

MHBU010015792024



**Cri.Appeal No.30/2024**

Dattatraya Jadhav Vs.Ramdas Kathawate

**ORDER BELOW EXH.4**

(Passed on this 30<sup>th</sup> day of November 2024)

1] Instant application has been filed for being suspended sentence and releasing the appellant on bail under Section 389 of the Code of Criminal Procedure inter-alia contending that appellant/accused was prosecuted by the respondent-complainant before learned Judicial Magistrate, Court, First Class, No.1, Chikhli for the offence punishable under Section 138 of the Negotiable Instrument Act. Said case was conducted and by way of impugned judgment, appellant/accused was convicted and was directed to suffer Simple Imprisonment for the period of Two Months and to pay fine of Rs.4,00,000/- (Rs.Four Lakhs Only), in default to suffer Simple Imprisonment for One Month. According to appellant, there was no cogent and reliable evidence against appellant/accused before learned Magistrate Court. Despite it, he was convicted illegally. According to accused, he has hope in succeeding appeal. Therefore, it is implored for being suspended said sentence and for being released accused on bail by allowing Exh.4.

2] I have heard learned Counsel of appellant Shri Sawadtkar. Perused case papers. From the available record, it appears that appellant has challenged impugned judgment passed by learned trial Court on various grounds. Questions raised in the application and in appeal memo

need to be decided on merit. Therefore, in this situation, certain time would be required for adjudicating appeal on merit by calling main record and proceeding from the Court of learned Magistrate. The opportunity of putting the grievances in the appeal is required to be given to the appellant.

3] Recently new Section 148 has been added in Negotiable Instrument Act by way of Amendment dated 2.8.2018. It read as under-

*“148.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of **twenty per cent** of the fine or compensation awarded by the trial Court.*

*Provided that the amount payable under this subsection shall be in addition to any interim compensation paid by the appellant under section 143A.*

*(2) The amount referred to in subsection (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.*

*(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal.*

*Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”*

4] Thus, from above provision, it is clear that by way of above

amended provision, Appellate Court is empowered to pass the order of depositing of minimum of twenty per cent of compensation or fine amount imposed by the trial Court, irrespective of the provision of Section 357(2) of Cr.PC.

5] It would be expedient to consider the judgment reported in **Ajay Vinodchandra Shah Vs. The State of Maharashtra & Anr, Criminal Writ Petition No.258 of 2019 decided by Hon'ble Bombay High Court on 14.3.2019.** Its para No.27 is re-produced as under-

*“27. Therefore, the orders dated 24.9.2018 imposing a condition that the accused to deposit 25% amount out of total compensation, are modified that the petitioner/accused is directed to deposit 20% of the total amount of the compensation. The stipulated time of 30 days to deposit the same amount is extended till 90 days as this litigation was going on. If it is not deposited within the 90 days, the accused will have to pay interest at the rate of Rs.18% from the date of this order, if the conviction is maintained finally.”*

6] In view of above-made discussion and having considered legal provision and observations made in the judgment, cited supra, impugned order of sentence needs to be suspended by imposing condition of directing to the appellant to deposit the 20% compensation amount in the Court. In the result, following order is passed.

#### **ORDER**

- 1] Application (Exh.4) is allowed.
- 2] Sentence passed by learned Judicial Magistrate, Court, First Class, No.1, Chikhli in the impugned judgment dated 5.11.2024 in Sum.Cri.Case No.644/2020 is hereby suspended and appellant/

accused Dattatraya Haribhau Jadhav be released on execution of PR.Bond of Rs.15,000/- with one surety in like amount till the decision of main appeal, subject to condition that appellant shall deposit 20% fine amount which is imposed by the learned trial Court, in the Court.

- 3] Said amount shall be deposited in fixed deposit till decision of the appeal.
- 4] Inform to the trial Court.

Buldana  
Date:30.11.2024

**(R.N.Mehare)**  
Addl.Sessions Judge,  
Buldana