NEUTRAL CITATION
2026:GUJHC:68560

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 12103 of 2026
With
R/SPECIAL CRIMINAL APPLICATION NO. 12165 of 2026
FOR APPROVAL AND SIGNATURE:
HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
		NO

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MAVJIBHAI JIVRAJBHAI BAVISHI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR SAVAN N PANDYA(5600) for the Applicant(s) No. 1
MS POOJA D RAVAL(11867) for the Applicant(s) No. 1
MR PARTHIV BHATT for the Respondent(s) No. 2
MR JAY MEHTA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**
Date : 23/10/2026
COMMON JUDGMENT

1 Since the issue raised in the these petitions are similar, they are being decided by a common judgment. The facts of Special Criminal Application No.12103 of 2026 are taken for the purpose of adjudication.

Present petition is filed with the following reliefs:

> "8...
> a) That Your Lordships may be pleased to admit and allow this petition;
>
> b) That your Lordships may be pleased to issue appropriate writ, order or direction and thereby quash and set aside the impugned order dated 24.07.2026

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below exhibit 4 qua the condition to deposit 20% amount of compensation passed by Additional Sessions Judge, City Civil & Sessions Court, Ahmedabad in Criminal Appeal No. 1659 of 2026 Annexure-A) and accordingly further be pleased to delete the condition namely "subject to deposition of 20% amount of compensation within 60 days from the date of this order, before the concerned Trial Court" from the impugned order dated 24.07.2026 below exhibit 4 passed by Additional Sessions Judge, City Civil & Sessions Court, Ahmedabad in Criminal Appeal No. 1659 of 2026 (Annexure-A) in the interest of justice;

c) That your Lordships may be pleased to issue appropriate writ, order or direction and thereby quash and set aside the order dated 24.07.2026 passed below exhibit 5 by Additional Sessions Judge, City Civil & Sessions Court, Ahmedabad in Criminal Appeal No. 1659 of 2026 (Annexure-B) and further be pleased to allow the prayers of the application below exhibit 5 filed by the present petitioner in Criminal Appeal No. 1659 of 2026 (Annexure-G) in the interest of justice;

d) Pending admission, hearing, and till final disposal of this petition, your Lordships may be pleased to stay the implementation and operation of impugned order dated 24.07.2026 below exhibit 4 qua the condition of deposition of 20% amount of compensation passed by Additional Sessions Judge, City Civil & Sessions Court, Ahmedabad in Criminal Appeal No. 1659 of 2026 (Annexure-A) in the interest of justice; and

e) Grant such other and further relief(s) as deemed just and proper by this Hon'ble Court in the interest of justice.”

2 Heard the learned advocate Mr. Savan Pandya for the petitioner, learned advocate Mr. Parthiv Bhatt for the

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respondent No.2 and learned APP Mr. Mehta for the respondent-State.

3 Learned advocate Mr. Pandya submits that the petitioner was convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, vide judgment and order dated 25.06.2026. It is submitted that the petitioner filed an application seeking suspension of the sentence, which came to be allowed by the learned Appellate Court vide order dated 24.07.2026, subject to the condition that the petitioner deposit 20% of the compensation amount within a period of 60 days from the date of the order. It is submitted that, thereafter, the petitioner filed an application below Exhibit 5 seeking waiver of the condition requiring deposit of 20% of the compensation amount, as imposed by the learned Appellate Court while suspending the sentence. However, the said application came to be rejected by the learned Court vide order dated 24.07.2026, which is impugned in the present petition.

3.1 Learned advocate Mr. Pandya has relied upon the decision rendered by the Apex Court in **Jamboo Bhandari v. Madhya Pradesh State Industrial Development Corporation Limited and Others,** reported in **(2023) 10 SCC 446**, and submits that exceptional circumstances exist in

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the present case. It is submitted that, as per the allegations, the transactions in question involved the borrowing of an amount of Rs.62 lakh, against which different cheques were issued, resulting in the filing of three separate complaints. It is further submitted that, in two of the complaints wherein the judgments and orders of conviction came to be passed, the petitioner had engaged an advocate; however, the advocate did not remain present, and the judgments and orders of conviction came to be passed in the petitioner's absence. It is submitted that, upon receiving the judgments and orders of conviction, the petitioner inquired into the status of the third case and came to know that the same was pending adjudication. The petitioner, therefore, engaged another advocate, who contested the said criminal case, ultimately resulting in the petitioner's acquittal.

3.2 It is submitted by the learned advocate Mr. Pandya that, as the petitioner's case was not properly presented before the learned Trial Court through an advocate, resulting in the judgments and orders of conviction, the petitioner deserves a fair opportunity to establish his case before the learned Appellate Court. It is further submitted that the petitioner's financial condition is not sound and that, if the condition requiring deposit

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of 20% of the compensation amount is not waived, the petitioner would be deprived of his right to pursue the appeals. In view of the above, learned advocate Mr. Pandya submits that the impugned order dated 24.07.2026, passed below Exhibit 5, deserves to be quashed and set aside, and the petitioner deserves an opportunity to establish his case before the learned Appellate Court without being subjected to the condition of depositing 20% of the compensation amount.

4 Learned advocate Mr. Bhatt, appearing for respondent No. 2, submits that merely because the petitioner has been acquitted in the third case, the same cannot be considered an exceptional circumstance, as contemplated by the Apex Court in the case of **Jamboo Bhandari (supra)**. It is submitted that, if such an explanation were to be considered an exceptional circumstance, in every case, an accused could plead that he was not represented by an advocate and, therefore, deserved a fair opportunity to present his case. It is further submitted that, when the petitioner was aware of the pendency of the complaint, it was incumbent upon him to remain in contact with the learned advocate engaged by him. Merely by shifting the responsibility onto the learned advocate, the petitioner cannot

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absolve himself of the liability arising from the criminal proceedings. In view of the above, it is submitted that no interference is warranted by this Court and that the present petition deserves to be dismissed.

5 Having considered the submissions made by the learned advocates for the respective parties and the facts discussed hereinabove, it emerges that, in relation to the alleged borrowing of Rs.62 lakh, three separate complaints came to be filed, being Criminal Case Nos. 98398 of 2023, 98125 of 2023 and 97856 of 2022. On perusal of the judgments and orders of conviction, it appears that the name of the learned advocate representing the present petitioner is mentioned therein. However, in paragraphs 4 and 5, the learned Court has observed that neither the accused nor his advocate remained present and, therefore, the judgments and orders of conviction came to be passed in the absence of assistance from the advocate representing the present petitioner. The said judgments and orders were passed on 25.06.2026. Thereafter, as submitted by the petitioner, on receiving the judgments and orders of conviction, he inquired about the status of the third case, being Criminal Case No. 97856 of 2022. The petitioner came to know that the said case was

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pending adjudication before the learned competent Court and, accordingly, engaged an advocate. On perusal of the judgment produced by learned advocate for the petitioner, it emerges that the learned advocate placed rebuttal evidence on record on behalf of the petitioner, which ultimately resulted in the judgment and order of acquittal dated 30.09.2026.

6 At this stage reference of the decision rendered by the Apex Court in the case of **Jamboo Bhandari (supra)** is required to be made. The relevant paragraphs are reproduced hereinbelow:

"5. The paragraph '8' of the decision of this Court in the case of Surinder Singh Deswal Alias Colonel S.S. Deswal and Others[1] reads thus: -

> "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 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, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to

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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 file 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 Section 148 of the NI Act, but also Section 138 of the 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 of the NI Act and also Section 138 of the NI Act.

(underline supplied)"

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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.

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."

7 Keeping in mind the ratio and examining the fact of the instant case where it appears that in the absence of proper assistance before the learned Magistrate, the judgments and orders of conviction came to be passed. Further, in the third case, which also arose out of the same transaction, the petitioner was

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represented by an advocate, and the proceedings ultimately resulted in a judgment and order of acquittal. It is also submitted that the petitioner's financial condition is not sound enough to enable him to deposit 20% of the compensation amount. In the opinion of this Court if a fair opportunity to establish his case is not afforded to the petitioner before the learned Appellate Court, he would be deprived of his right to appeal. In the aforesaid circumstances, this Court finds that the petitioner's case falls within the category of exceptional circumstances. For the reasons recorded hereinabove, the petitioner's application seeking waiver of the condition of depositing 20% of the compensation amount, filed below Exhibit 5, deserves to be allowed.

8 Resultantly, the present petitions are allowed. The impugned orders dated 24.07.2026 passed below Exhibit 5 by the learned Additional Sessions Judge, City Civil & Sessions Court, Ahmedabad, in Criminal Appeal Nos. 1659 of 2026 and 1660 of 2026 are hereby quashed and set aside. Consequently, the applications below Exhibit 5 filed by the petitioners in the respective appeals are allowed.

(M. K. THAKKER,J)

M.M.MIRZA

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