



[2025:RJ-JD:25157]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Misc(Pet.) No. 2235/2025

1. Mohammad Abid S/o Ahmad Rajak, Aged About 27 Years, R/o Kaluram Ki Bavdi, Jodhpur,raj.
2. Firoz @ Murgi W/o Sanaulla, Aged About 31 Years, R/o Eidgaha, 5Th Road, P.s. Pratap Nagar, Jodhpur,raj.
3. Virendra Jakhar @ Veera, Aged About 43 Years, R/o Bhopalgarh, Dist. Jodhpur,raj.
4. Swaroop Singh S/o Pappu Singh, Aged About 20 Years, R/o Bhikholai, P.s. Phalsund, Jaisalmer,raj.
5. Rahul S/o Chiranjeevi Lal, Aged About 24 Years, R/o Bhurtiya, Near Balaji Mandir, P.s. Sursagar, Jodhpur,raj.
6. Jahagir S/o Zakir Khan, Aged About 24 Years, R/o New Bhakri Bass, Kalu Ramji Ki Vavdi Sursagar, Jodhpur,raj.
7. Prashant Jakhar S/o Mohanram, Aged About 28 Years, R/o 346 D Shankar Nagar, P.s. Chopasani Housing Board, Jodhpur,raj.

-----Petitioners

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Divik Mathur
For Respondent(s) : Mr. Deepak Chaudhary ,AAG
assisted by Mr. Sri Ram Choudhary
Mr. Bansilal, RPS,ACP Headquarter
Jodhpur

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

ORDER RESERVED ON ::: 07/04/2025
ORDER PRONOUNCED ON ::: 27/05/2025
BY THE COURT:-

1. By way of filing this instant Criminal Miscellaneous Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 482 Cr.P.C., the petitioners



have approached this Court seeking quashing of the order dated 13.03.2025 passed by the learned Assistant Commissioner of Police & Executive Magistrate, Police Commissionerate, Jodhpur, whereby the petitioners were directed to be released on bail in proceedings under Sections 126, 170, and 130 of the BNSS, 2023, only upon furnishing a bond of Rs. 50,000/- each along with a character certificate to be produced by two sureties, one of whom must be a close family member.

2. Brief Facts of the Case:

The present petition arises out of proceedings initiated under Sections 126, 170, and 130 of the Bharatiya Nagarik Suraksha Sanhita, 2023, against the petitioners, pursuant to an incident dated 12.03.2025 involving a property dispute at "Chandra Radhe Sweet Home", Jodhpur. It is alleged that the petitioners, claiming tenancy rights under a registered rent agreement dated 03.01.2025 with the shop owner Subhash Sharma, attempted to assert possession over the premises, which was allegedly encroached upon by third parties. This led to a police intervention based on information received about a public disturbance, resulting in the petitioners' arrest under Section 170 BNSS to maintain public peace. Two FIRs, bearing Nos. 55/2025 and 56/2025, were lodged by rival claimants of the property on identical facts. Meanwhile, a civil suit concerning the tenancy was already pending before



the Rent Tribunal, Jodhpur, wherein an order dated 25.02.2025 had been passed in favour of the petitioners permitting peaceful possession. Subsequently, when the petitioners were presented before the Executive Magistrate, they were compelled to admit guilt in order to secure their release. Vide order dated 13.03.2025, were directed to maintain peace for six months and were granted bail only on furnishing a bond of Rs. 50,000 each along with two character certificates, one of which was to be provided by a close family member. The petitioners are aggrieved by this condition, terming it arbitrary and legally unsustainable, which has led to their continued detention.

3. Heard learned counsels present for the parties and gone through the materials available on record.
4. Having considered the facts and circumstances in entirety, this Court is compelled to observe that the conduct of the concerned Executive Magistrate (ACP, Headquarters) and the associated police officials reflects a distressing departure from the principles of fairness, legality, and procedural propriety that underlie the concept of rule of law.
5. It is evident that the Executive Magistrate, instead of acting in accordance with the limited preventive jurisdiction vested in him under B.N.S.S., has arrogated to himself an authority akin to that of a sovereign — operating not as a magistrate under a constitutional democracy, but more as a *Raja*



dispensing justice at whim. The distinction between personal discretion and rule of law lies at the very foundation of our legal system, and the impugned conduct strikes at that very foundation.

6. This Court has no hesitation in recording that the SHO and the Executive Magistrate appear to have acted in tandem, with the latter functioning virtually under dictation. A separate criminal case had already been instituted on 12.03.2025 against the petitioners — if their arrest was truly warranted, it ought to have occurred in that case. There was no occasion to invoke Section 170 B.N.S.S. simultaneously unless the true object was not maintenance of peace but continuation of incarceration.

7. It is axiomatic that once a substantive criminal case had already been registered in relation to the alleged offence, any warranted arrest or custodial measure ought to have been taken therein. To subject the petitioners to parallel preventive proceedings under Section 170 B.N.S.S. amounts to a form of double jeopardy in spirit, if not in letter. This dual action — one under criminal law and another under preventive jurisdiction — not only causes undue harassment but also reflects a misuse of statutory discretion. Preventive arrest is not a tool for punitive action nor a substitute for regular criminal procedure.



8. In routine situations of breach of peace, especially where no immediate threat of violence is evident, the law permits temporary preventive measures without resorting to prolonged custody. For instance, even in cases where a criminal act occurs in a densely populated locality and leads to public unrest, the invocation of Section 170 B.N.S.S. is not an automatic necessity — let alone by the same police officer already seized of the criminal case. The discretionary resort to preventive powers in such overlapping fashion serves no legitimate public interest and dilutes the very rationale of separate preventive and penal frameworks.

9. The chronology further betrays the real intent: first the petitioners were taken into custody under Section 170 B.N.S.S. on pretext of preventive action; then an arbitrary and unheard-of condition of furnishing character certificates from sureties — including one from a close family member — was imposed by the ACP. When that condition could not be met, they were remanded to judicial custody.

10. Such maneuvers reflect a gross abuse of preventive provisions. The actions are not only ultra vires but smack of arbitrariness and caprice. They indicate an attempt to bypass judicial scrutiny by creating a parallel and opaque route for depriving individuals of liberty. The order dated 13.03.2025 shows complete disregard for the legal parameters and seeks to use preventive powers as punitive tools — an approach



which is impermissible in a country governed by the Constitution.

11. This Court is further constrained to note that the character certificate condition of sureties is not found in any provision of law — neither under Section 130 B.N.S.S. nor under any other provision. In fact, the concept of “character certificate” is alien to preventive law jurisprudence. Such extralegal impositions amount to legislative overreach by the Executive Magistrate and are wholly unsustainable.

12. Moreover, the conduct of the Executive Magistrate, who, upon failure to receive character certificates, proceeded to remand the petitioners to judicial custody, reveals a premeditated intent to ensure their incarceration. When viewed in light of the pending civil litigation before the Rent Tribunal — where an order had already been passed in favour of the petitioners on 25.02.2025 — the entire sequence takes the colour of mala fide action to frustrate a civil order through colourable exercise of criminal process.

13. The facts of this case are not just irregular but outrageous to judicial conscience. It is in this backdrop that this Court had, on 18.03.2025, while hearing the matter at an earlier stage, recorded its serious disapproval and directed the ACP to remain present with an affidavit justifying the authority under which such a condition was imposed. It was also noted therein that liberty cannot be



curtailed by creative executive innovations, and that the petitioners were deliberately incarcerated by means of an illegal technicality.

14. It is pertinent to record that the impugned order dated 13.03.2025, insofar as it imposed the condition of character certificates for release, was subsequently modified later on the same day, and the petitioners were thereafter released on bail. In response to the notice issued by this Court, the Assistant Commissioner of Police appeared in person and submitted a written reply tendering an unconditional apology for the imposition of such an extralegal condition. He further assured this Court that no such practice would be repeated in future. While this Court accepts the apology extended by the officer — noting that contrition is a step towards institutional accountability — it must be firmly observed that quasi-judicial functions cannot be discharged in such a casual or uninformed manner. The Executive Magistrate is not an agent of the police but an officer of the law, duty-bound to act within the confines of legal authority and constitutional norms. The imposition of extrastatutory conditions, followed by custodial remand due to their non-fulfillment, is a grave dereliction of quasi-judicial responsibility and cannot be condoned as a mere lapse in judgment.

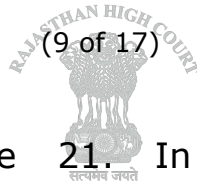




15. Furthermore, the facts of the present case echo the concerns raised in the landmark decision of **Joginder Kumar v. State of U.P., (1994 AIR 1349)**, wherein the Hon'ble Supreme Court emphasized that the power to arrest cannot be exercised mechanically or as a matter of course. The Court laid down that arrest must be founded on the necessity of the situation — not merely on the existence of power. For ready reference, the relevant portion of the judgment is reproduced below:

"The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation..."

16. The Hon'ble Court in Joginder Kumar also relied on the recommendations of the National Police Commission, which cautioned against unnecessary arrests and laid out specific circumstances under which arrest could be justified — such as the likelihood of absconding, repetition of offences, or serious violent crimes. These principles are not merely advisories but reflect the constitutional guarantee of personal



liberty under Article 21. In the present case, the simultaneous preventive and penal proceedings, unjustified custodial remand, and imposition of extralegal bail conditions clearly fall foul of these safeguards.

17. This Court's concern is not unprecedented. In the case of **Pawan Gaur v. State of Rajasthan (CRLMP No. 929/2021, decided on 07.03.2025)**, this Court had severely deprecated similar conduct by an Executive Magistrate who also functioned as an Assistant Commissioner of Police (ACP). The Court emphasized the dangers inherent in mechanically issuing preventive orders without application of judicial mind, especially when the officer concerned continues to operate with a policing mindset, rather than adopting the neutrality and legal orientation expected of a quasi-judicial authority. Relevant portions of the said decision are reproduced hereinbelow for reference and guidance.-

7. *Sections 107 and 151 of the Code of Criminal Procedure, 1973, are preventive provisions designed to maintain public order and tranquility. Section 107 Cr.P.C. empowers the Executive Magistrate to take preventive action when there is a likelihood of a breach of peace, whereas Section 151 Cr.P.C. permits the police to arrest a person without a warrant when it is necessary to prevent the commission of a cognizable offence. However, these provisions cannot be invoked arbitrarily or as a tool of harassment, as they operate within a legal framework that demands strict compliance with constitutional safeguards and procedural fairness.*



8. In ***Istkar versus The State of Uttar Pradesh & Anr (CRIMINAL APPEAL NO. 2034 of 2022 [Arising out of SLP(Crl.) No. 8586 of 2022]***), the Hon'ble Supreme Court emphasized that the scope and nature of Section 107 CrPC is preventive, not punitive. It is aimed at averting potential threats to public peace rather than penalizing past conduct. For ready reference the same is reproduced hereinbelow -

" 11. As noticed, the scope and nature of Section 107 CrPC is preventive and not punitive. It aims at ensuring that there be no breach of peace and that the public tranquillity be not disturbed by any wrongful or illegal act. The action being preventive in nature is not based on any overt act but is intended to forestall the potential danger to serve the interests of public at large. In other words, this provision is in aid of orderly society and seeks to avert any conduct subversive of the peace and public tranquillity. The provision authorises the Magistrate to initiate proceedings against a person if upon information, he is satisfied that such person is either likely to commit breach of peace or disturb public tranquillity or is likely to commit any wrongful act that might probably produce the same result. Simply stated, the provisions of Chapter VIII of the Code are merely preventive in nature and are not to be used as a vehicle for punishment."

9. The foundational principle behind these provisions is the existence of a reasonable apprehension that a person's conduct is likely to disturb public peace. A mechanical or routine invocation of these sections without any substantial material demonstrating an imminent threat defeats their very purpose. The law does not empower either the police or the Executive Magistrate to exercise preventive jurisdiction in a casual or discretionary manner. The Supreme Court has time and again emphasized that the preventive powers under Cr.P.C. should not be used to curtail personal liberty unless there is a clear, immediate,



and substantial risk to public order. The absence of any such material in the present case indicates an excessive and arbitrary use of power.

10. *In the instant matter, the Executive Magistrate's approach to the case is deeply concerning. The order dated 13.06.2020, being a mere half-printed, half-written proforma, is an outright display of non-application of mind. Such an order, devoid of any reasoned discussion or independent analysis, reflects an institutional failure to uphold the rule of law. It suggests that the Executive Magistrate acted as a rubber stamp for the police rather than as an independent judicial authority tasked with ensuring fairness and justice. The expectation from an Executive Magistrate is not mere clerical endorsement of police actions but the application of independent judicial reasoning to assess whether a preventive action is warranted under the law.*

11. *Moreover, the casual and callous approach of the Executive Magistrate in mechanically approving the police's request without scrutinizing the necessity of detention is a direct violation of constitutional and legal principles. Such an attitude not only undermines the individual's right to liberty but also erodes public trust in the judicial process. An Executive Magistrate, while exercising powers under Section 107 Cr.P.C., must ensure that the subjective satisfaction regarding the likelihood of a breach of peace is based on cogent material and not vague apprehensions. Similarly, under Section 151 Cr.P.C., an arrest cannot be made as a matter of routine; it must be justified by compelling reasons, indicating an immediate need for preventive action.*

12. *The instant case exemplifies a broader trend of misuse of preventive provisions by the police and the executive branch, where individuals are detained without proper justification, often in an arbitrary and high-handed manner. Such misuse of power, if left unchecked, can lead to a dangerous precedent where preventive detention becomes a tool of harassment rather than a lawful means*



of maintaining order. Judicial authorities, including Executive Magistrates, must be conscious of their duty to act as protectors of constitutional rights rather than facilitators of executive overreach.

13. It is in this context that the Executive Magistrate's lack of judicial discretion and mechanical approval of the petitioner's detention must be viewed as a grave dereliction of duty. The law mandates a judicious balance between preventive measures and individual liberty, and any failure to uphold this balance results in a direct affront to the fundamental rights guaranteed under Article 21 of the Constitution. The present case stands as a testament to the need for greater accountability and vigilance in the exercise of preventive jurisdiction by both the police and the Executive Magistracy.

14. The police, before effecting an arrest under Section 151 Cr.P.C., must demonstrate an imminent threat or compelling circumstances justifying the detention. In the instant case, there was neither an immediate threat nor any lawful reason for depriving the petitioner of his liberty. The arrest was an exercise of arbitrary power, made without due consideration of the principles governing preventive detention.

15. The petitioner's detention for 24 hours before being produced before the Executive Magistrate raises serious concerns regarding unlawful confinement. The law mandates that a person arrested without a warrant should be produced before the Magistrate at the earliest opportunity. The failure to do so in this case renders the petitioner's detention unlawful and violative of his fundamental rights enshrined under Article 21 of the Constitution.

16. Furthermore, the Executive Magistrate failed to exercise judicial discretion. It is expected that an Executive Magistrate should assess the necessity of detention independently, without blindly accepting the police report. The position of an Executive Magistrate is not a mere



extension of police power but entails independent judicial application of mind. However, in the present case, the Executive Magistrate, who was formerly a Circle Inspector (CI) before his promotion, appears to have viewed the matter from a police officer's perspective rather than as a judicial authority. The role of an Executive Magistrate demands impartiality, legal acumen, and an ability to assess matters from a constitutional and legal standpoint, rather than being influenced by a police-centric approach.



17. *The learned Sessions Judge, while deciding the petitioner's appeal, failed to examine the legality, correctness, and propriety of the Executive Magistrate's order. The appellate court did not scrutinize the apparent non-application of mind in the Executive Magistrate's order, which was issued on a pre-printed proforma with only minimal additions. The learned Sessions Judge merely dismissed the appeal without addressing the core legal issue, thereby failing in his duty as an appellate authority.*
18. *The petitioner was neither an accused nor a party to any ongoing criminal proceedings at the time of his arrest. He had merely accompanied his relative for counseling, which, by its very nature, requires patience and an environment conducive to dialogue. It is natural that during such sessions, emotions may run high, and parties may raise their voices. However, this does not justify an arrest, particularly when there was no legal basis for assuming that the petitioner's actions would lead to any cognizable offense.*
19. *It is pertinent to note that the FIR in the matter was lodged much later, on 15.07.2020, i.e., a month after the petitioner's arrest. The fact that there was no pending case against the petitioner at the time of his arrest further strengthens the argument that his detention was unwarranted and illegal.*
20. *Arbitrary arrests under Section 151 Cr.P.C. have become rampant, and such misuse of power must be checked. An arrest is a serious curtailment of personal liberty and should never be exercised mechanically or*



capriciously. The principles of fairness, reasonableness, and due process must guide any action that seeks to restrict an individual's fundamental rights. The Executive Magistrate in this case failed to exercise due diligence and acted in a manner that undermines the spirit of the Constitution and the established principles of law.

21. The manner in which the Assistant Commissioner of Police (ACP), while acting in the capacity of an Executive Magistrate, has dealt with the liberty of an individual in the present case is deeply concerning. Instances of such arbitrary exercise of power have become alarmingly frequent, with numerous cases of a similar nature coming before this Court. This highlights a systemic issue that requires urgent attention at the highest levels of administration.

22. In light of the recurring instances of misuse of magisterial powers by Assistant Commissioners of Police (ACPs), this Court deems it necessary that the Additional Chief Secretary (Home) and the Director General of Police (DGP) forthwith take cognizance of the matter and undertake a comprehensive review of the existing mechanism governing the deployment of ACPs as Executive Magistrates within Police Commissionerates. It is further observed that officers of the Rajasthan Police Service (RPS) who have been promoted through the ranks—from Sub-Inspector to Inspector—ought not to be entrusted with magisterial functions unless they have successfully undergone structured and formal training in magisterial duties at a recognized judicial or administrative training academy. Until such training is imparted and duly completed, such officers should not be assigned magisterial responsibilities. In the alternative, it is recommended that only directly recruited officers of the Indian Police Service (IPS) or Rajasthan Police Service (RPS), who are more likely to possess the requisite legal orientation and administrative competence, be considered eligible for such quasi-judicial roles so as to safeguard the integrity, impartiality, and fairness expected of an Executive Magistrate.



23. Furthermore, this Court is acutely cognizant of the fact that the functional transition from a predominantly policing-oriented role to that of a quasi-judicial authority is not merely a matter of administrative reassignment but requires a deep-seated psychological and institutional transformation. The mental and procedural shift from exercising coercive law enforcement powers to discharging adjudicatory responsibilities rooted in fairness, neutrality, and adherence to legal principles is inherently complex and cannot be achieved through the mere conferral of magisterial designation. When officers engaged in active policing are suddenly vested with magisterial authority without adequate preparatory training, the ability to recalibrate their mindset from enforcement to adjudication becomes significantly compromised. This transformation is not a superficial or mechanical process—it is neither immediate nor instinctive. Rather, it resembles the intricate and often strenuous natural process observed in certain species, such as the shedding of skin, which symbolizes a fundamental change in function, structure, and identity. Just as such biological renewal demands time, readiness, and conducive conditions, the professional evolution from a police officer to a magistrate necessitates deliberate reorientation, educational immersion, and cognitive recalibration. Absent this, the officer remains tethered to the enforcement-centric reflexes and hierarchical command models of policing, which are antithetical to the independent and unbiased temperament demanded of a magistrate.

24. Accordingly, unless such transformation is facilitated through structured instruction and institutional mentoring, the conferral of quasi-judicial powers upon officers who have historically operated within the contours of a police framework not only poses a grave risk to the sanctity of magisterial proceedings but may also undermine public trust in the fairness and impartiality of executive decision-making under the Code of Criminal Procedure, 1973.



25. *Additionally, it has been observed that in several cases, orders passed by such Executive Magistrates are of a stereotypical nature, often partially printed and partially handwritten, demonstrating a mechanical approach that is an abuse of the legal process. This Court unequivocally condemns such practice and directs the Secretariat (Home) and the DGP to ensure that such defective and perfunctory orders are not issued in the future.*

26. *To prevent the recurrence of such arbitrary exercises of power, the Court mandates that within three months, a robust mechanism be devised or appropriate orders be issued to ensure that only officers possessing the necessary skills, legal knowledge, and capacity to act as an Executive Magistrate are assigned such responsibilities. The competency of such officers must be thoroughly examined before entrusting them with these quasi-judicial powers.*

27. *It is also pertinent to elaborate upon the powers vested in an Executive Magistrate. The role of an Executive Magistrate encompasses critical functions, including but not limited to, maintaining public order, preventing potential breaches of peace, and exercising preventive jurisdiction under various provisions of the Code of Criminal Procedure (Cr.P.C.). These powers, however, are not meant to be exercised arbitrarily or as an extension of routine policing. The principle of separation of powers dictates that executive and judicial functions must be distinct, and therefore, a police officer cannot be permitted to routinely don the mantle of an Executive Magistrate without sufficient judicial oversight. The exercise of magisterial powers necessitates a judicious mind, an independent approach, and a commitment to upholding constitutional values, qualities that may not always align with the training and orientation of a career police officer.*

28. *In view of the foregoing discussion, this Miscellaneous Petition succeeds and is hereby allowed. The proceedings initiated against the petitioner pursuant to the order dated 13.06.2020 and the subsequent order dated 03.12.2020 are quashed and set aside.*



29. *The arrest and detention of the petitioner are declared illegal. The petitioner is at liberty to seek legal recourse against the wrongful confinement suffered by him.*

30. *Copies of this order be directly sent to the ACS (Home) and Director General of Police, for information and further course of action. "*

18. In light of the above discussion, this Court holds that

1. The impugned order dated 13.03.2025 passed by the Executive Magistrate (ACP Headquarters) in Case No.1255/2025 is hereby quashed and set aside.

2. All consequential proceedings taken pursuant to the said order stand quashed.

5. The State Government is directed to place the conduct of the concerned ACP under appropriate departmental scrutiny and report the compliance before this Court within six months.

6. A copy of this order shall be forwarded to the Director General of Police and Principal Secretary, Home Department, Government of Rajasthan, for necessary institutional corrective measures to prevent recurrence of such conduct.

19. Accordingly, the instant petition stands allowed.

20. The stay petition is disposed of.

(FARJAND ALI),J

59-Mamta/-