

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Misc. 4th Bail Application No. 4047/2026

Dinesh S/o Bhagwan Lal Jat, Aged About 33 Years, Resident Of
Rupaji Ka Kheda Police Thana Manfiya District Chittorgarh
Rajasthan Presently Lodged At District Jail Chittorgarh

-----Petitioner

Versus

State Of Rajasthan, Through Public Prosecutor

-----Respondent

For Petitioner(s)	:	Mr. Lokesh Mathur
For Respondent(s)	:	Mr. Surendra Bishnoi, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

REPORTABLE

27/04/2026

1. The jurisdiction of this court has been invoked by way of filing the instant bail 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	28/2023
2.	Concerned Police Station	Mandafiya
3.	District	Chittorgarh
4.	Offences alleged in the FIR	Sections 8/18 & 29 of the NDPS Act
5.	Offences added, if any	-
6.	Date of passing of impugned order	10.03.2026

2. In brief, the facts of the case are that on 06.03.2023, Shri Om Singh, Station House Officer of Police Station Mandafiya, while accompanied by the police personnel, was conducting a naka-bandi operation near the Referral Hospital. During the course of

such checking, a motorcycle without registration number was noticed approaching from the direction of Bhadsoda and was accordingly intercepted.

2.1. Upon being stopped, the rider disclosed his identity as Dinesh Jat. Entertaining suspicion, the police party, in the presence of independent motbirs, undertook his search in accordance with the prescribed legal procedure. During such search, five plastic packets containing, in aggregate, 10 kilograms and 300 grams of illicit opium, along with the packing material, were allegedly recovered from the bag carried by the accused.

2.2. Consequent upon the aforesaid recovery, an FIR came to be registered and investigation was set into motion. Upon culmination of investigation, a charge-sheet was laid before the competent court against accused Dinesh Jat for the offences punishable under Sections 8/18 and 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The record further reveals that the accused was arrested on 07.03.2023 and has remained in judicial custody since then. It is also borne out that three earlier bail applications preferred on his behalf had already been dismissed. Thereafter, during the course of trial, statements of prosecution witnesses PW-05 Arvind and PW-06 Khemaram came to be recorded. Hence, the instant application for bail.

3. It is contended on behalf of the accused-petitioner that the petitioner is arrested in this 07.03.2023, 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.

4. 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.

5. Upon hearing the submissions advanced by both sides and upon perusal of the material placed on record, the following emerges for consideration:

5.1. The petitioner has remained in judicial custody since 07.03.2023 and has thus undergone incarceration for a period exceeding three years. His earlier three applications seeking regular bail came to be rejected by this Court, having regard to the nature and gravity of the accusation, the quantity of contraband allegedly recovered, and the statutory rigours engrafted under Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985. While dismissing the third bail application, being S.B. Criminal Misc. Bail Application No. 6725/2025, vide order dated 04.12.2025, this Court had, however, directed the learned trial Court to expedite the proceedings and endeavour to conclude the trial with promptitude.

5.2. The present successive application, however, rests upon a distinct and supervening circumstance, namely, that the petitioner's fundamental right to a speedy, fair and meaningful trial, which inheres in Article 21 of the Constitution of India, now stands seriously jeopardised on account of the inordinate delay in conclusion of the proceedings. The grievance projected is not

merely of prolonged custody, but of custody bereft of any proximate likelihood of culmination of trial.

5.3. The learned Public Prosecutor has apprised to this Court the updated status of the case and has fairly submitted that the petitioner is not reported to possess any criminal antecedents. It further emerges that although twenty-three witnesses were originally cited by the prosecution, only six witnesses have been examined thus far, despite lapse of substantial time.

5.4. The matter has thereafter taken a further turn. During pendency of the trial, the investigating agency undertook further investigation under Section 173(8) Cr.P.C., resulting in the arrest of additional accused persons, namely Rahul, Ajay, Abhishek, Om Prakash and Jafar, followed by filing of a supplementary charge-sheet introducing further witnesses and additional material. Consequent thereupon, the learned trial Court has directed consolidation of the case of the newly arraigned accused with that of the present petitioner.

5.5. The inevitable legal consequence of such consolidation is that charges are yet to be framed against the subsequently arrested accused persons and, upon their joinder, the trial would necessarily require recommencement from the appropriate stage so as to secure a fair opportunity to all accused persons. In practical terms, the proceedings shall substantially commence afresh, witnesses already examined may require reconsideration or re-summoning depending upon the stage and defence rights, and the clock of trial would stand materially reset. Thus, what had

progressed minimally till date now faces further retardation, rendering the prospect of early culmination remote and uncertain.

5.6. This Court cannot remain oblivious to the reality that where only six witnesses have been examined in more than three years, and the proceedings are now burdened with supplementary investigation, newly added accused persons, fresh framing of charges, and the consequential procedural restart, the trial is likely to remain pending for an indeterminate period. The conclusion of the case, therefore, no longer appears imminent but speculative.

5.7. In these circumstances, the petitioner's custody has ceased to retain the complexion of a merely preventive detention pending trial and has assumed the attributes of punitive pre-conviction incarceration, a concept fundamentally discordant with settled criminal jurisprudence wherein every accused is clothed with the presumption of innocence until proven guilty in accordance with law.

5.8. The Hon'ble Supreme Court has repeatedly declared that the right to speedy trial constitutes an inseverable facet of Article 21. In ***Hussainara Khatoon v. State of Bihar (AIR 1979 SC 1369)*** it was recognised that oppressive delay in trial renders continued detention constitutionally suspect. In ***Kadra Pahadiya v. State of Bihar (1981 Supp SCC 308)*** the Court reiterated that undertrials cannot be left to languish in prisons owing to systemic delay. In ***Satender Kumar Antil v. CBI ((2002) 10***

SCC 51), it was reaffirmed that liberty cannot be sacrificed at the altar of procedural stagnation.

5.9. Even in prosecutions under the NDPS Act, where stringent statutory conditions apply, constitutional courts have recognised that indefinite incarceration cannot be countenanced. In **Supreme Court Legal Aid Committee v. Union of India ((1994) 6 SCC 731)** it was held that prolonged detention may justify release notwithstanding statutory severity. Hon'ble Apex Court in **Union of India Vs. K. A. Najeeb ((2021) 3 SCC 713)** held that statutory restrictions cannot eclipse the constitutional mandate flowing from Article 21 where trial is unlikely to conclude within a reasonable time. Likewise, in **Rabi Prakash v. State of Odisha (SLP (Crl.) No.4169/2023 decided on 13.07.2023)**, it was emphasised that personal liberty remains paramount and prolonged custody without foreseeable conclusion of trial cannot be justified merely by invoking statutory fetters.

5.10. It is also considered apposite to advert to the recent pronouncement of the Hon'ble Supreme Court in **Mohd Muslim @ Hussain v. State (NCT of Delhi), in Special Leave Petition (Crl.) No.915 of 2023 vide order dated 28.03.2023**, wherein while interpreting the rigours of Section 37 of the NDPS Act, it was lucidly expounded that the said provision cannot be construed in a manner so absolute as to render grant of bail virtually impossible. Their Lordships observed that the satisfaction contemplated under Section 37 regarding innocence of the accused can only be taken prima facie at the stage of bail, for a literal construction would

convert the provision into an instrument of punitive and unsanctioned preventive detention. The accused therein was enlarged on bail considering the long period of incarceration undergone. The relevant paragraphs of **Mohd. Muslim @ Hussain (supra)** relevant to the present matter are reproduced below:

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 1 Special Leave Petition (CRL.) NO(S). 915 of 2023, decided on 28.03.2023. 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence,

likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

(Emphasis Supplied)

The ratio flowing from the aforesaid judgment is that at the stage of adjudication of a bail application under Section 439 Cr.P.C., the Court is not expected to record a definitive acquittal-oriented finding. What is required is a tentative and prima facie appraisal of the material to ascertain whether continued detention is justified and whether the embargo of Section 37 stands

attracted in its true constitutional sense. An accused is not required to establish his innocence as though standing trial; rather, the burden lies upon the prosecution to justify continued curtailment of liberty.

5.11. This Court is further of the considered opinion that where an apparent conflict arises between guaranteed fundamental rights under Part III of the Constitution and the restrictive operation of a statutory embargo contained in a penal enactment, the constitutional command must receive precedence. Fundamental rights are not matters of legislative grace; they are solemn guarantees forming part of the basic framework of constitutional governance. Statutory provisions, however stringent, must therefore operate within constitutional discipline and cannot be construed so as to emasculate or render illusory those rights which the Constitution has placed beyond ordinary encroachment.

5.12. It is trite that personal liberty under Article 21 is not confined merely to protection against unlawful arrest, but extends to a just, fair and reasonable procedure, expeditious adjudication, humane treatment, and freedom from arbitrary or unduly prolonged incarceration. Consequently, where a statutory restriction on bail, though valid in its field, is sought to be applied in a manner resulting in indefinite custody, uncertain trial timelines, or punishment prior to conviction, the Court is duty-bound to interpret such restriction harmoniously with constitutional guarantees rather than mechanically in its most rigid form.

5.13. Section 37 of the NDPS Act undoubtedly embodies legislative anxiety against grave narcotic offences and mandates a heightened threshold for grant of bail. Yet, the said provision cannot be read as a charter for perpetual detention nor as a device to suspend constitutional liberties for an undefined duration. The rigour of the statute must yield, to the extent necessary, where literal enforcement would produce manifest injustice or constitutional infirmity.

5.14. Courts, while preserving the balance between societal interest in prosecuting crime and the individual's inalienable right to liberty, must remain vigilant that such balance is not distorted by extraordinary delay, stagnation of trial, absence of criminal antecedents, and no immediate likelihood of conclusion of proceedings. In such a situation, continued incarceration ceases to serve the cause of justice and instead assumes a punitive complexion.

5.15. Jurisprudence equally acknowledges that while the prosecution must be afforded a fair and reasonable opportunity to establish its case, such opportunity cannot be limitless when the accused remains incarcerated. In an ordinary sessions trial, a reasonable outer period is expected within one year and, in exceptional complexities, may extend further. Yet, where years pass without substantial progress and the proceedings are now compelled to recommence effectively from an earlier stage, continued detention becomes manifestly excessive.

5.16. Tested on the aforesaid principles, the petitioner's custody has already traversed far beyond a reasonable threshold. Only six witnesses have been examined over more than three years. The subsequent filing of supplementary charge-sheet, addition of multiple accused persons, fresh framing of charges, and the near inevitability of recommencement of trial have rendered the possibility of early disposal wholly illusory.

5.17. In the considered view of this Court, to keep the petitioner incarcerated for an indefinite future while the trial remains stalled and structurally delayed would be oppressive, disproportionate and constitutionally indefensible. Continued deprivation of liberty, in such exceptional circumstances, would amount to punishment before adjudication an outcome unknown to law and impermissible under the constitutional framework.

6. Accordingly, the instant bail application under Section 439 Cr.P.C. is allowed and it is ordered that the accused-petitioner, named above, 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