

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

S.B. Criminal Miscellaneous (Petition) No. 3459/2026

Manish S/o Mahaveer Bairwa, Aged About 21 Years, R/o Tehnal
P.S. Shahpura Dist. Shahpura At Present R/o Jag Jeevan Nagar
Kachchi Basti Kawakheda Bhilwara

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Sikander Khan

For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP

HON'BLE MR. JUSTICE SUNIL BENIWAL

Order

01/05/2026

1. The present petition has been preferred under Section 528 of the BNSS, 2023 against the order dated 04.04.2026 passed by the learned Sessions Judge, Bhilwara in Sessions Case No. 08/2024 (State vs. Shoyeb & Anr.), whereby the learned Sessions Judge initiated proceedings under section 446, Code of Criminal Procedure, 1973 (hereinafter, 'CrPC'), and under Sections 82 and 83, CrPC, in connection with FIR No.275/2023, registered at Police Station Sadar Bhilwara, District Bhilwara, for offences punishable under Sections 302, 201, 394 of Indian Penal Code, 1860 (hereinafter, 'IPC').

2. The brief facts of the present case are that on 13.10.2023, the complainant Biju Banjara submitted a written report stating that on 12.10.2023 at about 8:00 AM, his sister-in-law (bhabhi), Smt. Sita Devi, had gone outside but did not return till evening, whereupon a missing report was lodged. Subsequently,

information was received that her dead body had been found at Priyadarshni Nagar, and upon reaching the spot, the complainant found police and other persons present and identified the body, pursuant to which FIR No. 275/2023 was registered under Sections 302, 201 and 394 IPC. During investigation, statements of prosecution witnesses were recorded and a charge-sheet came to be filed against the petitioner under the aforesaid provisions.

2.1 Thereafter, on 17.03.2026, the petitioner did not appear before the Learned Sessions Judge. Due to absence of the petitioner, on 04.04.2026, the learned Sessions Judge forfeited his bail bond and initiated proceedings under Section 446, Cr.P.C. and under Sections 82 and 83, Cr.P.C.

3. Learned counsel for the petitioner respectfully submits that the petitioner has never intended to delay or obstruct the course of trial proceedings; it is only on 17.03.2026 that, for the first time, the petitioner could not appear before the learned trial court due to lack of knowledge of the date of hearing, as the same was not communicated to him by his counsel. It is further submitted that the said absence was neither willful nor deliberate. The petitioner is now ready and willing to appear before the learned trial court and to furnish fresh bail bonds, and therefore, in the interest of justice, one final opportunity may kindly be granted to him.

4. Learned Public Prosecutor opposed the submissions made by the learned counsel for the petitioner and submits that the petitioner had violated the conditions of the bail bond and therefore, the proceedings were rightly initiated against him.

Thus, the present petition holds no merit and is liable to be dismissed.

5. Heard and perused the material available on record.

6. This Court has considered the order dated 22.10.2024 passed by a Coordinate Bench of this Court in **Tarun Upadhyay Vs. State of Rajasthan bearing S.B. Criminal Misc. Petition No.7296/2024**, wherein it was observed as under:-

*"4. Reference may be had to a judgment in case title **Mohammad Haras Vs. State of Punjab, (CRM-M No.31385/2023, decided on 07.07.2023)** relevant whereof, for ready reference, is reproduced as below:-*

"5. Heard.

6. No doubt, learned trial Court has got discretion to cancel the bail, however, it is well settled that before passing such an order, Court is required to issue notice to the accused so as to afford him an opportunity to explain as to why the bail should not be cancelled. Such course has not been adopted by learned Judge, Special Court, Sangrur in the instant case. On this ground alone, impugned order to the extent of cancellation of bail deserves to be set aside.

7. Moreover, cancellation of bail is a serious matter and can have significant impact on the life of a person. Matters of personal liberty ought not to be taken so lightly and in such mechanical manner as in the case herein.

8. In the premise, impugned order is set aside. Earlier bail order stands revived on bail bond and surety bond already furnished by petitioner before learned trial Court. Petitioner is directed to join proceedings before learned trial Court within three weeks from today and shall continue to appear before learned trial Court without default.

9. Petition is accordingly allowed."

*5. As regards the directions issued by the learned trial court to proceed against the sureties under Section 446 Cr.P.C., the same is also a serious procedural fallacy committed by the learned trial Magistrate and cannot be sustained. In this context, guidelines enunciated in judgment titled In a case titled **Varinder Singh v. State of Punjab** (Punjab and Haryana High Court:- 2023:PHHC:104379) are relevant.*

6. In light of the aforesaid, the impugned order directing the forfeiture of the bail-bonds of the petitioner accused and initiating proceedings against his surety under Section 446 Cr.P.C.(corresponding Section 491 of BNSS), ibid, has to be necessarily set aside. It is so ordered.

7. Consequently, the impugned order dated 27.06.2024 is set aside. The original bail bonds of the petitioner accused as well as bonds of his sureties are restored and trial to proceed further, in accordance with law."

7. In view of the above, the present misc. petition is **allowed** in terms of the order passed in ***Tarun Upadhyay (supra)***. The order dated 04.04.2026, whereby, proceedings were initiated under section 446, CrPC (Section 491 of BNSS, 2023) as well as under section 82 and 83, Cr.P.C.(Sections 84 and 85 of BNSS, 2023), is hereby set aside. The original bail-bond of petitioner accused as well as bonds of his sureties are restored and learned Sessions Judge shall proceed further in accordance with law.

8. Pending application(s), if any, also stand disposed of.

(SUNIL BENIWAL),J