

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

S.B. Criminal Miscellaneous (Petition) No. 5200/2026

CNR: RJHC010634382026

URN: CRLMP / 9324U / 2026

Dhvaneesh Shah S/o Arvind Bhai Shah, Aged About 56 Years, R/o F-8/1-2 Saryu Apartment, Sector 29, Vashi, Navi Mumbai Maharashtra 400703.

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Prem Shankar Patel S/o Moga Patel, Aged About 69 Years, R/o 6-7 Basant Vihar, Mali Colony, Radaji Chouraha, Tekri, Udaipur Raj.

-----Respondents

For Petitioner(s)	:	Mr. Siddharth Mandawat
For Respondent(s)	:	Mr. Hanuman Prajapati, PP

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

13/07/2026

Learned counsel for the petitioner submits that in the present case, warrant of arrest was issued against the petitioner and proceedings under Section 82 and 83 have also been initiated. Learned counsel submits that the petitioner is resident of Mumbai and no summons at all have ever been served upon him. Learned counsel further submits that the learned trial Court, without recording any sufficient reasons, has straightway come to the conclusion that the petitioner is absconding.

Learned counsel for the petitioner has relied upon the order dated 24.05.2022 passed by this Hon'ble Court in S.B. Criminal

Misc.(Pet.) No.3072/2022 (Bhavin Tanwar Vs. State of Rajasthan & Anr.), relevant part of the order reads as under :-

“15. In the facts of the present case the Court below has initiated action under sections 82 and 83 of the Code in the absence of any cogent reason to show that the accused is absconding such that warrant cannot be served. In the opinion of this Court, mere recording a 'It appears (ऐसा प्रतीत होता है)' that accused has absconded is insufficient to proceed under section 82 of the Code because of the expression "such warrant cannot be executed".

16. The alleged absconding or concealment must be for the purpose of avoiding the warrant. The expression "such warrant cannot be executed" is extremely important because what is required to be ascertained is, that the accused is absconding despite being aware of the warrant. In the absence of such finding, It cannot be said that the accused is dodging or evading the warrant.

17. The trial Court has firstly, ignored the fact that on most of the occasions even the summons were not issued due to the fault of the office. That apart, during the period in question, entire society including the Government machinery remained standstilled due to spread of I and II wave of COVID. That apart, there was no material to infer let alone conclude that the petitioner has absconded; thirdly, the trial Court has not shown the basis on which it has concluded that the alleged absconding/ concealment by the present petitioner was avoid execution of the warrant.

17. In the opinion of this Court, before issuing standing warrant and initiating proceedings under Sections 82 and 83 of the Code, the trial Court is required to record a categorical finding/satisfaction that in spite of knowledge of the warrant, the petitioner has avoided appearance in the Court or has evaded the warrant. Simply becauseailable warrants have been ordered to be issued or as a matter of fact have been issued without report of their service/execution, the trial Court should not and cannot issue standing warrant and initiate proceedings under Sections 82 and 83 of the Code, as a matter of course or routine.

18. The trial Court seems to have been swayed by the purported directions issued by Hon'ble the Supreme Court to decide Negotiable Instrument cases expeditiously. Expeditious disposal of cases is necessary but equally necessary is to observe mandate of law including procedural law.

19. In the opinion Suneen of this court, endeavor of a Court should be to ensure proper compliance of the statutory provisions and service of the summons as mandated by law. Service of summons is a of bed-rock of principles of natural justice. The Courts should not rush to issue standing warrant and initiating proceedings under Sections 82 and 83 of the Code, unless they are satisfied that the accused is intentionally evading or circumventing the warrants in order to avoid the prosecution.

20. As an upshot of the discussion foregoing, the present petition is allowed and impugned order dated 16.05.2022 is quashed and set aside.

21. The petitioner shall appear before the trial Court on or before 10.06.2022 and furnish personal bond of Rs.1 lakh and two sureties of Rs.1 lakh each before the trial Court, whereafter the trial Court shall proceed in accordance with law.

22. The stay application also stands disposed of accordingly.”

Learned Public Prosecutor has opposed the submissions made by learned counsel for the petitioner.

Keeping in view the law laid down by the Co-ordinate Bench of this Court and as an upshot of the discussion foregoing, the present criminal misc. petition is allowed and the impugned order dated 10.06.2026 passed by learned Special Judicial Magistrate (N.I. Act Cases) No.3, Udaipur in CIS No.2480/2018 is hereby quashed and set aside.

The petitioner shall appear before the trial Court on or before 30.07.2026 and furnish personal bond of Rs.1 lakh and two sureties of Rs.1 lakh each before the trial Court, whereafter the trial Court shall proceed in accordance with law.

The stay application also stands disposed of accordingly.

(BALJINDER SINGH SANDHU),J