

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous 2nd Bail Application No. 15239/2025

Shiv Kumar Mistri S/o Late Ramprasad Mistri, Aged About 42 Years, R/o Barah Chitthi, Police Station Barah Chitthi, District Gaya (Bihar) (Presently Confined In Central Jail Jaipur District Jaipur)

-----Petitioner

Versus

The State Of Rajasthan, Through PP

-----Respondent

Connected With

S.B. Criminal Miscellaneous 2nd Bail Application No. 15240/2025

Vijay Prasad S/o Late Bulak Mato, Aged About 55 Years, R/o Barah Chitthi, Police Station Barah Chitthi, District Gaya (Bihar) (Presently Confined In Central Jail Jaipur)

-----Petitioner

Versus

The State Of Rajasthan, Through PP

-----Respondent

S.B. Criminal Miscellaneous 2nd Bail Application No. 15241/2025

Vijay Kumar Gupta S/o Prabhu Sahu, Aged About 48 Years, R/o Barah Chitthi, Police Station Barah Chitthi, District Gaya (Bihar) (Presently Confined In Central Jail Jaipur)

-----Petitioner

Versus

The State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s)	:	Mr. Manvendra Singh Choudhary with Mr. Himanshu
For Respondent(s)	:	Mr. N.S. Dhakar, PP Mr. M.S. Shekhawat, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

10/12/2025

1. These second bail applications under Section 483 BNSS have been filed on behalf of the petitioners, who have been arrested in connection with FIR No.145/2024 registered at Police Station Bassi, District Jaipur City East for offence punishable under

Section 8/18 of NDPS Act. After completion of investigation, police filed charge-sheet in this matter for offences punishable under Sections 8/18, 8/25 & 8/29 of NDPS Act.

2. The first bail applications filed on behalf of the petitioners were dismissed as withdrawn by this Court vide order dated 05.08.2025 while giving liberty to renew the prayer for bail after recording the testimony of the Seizure Officer. Now, the said witness has been examined during the course of trial thus, these second bail applications have been preferred.

3. Learned counsel for the petitioners submits that petitioners have falsely been implicated in this case. Counsel submits that petitioners are in custody since 20.03.2024, and as such, they have suffered incarceration of about 21 months. It is submitted that the provisions of Section 42 of NDPS Act have not been complied with properly. It is submitted that Seizure Officer has clearly admitted in his testimony, that immediate superior officer was not informed about the recovery which was allegedly affected accidentally. Counsel submits that entire procedure conducted by Seizure Officer i.e, Search, Seizure and arrest stands vitiated for the reason that he was not holding the charge of SHO as there is no document available on record to show that at the relevant time he was in-charge of the Police Station rather it appears that at the relevant time, SHO was available at the Police Station despite this, instead of calling the SHO, he himself conducted the Search and Seizure and made arrest of the petitioners. Counsel has relied upon the judgment passed by Hon'ble Supreme Court in the case of **Mohinder Kumar V. 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. The officer, from that stage itself, ceases to be a mere police officer under the Cr.PC and is expected to act according to the safeguards and procedures prescribed under the NDPS Act. Any infraction in adhering to these statutory requirements contaminates the entire search, seizure, and prosecution thereafter.

4. Counsel contends that bare perusal of the testimony of the Seizure Officer would reveal that on the pretext of an accidental search, the mandatory provisions of the NDPS Act were not adhered to. Counsel further submits that despite availability of the independent witnesses, no independent witness was associated during the search and seizure proceedings. Counsel submits that it has been admitted by the Seizure Officer that the place of recovery is near Toll Plaza which operates 24x7. Counsel further submits that association of the independent witnesses contemplated under 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. Finally, 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 the petitioners. It is contended that there are bleak chances of culmination of trial in near future as till date, only 3 prosecution witnesses have been examined out of 19 cited prosecution witnesses. Further custody of the petitioners would not serve any fruitful purpose.

5. Learned Public Prosecutor opposes the submissions made by learned counsel for 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.

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

7. 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.

8. The petitioners have been in custody for about 21 months, and there appears no likelihood of early conclusion of trial. Thus, the 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.

9. 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 21 months, but without commenting anything on the merits/demerits of the case, I deem it proper to allow these second bail applications.

10. These second bail applications are accordingly allowed and it is directed that accused-petitioners **1.) Shiv Kumar Mistri S/o Late Ramprasad Mistri, 2.) Vijay Prasad S/o Late Bulak Mato and 3.) Vijay Kumar Gupta S/o Prabhu Sahu** 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.

11. 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.

12. 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.

13. 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 them by this Court.

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

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

(ANIL KUMAR UPMAN),J