the accused admitted in cross-examination that she has not produced any bank account statement to prove that the money deposited by the complainant was

subsequently passed on to Santosh Rathod”, and submitted that this observation of learned trial Court is incorrect because the accused has produced statement of account below list Exh. 64. According to him, failure of learned trial Court to look into the statement filed below list Exh. 64 caused great prejudice to the accused and therefore, this Court should not order deposit of 20% of compensation amount while suspending the sentence. In support of his submission, he relied upon the case of **Muskan Enterprises & Ors. Vs. The State of Punjab & Ors., 2024 INSC 1046.**

05] In the case of *Muskan Enterprises* (supra), the Hon’ble Supreme Court preferred the view taken in the case of **Jamboo Bhandari Vs. Madhya Pradesh State Industrial Development Corporation Ltd. & Ors., reported in MANU/SC/1005/2023.** In the case of *Jamboo Bhandari* (supra), the Hon’ble Supreme Court has observed in paragraphs No.6 and 7 :

“6. What is held by this Court is that a purposive interpretation should be made of section 148 of 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.”

06] So far as the submission of learned counsel for the appellant that the case of the appellant falls in an exception because of failure of learned trial Court to look into the statement of account is concerned, I would like to point out that there is no merit in the submission. It is well settled that mere production of documents on record is not sufficient proof thereof. The Court can look into the documents only when the documents are admitted/exhibited in evidence. Admissibility and proof of documents are two different things. Firstly, the party relying upon it has to produce it on record. Secondly, the party relying upon it has to show that the document in question is admissible and then get it admitted in evidence on record. Thirdly, the party relying upon it has to prove the contents thereof by examining the relevant witness to the document. In the case in hand, the appellant is not appearing to have taken any effort to comply the second and third step and therefore, it cannot be said that a great prejudice has been caused to the appellant and consequently, the case of the appellant falls in an exception to the general rule laid down in section 148 of N.I.Act.

07] In view of order and judgment dated 18.12.2025 passed in SCC No. 1201/2022, the appellant is bound to deposit Rs.1,94,00,000/- (Rs. One Crore Ninety-four Lakhs only) towards

compensation. The impugned judgment shows that the hand-loan in question is of the year 2020 and the litigation is going on from the year 2022. The cheque amount is Rs. 97,00,000/-. Considering these aspects and the fact that the case of the appellant does not fall in an exception as observed above and also the fact that appellant is challenging the judgment of conviction and the appeal would take sufficient time in disposal, it would be just and proper to suspend the sentence of imprisonment, subject to deposit of Rs.38,80,000/- (20% of awarded compensation amount), and to release the accused on bail till the decision of the appeal. I, therefore, proceed to pass following order:-

ORDER

- 01] The substantive sentence of imprisonment is suspended till the disposal of appeal subject to deposit of Rs.38,80,000/- (Rs. Thirty-eight Lakhs Eighty Thousand only) towards part of compensation.
- 02] The Appellant/accused shall execute P.R. bond of Rs.50,000/- and furnish surety bond in like amount.
- 03] Inform trial court accordingly.

Date :- 17.01.2026

(R.D.Gadwe)
Additional Sessions Judge,
Paithan.