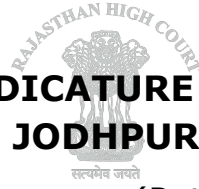




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



S.B. Criminal Miscellaneous (Petition) No. 2009/2026

1. Mohammad Atik S/o Mohammad Umar, Aged About 70 Years, Resident Of Ashraf Manzil, Meri Get, Jodhpur City East, Rajasthan
2. Mohammad Ali Chundrigar S/o Abdul Gani Sadar, Aged About 62 Years, Former President, Marwar Muslim Educational And Welfare Society, Jodhpur.
3. Nisar Ahmed Khilji S/o Abdul Rashid Khilji, Aged About 75 Years, Former General Secretary, Marwar Muslim Educational And Welfare Society, Jodhpur.
4. Aturrehman Qureshi S/o Abdul Aziz Qureshi, Aged About 46 Years, Former Treasurer, Marwar Muslim Educational And Welfare Society, Jodhpur.

----Petitioners

Versus

1. State Of Rajasthan, Through Pp
2. Shoukat Ali S/o Mohammad Sadik, Aged About 64 Years, R/o Laykan Mohala, Jodhpur City West, Rajasthan

----Respondents

For Petitioner(s) : Mr. Manish Singhvi, Sr. Adv. Through
VC assisted by
Mr. Wasim Khan
Mr. Monish Khan, through VC
Mr. Firoz Khan
Mr. Ansarul Hak Mansuri

For Respondent(s) : Mr. Ramesh Dewasi, PP
Mr. OP Mehta Assisted by
Mr. Jubin Ahmed
Mr. Hamendra Singh for
Mr. Moti Singh

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

21/04/2026

REPORTABLE

1. The present criminal miscellaneous petition has been filed under Section 528 BNSS by the petitioners challenging the order



dated 19.02.2026 passed by the learned Chief Judicial Magistrate, Jodhpur Metropolitan in connection with FIR No.84/2022, whereby bailable warrants were issued against the petitioners and it was observed that their entitlement for bail would be considered upon their appearance.

2. Learned counsel for the petitioners submitted that the learned trial Court without taking cognizance has directly proceeded to the stage of issuing process and has issued bailable warrants without application of mind and properly considering the nature of the case. It is submitted that the dispute mainly relates to the management committee of the society and the allegations are regarding manipulating the constitution to conceal the financial irregularities and fabrication of the minutes of the meeting. It is further submitted that civil litigation regarding the alleged amendment is already pending before the competent civil Court.

3. It is also submitted that earlier a negative final report was proposed during investigation, however, subsequently a charge-sheet has been filed. The entire case is based on documentary evidence and investigation is already complete. This Court had also granted protection to the petitioners against arrest till filing of the challan in S.B. Criminal Misc. Petition No.30/2025. In view of the observations made by the learned trial Court regarding bail, the petitioners apprehend that they may be taken into custody without sufficient cause.





4. It is argued that once the Investigating Agency itself did not find it necessary to arrest the petitioners, they should not now be taken into custody only for consideration of bail after filing of the charge-sheet. It is submitted that under Section 170 CrPC, there is no requirement that the accused must be arrested before being produced before the Magistrate. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in ***Siddharth vs. State of Uttar Pradesh & Anr.***, reported in **(2022) 1 SCC 676** and ***Satender Kumar Antil vs. CBI***, reported in **(2022) 10 SCC 51**.

5. It is further submitted that even issuance ofailable warrants at the first instance was not justified in view of the judgment of the Hon'ble Supreme Court in ***Inder Mohan Goswami & Another vs. State of Uttaranchal & Others***, reported in **AIR 2008 SC 251**. It is therefore prayed that the learned trial Court be directed to accept the bail bonds of the petitioners, which they are ready and willing to furnish, without taking them into custody.

6. Learned Public Prosecutor as well as learned counsel for the complainant opposed the prayer made by the petitioners. It is submitted that since the petitioners did not appear before the Court at the time of filing of the challan, they are required to file a bail application and it is within the discretion of the learned trial Court to consider the same. It is also submitted that no adverse order has yet been passed against the petitioners.





7. Heard learned counsel for the parties and perused the material available on record.

8. The FIR in the present case relates to the amendments made in the constitution of the society and their approval by the general body by fabricating the minutes of the meeting. Allegations have been made regarding cheating and forgery of records. After detailed investigation, the charge-sheet has been filed. During the entire investigation, the Investigating Agency did not find it necessary to arrest the petitioners and their custody was never required. This Court had also granted protection to the petitioners till filing of the challan.

9. The challan was filed against the petitioners but however no cognizance in the matter has been taken and since the petitioners did not appear on that day the bailable warrants have been issued and the learned Magistrate has directed to consider the bail thereafter. However, the order reflects that the same was done only for securing their appearance, which could have been achieved by issuing summons as well. There is nothing on record to show that the petitioners were likely to abscond, tamper with evidence, or evade the process of law.

10. The Hon'ble Supreme Court in ***Siddharth vs. State of Uttar Pradesh (supra)*** has clearly held that Section 170 CrPC does not require arrest of every accused at the time of filing of charge-sheet. If the Investigating Officer does not believe that the accused will abscond or disobey summons, there is no requirement to produce such accused in custody. The word





"custody" under Section 170 CrPC does not necessarily mean police or judicial custody, but only presentation of the accused before the Court. The Hon'ble Apex Court observed as under :-

"9. We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 CrPC that it does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the investigating officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 CrPC does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet.

10. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it 30. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the investigating officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

11. The same principle was reiterated by the Hon'ble Supreme Court in **Satender Kumar Antil vs. CBI (supra)**, wherein it was held that where the prosecution does not require custody of the accused, there is no need for arrest when the case is sent to the Magistrate under Section 170 CrPC. It was further held that even filing of a bail application may not be necessary in such cases and the Court can secure the presence of the accused by taking bonds





under Section 88 CrPC. The Hon'ble Apex Court observed as under:-

"43. The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2021) 1 SCC 676. This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application."

12. The Hon'ble Apex Court laid down detailed directions for the Investigating Agency and also for the courts pertaining to the arrest of a person in Para No.100, the relevant conditions are reproduced as under :-





“100.5. There need not be any insistence of a bail application while considering the application under Sections 88, 170, 204 and 209 of the Code.

100.6. There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth.”

13. The Hon'ble Supreme Court in ***Inder Mohan Goswami vs. State of Uttaranchal (supra)*** has also held thatailable and non-bailable warrants should not be issued casually or mechanically. If summons are sufficient for securing the presence of the accused, issuance of warrants should be avoided. Personal liberty must be protected and warrants should be issued only after proper application of mind.. The Hon'ble Apex Court observed as under :-

“54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or theailable warrants should be preferred. The warrants eitherailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issueailable – warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of the non-bailable warrants should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should





properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.”

14. Hence, in view of the law laid down by the Hon'ble Apex Court, the bailable or non-bailable warrants cannot be issued without proper scrutiny of facts and complete application of mind. Once the Investigating Agency did not think it proper to arrest the accused and take them in custody, the issuance of bailable or non bailable warrants should be resorted to by the Court only where the accused are charged with heinous crime and there is a clear likelihood of absconding, tampering with evidence, or evading the process of law.

15. In the present case, the offences alleged against the petitioners are not heinous in nature. The investigation is already complete and is mainly based on documentary evidence. The petitioners were never arrested during investigation and this Court had already granted protection to the petitioners until filing of the charge-sheet. There is nothing to show that they are avoiding the process of law. Rather, they are ready and willing to appear before the learned trial Court and participate in the trial.

16. In such circumstances, there is no justification for taking the petitioners into custody only for consideration of bail. Once the Investigating Agency itself did not require their custody, the





learned trial Court ought not to insist upon custody merely for acceptance of bail bonds.

17. The legal position is clear that the expression "custody" under Section 170 CrPC does not mean that the accused must first be arrested and sent to judicial custody. It only means presentation of the accused before the Court. The Hon'ble Apex Court has clearly held that if the Investigating Officer does not believe that the accused will abscond or disobey summons, the accused need not be produced in custody. In fact for due compliance of Section 170 of the Code, there is no need to file a bail application as the accused are forwarded to the court for framing of the charges and issuance of the process for trial. In such circumstances, learned trial Court is only to secure the presence of the accused in the trial, which may be secured by executing a bond, with or without sureties. Therefore, where arrest was never required during investigation, the accused should not be sent to custody after filing of the charge-sheet only for formal consideration of bail.

18. In view of the above facts and the law laid down by the Hon'ble Supreme Court, this Court is of the opinion that the order dated 19.02.2026 requires interference to the limited extent indicated herein.

19. Accordingly, the present criminal miscellaneous petition is allowed. The order dated 19.02.2026 passed by the learned Chief Judicial Magistrate, Jodhpur Metropolitan to the extent of the issuance ofailable warrants is hereby quashed & set aside. The





petitioners are directed to appear before the learned trial court on the next date. The learned trial court is directed to accept Personal Bonds/ Surety Bonds of the petitioners to its satisfaction for securing their presence during trial. However, the petitioners shall remain bound by the conditions imposed by the learned trial Court.

All pending application(s), if any, stands disposed of.

(BALJINDER SINGH SANDHU),J

11-Jatin/-