RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 975/2025

Sonu Ram Pachauri S/o Late Shri Shibbo, aged about 32 Years, R/o Village Chitaura, Distt. Dholpur, Police Station Kolari, Distt. Dholpur (Raj).

----Victim-Petitioner

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Versus

1. State of Rajasthan, Through P.P.
2. Puran Singh S/o Shri Chotelal, Through His Biological Son Ved Prakash Tyagi S/o Puran Singh R/o Village Chitaura, Distt. Dholpur, Police Station Kolari, Distt. Dholpur (Raj).

----Accused-Respondents

For Petitioner(s)	:	Mr. Nirmal Kumar Sharma Mr. Suraj Kumar Dixit and Mr. Anurag
For Respondent(s)	:	Mr. Jitendra Singh Rathore-PP with Mr. Shubham Sain Mr. Sagar Kumar for Mr. Anirudh Tyagi

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JUSTICE ANOOP KUMAR DHAND

Order

13/05/2026

Reportable

An accused cannot be prosecuted under the law unless and until he is certified to be of sound mind. The Right to Fair Trial is a fundamental right guaranteed under Article 21 of the Constitution of India and no person should be condemned unheard.

A criminal trial cannot proceed against an accused who is mentally unfit, as it violates the fundamental principles of a fair trial. The accused must possess the cognitive capacity to understand the charges framed against him, follow the proceedings and put his defence.

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When the accused who is being prosecuted under any law, does not possess the ability to understand the Court proceedings, and if he is not able to defend himself, he is incompetent to face trial.

If the criminal process is jeopardized then there would be no fair trial. So, to ensure a fair trial and to protect the principles of natural justice, the assessment of the accused person's mental capacity is necessary to establish that he is able to understand the proceedings of trial and put his defence before the Court.

1. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 05.12.2024, passed by the Court of Additional Sessions Judge, Dholpur in Sessions Trial No. 34/2024, by which the application submitted by the biological son of the accused-respondent-Puran Singh under Section 329 Cr.P.C. has been allowed and the accused-respondent has been released. The Trial Court has also issued direction to the biological son of the accused-respondent to look after the accused-respondent with further directions to submit the mental fitness certificate of the accused-respondent before the Trial Court in every six months.

2. Learned counsel for the petitioner submits that FIR No. 40/1994 was registered against the accused-respondent with the Police Station Kolari, District Dholpur wherein allegations of committing murder were levelled against him. After registration of the aforesaid FIR, the accused-respondent remained absconding for a considerable amount of time and accordingly, chargesheet under Section 299 Cr.P.C. was submitted against him in his absence. Almost 30 years after registration of the aforesaid FIR,

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the accused-respondent was arrested by the police on 24.01.2024 and at the relevant time, the mental condition of the accused-respondent was fit and fine and he was not suffering from any kind of mental disorder. Counsel submits that now, an application under Section 329 Cr.P.C. has been submitted by the biological son of the accused-respondent, averring that the accused-respondent is suffering from Dementia and he is not in a position to understand the trial proceedings against him and submit his defence before the Trial Court. Therefore, a prayer was made by the applicant to release the accused-respondent and hand him over to the applicant, i.e. the biological son of the accused-respondent. Counsel submits that the aforesaid application submitted by the biological son of the accused-respondent has been erroneously entertained in the light of the provisions contained under Section 329 Cr.P.C. Counsel submits that the aforesaid application was submitted at a pre-mature stage and such application can be filed when the trial commences, whereas till date, neither charges have been framed nor trial has commenced against the accused-respondent. Hence, under these circumstances, the application submitted at the instance of the accused-respondent, by his biological son, is pre-mature and not maintainable and the same should not have been considered by the Trial Court. However, inspite of the above, the same was considered and allowed by the Trial Court by passing the impugned order.

In support of his contentions, counsel for the petitioner has placed reliance upon the judgment passed by the High Court of Jammu and Kashmir and Ladakh at Jammu in the case of **Johar**

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Mehmood Vs. U.T. of Jammu and Kashmir and Ors. reported in **2025 SCC OnLine J&K 253**.

3. Per contra, learned Public Prosecutor as well as counsel appearing on behalf of the accused-respondent opposed the prayer.

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

5. When the instant matter was listed before this Court on the last occasion i.e. 08.12.2025, this Court passed the following interim order which reads as under:-

> "1. By way of filing the instant criminal misc. petition, a challenge has been made to the impugned order dated 05.12.2024 passed by the Additional Sessions Judge, Dholpur by which the custody of the accused Puran Singh has been handed over to his son on the ground that the accused-Puran Singh is suffering from severe dementia with behavioural problems leading to severe cognitive impairment.
>
> 2. Learned counsel for the petitioner submits that the condition of the accused-Puran is not as such that he could not face the trial. Hence, under these circumstances, interference of this Court is warranted.
>
> 3. Before proceeding further to decide the instant matter, this Court deems it just and proper to quote the relevant provisions with regard to the issue involved in the instant petition. The provisions contained under Chapter XXV of the Code of Criminal Procedure, deals with the accused-persons of unsound mind. Section 329 therein reads as under:-
>
> > "329. Procedure in case of person of unsound mind tried before Court.—(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 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.

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1 [(1A) If during trial, the Magistrate or Court of Sessions 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 psychiatric 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 medical college.]

2 [(2) If such Magistrate or Court is informed that the person referred to in sub-section (1A) is a person of unsound mind, the Magistrate or Court shall further determine whether 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 330:

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

(3) 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

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mental retardation, he or it shall not hold the trial and order the accused to be dealt with in accordance with section 330.]"

4. Bare perusal of the aforesaid provisions clearly indicating that the provisions deals with the procedure in case, a person is found to be unsound mind before the Court and before forming any opinion also as to whether an accused is suffering from unsoundness of mind or not or whether such accused is in a fit condition to face the trial or not, the learned Magistrate is required to get the information/ opinion of a Psychiatrist and Clinical Psychologist of a Medical Board, which shall consist of the head of the psychiatry unit from the nearest Government Hospital along-with a Faculty Member of Psychiatry from the nearest Medical College.

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5. Though a Medical Board has been constituted by the orders passed by the Trial Court and the following opinion has been given by the constituted Medical Board, which reads as under:-

"<u>Medical Board Examination Report of Shree Pooran Singh S/o Chotelal Tyagi</u>

Office Order-सामान्य/2024/886 दिनांक 30/03/2024 of PMO District Hospital Dholpur (Raj.)

Brought By- Shree Roop Singh (HC1262)

Above named was presented and assessed by medical board members constituted by PMO Dholpur through letter no as mentioned above on 01/04/2024 in Psychiatry OPD of district Hospital Dholpur. He was assessed through Appropriated available psychological tools. After detailed current evaluation and examination of his post treatment records. The Board is of the opinion that Shree Pooran Singh's current mental state examination is not found to be within normal limits and found to be suffering from Severe Dementia ē Behaviour problems leading to severe cognitive impairment.

<u>Mark of Identification</u> - A Black Mole over (L) Side Cheek"

6. Perusal of the aforesaid report, as furnished by the Medical Board does not indicate that as to whether the petitioner is not in a fit position to understand the proceedings of the trial pending against him. Unless and until, a specific opinion is given by the Medical Board, the matter cannot proceed further against the accused in accordance with law.

7. In the considered opinion of this Court, a fresh Medical Board is required to be constituted in terms of Section 329 Cr.P.C. The Superintendent of S.M.S.

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> Medical College, Hospital is directed to constitute a Medical Board consisting of the Head of Psychiatry Unit along-with a Faculty Member of Psychiatry and thereafter, send his report and specify the mental state of the accused-respondent after thorough examination and apprise this Court as to whether the accused-respondent is mentally fit to understand and participate in the Court proceedings.
> 8. Office is directed to send a copy of this order to the Superintendent, S.M.S. Medical College, Hospital, Jaipur for its compliance.
> 9. The learned Public Prosecutor is directed to instruct the concerned Investigating officer ask the accused-respondent to appear before the Medical Board on 18.12.2025.
> 10. List the matter on 05.01.2026."

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6. While passing the aforesaid interim order, this Court was of the view that the opinion given by the Medical Board constituted at Dholpur was not clear and specific with regard to the mental state and fitness of the accused-respondent. Therefore, directions were issued for constitution of a fresh Medical Board in terms of Section 329 Cr.P.C. The Superintendent, S.M.S. Medical College, Hospital, Jaipur was directed to constitute a Medical Board consisting of the Head of Psychiatry Unit along with a Faculty Member of Psychiatry. Further directions were issued to send a fresh report, specifying therein the mental state and fitness of the accused-respondent, after his thorough examination, in order to apprise this Court as to whether the accused-respondent is mentally fit to understand and participate in the Court proceedings, pending against him before the Trial Court.

7. In pursuance of the aforesaid interim order dated 08.12.2025, a Medical Board was constituted comprising of the Senior Professor and Unit Head, Department of Psychiatry, SMS Medical College and Superintendent, Psychiatry Centre, Jaipur as

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Chairman, a Professor (Psychiatry Department), a Senior Specialist (Psychiatry Department) and a Clinical Psychologist as Members, who examined the accused-respondent and on the basis of Serial and detailed Mental Status Examinations along with previous history of the accused-respondent, the Medical Board gave the following report on 18.12.2025, which reads as under:-

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"**PSYCHIATRIC CENTRE, JAIPUR**
Medical Board Examination Report

BY ORDER: क्रमांकः मा.चि./मेडि.बोर्ड/सामा./2025/2749 दिनांकः 18.12.2025
Subject: Psychiatric examination by board of **Mr. Puran Singh S/O Mr. ChoteLal,** 80 years old male, R/O:- Gainda Lal Colony Agra, Uttar Pradesh

Date of Admission: 18-12-2025
Date of Discharge: 02.01.2026

OPD NO. 181225278412376 **IPD No.** A/PSYCJP/25/01292

Reference :-

1. राजस्थान उच्च न्यायालय जयपुर द्वारा याचिका संख्या नं.–975/2025 में जारी आदेश दिनांक 05.12.2025 एंव आचार्य एवं विभागाध्यक्ष, फोरेन्सिक मेडिकल विभाग, सवाई मानंसिह महाविद्यालय, जयपुर के पत्र क्रमांक /1062/एफएम/25 दिनांक – 16.12.2025 द्व ारा अग्रेषित पत्र की अनुशंसा में

Mark of Identification:-

1. A black mole left cheek over mandibular reason.

2. A black mole over medial end of right clavicle bone.

On the basis of history given by reliable informant (Mr. Ved Prakash Tyagi, Son) Serial and detailed Mental Status Examinations, observation of behavior in the ward, neurological opinion, geriatric psychiatrist opinion and report of clinical psychologist (Psychological evaluation no. 26/00380 & 26/00386 & 26/00390, Dated: 01.01.2026), We the members of board are of unanimous opinion that **Mr. Puran Singh S/O Mr. ChoteLal** patient has dementia with BPSD (Behavioral and psychological symptoms of dementia). Owing to the cognitive impairment he is unable to understand and participate in the court proceedings. Considering the progressive nature of the disorder possi-

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bility of improvement in his condition near future is very bleak."

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8. Perusal of the aforesaid report indicates that four members of the newly constituted Medical Board were of the unanimous opinion that the accused-respondent-patient-Puran Singh has dementia with BPSD (Behavioral and Psychological Symptoms of Dementia). They further opined that owing to his cognitive impairment, the patient-Puran Singh would be unable to understand and participate in the Court proceedings. Considering the progressive nature of the disorder, it was found that the possibility of improvement in his condition in near future is very bleak.

9. This Court finds no substance in the arguments raised by the counsel for the petitioner that the application submitted by son of the accused-respondent was pre-mature and the same could not be submitted prior to the commencement of the trial i.e. framing of the charge. Once this fact is established on record in the form of the opinion of Medical Board that the accused-respondent is mentally unfit to face the trial on account of the disease suffered by him, then waiting for the trial to reach at the stage of framing of charge, would only be an empty formality.

10. Considering the aforesaid, this Court is of the considered opinion that at this stage, the accused-respondent is not in the mental state to face trial and under such circumstances, he is ordered to be released and his custody be handed over to his biological son. This Court finds no error in the order impugned passed by the Trial Court.

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11. The Trial Court is directed to notify the Secretary, District Legal Services Authority, Dholpur (DLSA) to ensure that the petitioner would be produced before the Medical Board at SMS Hospital, Jaipur every year in the second week of December for examination of his mental fitness to face the trial and send the report of such examination carried out by the Medical Board to the Trial Court in a timely manner.

12. In case, the Medical Board opines that the mental condition of the accused-respondent is fit to understand the Court proceedings, then such report shall be submitted before the Trial Court and thereafter, in case, the Trial Court comes to the conclusion that on the basis of the report received from the Medical Board, the accused-respondent seems to be of sound mind and he is in a position to face trial, then appropriate orders be passed for resumption of the proceedings against him, as per the provisions contained under Section 331 Cr.P.C. and the trial shall be concluded in accordance with law.

13. With the aforesaid observations and directions, the instant criminal misc. petition stands disposed of. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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