

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

S.B. Criminal Miscellaneous (Petition) No. 7731/2025

Amit Rathor S/o Bablu Rathor, R/o Moti Nagar, P.S. Chechat,
Dist. Kota (Raj.)

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Rambabu S/o Ramesh, R/o Chandrapura, Chechat, Kota Rural, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Sahajveer Baweja, Adv.
For Respondent(s) : Mr. Amit Punia, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

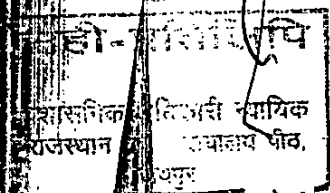
06/01/2026

1. Instant Criminal Misc. Petition under Section 528 of BNSS has been filed on behalf of the petitioner assailing the order dated 11.11.2025, passed by the learned Sessions Judge, Ramganj Mandi, District Kota whereby the learned Judge without deciding the application filed by the petitioner under Section 368 of BNSS in Criminal Case No.35/2025 proceeded with the trial thereby violating the petitioner's right to fair trial.
2. It is contended by the learned Counsel for the petitioner that the petitioner is innocent and has falsely been implicated in the matter. The petitioner has been suffering from Bipolar Affective Disorder (BPAD) and has been of unsound mind since the year 2019. It is submitted that petitioner has been undergoing regular medical treatment for the said condition. Counsel submits that FIR

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No.89/2025 came to be registered against the petitioner at Police Station Ramganj Mandi, District Kota Rural, for offence under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023, at the instance of the complainant/respondent No.2. As per the allegations contained in the FIR, the complainant allegedly received a phone call informing him that his brother, Vishal, had been attacked by an unknown assailant with a knife, resulting in his death. It is further submitted that during the course of investigation, the police arrested the petitioner on 07.03.2025 and subsequently, filed a charge-sheet against him for offences punishable under Section 103(1) of the BNS, 2023 and Section 4/25 of the Arms Act. Learned counsel contends that the charge-sheet has been filed solely on the basis of circumstantial evidence. It is submitted that the petitioner had no role whatsoever in the alleged murder of the deceased, nor was he present at the place of occurrence at the relevant time and false evidence has been created to implicate the petitioner in the matter.

3. It is further contended that on 01.07.2025, the learned trial Court framed charges against the petitioner and summoned PW-1, PW-2 and PW-3 for their examination. It is stated that, on account of the petitioner's medical condition, an application under Section 368 of the BNSS, 2023, was moved on 28.08.2025 before the learned trial Court, asserting that the petitioner was medically unfit to face the trial and, therefore, was required to be dealt with in accordance with the procedure prescribed under Section 368 of the BNSS. It is further stated that, upon consideration of the said application, the learned trial Court directed the medical



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examination of the petitioner. However, it is contended that the learned trial Court neither postponed the trial as contemplated under Section 368 of the BNSS nor passed any specific order on the application so filed. Instead, bailable warrants were issued against PW-1, PW-2 and PW-3, and no separate order-sheet entry was drawn in respect of the petitioner's application under Section 368 of the BNSS. It is further contended that thereafter, placing reliance on the medical opinion dated 30.10.2025 rendered by the Medical Examination Board, the learned trial Court, without assigning any reasons and without passing any order on the application filed under Section 368 of the BNSS, proceeded to pass the impugned order dated 11.11.2025, whereby the trial was directed to continue, which is arbitrary and contrary to law.

4. Learned counsel for the petitioner contends that, in view of the mandate contained under Section 368 of the BNSS, 2023, the learned trial Court was duty bound to conduct a proper inquiry with regard to the petitioner's mental soundness before proceeding further with the trial. It is submitted that the said provision is mandatory in nature and requires the Court to record its judicial satisfaction regarding the accused's capacity to understand the proceedings and to effectively instruct his counsel. It is further contended that the impugned order suffers from a complete absence of such judicial satisfaction. According to learned counsel, the order merely reproduces the medical opinion without any independent assessment or reasoning as to whether the petitioner possesses the requisite cognitive ability to face the trial. It is submitted that no finding has been recorded with



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respect to the petitioner's capacity to comprehend the proceedings or to participate meaningfully in his defence, which is a sine qua non for continuation of trial under Section 368 of the BNSS. Learned counsel further submits that the impugned order has been passed in utter disregard of the mandatory procedure prescribed under Section 368 of the BNSS, as also in violation of Article 21 of the Constitution of India and the principles of natural justice. It is contended that continuation of the criminal proceedings against a person who is medically shown to be incapable of defending himself would render the trial inherently unjust and legally unsustainable, thereby warranting immediate interference by this Court to prevent further prejudice to the petitioner's fundamental rights.

5. Thus, in such circumstances, it is prayed that the trial Judge may be directed not to proceed with the trial without deciding the application of the petitioner filed under Section 368 of BNSS. Counsel relies upon the judgment passed by Kerala High Court on 20.02.2019 in the case of **Babu Valleriyan versus State of Kerala in CrI.M.C. No.7526/2018.**

6. Learned Public Prosecutor opposes the submissions advanced by the Counsel for the petitioner and prays for dismissal of the misc. petition.

7. I have considered the submissions.

8. For ready reference, provisions of Section 368 of BNSS are reproduced herein below:

368: Procedure in case of person of unsound mind tried before Court—

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(1) If at the trial of any person before a Magistrate or Court of Session, it appears to the Magistrate or Court that such person is of unsound mind and consequently incapable of making his defence, the Magistrate or Court shall, in the first instance, try the fact of such unsoundness of mind and incapacity, and if the Magistrate or Court, after considering such medical and other evidence as may be produced before him or it, is satisfied of the fact, he or it shall record a finding to that effect and shall postpone further proceedings in the case.

(2) If during trial, the Magistrate or Court of Session finds the accused to be of unsound mind, he or it shall refer such person to a psychiatrist or clinical psychologist for care and treatment, and the psychiatrist or clinical psychologist, as the case may be, shall report to the Magistrate or Court whether the accused is suffering from unsoundness of mind:

Provided that if the accused is aggrieved by the information given by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate, he may prefer an appeal before the Medical Board which shall consist of—

- (a) head of psychiatry unit in the nearest Government hospital; and
- (b) a faculty member in psychiatry in the nearest Government medical college.

(3) If the Magistrate or Court is informed that the person referred to in sub-section (2) is a person of unsound mind, the Magistrate or Court shall further determine whether the unsoundness of mind renders the accused incapable of entering defence and if the accused is found so incapable, the Magistrate or Court shall record a finding to that effect and shall examine the record of evidence produced by the prosecution and after hearing the advocate of the accused but without questioning the accused, if the Magistrate or Court finds that no prima facie case is made out against the accused, he or it shall, instead of postponing the trial, discharge the accused and deal with him in the manner provided under section 369:

Provided that if the Magistrate or Court finds that a prima facie case is made out against the accused in



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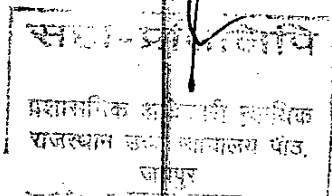
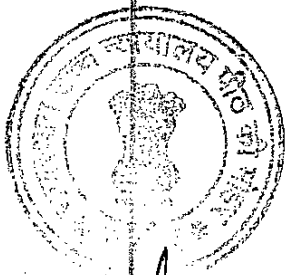
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respect of whom a finding of unsoundness of mind is arrived at, he shall postpone the trial for such period, as in the opinion of the psychiatrist or clinical psychologist, is required for the treatment of the accused.

(4) If the Magistrate or Court finds that a prima facie case is made out against the accused and he is incapable of entering defence by reason of intellectual disability, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 369.

9. In the case of **Babu Valleriyan (supra)**, Hon'ble Kerala High Court in para-17 of the judgment has held as under:

17. Coming to the facts of the case, I find that there were material before the Court in the form of medical reports which revealed that the accused was suffered from Paranoid Schizophrenia. The learned trial Judge did not permit the accused to let in any evidence to prove the factum of unsoundness of mind. Neither was the Superintendent nor the treating Doctor examined as a witness in Court. He did not call upon the counsel for the accused, who had filed Annexure-1 application, bringing on record the fact of unsoundness and his incapacity to lead evidence. It is as if the learned Sessions Judge was toally oblivious of the provisions of Chapter XXV of the Code. Even in the report dated 06.09.2018, the Superintendent of the Mental Health Center had reported that the petitioner is suffering from Paranoid Schizophrenia. When medical reports were placed before the learned Sessions Judge to the effect that the petitioner is suffering from Schizophrenia, I am at a loss to understand why it did not strike his mind that he should adopt the procedure prescribed in Section 329 of the Code. The fact that the accused was admitted in the Mental Hospital and that he was posting the case for trial. The procedure adopted by the learned Sessions Judge is illegal and in gross violation of the provisions of the Code. The learned Sessions



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Judge ought to have, in the first instance, tried the fact of such unsoundness and incapacity and he ought to have proceeded with the trial only if was satisfied that the accused is of sound mind and is capable of making his defence.

10. In the present case, the petitioner has asserted that he is suffering from Bipolar Affective Disorder, which is stated to be a serious psychiatric ailment. Upon such assertion, the learned trial Court called for a medical report regarding the petitioner's mental health. In compliance thereof, the Senior Medical Officer, Jail Dispensary, Central Jail, Kota submitted a medical report dated 09.09.2025, opining that the petitioner's mental health was stable and that he was under regular medical treatment. Being dissatisfied with the said report, the learned trial Court again called for a further medical report. Accordingly, a report dated 03.10.2025 was submitted by the Department of Psychiatry, New Hospital, Medical College Campus, Kota. The said report, upon clinical observation, recorded that the petitioner had little or no control over emotional expression, exhibited cognitive rigidity and perseveration, and suffered from disturbances in thinking, which cumulatively resulted in emotional disability. Despite the detailed nature of the said report, the learned trial Court, vide letter dated 08.10.2025, without assigning any reasons, observed that the report dated 03.10.2025 was unsatisfactory and directed the Jailor, Sub Jail, Ramganj Mandi to obtain a fresh medical report. Pursuant thereto, the petitioner was examined by a Medical Board consisting of three members, which submitted its report dated 30.10.2025. The Medical Board opined that the petitioner was not



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presently of unsound mind, was not intellectually disabled, and was capable of withstanding court proceedings. Relying upon the medical opinion dated 30.10.2025, the learned trial Court proceeded with the trial. It is contended that this was done without adjudicating upon the application filed by the petitioner under Section 368 of the BNSS, 2023.

11. In the aforesaid facts and circumstances of the case, this Court is of the view that before proceeding further with the trial, the trial Court ought to have decided the application filed by the petitioner under Section 368 of BNSS.

12. Consequently, the Criminal Misc. Petition is disposed of with the direction to the learned trial Court to first pass a speaking/reasoned order on the application filed by the petitioner under Section 368 of BNSS and then proceed with the trial.

13. Stay application and misc. application(s), if any, also stand disposed of.


(ANIL KUMAR UPMAN),J

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