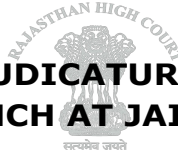




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



**S.B. Criminal Miscellaneous Bail Application No.
12518/2025**

Pramod Kumar S/o Shri Omprakash, R/o 1407, Sansi Basti, Near Radha Swami Bhawan, Bhagwan Ganj, Ajmer. (At Present Confined In Central Jail Ajmer, District Ajmer).

-----Petitioner

Versus

C.B.N., Through Special PP

-----Respondent

For Petitioner(s)	:	Mr. Nirmal Kumar Sharma
For Respondent(s)	:	Mr. Tej Prakash Sharma, S.P.P.

HON'BLE MR. JUSTICE GANESH RAM MEENA

Order

27/04/2026

1. The instant bail application has been filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on behalf of accused-petitioner in connection with FIR No. 14/2025 registered at C.B.N. Jaipur for offence under Sections 8/22 of the N.D.P.S. Act 1985.

2. Learned counsel for the petitioner submits that the accused-petitioner has been implicated in this case on the basis of the false and fabricated facts of recovery of the alleged contraband. Counsel further submits that there is violation of mandatory provisions of Section 42 of the NDPS Act. He further submits that photography of seizure was not done by the Competent Officer i.e. Superintendent. He also submits that no gazetted officer was present while making the seizure, as is



required under law. Learned counsel further submits that there is violation of provisions of Sections 103 and 105 of the B.N.S.S. 2023.

3. Learned counsel for the petitioner also submits that no independent witness has been associated with the seizure of the alleged contraband and there are no details in that regard. Counsel further submits that the samples were sent to the FSL after 72 hours, whereas the requirement under law is that the samples be sent within 72 hours.

4. Learned counsel for the petitioner also agitated that the application for inventory was submitted on 05.08.2025, whereas it was prepared on 29.09.2025 because of lapses on the part of the prosecution. Counsel further submits that the signature of the Gazetted Officer on the *Panchnama* and the person who received the secret information, as regards the transportation of the alleged contraband, the same Police personnel has been made the Investigating Officer of the accused-petitioner. He also submits that the accused-petitioner is in custody since 31.07.2025 and Police after completion of the investigation has submitted charge-sheet in the matter.

5. Learned Special Public Prosecutor appearing for the Central Bureau of Narcotics (C.B.N.) submits that the alleged contraband, which has been recovered from the possession of the accused-petitioner, is 114 gram Mephedrone (for short'MD). As per the schedule, the prescribed commercial quantity of MD is 50 grams, meaning thereby, the contraband recovered from the



possession of the accused-petitioner is much above than the commercial quantity. He further submits that the accused-petitioner is not able to fulfill the satisfaction as required under Section 37 of the NDPS Act, and in view of the evidence available on record, it cannot be said that he is not guilty of the offence.

6. Considered the submissions made by the counsel for the petitioner as well as learned Special Public Prosecutor so also perused the case diary.

7. As per facts on record, the secret information was received on 31.07.2025 that the person would be coming with the Narcotic Drug MD. On the basis of said information, the Police Officer was deputed for search and seizure and thereafter, search and seizure was made and 114 gram MD was recovered from the possession of the accused-petitioner, which is much above than the commercial quantity.

8. Since the recovery of a Narcotic Drug has been made from the possession of the accused-petitioner, which is more than the commercial quantity and looking to the evidence collected during investigation, it cannot be said that there is no *prima facie* evidence that the petitioner is not guilty of offence alleged against him.

9. As regards the other submissions made by the counsel for the petitioner concerning adherence to the mandatory provisions of the NDPS Act and BNSS, 2023, the Co-ordinate Bench of this Court at Principal Seat Jodhpur in case of **Vijay Meena vs. State of Rajasthan & Ors. (S.B. Criminal Writ**



Petition No.770/2026) decided on 10.04.2026 has held that raising this kind of questions at a stage prior to recording of the material witnesses, has been held to be premature.

The Co-ordinate Bench at Principal Seat Jodhpur, in case of **Vijay Meena(supra)** in para Nos.4 to 6 has dealt with such alleged discrepancies and legality of search and seizure, which are quoted as under:-

"4. Upon a considered evaluation of the submissions advanced and the material placed on record, this Court is of the view that the substratum of the petitioner's challenge essentially rests upon disputation of the prosecution narrative, particularly with regard to the authenticity and credibility of the seizure and arrest memos, as well as the alleged sequence of events culminating in his implication.

4.1 It is trite that the criminal justice process unfolds in a well-defined procedural continuum, commencing from investigation, followed by submission of the police report under Section 173 Cr.P.C., taking of cognizance by the competent court, framing of charges, recording of prosecution evidence, and thereafter affording the accused an opportunity to enter upon defence. The stage of adjudication of rival factual claims and appreciation of evidence is thus statutorily reserved for trial.

4.2 The petitioner, in essence, seeks pre-trial adjudication of disputed questions of fact by inviting this Court to test the veracity of the prosecution case, particularly on the premise that the recovery is fabricated and that he was unlawfully detained prior to the alleged seizure. Such contentions, being intrinsically evidentiary in nature, necessarily require a full-fledged trial wherein the prosecution evidence is subjected to cross-examination and the defence is afforded an opportunity to substantiate its version.

4.3 The contention of the petitioner regarding discrepancies in the timing and preparation of memos, as well as the plea of false implication, constitute matters squarely falling within the domain of trial appreciation. These aspects pertain to the credibility,



trustworthiness, and evidentiary value of the documents prepared during investigation, which cannot be conclusively adjudicated in writ jurisdiction without a detailed evidentiary inquiry.

4.4 It is further observed that, as per the prosecution case, a substantial quantity of contraband (ganja) has been recovered, and there is no categorical material on record at this stage to conclusively establish that the recovery was pre-planned, foisted, or fabricated. The alleged inconsistencies highlighted by the petitioner, at best, raise triable issues requiring adjudication by the trial court upon appreciation of evidence.

4.5 This Court is, therefore, of the considered opinion that entering into an evaluative exercise regarding the correctness of the recovery memo, arrest memo, or the sequence of events, at this interlocutory stage, would amount to pre-empting the trial and rendering findings on disputed factual issues an exercise which is neither permissible nor desirable in writ jurisdiction. In my considered view, such an approach would mean conducting a mini trial before the actual trial.

4.6 Judicial propriety further mandates that where the trial is already underway, higher courts ought to refrain from recording definitive findings on factual controversies which are sub judice before the trial court. Any such interference would not only disrupt the procedural sanctity of trial but may also prejudice either of the parties.

*5. The legal position governing the stage-wise consideration of defence material stands authoritatively settled by the Hon'ble Supreme Court in **State of Rajasthan v. Swarn Singh @ Baba, CRLA No.856/2024 arising of SLP (Criminal) No.346/2021** decided on **12.02.2024** wherein it has been unequivocally held that the right of the accused to rely upon material in support of his defence does not ordinarily arise at the pre-trial or charge stage, and such entitlement crystallizes only during the stage of defence evidence. The Court, relying upon the dictum in **State of Orissa v. Debendra Nath Padhi, (2025) 1 SCC 568** emphasized that the necessity or desirability of documents must be assessed with reference to the stage of proceedings, and that permitting the accused to invoke defence material*



prematurely would be contrary to the statutory scheme of criminal trial.

5.1 Applying the aforesaid principle to the present case, the petitioner's attempt to impeach the prosecution case on the basis of alleged discrepancies and defence material at this stage is clearly premature and legally untenable. The petitioner is, however, at liberty to raise all such contentions before the trial court at the appropriate stage, in accordance with law.6. Accordingly, while leaving all the issues raised by the petitioner particularly concerning the legality of recovery, authenticity of memos, and alleged false implication; open to be agitated at the appropriate stage during trial, this Court refrains from expressing any opinion on the merits thereof. The petitioner shall be at liberty to produce all relevant material before the trial Court for the purpose of its scrutiny at appropriate stage, in accordance with law, and the trial court is expected to adjudicate the same uninfluenced by any observations made herein."

10. This Court in case of ***Shakti Gurjar Vs. State of Rajasthan & Anr. (S.B. Criminal Misc. Bail Application No.13814/2023)*** decided on ***30.07.2024*** has observed as under:-

*"22. The Hon'ble Apex Court in the case of **Narcotics Control Bureau Vs. Mohit Agarwal (Criminal Appeal Nos.1001-1002 of 2022)** decided on **19.07.2022** after taking into consideration the provisions of section 37 of the Act of 1985 has observed in paras 11, 12, 13 and 14 as under:-*

"11. It is evident from a plain reading of the non-obstante clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 that there are certain restrictions placed on the power of the Court when granting bail to a person accused of having committed an offence under the NDPS Act. Not only are the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973 to be kept in mind, the restrictions placed under clause (b) of sub-section (1) of Section 37 are also to be factored in. The



conditions imposed in sub- section (1) of Section 37 is that (i) the Public Prosecutor ought to be given an opportunity to oppose the application moved by an accused Criminal Appeal Nos. of 2022 @ Petitions for Special Leave to Appeal (Criminal) No. 6128-6129 OF 2021 person for release and (ii) if such an application is opposed, then the Court must be satisfied that there are reasonable grounds for believing that the person accused is not guilty of such an offence. Additionally, the Court must be satisfied that the accused person is unlikely to commit any offence while on bail.

12. The expression "reasonable grounds" has come up for discussion in several rulings of this Court. In "Collector of Customs, New Delhi v. Ahmadalieva Nodira" a decision rendered by a Three Judges Bench of this Court, it has been held thus:-

"7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. 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" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence." [emphasis added]

13. The expression "reasonable ground" came up for discussion in "State of Kerala and others Vs. Rajesh and others" and this Court has observed as below:

"20. The expression "reasonable grounds" means something more than prima facie grounds. It



contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.” [emphasis added]

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

23. The Hon’ble Apex Court in the case of **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)**, reported in (1980) 1 SCC 81 has observed as under:-

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a 18 As per the counter-affidavit dated 21.02.2023 filed by the respondent-state before this court. prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied



that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws - be balanced against the public interest. “

24. The recent view of the Hon’ble Apex Court and other Courts after having due consideration to the provisions of section 37 of the Act of 1985 is that while granting bail to a person accused of an offence punishable for the offence involving commercial quantity, the Court should record its satisfaction 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.

25. The counsel appearing for the accused petitioner has referred the judgment of **Ranjitsingh Brahmajeetsing Sharma (supra)** relating to a case for offence under the provisions of Maharashtra Control of Organised Crime Act, 1999, wherein there is a similar section like section 37 of the Act of 1985. In that case, the Hon’ble Apex Court granted bail.

26. The Hon’ble Apex Court in the case **Mohammed Anis Vs. Union of India & Ors., reported in 1994 Supp(1) SCC 145** has observed as under:-

“Apex Court has been conferred extraordinary powers by Article 142(1) of the Constitution so that it can do



complete justice in any cause or matter pending before it. The question regarding the width and amplitude of this Court's power under Article 142(1) came up for consideration before this Court in Delhi Judicial Service Assn., Delhi v. State of Gujarat and again before the Constitution Bench in Union Carbide Corpn. v. Union of India. In the first case this Court observed that the power conferred by Article 142 (1) coupled with the plenary powers under Articles 32 and 136 empowers the Court to pass such orders as it deems necessary to do complete justice to the cause or matter brought before it. This power to do complete justice is entirely of different level and of a different quality which cannot be limited or restricted by provisions contained in statutory law. No enactment made by the Central or State Legislature can limit or restrict the Court's powers under Article 142(1) though while exercising it the Court may have regard to statutory provisions (See paragraphs 50 and 51 of the judgment). In the second case this Court clarified that the expression "cause or matter" must be construed in a wide sense to effectuate the purpose of conferment of power. This power has been conferred on the Apex Court only and the exercise of that power is not dependent or conditioned by any statutory provision. The constitutional plenitude of the powers of the Apex Court is to ensure due and proper administration of justice and is intended to be co-extensive in each case with the needs of justice of a given case and to meeting any exigency. Very wide powers have been conferred on this Court for due and proper administration of justice and whenever the Court sees that the demand of justice warrants exercise of such powers, it will reach out to ensure that justice is done by resorting to this extraordinary power conferred to meet precisely such a situation. True it is, that the power must be exercised sparingly for furthering the ends of justice but it cannot be said that its exercise is conditioned by any statutory provision. Any such view would defeat the very purpose and object of conferment of this extraordinary power. In the Union Carbide case this Court observed as under: (SCC p.634, para 83)

"It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this



Court under Article 142(1) of the Constitution.... The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous."

Proceeding further, the Court observed: (SCC p.635, para 83)

"The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations on provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142."

That is so for the obvious reason that statutory provisions cannot override constitutional provisions and Article 142(1) being a constitutional power cannot be limited or conditioned by any statutory provision."

27. *This Court has to go by the provisions of statutory law because any order of the Court without considering the provisions of the law in force or contrary to the same is said to be per-incurrium and this Court would like to restrain itself from passing such order.*

28. *In the present case there is recovery of contraband weighing more than the commercial quantity as notified and also there are five other criminal cases pending against the petitioner. There are no reasons for satisfaction of this Court so as to believe that the accused petitioner is not guilty of offences under the provisions of the Act of 1985 and that he is not likely to commit any offence while on bail as he is already facing five other criminal cases.*

29. *Drug abuse has taken its toll in almost all the districts of Rajasthan. The addicts primarily belong to youth age. The high rate of drug consumption is leading to issues like illegal trade, drug trafficking, and smuggling. The problem of drug addiction has a significant bearing on drug trafficking which has become a significant challenge for governments and social reformers. The NCB reports that the main internal factor for drug trafficking in India is the illicit cultivation of opium, poppy and cannabis. Also, the diversion from licit opium sources to illegal opium production is a major concern. In the trends of 2020, Rajasthan is among the 3 major states, along with Uttar Pradesh and Madhya Pradesh, from where the opium is trafficked to other parts of the country."*



11. Taking into consideration the overall facts and circumstances of the case and more particularly the fact that the alleged contraband, which has been recovered from the possession of the accused-petitioner, is much more than the commercial quantity and at this stage, looking to the evidence collected during investigation, it cannot be said that the petitioner is not guilty of offence, this Court is not inclined to enlarge the accused petitioner on bail at this stage.

12. Accordingly, the bail application is dismissed.

13. The Application No. 01/2026 has also been filed by the accused-petitioner for interim bail on the ground that his wife is suffering from a serious illness.

14. In the memo of application, there is no specific averments as regards of what kind of disease of his wife is suffering. He has also not placed on record any document related to treatment of his wife's illness, therefore, the said application seems to be very vague without disclosure of the complete facts and any supporting document.

15. Accordingly, the Application No. 01/2026 filed on behalf of te applicant petitioner for interim bail, also stands dismissed.

(GANESH RAM MEENA),J