

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Bail Application No. 6550/2026

Manish S/o Ratanlal, Aged About 38 Years, R/o Ward No. 8,
Kasba Nagarfort, P.s. Nagarfort, Dist. Tonk, Raj. (At Present
Accused Is In District Jail, Tonk)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s)	:	Mr. Swadeep Singh Hora
For Respondent(s)	:	Mr. Vijay Singh Yadav, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

REPORTABLE

06/05/2026

1. The present bail application under Section 483 of BNSS is filed by the applicant-accused **Manish S/o Ratanlal**, seeking bail in respect of a criminal case registered as FIR No.0038/2026 dated 03.04.2026 registered at P.S. Nagarfort, District- Tonk, for the offence under Sections 8, 20, 25, 29 of NDPS Act & Section 16/54 of Excise Act.
2. Learned counsel for the applicant submits that the applicant has been falsely implicated in the matter and the investigation against him is complete and he is no more required in investigation. He further submits that there are no chance of fleeing of applicant accused from the jurisdiction of this Hon'ble Court. He also submits that the applicant undertakes not to repeat offence and cooperate with investigation/trial, which will take time.

3. Learned counsel for petitioner submitted that without following mandatory provision under the NDPS Act, police has searched the house of the petitioner and allegedly *Ganja* and *Bhang* were recovered from his house. He also submitted that as per police inventory, 4 kg 900 grams of *Ganja* and 22 kg of *Bhang* were recovered from house of petitioner. He also submitted that recovery of *Bhang* is not subject matter under the NDPS Act as same is out of purview of the NDPS Act. He further referred the provision under the Rajasthan Excise Act and submitted that illegal possession of *Bhang* is an offence under the Rajasthan Excise Act. Learned counsel for petitioner has further referred judgment in case of **Madhukar Vs. State 2002 SCC Online Bombay 1271, Arjun Singh Vs. State of Haryana 2004 SCC Online P & H 828 and Roshan Kumar Mishra Vs. State of Karnataka 2022 SCC Online Kar 1484** and submitted that under section 2(iii) of NDPS Act, *Charas* and *Ganja* or their mixture which are included within the definition of cannabis (hemp) but it does not include *Bhang*. He further submitted that recovered quantity of *Ganja* is quite less than commercial quantity but whereas offence for possession of *Bhang* is triable by magistrate.
4. Aforesaid contentions were opposed by learned Public prosecutor and he submitted report received from P.S. Uniara, District Tonk.
5. Heard learned counsel for the petitioner-accused and learned Public Prosecutor. Perused the material placed on record by both the parties.

6. On 03.04.2026 SHO P.S. Nagar Fort has detained present petitioner as suspect and when his house was searched in his presence, the police has recovered and seized 4 kg 900 gram *Ganja* and also 22 kg of *Bhang* from three gunny bags. After the proceedings, FIR no. 38/2026 under section 8/20, 25, 29 of NDPS Act and 16/54 of Rajasthan Excise Act was registered at P.S. Nagar Fort, District Tonk.
7. The NDPS Act was enacted so as to consolidate and amend the law relating to narcotic drugs and to provide for control and regulation of operations relating to narcotic drugs and psychotropic substances.
8. Section 2(iii) of NDPS Act defines cannabis as under:
"cannabis (hemp) means—
(a)charas, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
(b)ganja, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and
(c)any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom"
9. Sub-section (iv) defines cannabis plant and same is reproduced as under:
"cannabis plant" means any plant of the genus cannabis"
10. Sub-section (xxiii) defines psychotropic substances as under:
"psychotropic substance" means any substance, natural or synthetic, or any natural material or any salt or preparation of such substance or material included in the list of psychotropic substances specified in the Schedule;

11. Section 3 empowers the Central Government to aid or omit from the list of psychotropic substances. Section 8 prohibits certain operations such as cultivation, production, manufacturing, possession, sale, purchase, transport, search, consumption of cannabis plant or any other contraband provided therein. Section 14 empowers the government to allow cultivation on any cannabis plant for industrial purpose only of obtaining fibre or seed or for horticulture purpose. Section 20 provides for punishment for contravention in relation to cannabis plants and cannabis.
12. Section 2(iii) provides for cannabis and it specifically provides definition of *charas*, *ganja* or any other mixture with or without any neutral material of any of above forms of cannabis or any drink prepared therefrom. The cannabis plant means any plant of genus cannabis. It means that unless any cannabis (hemp) falls within definition of section 2(iii), the product is not considered as a contraband under the NDPS Act. The schedule attached with the Act does not provide Bhang as one of the psychotropic substance to be considered. Thus, *bhang* is not within purview of the NDPS Act 1985.
13. Section 3(xiv) of the Rajasthan Excise Act, 1950, defines the word intoxicating drugs, and it means leaves,
 - (i) small stalks and flowering or fruiting tops of the hemp plant (*Cannabia Sativa*) including all forms known as Bhang, Sidhi or Ganja)
 - (ii) charas, that is, the resin obtained from the 8 hemp plant, which has not been submitted to any manipulations other than those necessary for packing and transport;

(iii) any mixture, with or without neutral materials, of any of the above forms of intoxicating drug, or any drink prepared therefrom; and
 (iv) any other intoxicating or narcotic substance which 9[the State Government] may declare, by notification in the 9[Official Gazette], to be an intoxicating drug, such substance not being opium, coca leaf or a manufactured drug as defined in the 9[Dangerous Drugs Act, 1930 (Central Act 2 of 1930)]

14. Section 3(iv) defines excisable article and same is reproduced as under:

"Excisable Article" means and includes-

- (i) Spirit, fermented liquor or any alcoholic liquor for human consumption or denatured spirit or denatured spirituous preparation, or
- (ii) Any intoxicating drug, or
- (iii) Stills or other appliances for distillation, or
- (iv) Fermented wash or other material for distillation, or
- (v) Any other article which the State Government may, from time to time declare to be an excisable article for the purposes of this Act.
- (vi) Heritage liquor.

15. Aforementioned provision makes it clear that *bhanga* is an excisable product and it is part of intoxicating drugs. Section 16 prohibits manufacturing, cultivation, and other acts in relation to excisable articles. So the possession of *bhanga* would fall within the purview of section 16 read with section 54 of the Rajasthan Excise Act.

16. A Co-ordinate bench of Allahabad High Court has considered the issue of *Bhang* in case of **Samid Vs. State of Uttar Pradesh reported as 1995 (3) RLR (criminal) 449 (Allahabad)** and further relied by a Co-ordinate bench of the Punjab and Haryana High Court in case of **Arjun Singh Vs. State of Haryana (supra)**. The judgment in case of

Manjee Vs. State of Rajasthan reported as **1986 (2) (RCR) (criminal) 258 (Rajasthan)** has also been relied in case of **Arjun Singh (supra)** and we are referring following

paragraphs from the judgment as under:

"7. Similarly in [Manjee](#)'s case (1996 CriLJ 3787) (supra), the Rajasthan High Court has elaborated and analysed the various definitions given under the Act and then came to the conclusion that bhang does not fall under the definition of cannabis (hemp) as defined under [Section 2\(iii\)](#) of the Act, by observing as under :-

13. It is apparent from aforesaid two enactments that under Act No. 2 of 1950 Charas, Ganja and Bhang are included within the definition of cannabis (hemp) whereas under [N.D.P.S. Act](#) bhang is excluded. Bhang does not fall within the definition of cannabis (hemp) as defined under [Section 2\(iii\)](#) of N.D.P.S. Act. It is also to be noticed that under Act No. 2 of 1950 cultivation of only cannabis (hemp) plant i.e. Charas, Ganja and Bhang is an offence under [Section 54\(b\)](#) and punishable under [Section 54\(g\)](#) of the said Act whereas under [N. D. P. S. Act](#) cultivation of any cannabis plant which means any plant of the genus cannabis as defined under [Section 2\(iv\)](#) of N.D.P.S. Act is punishable under [Section 20\(a\)](#) read with [Section 20\(b\)\(i\)](#) of the said Act. In my humble opinion although bhang is excluded from the definition of cannabis (hemp) under the [N.D.P.S. Act](#) yet it does fall within the definition of cannabis plant and as such its cultivation is punishable under [Section 20\(a\)](#) read with [Section 20\(b\)\(i\)](#) of the said Act. I am also of the opinion that cannabis (hemp) is one of the species of cannabis plant, therefore, it cannot be held that since 'Bhang' is excluded from the definition of cannabis (hemp) under the [N.D.P.S. Act](#) one of the species of cannabis plant, therefore, its cultivation is not an offence and it is not punishable under [Section 20\(b\)\(i\)](#) of the said Act.

14. In my considered opinion cultivation of 'Bhang' is punishable under [N.D.P.S.](#)

[Act](#) although it is not included within the definition of cannabis (hemp) and not Act No. 2 of 1950 within the meaning of [Article 254](#) of the Constitution of India. As regards cultivation of Bhang is concerned, the [N.D.P.S. Act](#) would prevail over Act No. 2 of 1950 and latter enactment passed by the Legislature of State shall be deemed to be repugnant and void to the extent of its inconsistency to the former enactment passed by parliament.

15. However, it is made clear that personal use and sale of Bhang is not an offence under Rule 24 of Rajasthan Narcotic Drugs and Psychotropic Rules, 1984, since in the present case the question of possession and sale of Bhang is not involved, therefore, it is left open to be decided in an appropriate case."

17. Similarly, in case of **Madhukar Vs. State of Maharashtra (supra)** and **Roshan Kumar Mishra Vs. State of Karnataka (supra)**, identical issue was considered and it was held that *bhang* is not a psychotropic substance under the NDPS Act. Even in case of **Roshan Kumar Mishra (supra)**, a co-ordinate bench had observed as under:

"It is worth to mention that the Bhang is a traditional drink, most of the people used to drink in North India especially near the Shiva temples and it is also available in Lassi shops like all other drinks. That apart, the said Bhang were sold in the market with branded names. Therefore, until the receipt of forensic science lab report, in order to confirm that this bhang is prepared out of the by the charas or ganja, the Court cannot come to any conclusion that the bhang is prepared out of the substance of ganja. Therefore, at present, I am agreeing with the judgments of the Bombay High Court as well as Punjab and Haryana High Court in the above said decisions that bhang is not covered under the [NDPS Act](#)."

18. The recovered quantity of ganja is 4.9 kg and same is above small quantity but less than commercial quantity. The recovery of *bhang* is an offence under section 16/54 of the Rajasthan Excise Act. Two criminal cases were registered against the petitioner and one relating to 8/20 of NDPS Act and petitioner was released on bail by a coordinate bench of this court on 05.10.2020 in bail application no. 9446 of 2020. Other case is relating to IPC. The offence under the Rajasthan Excise Act is generally triable by a Magistrate.
19. Upon hearing the arguments and perusing the record, we have found that the applicant-accused is no more required in the investigation and he is in custody for quite some time. The further proceedings will take its own time, therefore, looking to entirety of facts and circumstances of the case and without expressing any opinion on merits of the case, the Court deems it appropriate to grant bail to the applicant-accused.
20. Thus, the instant bail application filed on behalf of applicant-accused **Manish S/o Ratanlal**, is hereby allowed and the applicant-accused is ordered to be released on bail upon furnishing a personal bond of ₹50,000/- with two sureties of like amount to the satisfaction of the Trial Court with the following conditions:-
- (i) The applicant-accused shall not tamper with evidence or influence the witness in any manner.
 - (ii) The applicant-accused shall not indulge in any criminal activity and shall not repeat any criminal offence punishable under the Law.

- (iii) The applicant-accused shall attend the hearing of the Trial Court on the date fixed by the Trial court or as and when asked to appear before the Trial Court.
- (iv) In case of any violation of above conditions, the bail granted to the applicant-accused shall be liable to be canceled.

21. The Registry is directed to send a copy of this order to the Trial Court through E-mail.

(ASHOK KUMAR JAIN),J