

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

S.B. Criminal Misc(Pet.) No. 2186/2026

Mangat Ram S/o Nikku Ram, Aged About 60 Years, Resident Of
Jhandawali, Tehsil And District Hanumangarh Raj..

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Hathe Singh S/o Kamal Singh, Resident Of Gandhi Nagar,
Barmer Raj..
3. Muse Khan S/o Male Khan, Resident Of Baiya Jhijhanyali,
Jaisalmer Raj..
4. Mala Ram S/o Sardara Ram, Resident Of Viratra Nagar,
Barmer Raj..
5. Drish S/o Aadam Khan, Resident Of Khara Rathodan,
Barmer Raj..

-----Respondents

For Petitioner(s) : Mr. Gopi Ram Goyal

For Respondent(s) : Ms. Sonu Manawat, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

24/03/2026

The present criminal miscellaneous petition has been filed under Section 528 of the BNSS against the order dated 16.02.2026 passed by the learned Additional District and Sessions Judge No. 2, Barmer, whereby the application filed by the petitioner under Section 173(8) Cr.P.C. on 04.07.2024, seeking further investigation in Sessions Case No. 148/2024 (arising out of FIR No. 328/2022 registered at Police Station Kotwali, District Barmer for offences under Sections 302/34 IPC), has been dismissed.

Learned counsel for the petitioner has challenged the aforesaid order dated 16.02.2026 on the ground that the learned trial Court failed to appreciate the material irregularities and lapses in the investigation. It is submitted that the investigation conducted by the Investigating Agency is wholly lacunose and perfunctory. The statements of the eye-witnesses have not been recorded, and no meaningful investigation has been carried out.

It is further submitted that the FIR itself records that media persons were present at the spot, indicating the existence of video recordings; however, no effort has been made by the Investigating Agency to collect or produce such vital evidence. Learned counsel submits that several other important aspects were specifically pointed out before the learned trial Court, but the same have not been properly considered, and the application has been rejected in a cursory manner.

It is contended that the case was fit for directing further investigation. In support of his submissions, learned counsel has placed reliance upon the judgments of the Hon'ble Apex Court in ***Neetu Kumar Nagaich vs. State of Rajasthan, AIR 2020 SC 5267*** , ***Pooja Pal v. Union Of India reported in (2016) AIR (SCW)1345*** and ***Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat, reported in 2019 INSC 1146.***

Per contra, the learned Public Prosecutor has vehemently opposed the petition and submitted that the police conducted a proper investigation and thereafter filed the report in accordance with law.

This Court has considered the rival submissions and perused the impugned order dated 16.02.2026.

The Hon'ble Apex Court in **Pooja Pal v. Union of India(supra)** has emphatically held that a fair, transparent and judicious investigation is a constitutional imperative, and any investigation which is tainted, unfair or incomplete cannot be sustained in the eyes of law. The relevant observations are reproduced hereinbelow:—

"64. This Court in Babubhai (supra) while examining the scope of Section 173(8) of the Code, did recall its observations in Manu Sharma vs. State (NCT of Delhi), (2010) 6 SCC 1, that it is not only the responsibility of the investigating agency but as well as of the courts to ensure, that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It underlined, that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such drill should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law de hors his position and influence in the society as nobody stands above law. It propounded that the word "ordinarily" applied under Section 173(8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct normally for further investigation, and not for re investigation. It was however added as a sequiter that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for de novo investigation as well. It was observed that if an investigation has not been conducted fairly, the resultant charge sheet would be invalid. It was held as well, that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation."

(emphasis supplied)

The Hon'ble Apex Court in ***Common Cause Vs. Union of India [(1996) 6 SCC 775]*** has categorically held that further investigation can be directed at any stage prior to the framing of charges as "trial" means determination of issues adjudging the guilt or innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of charges that the Court informs him of the same, and therefore, the "trial" commences only upon charges being framed. Thus, the view that in a criminal case trial commences on cognizance being taken is not approved.

The Hon'ble Apex Court in ***Vinubhai Haribhai Malaviya & Ors. (supra)*** has categorically held that further investigation can be directed at any stage prior to the framing of charges. The relevant portion of the judgment is reproduced herein:

"38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and

Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* (supra). Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel* (supra), *Athul Rao* (supra) and *Bikash Ranjan Rout* (supra) have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration)* (1997) 1 SCC 361 and *Reeta Nag v. State of West Bengal and Ors.* (2009) 9 SCC 129 also stand overruled."

(emphasis supplied)

Considering the facts of the present case and the law laid down by the Hon'ble Apex Court, this Court finds merit in the contentions raised by the petitioner. The issues raised by the petitioner also find mention in the order passed by the learned trial Court, wherein the petitioner had raised all points in a detailed and point-wise manner, which prima facie appear to be relevant and significant for ensuring a fair consideration of the matter.

It is noteworthy that, despite specific allegations against the accused, the charge-sheet has been filed under Section 304 IPC. However, the learned trial Court rejected the application primarily on the ground of delay and on the premise that no relevant issue had been pointed out by the petitioner.

In the opinion of this Court, the said grounds of rejection are unsustainable. At this stage, even the charges have not yet been framed. The issues raised by the petitioner are clearly relevant, as

is evident from the record, and cannot be brushed aside merely by observing that they are not material.

It is also pertinent to note that the petitioner is not the Investigating Agency and cannot be expected to place such evidence on record himself. It is the duty of the Investigating Agency to collect all relevant material. The petitioner can only point out glaring omissions in the investigation, which has been done in the present case.

In view of the above- mentioned judgments and facts of this case, this Court finds that the impugned order passed by the learned trial Court is not sustainable in the eyes of law. The application filed by the petitioner ought to have been considered on merits in a pragmatic manner, keeping in view the nature of the issues raised.

Accordingly, the order dated 16.02.2026 is hereby quashed and set aside, and the matter is remanded to the learned trial Court for fresh consideration in accordance with law and in light of the principles laid down by the Hon'ble Apex Court.

With these observations, the present criminal miscellaneous petition stands allowed.

(BALJINDER SINGH SANDHU),J