

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous Second Bail Application No.
14486/2025

Binder Singh S/o Kartar Singh, Aged About 38 Years, R/o Sir-
athala, Police Station Payal, District Ludhiana (Punjab) (At
Present Lodged In Sub Jail Bhawani Mandi, District Jhalawar)

----Petitioner

Versus

State of Rajasthan, through Public Prosecutor.

----Respondent

For Petitioner(s)	:	Ms. Anushree Sharma
For Respondent(s)	:	Mr. N.S. Dhakar, PP with Mr. M.S. Dhakar, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

09/12/2025

1. This second bail application under Section 483 of BNSS has been filed on behalf of the petitioner, who has been arrested in connection with FIR No.63/2024 registered at Police Station Pagariya, District Jhalawar, Rajasthan for offences punishable under Sections 8/15 & 8/29 of NDPS Act. After completion of investigation, police filed charge-sheet in this matter for offences punishable under Sections 8/15, 8/29 & 8/25 of NDPS Act.
2. The first bail application filed on behalf of the petitioner was dismissed as withdrawn by this court vide order dated 08.09.2025 while giving liberty to renew the prayer for bail after recording testimony of Seizure Officer. Now, Seizure Officer has been examined during the course of trial thus, this second bail application has been preferred.

3. Learned counsel for the petitioner submits that petitioner has falsely been implicated in this case. Counsel submits that bare perusal of the FIR would reveal that there is non-compliance of Section 42 of the NDPS Act. Counsel submits that neither information received from the informant was reduced in the writing nor it was sent to the superior Officer. Counsel submits that Seizure Officer has candidly admitted the fact that he did not comply with Section 42 of the NDPS Act and he further admitted that SOP issued in this regard was not followed by him during the course of search, seizure and arrest. Counsel has relied upon the judgment passed by Hon'ble Supreme Court in the case of **Mohinder Kumar VS State of Goa**, reported in **AIR 1995 (SC) 1157**. It is submitted that by the ratio in **Mohinder Kumar (supra)**, it has been emphatically held that from the very moment, a police officer gets to know of the possession or recovery of contraband, he is obliged in law to scrupulously follow the mandatory provisions of the NDPS Act. It has also been admitted by the Seizure Officer that no independent witness was associated by him at the time of search and seizure. Counsel further submits that association of the independent witnesses contemplated under Section 103 of BNSS (corresponding to Section 100 of Cr.PC) is not a mere formality and concerned officer is required to make all endeavour to associate the independent witnesses from the same vicinity. Counsel submits that admittedly in this matter alleged recovery was made on 03.06.2024 and on 25.07.2024, inventory was prepared and on the same day samples were drawn. Counsel submits that

surprisingly, samples have been deposited in FSL on 13.08.2024 after the delay of nineteen days for which no plausible reason is available on record. Counsel submits that trial will take considerable time in its conclusion as till date, only eight witnesses have been examined out of twenty one cited prosecution witnesses. Counsel submits that there are no criminal antecedents of the petitioner. It is submitted that Hon'ble Supreme Court has taken the view in the matter of **Devendra Kumar Mishra @ Bade Guru vs. 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. Counsel contends that petitioner is in custody since 03.06.2024 and as such, he has suffered incarceration of about one year and six months. Further custody of the petitioner would not serve any fruitful purpose.

4. Learned Public Prosecutor vehemently opposes the prayer for bail made by learned counsel for the petitioner and submits that commercial quantity of contraband has been recovered from the possession of the petitioner therefore, considering the rigour of Section 37 of NDPS Act, bail should not be granted to the petitioner.

5. I have considered the contentions.

6. 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.

7. Having regard to the totality of the facts and circumstances of the case; considering the arguments advanced by learned counsel for the petitioner, especially considering the fact that recovery was made on the basis of prior information and Seizure Officer admitted the fact that he did not comply with Section 42 of NDPS Act; as also considering the fact that samples were deposited in the FSL after a delay of nineteen days; observations made by Hon'ble Supreme Court in the case of **Devendra Kumar Mishra @ Bade Guru (supra)**; there are no criminal antecedents of the petitioner and trial will take considerable time in its conclusion as till date, only eight witnesses have been examined out of twenty one cited prosecution witnesses as well as looking to the period of custody, but without commenting anything on the merits/demerits of the case, I deem it proper to allow this second bail application.

8. This second bail application is accordingly allowed and it is directed that accused-petitioner **Binder Singh S/o Kartar Singh** shall be released on bail provided he 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 he 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.

9. It is made clear that the accused-petitioner shall not involve in any other offence(s) during currency of the bail and he shall mark his presence in first week of every month in the concerned police station, till conclusion of the trial. It is further directed that petitioner shall share his mobile number (in use) to the trial Court and Investigating Agency and he shall keep his mobile phone in active mode and he shall not switch off his mobile phone intentionally for longer period.

10. Concerned SHO shall enter the attendance of the petitioner in the Roznamcha. In case the petitioner fails to mark his presence in the concerned police station, the concerned SHO is directed to immediately report the matter to the concerned Court in this regard.

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

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

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

(ANIL KUMAR UPMAN),J