

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) No.262/2026 c/w

- i)CRM(M) No.263/2026
- ii)CRM(M) No.264/2026
- iii)CRM(M) No.265/2026 and
- iv)CRM(M) No.266/2026

ABDUL HAMEED DANGA

.....Petitioner(s)

Through: Mr. Sheikh Manzoor, Advocate

V/s

GULSHAN RASOOL DAR

... ..Respondent(s)

Through: Mr. Aadil Farooq, Advocate
Mr. Rayees Maqbool, Advocate
Mr. Zahid Ameen, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

05.06.2026

1. By this common order five petitions under Section 528 BNSS, seeking quashment of five different orders passed by learned 4th Additional Sessions Judge, Srinagar on 21.01.2026, whereby the petitioner has been asked to deposit 20% of the fine/compensation amount to the respondent in terms of Section 148 of Negotiable Instruments Act (N.I.Act) as a condition precedent for staying the conviction and grant of bail, are being disposed of.

2. Heard learned counsel for the parties and perused the record of the case.
3. It appears that the petitioner has been convicted of offence under Section 138 of N.I.Act in five different complaints filed by the respondent against him in terms of five separate judgments passed by learned Special Mobile Magistrate (PT&E), Srinagar on 30.12.2025. These five judgments have been assailed by the appellant by way of five separate appeals before the learned 4th Additional Sessions Judge, Srinagar (hereafter 'the Appellate Court'), who vide the impugned orders while entertaining the appeals and suspending the sentence imposed upon the appellant, called upon him to pay 20% of the fine/compensation amount to the respondent within a period of 60 days in terms of Section 148 of N.I.Act.
4. The petitioner has challenged the impugned orders on the ground that Section 148 of N.I.Act is not mandatory in nature and that the orders impugned are cryptic in nature, inasmuch as, no reasons have been assigned by the learned Appellate Court while directing the petitioner to deposit 20% of the amount of compensation/fine. It has been further contended that the condition imposed by the learned Appellate Court in terms of the impugned orders is very oppressive and harsh and the petitioner being a person of limited means is

incapable of arranging the substantial amount which he has been asked to pay. According to the petitioner the condition imposed is punitive in effect and it amounts to denial of right of appeal to the petitioner.

5. Before coming to the merits of the contentions raised by the petitioner, it would be apt to understand the position of law as regards the power of Appellate Court to order payment pending appeal against conviction. Section 148 of the N.I.Act, which has been inserted by Act 20 of 2018 w.e.f 01.09.2018, vests power with the Appellate Court to pass a direction upon the appellant who has been convicted under Section 138 of N.I.Act to deposit such sum which has to be a minimum of 20% of the fine or compensation awarded by the trial Court. The Supreme Court in the case of **Surinder Singh Deswal v. Virender Gandhi (2019) 11 SCC 341** has, while interpreting the provisions of Section 148 of NI Act observed as under:-

“8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the NI Act as amended, the appellate court “may” order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court and the word used is not “shall” and therefore the discretion is vested with the first appellate court to direct the appellant-accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and

Reasons of the amending Section 148 of the NI Act, though it is true that in the amended section 148 NI Act, the word used is “may”, it is generally to be construed as a “rule” or “shall” and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the appellate court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant-accused under Section 389 CrPC to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve the objects and reasons of not only amended in Section 148 NI Act, but also Section 138 NI Act. The Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonour of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque, who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 NI Act and also Section 138 of the NI Act.”

6. The aforesaid observations of the Supreme Court were explained by the said Court in a later judgment delivered in the case of **Jamboo Bhandari vs Madhya Pradesh State Industrial**

Development Corporation and Ors, (2023) 10 SCC 446 in the following manner:-

“6. What is held by this Court is that a purposive interpretation should be made of Section 148 of the N.I. Act. Hence, normally, the 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.”

7. From the analysis of the aforesaid ratio laid down by the Supreme Court, it becomes manifest that in ordinary course the Appellate Court would be justified in imposing the condition of deposit as provided in Section 148 of N.I.Act. It is only if the Appellate Court is satisfied that the condition of deposit of 20% would be unjust or the same would amount to deprivation of right of appeal of the appellant that such condition may be waived. Therefore, it is in exceptional cases that the Appellate Court can dispense with the condition of deposit of 20% of the fine/compensation and for the said purpose the Court would have to record the reasons.

8. If we have a look at the impugned orders passed by the learned Appellate Court, the contention raised by the petitioner in the applications filed by him seeking suspension of sentence, have not been dealt with at all. The impugned order passed by the learned Sessions Judge does not reflect application of mind to the contentions raised by the petitioner in his applications for suspension of sentence.

9. It is to be noted that in the applications for suspension of sentence and for grant of bail the petitioner had pleaded that the sentence awarded is harsh, excessive and disproportionate, especially having regard to the amount of cheque. He has also pleaded that he has already been subjected to immense mental, social and financial hardship due to prolonged litigation.

10. It has further been pleaded by the petitioner that the cheques in question were issued by him under coercion and pressure at a time when he was under detention. The learned Appellate Court has, without dealing with the contentions and without rendering an opinion regarding merits of these contentions, proceeded to impose the condition of payment of 20% of the fine/compensation upon the petitioner for his release on bail. The learned Appellate Court has not recorded the satisfaction as to whether or not the condition of deposit of 20% would be unjust or whether or not the same would amount to

deprivation of right of appeal to the appellant in the light of the assertions made by him. The impugned orders passed by the learned Appellate Court are, therefore, not sustainable in law.

11. In view of the above, the impugned orders passed by the learned Appellate Court are set aside and the matter is remanded to the learned Appellate Court to consider the applications of the petitioner afresh after hearing the parties and pass a fresh order thereon in the light of the observations made herein before. The petitioner shall be at liberty to file supplementary affidavits in support of his contentions in addition to the applications already made by him to which the respondent shall have a right to respond. Since the petitioner is in custody, as such, the learned Appellate Court shall make every endeavour to decide the matter most expeditiously preferably within 10 days from the date of receipt of copy of this order.

12. The petitions shall stand disposed of. Original order shall be kept on record of lead case, whereas copies thereof be kept on record of other four cases.

13. A copy of this order be forwarded to learned Appellate Court forthwith.

(SANJAY DHAR)
JUDGE

SRINAGAR
05.06.2026
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No