

HIGH COURT OF JUDICATURE FOR RAJASTHAN
JODHPUR

S.B. Criminal Writ Petition No. 1961/2026

Jagdish

-----Petitioner

Versus

State Of Rajasthan

-----Respondent

For Petitioner(s) : Ms. Saraswati Kumari, wife of the
petitioner

For Respondent(s) : Mr. Deepak Choudhary, GA-cum-AAG

HON'BLE MR. JUSTICE FARJAND ALI

Order

30/04/2026

1. The present matter brings to the fore a disturbing set of facts, which prima facie reflect an abuse of process of law and a colourable exercise of power by the investigating agency.
2. The petitioner had been in custody for more than two and a quarter years in connection with FIR No.540/2020 registered at Police Station Sanganer, District Jaipur City (East). Upon grant of bail by this Court vide orders dated 07.03.2025 and 16.01.2026, the petitioner, after furnishing the requisite bonds, reached the exit gate of the jail on 19.01.2026 to secure his liberty. However, at that very moment, officers of the SOG, who had already kept the petitioner in custody for over two years apprehended him from the gate itself and proceeded to arrest him in connection with a newly registered FIR No. 03/2026 registered at PS Special Police

Station, SOG, ATS & SOG dated 19.01.2026 pertaining to alleged use of unfair means in a recruitment examination. Notably, the said FIR pertains to an alleged incident of the years 2020–2021, i.e., nearly four years prior to the date of its registration.

3. This Court has carefully perused the contents of the FIR No.03/2026 registered at PS Special Police Station, SOG, ATS & SOG. There is no whisper, much less any cogent narration, indicating that the alleged information regarding the commission of the offence came to the knowledge of the investigating agency on the same date of registration of the FIR and his release order. Had there been any narration in the FIR reflecting receipt of the information on the very same day or a recitation of fresh cause of action; the matter would have stood on an altogether different footing. However, there is no such narration in the FIR. The absence of such foundational facts raises serious doubts regarding the bona fides of the action.

3.1 Even if, for the sake of argument, it is assumed that such information came to light on the very same day, the question still remains, whether mere registration of an FIR, without any preliminary inquiry or collection of incriminating material, could justify the immediate arrest of the petitioner. The sequence of events, wherein the FIR is lodged and the arrest follows instantaneously, without any intervening investigation, strongly suggests a premeditated design.

3.2 The manner in which the arrest of the accused appears to have been effectuated raises serious constitutional and procedural concerns. The sequence of events unmistakably suggests that the

moment the FIR came to be registered, the arrest of the accused was treated as an inevitable consequence, rather than a considered outcome of a fair and impartial investigation. At that nascent stage, neither the statement of the complainant nor those of the material witnesses had been recorded, nor had any credible evidence been collected by the investigating agency so as to form even a prima facie opinion regarding the complicity of the accused. In such a backdrop, the formation of a prior determination to arrest reflects a mechanical and premeditated exercise of power, which is wholly alien to the settled principles of criminal jurisprudence. It appears that the investigating agency has adopted a rather unusual and legally impermissible course, whereby the arrest was given precedence and the investigation was relegated to a subsequent formality, thereby inverting the very foundation of a fair investigative process. Such an approach not only undermines the safeguards enshrined under the statutory framework governing arrest, but also strikes at the heart of personal liberty guaranteed under Article 21 of the Constitution.

3.3 In the given facts and circumstances, it is not in dispute that the very same agency had the petitioner within its reach for a considerable period of nearly two years in connection with an earlier case. Despite such prolonged custody, no occasion arose for the agency to effect arrest in the present matter during that entire period. However, what troubles the conscience of this Court is that immediately upon the petitioner securing release on bail, he was taken into custody afresh and thereafter FIR No. 03/2026 registered at PS Special Police Station, SOG, ATS & SOG appears

to have been lodged with a pre-determined timing, ostensibly to lend legitimacy to an otherwise questionable detention. The sequence suggests that the act of lodging the FIR was not a spontaneous outcome of investigation, but rather a calculated step with a pre-conceived intent to justify the arrest. The circumstances, when viewed cumulatively, give rise to a reasonable suspicion that the agency, having failed to secure continued incarceration of the petitioner in the earlier case, resorted to the present course so as to ensure that he does not come out of custody. The fact that the alleged offence was within the knowledge of the agency for a substantial period, yet no action was taken while the petitioner remained in custody, and that the arrest was effectuated only on the day of his release, cannot be brushed aside as a mere coincidence. Such a pattern, prima facie, lends credence to the allegations articulated in the petition and necessitates a deeper judicial scrutiny. This Court is, therefore of the view that these circumstances cannot be lightly ignored and must be examined with the seriousness they deserve.

4. The distinction between legal and illegal detention becomes stark in such circumstances. A lawful detention must be preceded by due application of mind, supported by tangible material collected during investigation, and must satisfy the conditions necessitating arrest, particularly in light of the parameters laid down under Section 41 of the CrPC (corresponding to Section 35 of BNSS). Even in cases involving non-bailable offences, arrest cannot be treated as a matter of course; it must be shown to be indispensable, inevitable, and necessitated by compelling reasons

such as preventing further offence, ensuring a fair investigation, or securing the presence of the accused. Conversely, where arrest is effected in the absence of such satisfaction, or on the basis of a preconceived notion without any investigative foundation, the same partakes the character of an arbitrary exercise of power, rendering the detention illegal. The principles laid down by the Hon'ble Supreme Court in **Joginder Kumar v. State of Uttar Pradesh** reported in (1994) 4 SCC 260 serve as a guiding beacon in this regard, wherein it has been categorically held that the power to arrest does not translate into an unbridled license to do so, and that no arrest should be made in a routine or cavalier manner without reasonable justification. The relevant phrase from the judgment referred supra is reproduced herein below:-

"No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another."

4.1 The present case, viewed in its entirety, prima facie reflects a departure from these settled principles, thereby warranting a deeper judicial scrutiny into the legality and propriety of the detention of the accused. Although, from a bare reading of the FIR as well as the material reflected in the earlier bail orders, this Court cannot be unmindful of the prima facie impression that the petitioner appears to have been involved in certain illegal activities, particularly those relating to the use of unfair means in the recruitment process; nevertheless, this Court is equally conscious of the settled principle that even in cases involving the

gravest of offences or the most undesirable antecedents of an accused, the mandate of law does not yield. It is trite that the severity of allegations or the perceived culpability of an individual cannot become a justification for the investigating agency to dilute or bypass the requirements of fairness, transparency, and due process. The rule of law, which is the very edifice of our constitutional framework, demands that even the worst of offenders be dealt with strictly in accordance with law, imbued with procedural fairness and administrative transparency. Any action that bears the imprint of arbitrariness, or which seeks to achieve an end by subverting the due procedure established by law, cannot be countenanced by this Court. The majesty of law lies not in targeting the individual, but in upholding the process; and it is this process which must remain untainted, irrespective of the nature of the allegations or the character of the accused.

5. Prima facie, this Court is constrained to observe that the action of the respondents appears to be actuated by mala fide intentions, with the sole objective of ensuring that the petitioner remains incarcerated, notwithstanding the grant of bail by a competent Court. Such conduct strikes at the very root of personal liberty guaranteed under Article 21 of the Constitution of India.

6. At this juncture, it would be apposite to recall the words of *Justice V. R. Krishna Iyer*, who eloquently observed that:-

"Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognised under Article 21 that the curial power to negate it is a great trust exercisable, not

casually but judicially, with lively concern for the cost to the individual and the community.”

6.1 The idea is that personal liberty is one of the most important rights protected under Article 21 of the Constitution. When a court refuses bail, it is effectively taking away a person’s freedom, even before guilt is finally decided. Because of this, such a decision cannot be made lightly or mechanically. A Court must carefully weigh the consequences, not only the impact on the individual, whose life and liberty are directly affected, but also the broader interests of society. In essence, denying bail is a serious judicial act that must be exercised with caution, fairness, and a strong sense of responsibility.

7. The Court is not oblivious to the gravity of the allegations levelled against the accused. The accusations, as projected, depict a course of conduct which has allegedly affected numerous aspirants who, after undergoing the rigours of competitive examinations, nurtured legitimate expectations of recruitment. Such acts, if ultimately established, undoubtedly have a cascading effect on society at large and place an unwarranted burden upon the State machinery. However, even if one were to assume, for the sake of argument, that the accused is the most culpable individual and the most depraved person in the State, still, it does not clothe the State authorities with a licence to transgress the procedure established by law or to do any act without adhering to the rule and due process. The most fundamental distinction between a system governed by the Rule of Law and one under Monarchy lies precisely in this, under the Rule of Law, the law

stands supreme and governs all, whereas in a Monarchy, the will of the ruler assumes primacy. The majesty of the rule of law and the constitutional ethos demand that every action of the State must be just, fair, and reasonable. The State authorities cannot descend to the level of the alleged wrongdoer and resort to unfair or improper means under the guise of teaching a lesson. The contest between the State and an accused is not to be reduced to a competition in impropriety. In all circumstances, the investigating agency is under a bounden duty to adhere to a fair, transparent, and legally sanctioned procedure. This Court finds it deeply disquieting that despite orders passed by two Coordinate Benches of this Court granting bail to the petitioner and directing his release, the petitioner has not been set at liberty. Such conduct prima facie reflects a degree of obstinacy and disregard, suggesting that notwithstanding the judicial determination of this Court deeming the petitioner fit for release, the authorities have chosen to circumvent the same. What further aggravates the situation is the apparent pattern whereby, upon grant of bail in one case, another case is instituted so as to ensure continued incarceration of the petitioner. This method of thwarting judicial orders cannot be countenanced and is wholly impermissible in the eyes of law. If the State is aggrieved by an order granting bail, the remedy lies in challenging the same before a higher forum or seeking appropriate relief within the four corners of law. It is always open to the prosecution to assail such orders by adopting legally permissible recourse, including approaching a Coordinate Bench or the appropriate appellate forum. Nevertheless, what is

not permissible is to ensure, by “hook or by crook” that despite judicial orders of release, the accused continues to languish in custody. Such a course strikes at the very root of judicial authority and undermines the sanctity of the rule of law, which this Court is duty-bound to preserve. This Court cannot remain a silent spectator to what appears, prima facie, to be an instance of illegal detention under the guise of lawful authority. If such actions are countenanced, it would amount to abdication of the constitutional duty entrusted to this Court.

8. Having heard the learned GA-cum-AAG at length, this Court deems it appropriate, in the interest of justice, to grant one opportunity to the respondents to justify their action. Let an affidavit be filed by the competent officer, not below the rank of Additional Director General of Police, explaining:-

(i) The circumstances leading to the registration of FIR No. 03/2026 registered at PS Special Police Station, SOG, ATS & SOG after a lapse of nearly four years on the very day of release of the accused in another case.

(ii) The material available at the time of arrest of the petitioner.

(iii) The justification for effecting arrest immediately upon registration of the FIR, without any discernible investigation.

9. The attendant circumstances, prima facie, impel this Court to draw an inference that the detention of the accused was not in consonance with the mandate of law and appears to bear the imprint of illegality. However, before this Court records any conclusive finding on such a serious issue, it deems it appropriate, in the interest of fairness and due process, to afford an

opportunity of hearing to the respondents. That said, the question which stares this Court in the face is, if such detention is ultimately found to be illegal, what justification remains for not declaring it so? And further, why should the consequential relief of compensation not be awarded to the accused, who has remained deprived of his personal liberty, in clear derogation of the guarantees enshrined under law?

10. Pending such justification, and in light of the prima facie findings recorded hereinabove, this Court finds itself constrained to observe that when a strong prima facie view emerges indicating that the detention may not be in consonance with law, a Constitutional Court cannot remain a silent spectator nor permit the continuance of such detention. The constitutional mandate enjoins upon this Court a duty to zealously guard personal liberty and to ensure that no individual is deprived of the same except by due procedure established by law. Though the issue shall be finally adjudicated at an appropriate stage after affording due opportunity to all concerned, the present prima facie satisfaction of this Court that the arrest may not have been effected in accordance with law necessitates immediate intervention, lest the illegality, if any, is perpetuated.

10.1 Accordingly, it is deemed just and proper to direct that, pending final determination of the issue, the detention of the petitioner shall not be prolonged. The petitioner is, therefore, ordered to be released forthwith, until further orders of this Court, upon his furnishing a personal bond in the sum of Rs. 1,00,000/- to the satisfaction of the learned Trial Court.

10.2 Further, this Court is of the considered prima facie opinion that the conduct of the officers concerned, who were instrumental in lodging FIR No. 03/2026 registered at PS Special Police Station, SOG, ATS & SOG and in apprehending the petitioner from the gate of the jail premises, appears to be dishonest, mala fide, and in abuse of their official position.

11. Since this Court has already taken cognizance of the matter, the case is hereby admitted for further hearing and final adjudication.

12. List the matter on 30.07.2026.

13. In the interregnum, the accused shall continue to remain on bail, subject to the terms and conditions already imposed.

(FARJAND ALI),J

28-divya/-