



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

130

**CRM-M-15652-2025 (O&M)**

**Date of decision: 21.03.2025**

Joginder Pal

....Petitioner

Versus

Gurwinder Singh

....Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Mr. Tajinder Pal Singh Makkar, Advocate  
for the petitioner.

**HARPREET SINGH BRAR J. (Oral)**

1. The present petition has been filed under Section 528 of BNSS, 2023 for quashing of order dated 21.11.2024 passed by learned Sessions Judge, Sri Muktsar Sahib in complaint No.CRA-76/2024, vide which bail order of the petitioner was cancelled and his bail/surety bonds were forfeited to the State and notice to his surety was issued. Further prayer has been made to set-aside the order dated 05.04.2024 (Annexure P-3), passed by learned Sessions Judge, Sri Muktsar Sahib in CRA-76 of 2024, titled as "Joginderpal vs Gurwinder Singh", whereby the petitioner is directed to deposit Rs.1,10,000/- i.e. 20% of the compensation amount awarded by learned trial Court vide judgment of conviction and order of sentence dated 15.03.2024, passed by learned Sub-Divisional Judicial Magistrate, Gidderbaha.

2. The brief facts of the case are that a complaint was filed by the respondent/complainant against the petitioner under Section 138 of



the Negotiable Instruments Act, 1881 (for short 'the Act') on the ground of dishonouring of cheque bearing No.758275 dated 30.10.2018 amounting to Rs.5,50,000/- issued in favour of the complainant/respondent by the petitioner in discharge of the liability. Vide judgment of conviction and order of sentence dated 15.03.2024, the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of one year and was further directed to pay compensation to the tune of Rs.5,50,000/-, within 30 days from the date of order. Thereafter, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Sri Muktsar Sahib and the learned Sessions Judge, Sri Muktsar Sahib vide order dated 05.04.2024, suspended the sentence of the petitioner subject to depositing 20% of the compensation amount within two months from the date of order.

3. Learned counsel for the petitioner, *inter alia*, contends that the learned Lower Appellate Court failed to appreciate the facts in the right perspective and imposed the condition to deposit 20% of the compensation and such a condition is illegal, arbitrary and in violation of the law as laid down by the Hon'ble Supreme Court in "***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Ltd. and others***", 2013 (12) SCALE 611.

4. Learned counsel for the petitioner further submits that the petitioner was regularly appearing before the learned Lower Appellate Court while he was on bail, but due to some unavoidable circumstances,



he could not appear before the learned Lower Appellate Court on 21.11.2024 and his bail order was cancelled and bail/surety bonds were forfeited to the State and notice to his surety was issued vide order dated 21.11.2024 and when he filed an application for anticipatory bail before the learned Lower Appellate Court, the same was also dismissed on 09.01.2025. Thus, aggrieved by the aforesaid order(s) dated 05.04.2024 (Annexure P-3) and dated 21.11.2024 (Annexure P-5), he has approached this Court by way of instant petition. It is contended that the order dated 21.11.2024 is liable to be set-aside on the ground of unintentional non-appearance of the petitioner due to some unavoidable circumstances. It is also submitted that the petitioner undertakes to appear before the Court below on each and every date.

5. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, present petition is being decided *in limine* without issuing notice to the respondent in order to save judicial time of the Court and also the litigation costs of the respondent.

6. The Hon'ble Supreme Court in ***Jamboo Bhandari's case*** (*supra*), speaking through Justice Abhay S. Oka, has held as follows:-

*“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, 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. A perusal of the order dated 21.11.2024 reflects that the learned Lower Appellate Court proceeded to pass the extreme order of cancellation of bail. Many a times, the accused can be prevented by sufficient reasons to put an appearance before the Court on a given date and, therefore, it necessarily cannot be construed as a deliberate and wilful absence. The explanation offered for non-appearance before the learned Lower Appellate Court is justified and, therefore, the same is accepted.

8. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice



of arbitrariness or unreasonableness.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The order dated 21.11.2024, vide which bail order of the petitioner was cancelled and bail/surety bonds were forfeited to the State and notice to his surety was issued, as well as the order dated 05.04.2024 whereby the condition of depositing 20% of the compensation amount awarded has been imposed upon the petitioner while granting suspension of sentence, are hereby set-aside.

10. The learned Lower Appellate Court is directed to re-examine the case after granting an opportunity to the petitioner to make submissions regarding the exceptional circumstances and decide whether it is an appropriate case that warrants waiver of the requirement of deposit of 20% of the compensation awarded by learned Court below and thereafter, decide the matter afresh in accordance with law in the light of judgment passed by the Hon'ble Supreme Court in ***Jamboo Bhandari's case (supra)***.

11. The petitioner is directed to appear before the learned Lower Appellate Court within a period of 02 weeks from today and on doing so, he shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the learned Lower Appellate Court, along with costs of Rs.10,000/- to be deposited with PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.



12. The receipt of payment of costs imposed upon the petitioner must be presented before learned Lower Appellate Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

13. However, in case, the petitioner fails to surrender before the learned Lower Appellate Court within the stipulated time period, the interim protection granted by this Court, shall be deemed to be vacated.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**21.03.2025**

*yakub*

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No