

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

S.B. Criminal Misc(Pet.) No. 1130/2026

Mahendra Singh S/o Shri Bhanwar Singh, Aged About 38 Years,
Mandali, P.s. Sadar Pali, District Pali, Rajasthan.

-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor.

-----Respondent

For Petitioner(s)	:	Mr. Ramdev Rajpurohit
For Respondent(s)	:	Mr. V.S. Rajpurohit, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

1.	Date of Conclusion of Arguments	19.02.2026
2.	Date on which Judgment was Reserved	19.02.2026
3.	Whether the full Judgment or only the Operative part was pronounced	Operative part
4.	Date of pronouncement	28.03.2026

The present criminal misc. petition has been filed under Section 528 BNSS by the petitioner aggrieved against the order dated 19.05.2025 passed by the learned Executive Magistrate and Tehsildar, Pali under Section 129 BNSS directing the petitioner to execute a bond for maintaining peace for a period of 12 months.

The brief facts of the case are that proceedings were initiated on a complaint filed by the then S.H.O., under Section 129 BNSS alleging that the petitioner is a habitual offender and that preventive action was necessary to maintain public peace within the district. The learned Trial Court, relying upon the report and antecedents placed on record, passed the impugned

order dated 19.05.2025. The petitioner being aggrieved by the said order, has approached this Court challenging its legality and propriety.

Learned counsel for the petitioner submits that complaint under Section 129 BNSS has been filed by the agency out of malice and without placing proper and complete information before the learned trial court. Counsel further submits that though a list of antecedents was produced, the petitioner has been acquitted in almost all the cases and only one case is stated to be pending against him. Despite this, the learned trial court has arbitrarily treated the petitioner as a habitual offender and passed the impugned order.

On behalf of State, a formal reply to the petition is submitted as well as a detailed report dated 20.02.2026 is placed on record for consideration before the Court which was sent by SHO, Police Station, Sadar Pali District Pali. In order to justify initiation of proceeding under Section 129 BNSS, SHO has made an endeavour to highlight the conduct of the petitioner and his alleged criminal activities to label him as a habitual offender.

Heard learned counsel for the petitioner as well as learned Public Prosecutor and perused the material available on record.

The details about the cases registered against the petitioner, and the outcome/status of these cases is incorporated in the report filed by the State which reads as under:-

क्र सं	मु. न. /वर्ष	धारा	नाम थाना	चार्जशीट नं. दिनांक	नाम न्यायालय	निर्णय न्यायाल य/ आगामी तारीख पेशी

1	2	3	4	5	7	8
1	376 / 08.08.05	16 / 54 आबकारी अधि I.	कोतवाली पाली	275 / 31.08.05	CJM Court PALI	दिनांक 05.02.10 को बरी
2	377 / 08.08.05	16 / 54 आबकारी अधि I.	कोतवाली पाली	273 / 29.08.05	CJM Court PALI	दिनांक 05.02.10 को बरी
3	378 / 08.08.05	16 / 54 आबकारी अधि I.	कोतवाली पाली	261 / 18.08.05	CJM Court PALI	दिनांक 05.02.10 को बरी
4	383 / 09.08.05	16 / 54 आबकारी अधि I.	कोतवाली पाली	278 / 31.08.05	CJM Court PALI	दिनांक 20.05.14 को सन्देह का लाभ देकर दोषमुक् त
5	411 / 26.08.05	451,323 भादस	कोतवाली पाली	283 / 31.08.05	MJM Court PALI	दिनांक 24.09.2007 को राजीना मा
6	516 / 17.11.06	143,341,323 भादस	कोतवाली पाली	424 / 21.12.06	CJM Court PALI	दिनांक 04.01.10 को सन्देह का लाभ देकर दोषमुक् त
7	517 / 17.11.06	307,147,148,149,341 भादस	कोतवाली पाली	56 / 02.03.07	CJM Court PALI	पीओ ए क्ट के तहत 5-5 हजार रुपये के जमानत पर 01 साल के लिए पाबन्द व मुल0 को 200 / - रुपये का जुर्माना
8	04 / 02.01.07	279,337 भादस	कोतवाली पाली	03 / 09.01.07	CJM Court PALI	दिनांक 29.10.2007 को बरी
9	293 / 20.06.07	143,327,341,323 भादस	कोतवाली पाली	FR83 / 20.06.07	CJM Court PALI	स्वीकृत दिनांक 01.02.2007
10	90 / 05.03.	341,323 भादस	कोतवाली पाली	62 / 30.03.08	CJM Court	दिनांक

	08				PALI	01.04.15 को जरिये राजीनामा बरी
11	179 / 23.10.08	143,383,323,427 भादस व 3 / 25 आर्म्स एक्ट	सदर पाली	140 / 12.10.2009	ACJM PALI	दिनांक 03.02.10 को सन्देश का लाभ देकर राजीनामा
12	40 / 04.03.11	307,323 भादस	सदर पाली	54 / 22.04.2009	ADJ F. T. N. 2 PALI	दि. 13.1.10 को राजीनामा
13	589 / 09.10.13	307 भादस व 3 / 25 आर्म्स अधिनियम	कोतवाली पाली	430 / 08.12.2013	CJM Court PALI	दिनांक 04.05.17 को दोषमुक्त
14	152 / 27.03.18	धारा 365, 368, 342 34, / 323 भादस व 3 / 25 आर्म्स एक्ट	कोतवाली पाली	173 / 04.06.18	ACJM(CR) Court PALI	पैपडिंग कोर्ट

The definition of habitual offender envisaged under Section 2(a) of the Rajasthan Habitual Offenders Act, 1953 reads as under:-

“2. (a) ‘habitual offender’ means a person who, during any continuous period of five years, whether before or after the 15th day of September, 1952 or partly before and partly after the said date, has been sentenced on conviction on not less than three occasions since he attained the age of eighteen years to a substantive terms of imprisonment for any one or more of the scheduled offences committed on different occasions and not so connected together as to form parts of the same transaction, such sentence not having been reversed in appeal or revision.
Provided that in computing the continuous period of five years referred to above any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account”

Upon examining the definition of habitual offender as quoted above it is seen that a person can only be treated as a habitual offender if he is sentenced or convicted or not less

than three occasions. However, in the present case, based upon the report submitted by the State it is revealed that only one case against the petitioner is pending consideration before the learned Additional Chief Judicial Magistrate Court, Pali in FIR No.152/2018, and in rest all the cases the petitioner has been acquitted. The petitioner has not been convicted in any of the cases and hence in such circumstances the petitioner cannot be treated as a habitual offender within the meaning of Section 2(a) of Rajasthan Habitual Offender Act, 1953.

The learned trial Court while passing the order dated 19.05.2025, has absolutely failed to consider the definition of Habitual Offender, so as to initiate the proceedings under Section 129 BNSS and to seek a bond for keeping peace and maintaining a good behavior from the petitioner. Further the order of learned Magistrate cannot be treated as a reasoned and speaking order and has been passed without due application of mind. It does not disclose any inquiry to have been undertaken before asking the petitioner for keeping peace and maintaining good behavior.

The Coordinate Bench of this Court in ***Shankar Lal vs. State of Rajasthan in CRLMP No. 3308/2015*** in identical set of facts was pleased to quashed and set aside the proceedings initiated under Section 110 Cr.P.C. The Hon'ble High Court observed as under:

"8. In totality, I am at loss to say that petitioner cannot be treated as habitual offender or a person having tenancy of recidivism within the four corners of

Section 2(a) of the Act of 1955 which is per-requisite for initiation of proceeding under Section 110 Cr.P.C. In common parlance asking someone to furnish a bond of good behaviour appears to be innocuous, but one cannot forget its overall impact on the personality of an individual inasmuch as it causes a social stigma. In a democratic republic, a citizen cannot be asked to furnish bond of good behaviour without any justifiable cause or ground because it obviously affects his liberty and his social status in clear negation of Art. 21 of the Constitution, i.e., fundamental right of Life and liberty. The concept of right to life and liberty as enshrined under Art. 21 of the Constitution of India, being a guaranteed fundamental right undoubtedly very wide in its scope and applicability and with the advent of the modern strides in jurisprudence with revolutionary pronouncements by the Apex Court in umpteen number of judgments over the past more than two decades has assumed wider connotations and amplifications.

9. It is not in dispute that the term 'habitual offender' is not defined under Cr.P.C., and the law governing the province for surveillance and control of habitual offenders in the State is envisaged under the Act of 1955. Therefore, for treating someone as habitual offender to execute a bond of good behaviour, an Executive Magistrate is required to record its satisfaction in terms of Section 2(a) of the Act of 1955 and not otherwise. *Maxim Expressio Unius est exclusio alterius*, i.e., "Express mention of one thing implies the exclusion of another has its fullest application in the backdrop of facts of the instant case. Reliance on this settled legal proposition can be profitably made to a very old decision in *Taylor Vs. Taylor* (1875) LR 1 Ch D426. It was further followed by Lord Roche in *Nazir Ahmed Vs. King Emperor* (AIR 1936 PC 253)."

Considering the law laid down by the co-ordinate bench of this Court and the observation made above, this Court is of the view that, initiation of proceeding under Section 129

BNSS against the petitioner cannot be sustained and consequently, the impugned order dated 19.05.2025 passed by Executive Magistrate is hereby quashed and set aside.

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

(BALJINDER SINGH SANDHU),J

195-Hanuman/-