

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 7428/2026

CNR: RJHC010562172026

URN: CRLMB / 16325U / 2026

Sukhdev S/o Bhiyaram, Aged About 30 Years, R/o Rohila
Paschim Tehsil Sedwa District Barmer Raj. (Lodged In Dist. Jail
Barmer)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. D.D. Godara

For Respondent(s) : Mr. Surendra Bishnoi, PP

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

08/07/2026

1. The applicant has filed the present bail application under Section 483 of BNSS, being aggrieved against the order dated 02.06.2026 passed by the learned Special Judge, NDPS Act Cases, District Barmer, in Criminal Misc. Case No.179/2026, whereby the bail application filed by the accused-applicant under Section 483 of B.N.S.S. was rejected. The accused-applicant is behind the bars, pursuant to the F.I.R. No.02/2026 registered at ANTF Police Station, District Jaipur, Rajasthan for the offence punishable under Sections 8, 22, 25, 28, 29, 30 & 35 of NDPS Act, 1985.

2. Learned counsel for the applicant submits that the applicant was not even present at the site in question and has been implicated only on the ground of being the owner of the vehicle in

question i.e. the truck. He further submits that the alleged recovery has been effected from the presence of co-accused Dinesh and Kamlesh. He further submits that the FSL report was called for wherein a specific finding has been given that presence of 2-Bromo-4-Methyl Propriophenone could not be detected in the samples and the substance recovered was Calcium ion (Ca^{2+}) and Sulphate ion (SO_4^{2-}). He further submits that since the substance recovered itself is not a narcotic or psychotropic substance, no offence under NDPS Act is made out. Therefore, he prays that the benefit of bail may be granted to the applicant.

3. *Per contra*, learned Public Prosecutor opposes the bail application and submits that though the FSL report has been negative, however, the applicant is guilty of preparation as per Section 30 of the NDPS Act, 1985. He therefore prays that the applicant does not deserve to be enlarged on bail.

4. Heard learned counsel for the parties and perused the case diary as well as the FSL report.

5. Needless to emphasize that as far as the FSL report is concerned, a negative report has been given qua the samples collected. For sake of convenience, the FSL report is reproduced as under:

"On Microchemical & Instrumental analysis:-

The sample packed in each of the jar marked S1 to S12 gave positive tests for the presence of Calcium ion (Ca^{2+}) and Sulphate ion (SO_4^{2-}). Presence of 2-Bromo-4-Methylpropioophenone could not be detected in these samples."

5.1. Thus, the transportation of the substance in question does not fall within the provisions of NDPS Act. As far as the arguments of the learned Public Prosecutor with regard to offence being

committed under Section 30 of the NDPS Act, 1985 is concerned, the same provides as under:

*"30. **Preparation.**— If any person makes preparation to do or omits to do anything which constitutes an offence punishable under any of the provisions of sections 19, 24 and 27A and for offences involving commercial quantity of any narcotic drug or psychotropic substance and from the circumstances of the case it may be reasonably inferred that he was determined to carry out his intention to commit the offence but had been prevented by circumstances independent of his will, he shall be punishable with rigorous imprisonment for a term which shall not be less than one-half of the minimum term (if any), but which may extend to one-half of the maximum term, of imprisonment with which he would have been punishable in the event of his having committed such offence, and also with fine which shall not be less than one-half of the minimum amount (if any), of fine with which he would have been punishable, but which may extend to one-half of the maximum amount of fine with which he would have ordinarily (that is to say in the absence of special reasons) been punishable, in the event aforesaid:
Provided that the court may, for reasons to be recorded in the judgment, impose a higher fine."*

6. A perusal of the same will reveal that, for the purpose of falling within the four corners of the provisions of Section 30 of the NDPS Act, 1985, preparation of an offence under Section 19 i.e. punishment for embezzlement of opium by the cultivator, Section 24 i.e. punishment for external dealings in narcotic drugs and psychotropic substances in contravention of Section 12 and Section 27A i.e. punishment for financing illicit traffic or harbouring offenders, has to be there. As also preparation of any offence under the Act involving commercial quantity. Only post that, the provisions of Section 30 would come into force, and in the present case there is no such allegation against the applicant

and, rather, as per the prosecution itself, the applicant was duped by somebody else.

7. Considering the fact that the substance itself was not found to be a narcotic substance or psychotropic substance as per the FSL report itself, the embargo of Section 37 would not apply and no *prima facie* offence under the Act of 1985 is made out. Thus, without expressing any opinion on the merits/demerits of the case, this Court is inclined to enlarge the applicant on bail.

8. Consequently, the bail application under Section 483 B.N.S.S. is allowed. It is ordered that the accused-applicant **Sukhdev S/o Bhiyaram** arrested in connection with F.I.R. No.02/2026 registered at ANTF Police Station, District Jaipur, Rajasthan shall be released on bail, if not wanted in any other case, provided he furnishes a personal bond of Rs.50,000/- and two sureties of Rs.25,000/- 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.

9. It is further made clear that findings recorded/observations made above are for limited purposes of adjudication of bail application and the same shall not prejudice the trial of the case in any manner.

(SANDEEP SHAH),J