



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous 2nd Bail Application No. 3805/2026

Raju Basuniya S/o Shree Ranjeet Basuniya, Aged About 24 Years, R/o E-21 Akhil Nagar, Malviya Nagar, Jaipur (Raj.) (At Present In Central Jail Jaipur)

-----Petitioner

Versus

Cbn, Through Special PP

-----Respondent

Connected With

S.B. Criminal Miscellaneous 3rd Bail Application No. 1117/2026

Kamal Barman S/o Nalit Barman, Aged About 21 Years, Currently Residing At Lalkothi Scheme, Near Police Headquarter, Jyoti Nagar, District Jaipur Rajasthan. Bonafide Resident Of Bhawairthana, Cooch Behar, West Bengal- 736172. (At Present Accused Confined In Central Jail, Jaipur).

-----Petitioner

Versus

Central Bureau Of Narcotics, Through Special PP

-----Respondent

For Petitioner(s)	:	Mr. Kailash Chand Meena, Adv. & Mr. Nirmal Kumar Sharma, Adv.
For Respondent(s)	:	Mr. Tej Prakash Sharma, Spl. PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

- | | |
|--|----------------------|
| 1. Date of conclusion of arguments : | 22.04.2026 |
| 2. Date on which the judgment was reserved : | 22.04.2026 |
| 3. Whether the full judgment or only the operative part is pronounced : | Full Judgment |
| 4. Date of pronouncement : | 08.05.2026 |

1. These bail applications under Section 483 of BNSS have been filed on behalf of the petitioners, who have been arrested in



connection with FIR No.8/2024 registered at Police Station CBN, District Jaipur for offences punishable under Sections 8/20(b)ii(C) and 29 of NDPS Act. After completion of investigation, police filed charge-sheet in this matter.

2. The first bail application filed on behalf of petitioner Raju Basuniya and second bail application filed on behalf of petitioner Kamal Barman were dismissed as withdrawn by this Court vide order dated 13.08.2025 & 26.09.2025, respectively while giving liberty to renew the prayer for bail after recording testimony of the Seizure Officer of this case. Now, Seizure Officer has been examined during the course of trial as PW-1, thus, these bail applications have been filed on behalf of the petitioners.

3. Learned counsel for the petitioners submit that petitioners have falsely been implicated in this case. Counsel submit that petitioners are in custody since 24.12.2024, and as such, they have suffered incarceration of about 16 months. It is an admitted case of prosecution that acting on the basis of secret information, the contraband was allegedly recovered from the possession of the petitioners on 23.12.2024 at about 4:00 PM near Lalkothi Sabji Mandi however, instead of making seizure at the place of incident, contraband was brought to the office of the Superintendent, Jaipur wherein entire memos, i.e., seizure, notices, arrests, search and recovery memos were prepared. It is submitted that taking the contraband and the accused to the office of the Superintendent, and subsequently preparing memos there at their convenience, has undermined the sanctity of the search and seizure. It is contended that law requires that if certain thing is recovered at a particular place on the given time then the memos should be



prepared at the same place in the presence of witnesses and accused. It is submitted that in the present case, there was no extraordinary circumstance available with the seizure officer to make search and seizure at any other place. It is argued that this issue was considered by Co-ordinate Bench of this Court in S.B. Criminal Misc. Bail Application No.11544/2023 titled as **Kamlesh Kumar versus Union of India** decided on 30.10.2023. The relevant part is reproduced as under:-

"5. Have considered the submissions made by both the parties and have perused the material available on record. The circumstances created by the Police team in this matter brings the recovery into doubt. The statement of the seizing officer recorded under Section 164 of Cr.P.C. reveals that the process of seizure was conducted at the Office of Superintendent CBN, Neemach instead of the place where the recovery took place and the same is corroborated by the Panchnama Japti. He submits that the sanctity of the seizure made in the premises of Police Station is highly doubtful and no explanation furnished by the team members as to why the search and seizure was not made at the place where the vehicle was intercepted. It is not comprehensible as to what was the need to conduct the seizure at a place located 20-25 kms away from the place where the vehicle was intercepted; that too, at the premises of Office of Superintendent CBN, Neemach and no reasonable explanation has been furnished for the same. When the actual recovery had already been made and search and seizure had already been conducted at the shop and warehouse of the petitioner beforehand, then why was the memo regarding the same prepared after a significant period of time had passed at another place(CBN,



Neemach) making it seem as if seizure/recovery memo can be prepared as a paper formality whenever it is convenient when the actual, physical recovery had been made at a different place, thus, watering down the sanctity of seizure/recovery memo.”

4. Counsel further submit that despite the availability of the independent witnesses, no independent witness was associated during the search and seizure proceedings. Counsel submit that in cross-examination of the Seizure Officer, he has admitted the fact that alleged recovery of contraband was made from a public place, which is a sabji mandi and from the house of the petitioner Raju Basuniya. Counsel further submit that association of the independent witnesses contemplated under Section 103 of the BNSS (Corresponding to Section 100 of Cr.P.C) is not a mere formality and concerned officer is required to make all endeavour to associate the independent witnesses from the same vicinity. He cannot escape from his obligation merely by saying that a person refused to become an independent witness and if any person refuses to become a witness, his name should be recorded and proper action should be initiated against him for disobeying the order of the public servant.

5. It is further argued that during search and seizure proceedings, compliance of provisions provided under Sections 105 & 185 of BNSS have not been made by the Seizure Officer. Counsel submits that the Seizure Officer admitted in his statement that no photography and videography of the seizure proceedings was made. It is contended that there are bleak chances of



culmination of trial in near future. It is urged that the continued incarceration of the petitioners serves no useful purpose, particularly looking to the fact that there are no criminal antecedents against them. Counsel submits that Hon'ble Supreme Court has taken the view in the matter of **Devendra Kumar Mishra @ Bade Guru versus The State of Madhya Pradesh in Special Leave to Appeal (Crl.) No.14639/2023** that on the ground of period of incarceration suffered by accused, bail application under the NDPS Act can be considered for grant. It is submitted that petitioners are ready to abide by all such conditions which may be imposed by this Court.

6. Learned Special Public Prosecutor opposes the submissions advanced on behalf of the petitioners. He submits that considering the recovery of commercial quantity of contraband, the petitioners do not deserve indulgence of bail in view of Section 37 of the NDPS Act. He has placed reliance upon the following judgments:-

1. Ravi Goyal v. State of Rajasthan, in S.B. Criminal Misc. Bail Application No. 3558/2022.
2. Narcotics Control Bureau v. Kashif, reported in (2024) 11 SCC 372.
3. Daulat Singh @ Gatu v. State of Rajasthan, reported in 2014 SCC OnLine Raj 1028.
4. Union of India v. Rattan Mallik @ Habul, reported in (2009) 2 SCC 624.
5. Ashish v. State NCT of Delhi, Criminal Appeal 677/2025 & Criminal Bail Application 1078/2025.
6. Union of India v. Ram Samujh & Anr., reported in (1999) 9 SCC 429.



7. Jothi @ Nagajothi v. The State, Rep. By the Inspector of Police, reported in 2025 SCC OnLine SC 2774.
8. Bharat Aambale v. the State of Chhattisgarh, reported in (2025) 8 SCC 452.
9. Vijay Meena v. State of Rajasthan & Ors. in S.B. Criminal Writ Petition No. 770/2026.

7. I have considered the contentions. Perused the material available on record.

8. It is settled that Section 37 of the NDPS Act does not impose an absolute embargo on grant of bail. While considering bail, the Court is not required to record a positive finding of innocence; rather, it must assess, prima facie, whether the accused may not be guilty, upon a reasonable and broad evaluation of the material on record. Meticulous examination of evidence is not warranted at this stage.

9. The petitioners have been in custody for about sixteen months, and there appears no likelihood of early conclusion of trial. Thus, the petitioners' fundamental right to speedy trial, guaranteed under Article 21 of the Constitution of India, stands infringed. Prolonged incarceration generally militates against the cherished right to personal liberty, and in such a situation, conditional liberty must override the statutory embargo under Section 37 of the NDPS Act as held by Hon'ble Supreme Court in series of cases.

10. Having regard to the totality of the facts and circumstances of the case; considering the arguments advanced by learned counsel for the parties as noted above, especially considering the statement of the Seizure Officer, as also considering the fact that



there are no criminal antecedents against the petitioners and trial will take considerable time in its conclusion as well as looking to the custody period which is about 16 months, but without commenting anything on the merits/demerits of the case, I deem it proper to allow these bail applications.

11. These bail applications are accordingly allowed and it is directed that accused-petitioners **(1) Raju Basuniya S/o Shree Ranjeet Basuniya** and **(2) Kamal Barman S/o Nalit Barman** shall be released on bail provided each of them furnishes a personal bond in the sum of Rs.5,00,000/- together with two sureties in the sum of Rs.2,50,000/- each, to the satisfaction of the learned trial Court with the stipulation that they shall appear before that Court and any Court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

12. It is made clear that the accused-petitioners shall not involve in any other offence(s) during currency of the bail and they shall mark their presence in first week of every month in the concerned police station, till conclusion of the trial.

13. Concerned SHO shall enter attendance of the petitioners in the Roznamcha. In case the petitioners fail to mark their presence in the concerned police station, the concerned SHO is directed to immediately report the matter to the concerned Court in this regard.

14. If any breach of these conditions is reported or comes to the notice of the Court, the same shall alone be a reason for the trial Court to cancel the bail granted to the petitioners by this Court.



15. Office is directed to send a copy of this order to the concerned SHO for necessary compliance.

16. The observations made hereinabove are only for decision of these bail applications and would not have any impact on the trial of the case in any manner.

(ANIL KUMAR UPMAN),J

Manoj Solanki/-