

APHC010409592025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

THURSDAY, THE SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION NO: 8265/2025

Between:

1.SUNDARA SRINIVASA RAO, S/O. SRI KRISHNA, AGED ABOUT 50 YEARS, OCC AGRICULTURE, R/O. SUNDARA VARI MERAKA, GUDAPALLI VILLAGE, MALIKIPURAM MANDAL, EAST GODAVARI DISTRICT.

...PETITIONER/ACCUSED

AND

1.THE STATE OF ANDHRA PRADESH, REP.BY ITS PUBLIC PROSECUTOR, THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATHI, ANDRA PRADESH.

2.VARDHINEEDI DORABABU, S/O. VENKATA SATYANARAYANA AGED ABOUT 39 YEARS, OCC AGRICULTURE, R/O. MAGATAPALLI VILLAGE, MAMIDIKUDU MANDAL, EAST GODAVARI DISTRICT.

...RESPONDENT/COMPLAINANT(S):

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to call for the record and set aside the onerous condition i.e. depositing of Rs. 1,40,000/- being 20 percent of the cheque amount of Rs. 7,00,000/- before the Trial court on or before 07.10.2024, vide order in CrI.M.P No. 400 OF 2024 IN CrI.A. No.233 of 2024 on the file of The Court Of The II Addl District and Sessions Judge, Amalapuram consequently modified the same and pass such

IA NO: 1 OF 2025

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased may be pleased to stay of operation the onerous condition i.e. depositing of Rs. 7,00,000/- before the Trial court on or before 07.10.2024, vide order in CrI.M.P No. 400 OF 2024 IN CrI.A. No. 233 OF 2024 on the file of The Court Of The II Addl District and Sessions Judge, Amalapuram orders dated 05.07.2024 and pass such

Counsel for the Petitioner/accused:

1.DASARI S V V S V PRASAD

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

THE HONOURABLE DR JUSTICE VENKATA JYOTHIRMAI PRATAPA

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ORDER:

The instant criminal petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C)/under Section 528 of BNSS, has been filed by the Petitioner/Accused, seeking to quash the onerous condition i.e., depositing of Rs.1,40,000/- being 20% of the compensation amount of Rs.7,00,000/- before the Trial Court on or before 07.10.2025 vide order 07.08.2024 in CrI.M.P.No.400 of 2024 in CrI.A.No.233 of 2024 on the file of II Additional District and Sessions Judge, Amalapuram.

2. Heard Sri DASARI S.V.V.S.V. PRASAD, learned counsel for the Petitioner and Ms. K. Priyanka Lakshmi, learned Assistant Public Prosecutor representing the State/Respondent.

3. It is submitted by the learned counsel for the Petitioner and acceded to, by the learned Assistant Public Prosecutor that the subject matter of this Criminal Petition is squarely covered by the Order passed by this Court vide Criminal Petition No.5914 of 2024, dated 28.08.2024, wherein, it was held at para Nos. 7 and 8 as under :

*“7. The Hon’ble Supreme Court in **Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited and Others**¹, referring above para in the case of **Surinder Singh Deswal @ Colonel S.S.Deswal and others**, held in paras 6 to 9 as under :*

“6. What is held by this Court is that a purposive interpretation

¹ 2023 LiveLaw (SC) 776

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.

8. The submission of the learned counsel appearing for the original complainant is that neither before the Sessions Court nor before the High Court, there was a plea made by the appellants that an exception may be made in these cases and the requirement of deposit or minimum 20% of the amount be dispensed with. He submits that if such a prayer was not made by the appellants, there were no reasons for the Courts to consider the said plea.

9. We disagree with the above submission. When an accused applies under Section 389 of the Cr.P.C. for suspension of sentence, he normally applies for grant of relief of suspension of sentence without any condition. Therefore, when a blanket order is sought by the appellants, the Court has to consider whether the case falls in exception or not.”

8. Therefore, in the light of above judgments of the Hon'ble Supreme Court, normally, the Appellate Court will be justified in imposing condition of deposit as provided in Section 148 of N.I.Act. However, in a case, whether the Appellate Court is satisfied with the condition of deposit of 20% will be unjust, exception can be made for the reason specifically recorded. Hence, when the Appellate Court considers an application filed U/s. 389(3) Cr.P.C. corresponding to Section 430 of BNSS by the drawer of the cheque (accused), who was convicted for the offence U/s.138 of Negotiable Instruments Act, the Appellant Court has to consider whether it is exceptional case which warrants grant of suspension of sentence without imposing condition of deposit of 20% of fine/compensation amount. If the Appellate Court comes to said conclusion that it is an exceptional case, reasons for coming to such conclusion must be recorded.”

4. Considering the submissions made and following the Order passed by this Court in Criminal Petition No.5914 of 2024, dated 28.08.2024, this Criminal Petition is allowed. The impugned order of the learned Appellate Court is set side restoring the application filed by the appellant U/s.389 (3) Cr.P.C., corresponding to section 430 of BNSS before the Appellate Court. The learned Appellate Judge shall consider the application afresh and dispose of the same according to law. The petitioner shall be released forthwith on execution of a personal bond of Rs.20,000/- (Rupees Twenty thousand only) to the satisfaction of the Appellate Court. In the meanwhile, the sentence imposed against the petitioner is suspended.

As a sequel thereto, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 07.08.2025

Note: CC today,
B/o.UPS

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HON'BLE DR. JUSTICE VENKATA JYOTHIRMAI PRATAPA

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Dated.07.08.2025

UPS