

RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 1492/2026

Sharwan Lal S/o Shri Naruram Alias Narsingh Ram, Aged About 40 Years, Resident Of Anwana, Police Station Khedapa, District Jodhpur (Raj.) (At Present Lodged In Central Jail, Jodhpur)
-----Petitioner

Versus

State Of Rajasthan, Pp
-----Respondent

For Petitioner(s) : Mr. Ankit Choudhary.
For Respondent(s) : Mr. Pawan Bhati, PP.

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

25/02/2026

This second application for bail under Section 483 of BNSS (439 Cr.P.C.) has been filed by the petitioner who has been arrested in the present matter. The requisite details of the matter are tabulated herein below:

S. No.	Particulars of the case	
1.	FIR Number	62/2024
2.	Police Station	Khedapa
3.	District	Jodhpur Rural
4.	Offences alleged in the FIR	Under Sections 8, 18, 21 and 25 of the NDPS Act.
5.	Offences added, if any	-

The 1st bail application filed on behalf of petitioner i.e. S.B. Criminal Misc. Bail Application No.7449/2025 was dismissed as not pressed vide order dated 17.10.2025 passed by this Court. Hence, this second application for bail has been filed.

Learned counsel for the petitioner contends that the allegations levelled against the petitioner are false and fabricated. He submits that, as per the statement of the Seizure Officer (PW-1) recorded

before the learned Trial Court, the alleged recovery was effected from a place which does not belong to the petitioner. The relevant portion the statement of Seizure Officer (PW-1) is reproduced hereinbelow:—

"यह कहना सही हुआ है। कि प्रदर्श पी.11 नक्शानजरी बरामदगीस्थल में मुर्तिब स्थान सरहद अणवाणा लिखा है, अजखुद कहा कि बरामदगीस्थल अणवाणा गांव की सरहद में आया हुआ है। यह कहना सही है कि बरामदगीस्थल के आगे से कटाण रास्ता है, जो ढाणियो में जाता है। यह कहना सही है कि बरामदगीस्थल के कमरे के ताला नहीं लगा हुआ था। यह कहना सही है कि बरामदगीस्थल मकान के चारो तरफ चारदीवारी नहीं थी। यह कहना सही है कि बरामदगीस्थल का दरवाजा कटाणी रास्ते की तरफ खुलता है। यह कहना सही है कि बरामदगीस्थल छीणो व टीनशेड से कच्चा बना हुआ है। यह कहना सही है कि बरामदगीस्थल के बाहर श्रवणराम के नाम की नेमप्लेट नहीं लगी थी। यह कहना सही है कि बरामदगीस्थल से श्रवणराम के नाम के तथा बरामदगीस्थल के स्वामित्व के संबंध में कोई दस्तावेज नहीं लिये थे। यह कहना सही है कि बरामदगीस्थल के स्वामित्व के संबंध में मौके पर सरपंच, ग्रामसेवक या पटवारी को बुलाकर स्थान किसके नाम से है, इस संबंध में तस्दीक नहीं करवाई थी। मुझे इस बात की जानकारी नहीं है कि बरामदगीस्थल वाला खेत कई लोगों का सामलाती हो. इस संबंध में अनुसंधान अधिकारी ही बता सकते हैं। यह कहना सही है कि प्रदर्श पी. 11 बरामदगीस्थल के पड़ौसी हरदेवाराम, मांगीलाल, नरसिंगाराम व अन्य किसी पड़ौसी को मौके की कार्यवाही के दौरान बुलाकर बरामदगीस्थल के संबंध में पूछताछ नहीं की थी। यह कहना सही है कि कार्यवाही के दौरान बरामदगीस्थल के आस पास के किसी पड़ौसी ने मौके पर आकर उक्त घर किसका है, इसके बारे में नहीं बताया था। यह कहना सही है कि पुलिस जाब्ता के पहुंचने के बाद मौके पर जो लोग इकठा हुए. उनसे मेरे द्वारा किसी प्रकार की पूछताछ नहीं की थी। यह कहना सही है कि मौके पर बरामदगीस्थल पर बरामदगी के समय महिलाये व बच्चे मौजूद थे, उनसे मेरे द्वारा पूछताछ नहीं की गई थी। यह कहना सही है कि बरामदशुदा थैली पर श्रवणराम का नाम नहीं लिखा था"

Learned counsel submits that the Seizure Officer himself has admitted that no verification was made to establish that the land in question belonged to the petitioner. No revenue record was summoned by the Seizure Officer/Investigating Officer. In these circumstances, it is not substantiated that the land from which the alleged contraband was recovered belonged to the petitioner.

It is further submitted that recovery of alleged contraband was stated to be effected on 11.03.2024, whereas, samples were forwarded to the FSL for examination on 22.03.2024, resulting in an unaccounted delay of approximately 11 days which is in

contravention of Clause 1.13 of Standing Order No.1/1988 dated 15.03.1988 wherein it is mandated that samples drawn ought to have been sent for FSL examination within 72 hours from recovery. It is additionally contended that as per averments in the FIR, alleged recovery was effected in the day time and as per provisions of Section 42 of the NDPS Act, it is mandatory to obtain prior authorization from a competent authority for search and seizure. It is further submitted that out of total 23 prosecution witnesses, statement of only 1 witness has been recorded till date and the pace of the trial is very slow.

In support of his contention, learned counsel for the petitioner has placed reliance on the judgment rendered in ***Rambabu v. State of Rajasthan (SLP (Crl.) No. 5648/2025 and SLP (Crl.) No. 5732/2025***, decided on 13.08.2025, wherein relief was granted considering the delay and lack of substantive evidence.

Learned counsel for the petitioner has further placed reliance on the judgment rendered by the Hon'ble Supreme Court in the cases of ***Rabi Prakash Vs. State of Orisa (Leave to Appeal (Criminal) No.4169/2023*** and ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi) in Special Leave Petition (Crl.) No(s).915 of 2023***.

Learned counsel has also placed reliance on the judgment of Honb'le Supreme Court in the case of ***Balwinder Singh Vs. State of Punjab & Anr. (Special Leave to Appeal (Crl.) No.8523/2024)***, in which, while granting bail, it has been observed as under:

“9. The incident in the present case occurred on 25.06.2020 and the petitioner was arrested soon thereafter on 26.06.2020. By now, 6 co-accused have been granted bail. As the prosecution wishes to examine 17 more witnesses, the trial is unlikely to conclude on a near date.

10. Considering the above and to avoid the situation of the trial process itself being the punishment particularly when there is presumption of innocence under the Indian jurisprudence, we deem it appropriate to grant bail to the petitioner – Balwinder Singh. It is ordered accordingly. Appropriate bail conditions be imposed by the learned trial court.”

Learned counsel for the petitioner has placed reliance on the judgment passed by a coordinate Bench of this Court in ***Avtar Singh Vs. State Of Rajasthan [S.B. Criminal Miscellaneous Bail Application No. 13483/2024]***, decided on 22.05.2025, wherein, while allowing the bail application, it was observed as under:

*“7. In **Rabi Prakash Vs. State of Odisha** passed in Special leave to Appeal (Crl.) No.(s) 4169/2023, Hon’ble the Apex Court has again passed an order dated 13th July, 2023 dealing this issue and has held that the provisional liberty(bail) overrides the prescribed impediment in the statute under Section 37 of the NDPS Act as liberty directly hits one of the most precious fundamental rights envisaged in the Constitution, that is, the right to life and personal liberty contained in Article 21.*

8. Considering the overall facts and circumstances of the case and the fact that petitioner is behind the bars for around more than two years thus, looking to the fact that there is high probability that the trial may take long time to conclude and given the flagrant non-compliance with these mandatory provisions, this Court finds that the continued detention of the petitioner is not justified thus it is deemed suitable to grant the benefit of bail to the petitioner.

9. It is nigh well settled law that at a pre-conviction stage; bail is a rule and denial from the same should be an exception. The purpose behind keeping an accused behind the bars during trial would be to secure his presence on the day of conviction so that he may receive the sentence as would be awarded to him. Otherwise, it is the rule of Criminal Jurisprudence that he shall be presumed innocent until the guilt is proved.

It is further submitted that the challan has already been filed and the petitioner has been in custody since 11.03.2024, i.e. for

about 1 year, 11 months and 14 days as on today. The trial of the case is likely to take a sufficiently long time to conclude; therefore, further incarceration of the petitioner is not warranted, and the benefit of bail deserves to be granted.

Per contra, learned Public Prosecutor has vehemently opposed the bail application and submitted that the contraband recovered in this matter is above the commercial quantity and the one case of similar nature is registered against the petitioner. However, he is not in a position to refute the fact that out of total 23 prosecution witnesses, statement of only 1 witness have been recorded; the FSL samples were sent after an inordinate delay of about 11 days; and the petitioner is in custody since 11.03.2024, i.e. for about 1 year, 11 months and 14 days as on today.

In response, learned counsel submits that in that case an FIR bearing No.14/2023 registered at Police Station Mangaliyawas, District Ajmer, under Section 8/18 of the NDPS Act, in which the petitioner has already been enlarged on bail by a Coordinate Bench of this Court vide order dated 26.07.2024 passed in S.B. Criminal Misc. Bail Application No. 6454/2024.

Having heard and considered the rival submissions, facts and circumstances of the case as well as perused material available on record; considering Clause 1.13 of Standing Order No.1/1988 dated 15.03.1988, which mandates that samples drawn ought to have been sent for FSL examination within 72 hours from recovery; the challan has already been filed; the petitioner has remained in custody since 11.03.2024, i.e. for about 1 year, 11 months and 14 days as on today; and the trial of the case will

take sufficient long time to conclude; without expressing any opinion on merits/demerits of the case, this Court is inclined to enlarge the petitioner on bail.

Consequently, the second bail application under Section 483 of BNSS (439 Cr.P.C.) is allowed. It is ordered that the accused-petitioner as named in the cause title, arrested in connection with the above mentioned FIR, shall be released on bail, if not wanted in any other case, provided he furnishes a personal bond of Rs.1,00,000/- and two sureties of Rs.50,000/- each, to the satisfaction of learned trial court, for his appearance before that court on each & every date of hearing and whenever called upon to do so till completion of the trial.

In case, the petitioner remains absent on any date of hearing or makes an attempt to delay the trial by seeking unnecessary adjournments, it shall be taken as a misuse of concession of bail granted to him by this Court. The prosecution, in such a situation, shall be at liberty to move an application seeking cancellation of bail granted to the petitioner today by this Court.

(MUKESH RAJPUROHIT),J