



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



S.B. Criminal Miscellaneous (Petition) No. 7694/2024
CNR: RJHC020972392024 | URN: CRLMP / 15712U / 2024

Smt. Mamta Jangid Wife Of Shri Chhaju Ram Jangid, Aged About 40 Years, Resident Of Village Tatija, Police Station Khetdi District- Neem Ka Thana, Presently Resident Of Tenant Ramu Kalwaniya Ka Plot Munna Wali Dhani, Tan Lalchandpura, Police Station Kardhani, Jaipur West (At Present Accused Confined In Central Jail, Jaipur).



-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

-----Respondent

For Petitioner(s)	:	Mr. Nirmal Kumar Sharma
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP Mr. Onkar Singh Rajpurohit, PP Ms. Karishma, SI Vishvakarma Jaipur West, present in person

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

05/08/2026

1. The instant criminal miscellaneous petition is preferred by the petitioner accused for quashing FIR No. 872/2024 dated 30th July 2024 at Police Station Kardhani, District Jaipur (West) for the offence under Section 8/20 of NDPS Act.
2. Learned counsel for the petitioner submits that in the night of 29th July 2024, the police has reached the house of present petitioner and in the intervening night has searched the house of the present petitioner. He also submit that the petitioner was arrested at 1.15 a.m. on 30th July 2024, which is evident from the arrest memo as well as remand paper submitted to the ACMM



No.1, Jaipur Metropolitan No-II. He also submit that the police has no authority to arrest any female after sunset and before sunrise.

He placed reliance upon judgment in case of **Deepa versus S.**

Vijayalakshmi : W.A.(MD) No. 1155/2020, decided by a

Division Bench of the Madras High Court on 07-02-2025, and

judgment in case of **Serina Bibi versus The State of West**

Bengal : CRM (NDPS) 244/2025, decided by a Coordinate

Bench of High Court of Calcutta on 13th May 2025, and submitted

that arrest in the midnight is in violation of BNSS, has to declared

as illegal and petitioner is entitled to quash the proceedings.

3. Learned Public Prosecutor has contended that the allegation and submitted that the search was made by a female police officer and the arrest is made by a female police officer and no case is made out for quashing of any proceedings.

4. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material placed on record. Also considered submission of Ms. Karishma, SI, P.S. Vishwakarma.

5. The instant criminal miscellaneous petition is filed under Section 528 of BNSS for quashing FIR No. 872/2024, dated 30th July 2024, registered at Police Station Kardhani, District Jaipur (West) for the offence under Section 8/20 of NDPS Act, on ground of illegal arrest of petitioner.

6. As regard to quashing of any FIR is concerned, the same is governed by the principle laid down in case of **State of Haryana Vs. Bhajan Lal reported in 1992 Supplementary (1) SCC 335**. Hon'ble Supreme Court has laid down illustrative categories



where quashing of proceedings is justified and same are reproduced as under:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the





accused and with a view to spite him due to private and personal grudge."

7. In case of **Ankul Singh Vs. State of Uttar Pradesh and Anr. reported in 2025 INSC 1153**, Hon'ble Supreme Court has observed that the categories in **State of Haryana Vs. Bhajan Lal** (supra) are illustrative and not exhaustive, but they provide guiding principle to balance two competing considerations; (a) preventing abuse of process of law and; (b) ensuring that criminal proceedings are not stifled at the threshold of disputed question of fact. The scope of inquiry is confined to whether, on a plain reading of the FIR/complaint and accompanying material the ingredients of the alleged offence are disclosed.

8. Having considered the principle of law for quashing of FIR, no case is made out for quashing of FIR as police has registered FIR No. 872/2024 under Section 8/20 of NDPS Act on the basis of search and seizure effected by Ms. Karishma, In-charge Police Station Kardhani, Jaipur (West). The FIR is registered against Inderjit Mandal and Smt. Mamta Jangid. At the time of search, both Inderjit Mandal and present petitioner were occupier of the premises, where search was conducted and contraband was recovered, therefore, the FIR is registered on the basis of search proceedings conducted in presence of several persons. None of the example as referred in the cases of **State of Haryana Vs. Bhajan Lal** (supra) and **Ankul Singh Vs. State of Uttar Pradesh and Anr.** (supra), are sufficient to draw any conclusion that FIR is a misuse of authority or abuse of process of law, therefore, no ground is made out for quashing of FIR.



9. Now comes the process of arrest. Admittedly, the petitioner is a female, who was arrested on 1.15 A.M. on 30th July 2024, and she was produced before learned ACMM No.1, Jaipur Metropolitan-II at 6.21 P.M. on 30th July 2024. The petitioner was remanded for police custody. The petitioner has not raised any objection about her arrest, either at the time of arrest or before Magistrate.

10. Section 43 of BNSS provides for arrest and same is reproduced as under:-

"43. Arrest how made .- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action:

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest, and give the information regarding such arrest and place where she is being held to any of her relatives, friends or such other persons as may be disclosed or mentioned by her for the purpose of giving such information.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) The police officer may, keeping in view the nature and gravity of the offence, use handcuff while effecting the arrest of a person who is a habitual, repeat offender who escaped from custody, who has committed offence of organised crime, offence of terrorist act, drug related crime, or offence of illegal possession of arms and ammunition, murder, rape, acid attack, counterfeiting of coins and currency notes, human trafficking, sexual offences against children,



offences against the State, including acts endangering sovereignty, unity and integrity of India or economic offences.

(4) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

(5) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made."

11. Section 43(5) of BNSS specifically provides that no woman shall be arrested after sunset and before sunrise, except in exceptional circumstance but where there is such exceptional circumstance, then the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

12. The provision prohibits arrest of any woman after sunset and before sunrise, but if there exists any exceptional circumstance, (i) then a woman police officer may make a written report to the Magistrate First Class having jurisdiction; (ii) obtain prior permission for arrest, and then make arrest of said female.

13. In the instant case, the search is conducted between sunset and sunrise (night hours) and the present petitioner, who is a female, was arrested during midnight by a female police officer, but no prior permission of Magistrate has been procured before making arrest of the petitioner. Thus, the arrest is not in



accordance with Section 43(5) of BNSS, and police has violated the provision of law.

14. In case of **Deepa versus S. Vijayalakshmi** (supra), a Division Bench after considering the provision of Section 46(4) of CrPC, (corresponding provision under Section 43(5) of BNSS) has observed that Section 46(4) of CrPC is mandatory in nature.

15. In case of **Serina Bibi versus The State of West Bengal** (supra), a Coordinate Bench considering the case of accused charged under the NDPS Act has observed that the police is obliged to follow mandatory provision under the law.

16. Having considered the entirety and facts and circumstances of the case, we are only considering petition under Section 528 of BNSS, and it is apparent that the arrest of petitioner is made in violation of section 43(5) of BNSS (corresponding provision under Section 46(4) of CrPC) but the proceedings against the petitioner cannot be quashed only on the ground that the police has violated the mandatory provision under the law while making arrest of the petitioner. The charge against the petitioner is for involvement in offence relating to NDPS Act, therefore, on these grounds alone, we are not inclined to quash proceedings against the petitioner, though the petitioner may take advantage for seeking bail on this ground.

17. In view of discussion made hereinabove, the criminal miscellaneous petition under Section 528 of BNSS is hereby dismissed, with pending application if any.

18. Before parting the order, it is appropriate to note that the Sub-Inspector, who conducted search after receipt of information,



has not bothered to read Section 43 of BNSS before effecting arrest of the present petitioner, who is a female. This clearly indicates that the police requires either extensive training or a handbook type of material so that the police personnel can comply with the provisions of law.

19. A copy of this order be sent to the Director General of Police, Rajasthan, for taking action for training of the police personnel about the procedure of arrest.

(ASHOK KUMAR JAIN),J

16/MR