

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Misc. 2nd Bail Application No. 3304/2025

Rakesh S/o Hanumanram Bishnoi, Aged About 22 Years, R/o Hamir Nagar Dhaka Ku Dhani, Feench, P.s. Luni, Dist Jodhpur (Presently Lodged In Dist Jail Chittorgarh)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. K.L. Thakur
For Respondent(s)	:	Mr. S.S, Rathore, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

18/07/2025

1. The jurisdiction of this court has been invoked by way of filing an application under Section 439 CrPC at the instance of accused-petitioner. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	234/2023
2.	Concerned Police Station	Nimbhera Sadar
3.	District	Chittorgarh
4.	Offences alleged in the FIR	Sections 8/15 of the NDPS Act, 353 & 307 of the IPC & Section 3/25 of the Arms Act
5.	Offences added, if any	Section 482 of the IPC
6.	Date of passing of impugned order	16.08.2024

2. The concise facts of the case are that On 03.07.2023, during routine patrolling and blockade duty, police personnel stationed near GSS on Dhoriya Road attempted to stop a Scorpio vehicle (RJ

22 UB 4157) approaching from Binota. The driver, however, opened fire on the police and fled under the cover of darkness. The vehicle was intercepted near Dhoriya Square, where one occupant, Rakesh was apprehended. He disclosed that the absconding driver was Ramswaroop. A search of the vehicle, conducted lawfully in the presence of independent witnesses, resulted in the recovery of 4 quintals 26.5 kilograms of illegal opium poppy husk stored in 21 plastic packets. Based on investigation, a charge sheet was filed against the accused Rakesh for offences under Sections 8/15 NDPS Act, 3/25 Arms Act, and 307, 353 IPC before the competent court. His first bail application being SBCRLMB No.15959/2023 was dismissed by this Court as not pressed. Hence the instant bail application.

3. It is contended on behalf of the accused-petitioner that no case for the alleged offences is made out against him and his incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioner and he has been made an accused based on conjectures and surmises.

3. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.

4. I have heard and considered the submissions made by both the parties and perused the material available on record.

5. This Court is of the considered opinion that an undertrial prisoner ought not to remain incarcerated for an indefinite period,

especially when the delay in trial is not attributable to the accused. A perusal of the record reveals that although the trial commenced in the year 2023, the examination of prosecution witnesses has not been completed due to various reasons. Out of the total 20 witnesses cited by the prosecution, only 3 could have been examined thus far.

7. As per the law, while keeping an accused detained, the opportunity to the prosecutor to lead evidence can only be given for a reasonable period. The wider connotation of the phrase 'reasonable period' be understood to be one year because the case is classified as a sessions case which would mean that the like cases should commence and conclude within a session, that is, one year. Even if an elastic interpretation of the expression 'reasonable period' is taken on the pretext of certain unavoidable circumstances, then it can only be doubled and even in that situation, trial has to be completed within two years while keeping an accused in custody. Suffice it would to say that for the purpose of determination as to whether the accused is guilty or not, only a reasonable period can be awarded to the prosecutor if the accused is behind the bars. The cases which are classified as session case are purposefully directed to be heard by senior officer of District Judge Cadre looking to his experience and rank/grade/post. In criminal jurisprudence prevalent in India, there is a presumption of innocence working in favour of the accused until he is proven guilty in the trial. The trial is conducted for the purpose of affording an opportunity to the prosecutor to prove the charges and only for the purpose of proving guilt or adducing evidence on

record, an unreasonable period of time cannot be granted as the same infringes the fundamental rights of an accused which are otherwise guaranteed by the Constitution of India. While entertaining a bail plea the Court of law is required to take into account the above-mentioned aspect of the matter as well beside the gravity of offence and quantum of sentence.

6. 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.

7. Considering the overall facts and circumstances and looking to the fact that the petitioner is behind the bar since last more than two years and noticing that there is no criminal antecedent except the present one and the culmination of trial in a near future is not a seeming fate this Court is of the view that nature and gravity of offence alone are not required to be considered at the time of granting bail but at the same time, it has to be ensured that the trial has to be concluded within a reasonable period if the accused is languishing in jail therefore, without going into the niceties of the matter it is felt that the right of the accused to have a speedy trial should be protected, this Court deems it fit to grant the benefit of bail to the petitioner.

8. 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.

9. Accordingly, the instant bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner as named in the cause title shall be enlarged on bail provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J