

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No.3042/2023

Mahendra Singh S/o Kalyan Singh, Aged About 51 Years, R/o Plot No. 4 Alpna Colony, Near Khatipura Flyover, Jhotwara, Jaipur (Raj.) - 302012

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Superintendent Of Police, Jaipur (South).
3. Station House Officer, Police Station Jhotwara, Jaipur, District Jaipur (Raj.).

-----Respondents

For Petitioner(s) : Mr. Yash Takhar

For Respondent(s) : Mr. Jitendra Singh Rathore, PP

JUSTICE ANOOP KUMAR DHAND

Order

04/05/2026

1. The instant criminal misc. petition has been preferred for quashing the impugned order dated 29.05.2007 passed by the Superintendent of Police, Jaipur (South) by which an order has been passed for opening history sheet against the petitioner in terms of Rule 4.9 of the Rajasthan Police Rules, 1965 (hereinafter referred to as "the Rules of 1965").

2. Learned counsel for the petitioner submits that till 2007, only five cases were registered against the petitioner, out of which the petitioner was convicted in one criminal case bearing No.230/2004 for the offences punishable under Section 420 and 120B IPC by the concerned Court vide judgment dated 25.05.2017, against which the Criminal Appeal bearing No.838/2017 was preferred and

the same was allowed by the Court of the Additional Sessions Judge No.17, Jaipur Metropolitan, Jaipur and the judgment of conviction of the petitioner was set-aside. He submits that, as on date, the petitioner is not a convicted person, even then the order impugned has been passed, hence, interference of this Court is warranted.

3. *Per contra*, learned Public Prosecutor opposes the prayer and submits that the petitioner is a habitual offender against whom 12 criminal cases were registered between the year 1999 till 2017 and on the basis of such criminal history of the petitioner, impugned order was passed to open the history sheet against the petitioner, in terms of Rule 4.9 of the Rules of 1965, hence, under these circumstances, the respondent has not caused any illegality in passing the order impugned.

4. Heard and considered the submissions made at the Bar and perused the material available on the record.

5. Rule 4.9 of the Rules of 1965 provides for opening of the History sheets, and the same reads as under:-

"4.9 History Sheets when opened. - (1) A history sheet, if one does not already exist, shall be opened in Form 4.9 for every person whose name is entered in the surveillance register, except conditionally released convicts.

(2) A history sheet may be opened by or under the written orders of a police officer not below the rank of Inspector for any person not entered the surveillance register who is reasonably believed to be habitually addicted to crime or to be an aider or abettor of such person."

(3) The Government Railway Police will maintain the history sheet of criminals known or suspected to operate on the railway in accordance with Police Rule 4.8. They will open history sheets themselves for criminals living in railway premises, who have been

absent from their original homes so long that the railway premises may be regarded as their permanent residence. They may also open history sheets for wandering strangers reasonably believed to be habitually addicted to crime on the railway, whose original homes cannot be traced."

6. Rule 4.4 of the Rules of 1965 deals with Surveillance Register No.8, to be maintained in every police station in Form 4.4(1), and the same reads as under :-

"4.4 Surveillance Register No.8 - (1) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 4.4. (1).

(2) In Part I of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belong to one or more of the following classes:-

(a) All persons who have been proclaimed under Section 87, Code of Criminal Procedure.

(b) All released convicts in regard to whom an order under Section 565, Criminal Procedure Code, has been made.

(c) All convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under section 401, Criminal Procedure Code.

(d) All persons restricted under Rules of Government made under section 8 of the Rajasthan Habitual Offenders Act, 1953.

(3) In Part II of such register maybe entered at the discretion of the Superintendent-

(a) persons who have been convicted twice, or more than twice, of offences mentioned in rule 8.22;

(b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not;

(c) persons under security under section 109 or 110, Code of Criminal Procedure;

(d) convicts released before the expiration of their sentences under the Prisons Act and

Remission Rules without the imposition of any conditions.

Note:- This rule must be strictly construed, and entries must be confined to the names of persons falling in the four classes named therein."

7. As per Clause (1) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened against a person, whose name is entered in the Surveillance Register, except conditionally released convicts. As per Clause (2) of Rule 4.9 of the Rules of 1965, a history-sheet can be opened under the written orders of a police officer not below the rank of Inspector against any person, whose name has not been entered in the Surveillance Register but who is reasonably believed to be habitually addicted to commit crime or to be an aider or abettor of such person.

8. Rule 4.4 of the Rules of 1965 clearly reveals that there are two categories of persons whose names may be entered in the Surveillance Register: the first category deals with such persons, who are commonly resident within or commonly frequenting the local jurisdiction of the concerned police station, and who are either proclaimed under Section 87 Cr.P.C., or released convicts in regard to whom an order under Section 565 Cr.P.C. has been made, or all convicts, the execution of whose sentence is suspended in the whole, or any part under Section 401 Cr.P.C. The second category of persons are those whose names may be entered at the discretion of the Superintendent of Police, given that they have been convicted twice, or more than twice, of offences mentioned in Rule 8.22. Rule 8.22 deals with specific offences in Chapter XI, XII, XIII, XVI, XVII and XXI of the I.P.C. or under Chapter VIII of the Cr.P.C. or under the Rajasthan Public Gambling Ordinance, 1949, Indian Arms Act, 1959 or where

subsequent conviction, of a person previously convicted of the same or similar offence, would lead to enhanced punishment. Other cases, covered under the second category, include those persons who are reasonably believed to be "habitual offenders" or receivers of stolen property "whether they have been convicted or not", or persons under security under Sections 109 or 110 Cr.P.C., or convicts released before the expiration of their sentences under the Prisons Act and Remission Rules without imposition of any conditions.

9. As per the definition of the word 'habitual offender', as provided under the Act of 1953, a person can be declared as habitual offender if he has three convictions recorded against him. In the present case, there is only one conviction recorded against the petitioner i.e. in Criminal Case No.230/2004. The rest of the cases are lying pending in the respective courts. Hence, under these circumstances, the petitioner does not fall within the definition of "habitual offender".

10. The Rajasthan Police Rules do not empower the police to act in a manner that infringes upon citizen's fundamental freedom. The police does not possess a licence to enter the names of whosoever they like or dislike, in the surveillance register. Ordinarily the names of persons with previous criminal record alone are entered in the surveillance register. They must be proclaimed offenders, previous convicts, or persons who have already been placed on security for good behaviour. In addition, names of persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been

convicted or not, can be categorized and entered in the surveillance register under the Police Rules.

11. The Apex Court in the case of **Govind v. State of Madhya Pradesh** reported in **(1975) 2 SCC 148**, observed that a person subjected to surveillance, the object and limitation of such surveillance depends upon the character and antecedents of the person concerned. The Police Regulation has force of law and, therefore, it can not be said to be infringement of fundamental right. Nevertheless, Article 21 of the Constitution of India is a right of an individual to be free from such restriction or encroachment directly imposed or indirectly approached by calculated measures.

12. The criteria for opening a history sheet is the subjective satisfaction of the authority and it has to be arrived at, on the reasonable belief or knowledge that the person, for whom the history is opened or retained is habitually addicted to aid or abet, the commission of crime, whether convicted or not etc. While arriving at the subjective satisfaction, the activities of such persons which are informative and useful, based on the facts ascertained by the police from the date of last entry shall be made month-wise for close watch of characters and quarterly for non-close watch of characters. The discretion of the authorities has to be exercised, according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrarily vague, fanciful, but legal and regular and it must be exercised within the limit to which an honest man competent to discharge of his office or to confine himself.

13. A habitual offender or a person habitually addicted to crime is one who is a criminal by habit or by disposition formed by

repetition of crimes. Reasonable belief of the police must be based on strong and reasonable grounds. Mere belief is not sufficient. The belief must be reasonable, it must be based on reasonable grounds.

14. Opening of 'History-sheet' must be on the basis of subjective satisfaction of the competent authority and subjective satisfaction must be arrived at in accordance with legal provisions vis-à-vis well reasoned and speaking decision, failing which it would be hit by Articles 14 and 21 of the Constitution of India, being arbitrary in nature and not permissible in law.

15. Considering the overall facts and circumstances of the case and the documents annexed with the reply submitted by the State, it is clear that, in all, 12 cases were registered against the petitioner. The following 12 cases were registered against the petitioner with different Police Stations and the same are summarized in the tabular form:-

क्र. सं.	मु.नं.	दिनांक	धारा	नाम थाना	नतीजा चार्ज शीट	नतीजा कोर्ट
1.	81/9 9	5.03.99	147.447.427. 420 आई.पी.सी.	झोटवाड़ा	CS-239 29-09-99	पैडिंग न्याया0
2.	230/ 04	2.06.04	420.406.467. 468. 120 बी. आई.पी.सी	झोडवाड़ा	CS-387 31-8-94	फैसला दिनांक 25.05.17 आरोपी महेन्द्र सिंह को धारा 420.120बी भादस में दोषसिद्ध किया जाकर 420 भादस में 3 साल का कारावास व 10 हजार रुपये जुर्माना व 120बी भादस में 6 माह का कारावास 5 हजार रुपये के अर्थ दण्ड से दण्डित किया गया
3.	231/ 04	2.06.04	420.406.467. 468.120 बी.आई. पी.सी	झोडवाड़ा	CS-388 31.8.94	पैडिंग न्याया0
4.	14/0 6	13.01.0 6	147.148.149. 323.341.451. आई.पी.सी.	हरमाड़ा	CS-11 16.02.06	पैडिंग न्याया0
5.	742/ 07	17.09.0 7	420.467.468. 471.120 बी.आई. पी.सी.	झोटवाड़ा	CS-743 29.12.10	पैडिंग न्याया0
6.	301/ 08	7.08.08	406.420.120.बी. आई.पी.सी.	हरमाड़ा	CS-1/10 15-01-10	पैडिंग न्याया0

7.	302/08	7.08.08	406.420.120.बी.आई.पी.सी.	हरमाड़ा	CS-2/10 15-01-10	पैडिंग न्याया0
8.	405/09	18.09.09	406.420.120.बी.आई.पी.सी.	हरमाड़ा	CS-3/10 15-01-10	पैडिंग न्याया0
9.	320/11	18.4.11	420.467.468. 471.120 बी.आई.पी.सी.	जेडीए	CS-33/12 21-4-12	पैडिंग न्याया0
10.	542/11	16.06.11	420.467.468. 471. आई.पी.सी.	जेडीए	CS-123/12 20-11-12	पैडिंग न्याया0
11.	12/18	12.01.18	42.406.467.468. 471.120ब भादस	विश्वकर्मा	CS NO-544/19 11-12-19	पैडिंग न्याया0
12.	717/17	12.09.17	420.467.468. 471.120 बी.आई.पी.सी.	सांगानेर	CSNO 251/22 2-11-22	पैडिंग न्याया0

अतः चाही गई सूचना श्रीमान् की सेवामें सादर प्रेषित है।

16. It is worthy to note here that out of above 12 criminal cases, the petitioner was found guilty only in one criminal case i.e. 230/2004 registered with the Police Station Jhotwara, by the Court of the Additional Chief Metropolitan Magistrate No.9, Jaipur Metropolitan in Criminal Case No.151/2012 and the petitioner was found guilty for the offences punishable under Sections 420 and 120B IPC and was sentenced to undergo three years imprisonment.

17. Aggrieved by the aforesaid, the petitioner submitted Criminal Appeal No.838/2017 before the Court of the Additional Sessions Judge No.17 Jaipur Metropolitan and the same has been allowed vide judgment dated 08.09.2017 and the petitioner has been acquitted from all the charges, hence, under these circumstances, the petitioner has not been found guilty in any of the offences, as prescribed in the aforesaid table.

18. Accordingly, the instant criminal misc. petition stands allowed. The Deputy Commissioner of Police, Jaipur (South) as well as the Station House Officer, Police Station Jhotwara, District Jaipur are directed to remove the name of the petitioner from the

history sheet/surveillance register, if already entered, of the Police Station Jhotwara, District Jaipur forthwith.

19. The stay application and all pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

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