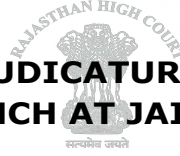




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous 4th Bail Application No. 16405/2025

Kavita Gurjar D/o Late Shri Shivram Gurjar, Aged About 25 Years, R/o Gurjaro Ka Mohalla, Dhemikala, Bagru, Jaipur, Rajasthan. (Presently Confined In Central Jail Jaipur).

-----Petitioner

Versus

Narcotics Control Bureau, Through PP

-----Respondent

Connected With

S.B. Criminal Miscellaneous 3rd Bail Application No. 4051/2026

Ayush Sadawat S/o Shri Rajendra Sadawat, Aged About 22 Years, R/o Behind Roadways Depot, Didwana Road, Nagaur, Raj. (At Present Confined In Central Jail Jaipur).

-----Petitioner

Versus

NCB, Through Special PP

-----Respondent

For Petitioner(s)	:	Mr. Rajveer Singh Gurjar, Adv. with Ms. Seema Shekhar, Adv. Mr. Harmeet Singh, Adv. Mr. Hemant Nahta, Adv. with Mr. Naresh Sharma, Adv.
For Respondent(s)	:	Mr. Tej Prakash Sharma, Spl.PP with Mr. Vaibhav Jhankra, Adv.

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

23/03/2026

1. These bail applications under Section 483 of BNSS have been filed on behalf of the petitioners, who are in custody in connection with FIR/Complaint No.VIII(IO)09/NCB/JPZU/2024 registered at Police Station Narcotics Control Bureau, Jaipur for offences punishable under Sections 8/22 & 8/29 of the NDPS Act. After



completion of investigation, police filed charge-sheet in this matter.

2. The first bail application filed on behalf of petitioner- Kavita was dismissed as withdrawn by this Court vide order dated 20.12.2024. Thereafter, second bail application was filed on her behalf which was also dismissed as withdrawn by this Court vide order dated 01.07.2025 while giving liberty to renew the prayer for bail after recording testimony of the Seizure Officer. Subsequently, third interim bail application was filed on her behalf which was dismissed by this Court vide order dated 06.08.2025. Now, this fourth bail application has been filed on her behalf.

3. The first bail application filed on behalf of the petitioner- Ayush was dismissed on merits by this Court vide order dated 29.08.2025. Thereafter, second interim bail application was filed on his behalf which was dismissed as withdrawn by Co-ordinate bench of this Court vide order dated 09.03.2026. Now, this third bail application has been filed on his behalf.

4. Learned counsel for the petitioners contends that the petitioners have falsely been implicated in this case. It is submitted that provisions of Section 42 of NDPS Act have not been complied with properly. It is submitted that in this case, search has been effected between sunset and sunrise therefore, it was incumbent upon the officer to follow the provisions of NDPS Act but admittedly, no memo in terms of Section 42 of the NDPS Act was prepared by seizure officer regarding the reasons effecting the search between sunset and sunrise. Reliance has been placed upon the judgment passed by Hon'ble Supreme Court in the case



of **State of Orissa versus Laxman Jena**, reported in **(2009) 16 SCC 332**.

5. Arguing the case of petitioner Kavita, counsel submits that it is an admitted case of prosecution that on the basis of secret information, the premises of petitioner was searched on 30.11.2024 at about 08:00-08:30 PM. Counsel submits that no independent witness was associated during the search and seizure proceedings. Counsel submits that association of the independent witnesses contemplated under Section 103 of the BNSS (Corresponding to Section 100 of the 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.

6. Counsel further submits that the alleged recovery of contraband is stated to have been made from the bag of the petitioner, Kavita however, the video recording of the alleged recovery, prepared by the police, does not corroborate this assertion. It is further contended that the premise in question was occupied and accessible to multiple persons, and thus, the filing of the charge-sheet solely against the petitioner is unsustainable in the eyes of law. The prosecution has failed to produce any cogent evidence or material to establish that the alleged contraband was in the exclusive and conscious possession of the petitioner.



7. Arguing the case of petitioner Ayush Sadawat, counsel submits that no recovery was made from the possession of the petitioner and he has been made accused in this case solely on the basis of interrogation of co-accused Kavita Gurjar.

8. It is contended that apart from the present case, no other case has been registered against the petitioners. It is submitted that petitioner Kavita Gurjar is in custody since 01.12.2024 and as such, she has already suffered incarceration of more than fifteen months whereas petitioner Ayush Sadawat is in custody since 10.03.2025 and as such, he has already suffered incarceration of one year. Counsel further submit that there are bleak chances of culmination of trial in near future. Finally, it is urged that the continued incarceration of the petitioners serves no useful purpose.

9. Learned 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.

10. Counsel has further placed reliance upon the following orders passed by Hon'ble Supreme Court:

- (1) Amit @ Chintu Patel versus The State of Madhya Pradesh, arising out of Special Leave to Appeal (Criminal) No.11224/2024, decided on 22.11.2024;



- (2) Vivek Patel versus State of Gujarat & Anr., Special Leave Petition (Cr.) Diary No.2793/2025, decided on 19.09.2024;
- (3) Sohrab Khan versus State of Madhya Pradesh, Petition for Special Leave to Appeal (Cr.) No.7115/2024, decided on 02.01.2024; and
- (4) Sujan Sk. @ Sujan Sheikh versus State of West Bengal, Petition for Special Leave to Appeal (Cr.) No.1143/2025, decided on 05.12.2024.
- (5) Siyaram Gurjar @ Gurja versus State of West Bengal, arising out of Special Leave to Appeal (Criminal) No.3401/2025.

11. Per contra, learned Special Public Prosecutor appearing for NCB opposes the submissions advanced on behalf of the petitioners. He submits that contraband Mephedrone weighing 123.8 grams has been recovered in this case which falls under the category of above commercial quantity. He submits that the petitioners were in constant touch via mobile phones. He further contends that several monetary transactions via banking channel took place between the petitioners and therefore, considering the rigour of Section 37 of the NDPS Act, benefit of bail should not be extended to the petitioners.

12. Learned Special Public Prosecutor has relied upon the following judgments:

- (1) Jarnail Singh versus State of Punjab reported in (2011) 3 SCC 521.



- (2) State of Maharashtra versus Natwarlal Damodarda Soni reported in (1980) 4 SCC 669.
- (3) Jothi @ Nagajothi versus The State represented by the Inspector of the Police reported in 2025 INSC 1417.
- (4) Mukesh Singh versus State (Narcotics Branch of Delhi), arising out of Special Leave Petition (Criminal) No.39528/2018.
- (5) Kashif versus NCB, Criminal Appeal No.5544/2024.

13. I have heard and considered the submissions advanced by counsel for the petitioners as well as learned Special Public Prosecutor and perused the material available on record.

14. Section 37 of the NDPS Act does not create an absolute embargo for grant of bail. Further, while considering an application for grant of bail, it is not required for the Court to record positive finding that the accused is not guilty. The only requirement of law is that the Court would look at the material in a broad manner and reasonably see whether the accused's guilt may be proved. The satisfaction which courts are expected to record i.e, the accused may not be guilty is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the material collected during investigation.

15. Having regard to the totality of the facts and circumstances of the case; considering the arguments advanced by learned counsel for the parties, especially considering the observations made by Hon'ble Supreme Court in catena of judgments wherein considering the period of incarceration suffered by the accused,



facility of bail has been granted, as also considering the lacunae pointed out by learned counsel for the petitioners in the present case and trial will take considerable time in its conclusion as well as looking to the custody period of the petitioners, but without commenting anything on the merits / demerits of the case, I deem it fit and proper to allow these bail applications.

16. These bail applications are accordingly allowed and it is directed that accused-petitioners **(1) Kavita Gurjar D/o Late Shri Shivram Gurjar** and **(2) Ayush Sadawat S/o Shri Rajendra Sadawat**, arrested in connection with FIR/Complaint No.VIII(IO)09/NCB/JPZU/2024 registered at Police Station Narcotics Control Bureau, Jaipur shall be released on bail provided each of them furnishes a personal bond in the sum of Rs.5,00,000/- (Rupees Five Lakh only) together with two sureties in the sum of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only) 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.

17. 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. It is further directed that the petitioners shall share their mobile number (in use) to the trial Court and Investigating Agency and they shall keep their mobile phones in active mode and they shall not switch off their mobile phone intentionally for longer period.



18. 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.

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

20. 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.

21. 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