

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 5095/2026

Shakir Shah S/o Shakil Shah, Aged About 28 Years, R/o Gadola
Ps Rathanjana Tehsil And Dist Pratapgarh (Lodged In Dist. Jail
Chittorgarh)

-----Petitioner

Versus

C.B.N.

-----Respondent

For Petitioner(s)	:	Mr. Vijay Raj Bishnoi
For Respondent(s)	:	Mr. MR Pareek, SPP a/w Mr. Thanaram Bishnoi, Spl. PP with Mr. Gopal Singh Shekhawat.

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

27/04/2026

This second application for bail under Section 483 of BNSS (439 Cr.P.C.) has been filed by 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/Crime Number	24/2024
2.	Police Station	CBN
3.	District	Chittorgarh
4.	Offences alleged in the FIR	S. 8/22 (c) NDPS Act
5.	Offences added, if any	S. 8/29 NDPS Act

The 1st application filed on behalf of petitioner i.e S.B Criminal Misc. Bail Application No. 10791/2025 was dismissed as not pressed vide order dated 12.11.2025 passed by this court, however, with the liberty to the petitioner to file fresh bail application after recording of

the statement of Seizure Officer. After rejection of first bail application, the statement of Seizure Officer-Samrath Ganawa has been recorded as PW-4. Hence, this second application for bail has been preferred.

Heard learned counsel for the petitioner and learned Public Prosecutor.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is further submitted that the contraband was recovered from the petitioner at Choti Sadri, Nimbaheda Road, Near Narsingharh Toll, whereas the entire proceedings were carried at the office of the Central Bureau of Narcotics (CBN), which is situated 110 kms away from the place of recovery. The said fact has also been admitted by the Seizure Officer- Samrath Ganawa as PW-4 in his cross-statement. The relevant portion of the statement of the Seizure Officer (PW-4) is reproduced hereinbelow:-

"यह सही है कि फर्ड जब्ती बनाते समय मैंने न्यायिक मजिस्ट्रेट साहब को उपस्थित नहीं रखा था। यह सही है कि फर्ड जब्ती व एनडीपीएस की कार्यवाही मैंने मौके से 110 किलोमीटर दूर अपने कार्यालय में आकर की थी। यह सही है कि हम मौके से कार्यालय तक आए इस बाबत कोई लाइव लोकेशन व रूटचार्ट पत्रावली पर पेश नहीं है।"

It is further submitted that the recovery of the alleged contraband is stated to have been effected on 30.09.2024, whereas the samples were forwarded to the FSL for examination only on 17.10.2024, resulting in an unaccounted delay of approximately 17 days. He has also submitted that Clause 1.13 of Standing Order No.1/1988 dated 15.03.1988, mandates that samples drawn ought

to have been sent for FSL examination within 72 hours from recovery. In terms of Section 42(2) of the NDPS Act, prior authorization from the competent authority is mandatory before conducting search and seizure, which requirement has not been complied with in the present case.

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 also relied upon the judgment 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 submitted that there are several flaws and latches in the case of prosecution and the entire procedure is highly doubtful. It is further submitted that the co-accused Sameer Sheikh has already been enlarged on bail by the co-ordinate bench of this Court in S.B. Criminal Misc. Bail Application No. 9097/2025. It is further submitted that the petitioner has no criminal antecedents; the challan/complaint has already been filed in the case and the petitioner is in custody since 30.09.2024; i.e. 1 year, 6 months and 28 days as on today. It is also submitted that 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.

In support of his contention, learned counsel for the petitioner has also 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.***

Per contra, learned Special Public Prosecutor appearing for Central Bureau of Narcotics (CBN) has vehemently opposed the bail application and submitted that the contraband was recovered from the petitioner in commercial quantity and therefore, he may not be enlarged on bail. However, he is not in a position to refute the fact that the entire proceedings were carried/conducted in the office of CBN, which is around 110 kms away from the place of incident/recovery and the FSL samples were sent after an inordinate delay of about 17 days.

I have considered the submissions advanced by learned counsel for the petitioner and learned Public Prosecutor, perused the material available on record and examined the judgment cited.

The evidentiary value of a seizure memo is considerably diminished where the alleged recovery is made at a distant place, yet the seized articles are first transported to the police station and the memo is thereafter prepared there. If such a practice were to be countenanced, it would open the door for the police, in every case, to remove articles from the scene of occurrence and subsequently formalize the entire proceeding within the precincts of the police station. By the same reasoning, even the arrest of an accused could be shown as having been effected elsewhere, with the arrest memo prepared later at the police station, an approach that is plainly impermissible.

This Court is of the considered view that whenever any incriminating article is recovered at a particular place and time, the corresponding seizure or recovery memo ought to be prepared at that very place, and preferably in the presence of independent witnesses from the locality. A limited deviation may be justified in exceptional circumstances, for instance, where no independent witness is available at the scene, in which case members of the police party may attest the recovery. Similarly, in situations such as heavy rainfall, congested traffic on a highway, or other comparable exigencies, the memo may be prepared at a nearby safe and convenient location but no such circumstances has been established in the present case.

However, it is wholly impermissible for the police to recover contraband from one place, transport it to a distant police station, and then prepare the seizure memo there. Permitting such a practice would erode the sanctity, authenticity, and reliability of the recovery process, and would inevitably cast serious doubt on the fairness and genuineness of the alleged seizure.

The Hon'ble Supreme Court in the case of ***Union of India vs. Rattan Mallik @ Habul*** passed in ***Criminal Appeal No.137 of 2009***, explained the principles applicable in grant of Bail in offences under the NDPS Act, the relevant paras are reproduced here:

““12. Section 37 of the NDPS Act, as substituted by Act 2 of 1989 with effect from 29th May, 1989 with further amendment by Act 9 of 2001 reads as follows:

"37. Offences to be cognizable and nonbailable.-- (1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

- (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
- (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (12 of 1974), or any other law for the time being in force on granting of bail."

13. It is plain from a bare reading of the non-obstante clause in the Section and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz; (i) the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds". The expression 'reasonable grounds' has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. [Vide Union of India Vs. Shiv Shanker Kesari²] Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the Court is not called upon to record a finding of 'not guilty'. At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the Court about the existence of the said

twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.””

Having heard and considered the aforesaid principle, rival submissions, facts and circumstances of the case as well as perused the material available on record, at the stage of considering a bail plea pending trial, this Court is not expected to record any definite opinion or make firm observations regarding discrepancies or legal defects in the prosecution case, as doing so may seriously prejudice the prosecution's case. At the same time, the Court cannot ignore non-compliance with mandatory provisions including 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 and the fact that the accused has remained incarcerated since 30.09.2024 i.e. 1 year, 6 months and 28 days as on today.

The Hon'ble Apex Court in the case of **Mohd. Muslim @ Hussain (Supra)**, observed that, while deciding a bail application under Section 439 Cr.P.C., the Court may not be able to form a definite opinion that the accused is not guilty of the alleged offence; however, for the limited purpose of just disposal of the bail application, it may form a tentative view that the material on record is insufficient to attract the embargo under Section 37 of the NDPS Act.

Accordingly, this Court has examined the facts of the case and the manner in which the proceedings were conducted. If the surrounding circumstances are inconsistent with the statutory requirements, the personal liberty of an individual cannot be curtailed by keeping him in custody for an indefinite period pending trial.

Thus, in the peculiar facts and circumstances of the case as well as the fact that the petitioner has no criminal antecedent and in absence of sufficient incriminating material available on record, this Court is of the view that the embargo under Section 37 of the NDPS Act would not stand in the way of granting bail. Furthermore, considering that the challan/complaint has already been filed and that 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 applicant 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 their 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