

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Writ Petition No. 876/2026

1. Deepak Dave S/o Shri Tej Shankar Dave, Aged About 54 Years, B-402, Dwarika Apartment, Manvakhera, Udaipur, Raj.
2. Dharmendra Dave S/o Shri Tej Shankar Dave, Aged About 51 Years, B-101, Dwarika Apartment, Manvakhera, Udaipur, Raj.

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Smt. Chetna Sharma W/o Shri Bharat Sharma, Through Power Of Attorney Bharat Sharma R/o Moon Florist Gumaniyawala Petrol Pump Near Panchavati, Police Station Hathipol, District Udaipur

----Respondents

For Petitioner(s)	: Ms. Manisha Phophalia
For Respondent(s)	: Mr. N.S. Chandawat, DyGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

25/02/2026

1. The present writ petition has been filed invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 questioning the legality of the condition imposed by the appellate court while suspending the sentence of the petitioner after conviction for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
2. Briefly stated facts of the case are that the petitioner came to be convicted by the learned Special Judicial Magistrate (NI Act

Cases), Udaipur vide judgment dated 03.12.2025 passed in CIS No. 15152/2015 for the offence punishable under Section 138 of the Negotiable Instruments Act and was sentenced accordingly. Aggrieved thereby, the petitioner preferred Criminal Appeal No. 18/2026 before the Court of Additional Sessions Judge No. 4, Udaipur.

3. While admitting the appeal and suspending the sentence during the pendency of the appeal, the appellate court vide order dated 08.01.2026 imposed a condition requiring the petitioner to deposit 20% of the fine/compensation amount awarded by the trial court. The petitioner has approached this Court challenging the said condition imposed while granting suspension of sentence.

4. Learned counsel for the petitioner submits that although the appellate court is empowered to impose a condition while suspending the sentence in an appeal arising out of conviction under Section 138 of the Negotiable Instruments Act, the direction requiring deposit of 20% of the fine/compensation amount is disproportionate in the facts of the present case. It is contended that the requirement of deposit ought to be confined to the cheque amount involved in the complaint and not the entire fine/compensation amount awarded by the trial court. It is further submitted that the condition imposed requires reconsideration so as to ensure that the right of appeal of the petitioner is not rendered illusory.

5. Learned counsel for the petitioner has also filed written submissions and also raised several grounds assailing the

correctness of the conviction recorded by the trial court. The submissions inter alia relate to the alleged premature presentation of the cheque, alleged material alteration in the cheque within the meaning of Section 87 of the Negotiable Instruments Act, discrepancies in handwriting and signatures as reflected in the expert report, issues relating to bank verification, alleged defect in service of statutory notice, retention of shares as security and the filing of multiple complaints arising out of the same transaction. On the strength of these submissions, it is contended that the conviction itself is unsustainable.

6. This Court finds that the aforesaid submissions essentially pertain to the merits of the conviction recorded by the trial court and the legality of the proceedings under Section 138 of the Negotiable Instruments Act. The present writ petition, however, is directed only against the condition imposed by the appellate court while suspending the sentence in exercise of powers under Section 148 of the Negotiable Instruments Act.

7. Questions relating to the existence of a legally enforceable debt, validity of the cheque, alleged material alteration, appreciation of expert evidence, service of statutory notice and other factual aspects touching upon the merits of the conviction fall within the domain of the appellate court while deciding the criminal appeal on merits. Such issues cannot be examined in the present proceedings which are confined to the legality and propriety of the condition imposed while granting suspension of

sentence. Therefore, the aforesaid submissions do not require detailed consideration in the present writ proceedings.

8. The only contention relevant for the purposes of the present petition is the submission that the appellate court has imposed the condition of deposit of twenty per cent of the amount mechanically without recording reasons and that such condition requires modification so that the right of appeal of the petitioner is not rendered illusory.

9. Learned Public Prosecutor submits that the appellate court has exercised its jurisdiction in view of Section 148 of the Negotiable Instruments Act while directing deposit of a portion of the amount as a condition for suspension of sentence. It is contended that such a direction is consistent with the legislative intent of ensuring expeditious resolution of cheque dishonour cases.

10. Having considered the submissions advanced and upon perusal of the material placed on record, it is evident that Section 148 of the Negotiable Instruments Act empowers the appellate court, while considering suspension of sentence in an appeal arising out of conviction under Section 138 of the Act, to direct the appellant to deposit a minimum of twenty per cent of the fine or compensation awarded by the trial court.

11. The scope and object of this provision have been considered by the Hon'ble Supreme Court in **Surinder Singh Deswal @ Col. S.S. Deswal v. Virender Gandhi [2020 (2) SCC 514]**, wherein it has been observed that though the word "may" is used in

Section 148 of the Act, ordinarily the appellate court would be justified in directing deposit of a minimum of twenty per cent of the amount awarded. At the same time, the Hon'ble Supreme Court has clarified that the power under Section 148 of the Act is discretionary and must be exercised judiciously depending upon the facts of each case. In ***Jamboo Bhandari v. M.P. State Industrial Development Corporation Ltd. [(2023) 10 SCC 446]***, it has been held that while the condition of deposit is normally justified, the appellate court is required to consider whether the case warrants modification of the condition so that the right of appeal of the appellant is not rendered illusory.

12. In the considered opinion of this Court, the discretion vested in the appellate court under Section 148 of the Negotiable Instruments Act must be exercised in a manner that balances the object of the statute with the requirement that the condition imposed should remain reasonable and proportionate. In the facts of the present case, the condition imposed by the appellate court requires modification so as to ensure that the right of appeal of the petitioner is not rendered illusory while simultaneously safeguarding the interest of the complainant.

13. Having regard to the facts of the present case, the ends of justice would be adequately served if the condition imposed by the appellate court is modified by directing the petitioner to deposit twenty per cent of the cheque amount involved in the complaint instead of twenty per cent of the fine/compensation amount awarded by the trial court. Accordingly, the writ petition deserves

to be allowed to the limited extent of modification of the impugned order.

14. Consequently, the writ petition is partly allowed. The order dated 08.01.2026 passed by the Additional Sessions Judge No. 4, Udaipur in Criminal Appeal No. 18/2026 is modified to the extent that the petitioner shall deposit 20% of the cheque amount involved in the complaint within the period stipulated by the appellate court. Subject to the aforesaid modification, the remaining part of the order shall remain intact.

15. Considering that the criminal appeal against conviction is already pending, the appellate court is requested to make an endeavour to decide the appeal expeditiously, preferably within a reasonable period, without being influenced by any observations made in the present order.

(FARJAND ALI),J