



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 645 of 2026

Ratnakar Nayak

..... *Petitioner(s)*

Ms. Samapika Mishra, Adv.

-Versus-

State of Odisha & Anr.

..... *Opposite Party(s)*

Mr. Tej Kumar, ASC

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

ORDER

25.03.2026

Order No.

02.

1. This matter is taken up through hybrid arrangement.
2. By filing the present CRLMC, the Petitioner has assailed the order dated 28.01.2026 passed by the learned Additional Sessions Judge, Talcher in Criminal Appeal No. 06 of 2025 appended hereto as Annexure-1.
3. Heard learned counsel for the parties.
4. Learned counsel for the Petitioner submits that the Petitioner had availed a loan of Rs. 2,00,000/- from the Opposite Party No.2 to meet his personal necessities. It is further contended that towards discharged of the said liability, the Petitioner issued a cheque bearing No. 183505, drawn on the State Bank of India, Khamar Branch.



5. However, upon presentation, the said cheque was dishonoured and returned unpaid by the Bank with the endorsement "funds insufficient". Consequently, the Opposite Party No.2, being the Complainant, instituted a complaint under Section 138 of the N.I. Act, which came to be registered as ICC Case No.23 of 2018 and is presently pending before the learned S.D.J.M., Pallahara.
6. Learned counsel for the Petitioner further contends that the learned Magistrate, vide order dated 25.11.2025, disposed of the aforesaid complaint case and directed the Petitioner to pay compensation of Rs.3,50,000/- to the Opposite Party No.2/complainant, without due and proper appreciation of the documentary evidence on record.
7. Being aggrieved by the said order, the Petitioner preferred the Criminal Appeal No. 6 of 2025 before the learned Additional Sessions Judge, Talcher, along with an interlocutory application seeking for bail and stay of realization of the compensation amount. It is further submitted that the learned Sessions Judge was pleased to granted bail to the Petitioner, subject to the condition of depositing 20% of the compensation amount before the court below. Hence, the Petitioner has approached this Court seeking modification of the said condition.
8. Learned counsel for the Petitioner placed relied upon the judgement of the High Court of Judicature at Allahabad in *Anil*



Mittal vs. State of UP and Another¹, wherein the Hon'ble Court, while considering a similar issue, was pleased to held as under:

"7. From the plain reading of Section 148(1) of the N.I. Act, the deposit of 20 percent of the amount of fine/compensation as awarded by the trial court, appears to be discretionary in nature. However, such discretion ought to be exercised by the Appellate Court in exceptional circumstances, Ordinary, no appeal could be entertained without the said deposit and proviso to sub-Section (1) of Section 148 of the N.I. Act also provides that if any amount under Section 143(A) of the N.I. Act was deposited by the accused/appellant, the amount which is required to be deposited under Section 148(1) of the N.I. Act, is in addition to the same and shall not be adjusted against the amount already paid during the trial."

9. This Court is of the considered view that it is well-settled principle of law that a statutory provision does not assume a mandatory or directory character merely by use of the expressions "shall" or "may". The true and import and nature of such provision must be gathered from the object, context, and scheme of the enactment. This legal position has been succinctly reiterated by the Supreme Court in ***Bachahan Devi & Ors v. Nagar Nigam, Gorakhpur & Ors.***², where it was held that:

"31. It is well-settled that the use of word 'may' in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore to interpret the legal import of the word 'may', the court has to consider various factors, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well-settled that where the word 'may' involves a discretion

¹ CrI. No. 64 of 2024

² AIR 2008 SC 1282



coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words discretionary significance would defeat the very object of the Act 'may' should be interpreted to convey a mandatory force."

10. In view of the foregoing discussions and for the reasons recorded hereinabove, the application stands allowed. Accordingly, this Court deems it appropriate to modify that part of the order dated 28.01.2026 passed by the learned Additional Sessions Judge, Talcher in Criminal Appeal No. 06 of 2025, and directs the Petitioner shall deposit 10% of the compensation amount before the court below within a period of two weeks from the date of receipt of a certified copy of this order.
11. Accordingly, the **CRLMC** stands **disposed of** in terms of the observations and directions made hereinabove.

(Dr. Sanjeeb K Panigrahi)
Judge