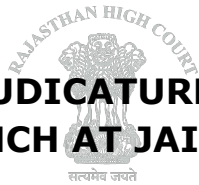


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Writ Petition No. 1134/2025

Kaptan Singh S/o Shri Amar Singh, Aged About 45 Years,
R/o Village Ghatari, Police Station Bhusawar, District
Bharatpur (Raj.)

-----Petitioner

Versus

1. State Of Rajasthan, Through The PP
2. Director General Of Police, Police Headquarter,
Lalkothi, Tonk Phatak, Jaipur.
3. Superintendent Of Police, Bharatpur.
4. S.H.O., Police Station Bhusawar, District Bharatpur.

-----Respondents

For Petitioner(s)	:	Mr. Nikhlesh Katara with Mr. Vishnu Kumar Sharma
For Respondent(s)	:	Mr. Amit Punia, PP

JUSTICE ANOOP KUMAR DHAND

Order

04/12/2025

Reportable

1. By way of filing the instant criminal writ petition, a challenge has been led to the impugned order dated 23.04.2025 passed by the Superintendent of Police, Bharatpur, by which history sheet has been ordered to be opened in terms of Rule 4.9 of the Rajasthan Police Rules, 1965 (for short, 'the Rules of 1965') against the petitioner.
2. Learned counsel for the petitioner submits that in all, ten criminal cases were registered against the petitioner during different years, where in the FIR Nos.127/2024, 288/2024, 317/2024, 477/2024 and 518/2016 registered with the Police



Station Bhusawar, the Final Report Negative was submitted. While in FIR No.46/2007, registered with the Police Station Weir, Bharatpur, the proceedings were quashed by this Court vide order dated 18.07.2017, while deciding S.B. Criminal Misc. Petition No.1217/2017. Counsel submits that in the FIR Nos.106/2007 and 05/2016, registered with the Police Station Bhusawar, after trial the petitioner has been acquitted and in the FIR No.52/2015 registered with the Police Station Bhusawar, the trial is pending and still going on. Counsel submits that apart from the above nine criminal cases, the petitioner has been convicted only in one other criminal case bearing No.80/2014 registered with the Police Station Bajaj Nagar, Jaipur. Hence, under these circumstances, the order impugned cannot be passed, in terms of Rule 4.92 of the Rules of 1965. Counsel submits that the word 'habitual offender' has not been defined under the Rules of 1965, but it has been defined in the Rajasthan Habitual Offenders Act, 1953 (for short, 'the Act of 1953'), whereby a 'habitual offender' means a person who has been convicted in more than three criminal cases on three different occasions, after attaining the age of 18 years. Counsel submits that till date, the petitioner has not been convicted in more than a single case, therefore, under these circumstances, the petitioner cannot be treated as an habitual offender and history sheet cannot be ordered to be opened against him. In support of his contentions, counsel has placed reliance upon the judgment passed by the Co-ordinate Bench of this Court in the case of **Pankaj Charan vs. State of Rajasthan and Ors.** while

deciding **S.B. Criminal Misc. Petition No.2975/2014** vide order dated 13.01.2015 and **Nishit @ Bablu Choudhary vs. State of Rajasthan and Ors.** while deciding **S.B. Criminal Misc. Petition No.5992/2016** on 03.03.2023. Counsel submits that in view of the submissions made herein above, the impugned order is liable to be quashed.

3. Per contra, learned Public Prosecutor opposed the prayer, but he is not in a position to controvert the submissions made by counsel for the petitioner.

4. Heard and considered the submissions made at the Bar and perused the material available on the record.

5. Rule 4.9 of the Rules of 1965 provides for opening of the History sheets, and the same reads as under:-

"4.9 History Sheets when opened. - (1) A history sheet, if one does not already exist, shall be opened in Form 4.9 for every person whose name is entered in the surveillance register, except conditionally released convicts.

(2) A history sheet may be opened by or under the written orders of a police officer not below the rank of Inspector for any person not entered the surveillance register who is reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person."

(3) The Government Railway Police will maintain the history sheet of criminals known or suspected to operate on the railway in accordance with Police Rule 4.8. They will open history sheets themselves for criminals living in railway premises, who have been absent from their original homes so long that the railway premises may be regarded as their permanent residence. They may also open history sheets for wandering strangers reasonably believed to be habitually addicted to crime on the railway, whose original homes cannot be traced."

6. Rule 4.4 of the Rules of 1965 deals with Surveillance Register No.8, to be maintained in every police station in Form 4.4(1), and the same reads as under :-

"4.4 Surveillance Register No.8 – (1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 4.4.(1).

(2) In Part I of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belong to one or more of the following classes:-

(a) All persons who have been proclaimed under Section 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made.

(c) All convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under section 8 of the Rajasthan Habitual Offenders Act, 1953.

(3) In Part II of such register maybe entered at the discretion of the Superintendent-

(a) persons who have been convicted twice, or more than twice, of offences mentioned in rule 8.22;

(b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

(c) persons under security under section 109 or 110, Code of Criminal Procedure;

(d) convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without the imposition of any conditions.

Note:- This rule must be strictly construed, and entries must be confined to the names of persons falling in the four classes named therein.”

7. As per Clause (1) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened against a person, whose name is entered in the Surveillance Register, except conditionally released convicts. As per Clause (2) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened under the written orders of a police officer not below the rank of Inspector against any person, whose name has not been entered in the Surveillance Register but who is reasonably believed to be habitually addicted to commit crime or to be an aider or abettor of such person.

8. Rule 4.4 of the Rules of 1965 clearly reveals that there are two categories of persons whose names may be entered in the Surveillance Register: the first category deals with such persons, who are commonly resident within or commonly frequenting the local jurisdiction of the concerned police station, and who are either proclaimed under Section 87 Cr.P.C., or released convicts in regard to whom an order under Section 565 Cr.P.C. has been made, or all convicts, the execution of whose sentence is suspended in the whole, or any part under Section 401 Cr.P.C. The second category of persons are those whose names may be entered at the discretion of the Superintendent of Police, given that they have been convicted twice, or more than twice, of offences mentioned in Rule 8.22. Rule 8.22 deals with specific offences in Chapter XI, XII, XIII, XVI, XVII and XXI of the I.P.C. or under Chapter VIII of the Cr.P.C. or under the Rajasthan



Public Gambling Ordinance, 1949, Indian Arms Act, 1959 or where subsequent conviction, of a person previously convicted of the same or similar offence, would lead to enhanced punishment. Other cases, covered under the second category, include those persons who are reasonably believed to be "habitual offenders" or receivers of stolen property "whether they have been convicted or not", or persons under security under Sections 109 or 110 Cr.P.C., or convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without imposition of any conditions.

9. As per the definition of the word 'habitual offender', as provided under the Act of 1953, a person can be declared as habitual offender if he has three convictions recorded against him. In the present case, there is only one conviction recorded against the petitioner i.e. in FIR No.80/2017 registered with the Police Station Bajaj Nagar, Jaipur. In the rest of the cases either the Final Report Negative has been submitted, or he has been acquitted, or the FIR has been quashed and only one criminal case, i.e. FIR No.52/2018, is lying pending for adjudication and till date, the petitioner has not been convicted in the aforesaid case. Hence, under these circumstances, the petitioner does not fall within the definition of "habitual offender".

10. The Rajasthan Police Rules do not empower the police to act in a manner that infringes upon citizen's fundamental freedom. The police does not possess a licence to enter the names of whosoever they like or dislike, in the surveillance register. Ordinarily the names of persons with previous

criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, can be categorized and entered in the surveillance register under the Police Rules.

11. The Apex Court in the case of **Govind v. State of Madhya Pradesh** reported in **(1975) 2 SCC 148**, observed that a person subjected to surveillance, the object and limitation of such surveillance depends upon the character and antecedents of the person concerned. The Police Regulation has force of law and, therefore, it can not be said to be infringement of fundamental right. Nevertheless, Article 21 of the Constitution of India is a right of an individual to be free from such restriction or encroachment directly imposed or indirectly approached by calculated measures.

12. The criteria for opening a history sheet is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the history is opened or retained is habitually addicted to aid or abet, the commission of crime, whether convicted or not etc. While arriving at the subjective satisfaction, the activities of such persons which are informative and useful, based on the facts ascertained by the police from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters. The discretion of

the authorities has to be exercised, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrarily vague, fanciful, but legal and regular and it must be exercised within the limit to which an honest man competent to discharge of his office or to confine himself.

13. A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by repetition of crimes. Reasonable belief of the police must be based on strong and reasonable grounds. Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds.

14. Opening of 'History-sheet' must be on the basis of subjective satisfaction of the competent authority and subjective satisfaction must be arrived at in accordance with legal provisions vis-à-vis well reasoned and speaking decision, failing which it would be hit by Articles 14 and 21 of the Constitution of India, being arbitrary in nature and not permissible in law.

15. In the instant case, history sheet has been ordered to be opened against the petitioner simply on the basis of registration of certain criminal cases against him. No reasons have been assigned in the order for doing so. It is clear that the history-sheet of the petitioner has not been ordered to be opened, in accordance with the relevant provisions of the Police Act and Police Rules. Hence, opening of the history-sheet against the petitioner offends his fundamental right, enshrined under Article 21 of the Constitution of India.



15. Considering the overall facts and circumstances of the case, it is clear that the petitioner is not a "habitual offender" in terms of Section 2(1)(a) of the Act of 1953. Hence, his name cannot be recorded in the history sheet/surveillance register. The order passed by the Superintendent of Police, Bharatpur on 23.04.2025 is not legally sustainable in the eyes of law and the same is liable to be and is hereby quashed and set-aside.

16. Accordingly, the instant criminal misc. petition stands allowed. The Superintendent of Police, Bharatpur as well as Station House Officer, Bhusawar, District Bharatpur are directed to remove the name of the petitioner from the history sheet/surveillance register, if already entered, of the Police Station Bhusawar, District Bharatpur forthwith.

17. The stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J