

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 2903/2026

Mukesh Kumar S/o Shri Mangla Ram, Aged About 25 Years, R/o Village Siwada, Police Station Chitalwana, District Jalore.
(At Present Lodged In Sub Jail, Sanchore)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Ankit Choudhary
For Respondent(s)	:	Mr. Narendra Singh Chandawat, PP

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT
Order

10/03/2026

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	165/2024
2.	Police Station	Chitalwana
3.	District	Jalore
4.	Offences alleged in the FIR	Under Sections 8/18 and 22 of 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.9880/2025 was dismissed as not pressed vide order dated 16.10.2025 passed by this Court, with a liberty to file fresh bail application after recording of the statement of Seizure Officer. Statement of Seizure Officer has already been recorded, hence, this second application for bail has been filed.

It is contended by the learned counsel for the petitioner that the allegations levelled against the petitioner are false and fabricated. He submits that the petitioner is about 25 years of age and has no concern with the alleged recovery as the contraband was not recovered from the conscious possession of the petitioner.

Learned counsel for the petitioner has drawn attention of this Court toward statement of Seizure Officer (PW-1) and submitted that as per the statement of Seizure Officer, the contraband was recovered from the place which does not belong to the petitioner. It is further submitted that the Seizure Officer himself admitted that place in question does not belong to the petitioner and there was no name plate affixed there. The relevant portion of the statement of Seizure Officer reads as under:-

"यह कहना सही है कि अभियुक्त मुकेश की व्यक्तिगत तलाशी के दौरान उसके शरीर पर पहने हुए कपड़ों व उसके चैतन्य कब्जे से कोई अवैध मादक पदार्थ की बरामदगी नहीं हुई थी। यह कहना सही है कि मेरे द्वारा एवं हमारे जाबते द्वारा आरोपी को उसकी रहवासी ढाणी में मादक पदार्थ छिपाते हुए नहीं देखा गया। यह कहना सही है कि मकान के जिस कमरे से बरामदगी की गई, उस कमरे में मुकेश के नाम के बर्तन, नेमप्लेट आदि नहीं मिले। यह कहना सही है कि जिस रहवासी घर की तलाशी ली गई, उस घर के सदस्यों की उपस्थिति बाबत बरामदगी एवं जब्ती के दौरान बनाये गये दस्तावेजों पर उनके हस्ताक्षर नहीं हैं तथा उपस्थिति बाबत किसी व्यक्ति का वर्णन नहीं है। यह कहना सही है कि तलाशी से पूर्व रहवासी ढाणी मुकेश की होने बाबत कोई जांच नहीं की गई। यह कहना सही है कि तलाशी से पूर्व पटवारी को तलब कर अभियुक्त मुकेश की ढाणी होने की सत्यापन की रिपोर्ट की फर्द नहीं बनायी थी। यह कहना सही है कि बरामदगी वाली ढाणी अभियुक्त के चैतन्य कब्जे व स्वामित्व का हो, इस बाबत तलाशी से पूर्व एवं बाद में ग्राम पंचायत एवं सरपंच की रिपोर्ट या किसी सरकारी कर्मचारी से रिपोर्ट लेकर ढाणी की तस्दीक नहीं की गई, ना ही स्वामित्व संबंधी कोई दस्तावेज मेरे द्वारा प्राप्त किये गये, अजखुद कहा कि आईओ ने बाद में की होगी तो मेरी जानकारी में नहीं है। यह कहना सही है कि आरोपी मात्र 21 वर्ष का है। यह कहना सही है कि बरामदगीस्थल वाला मकान अभियुक्त के स्वामित्व का हो या उसके किराये का हो, ऐसा कोई भाड़ा चिट्ठी किरायानामा या कोई स्वामित्व संबंधी दस्तावेज मैंने नहीं लिया था। यह कहना सही है कि जिस रहवासी घर की तलाशी ली गई उस रहवासी घर में मुकेश स्थायी रूप से या अस्थायी रूप से निवास करता हो, उस संबंध में कोई साक्ष्य तलाशी से पूर्व एवं मुखबिर की सूचना के बाद मेरे द्वारा प्राप्त नहीं किया, अजखुद कहा कि मौके पर मौखिक जानकारी प्राप्त की गई थी जिस पर मुकेश अपने परिवार सहित इसी घर में रहना पाया गया था। यह कहना सही है कि उक्त मौखिक जानकारी किससे प्राप्त की गई, इसका कोई अंकन किसी फर्द में नहीं है। यह कहना सही है कि मुखबिर की सूचना का मौके पर जाने से पहले कोई सत्यापन नहीं करवाया गया था। यह कहना सही है कि अभियुक्त मुकेश के कितने दोस्त या कितने लोग उससे रंजिश रखते हैं उस संबंध में भी मेरे द्वारा सत्यापन नहीं करवाया गया। यह कहना सही है कि जिस रहवासी ढाणी में मैं गया, उस ढाणी में कितने व्यक्ति संयुक्त रूप से

निवासरत है या कब्जाधारी है, मेरे द्वारा ऐसी जांच तलाशी से पूर्व या बाद में नहीं की गई।”

It is further submitted that the recovery of the alleged contraband is stated to have been effected on 25.10.2024, whereas the samples were forwarded to the FSL for examination only on 10.12.2024, resulting in an unaccounted delay of approximately 45 days. The said delay is in contravention of Clause 1.13 of Standing Order No. 1/1988 dated 15.03.1988, which mandates that the samples drawn are required to be sent for FSL examination within 72 hours from the date of recovery. Additionally, it is contended that as per the averments made in the FIR, the alleged recovery was effected in the evening hours and in terms of Section 42 of the NDPS Act, prior authorization from the competent authority is mandatory for conducting search and seizure. It is further submitted that out of a total of 18 prosecution witnesses, the statement of only 01 witnesses have been examined till date, thus, 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.

Learned counsel for the petitioner has further placed reliance on the judgments rendered by the Hon'ble Supreme Court in ***Wajid Ali @ Tinku Vs. State of Rajasthan (Special Leave to Appeal No.7049/2025)*** decided on **09.02.2026**.

It is further submitted that the petitioner has no previous antecedents. It is further submitted that the challan has already been filed and the petitioner has been in custody since 25.10.2024, i.e. for about 1 year 4 months 16 days as on today. The trial of the case is likely to take a sufficiently long time to conclude; therefore, looking to the age of petitioner i.e. 25 years 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, therefore, the petitioner is not entitled to be released on bail.

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 25.10.2024, i.e. for about 1 year 4 months 16 days as on today; the petitioner has no previous criminal antecedents 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