

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous 2nd Bail Application No. 16200/2025

Jitendra Kumar S/o Shri Pokharmal, Aged About 21 Years, R/o Village Sihot, Badi Tehsil, Dhod, Police Station Dhod, District Sikar (Raj.) (Presently Confined In Central Jail, Jaipur).

-----Petitioner

Versus

State Of Rajasthan, Through Special PP

-----Respondent

For Petitioner(s)	:	Mr. Rajveer Singh Gurjar with Ms. Seema Shekhar
For Respondent(s)	:	Mr. N.S. Dhakar, PP with Mr. M.S. Shekhawat, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN
Order

17/12/2025

1. The second bail application under Section 483 of BNSS has been filed on behalf of the petitioner, who is in custody in connection with FIR No.233/2025 registered at Police Station Amer, Jaipur City (North) for offence punishable under under Section 8/22 of the NDPS Act. After completion of investigation, Police filed charge-sheet in this case before the concerned Court for offences punishable under Sections 8/22 & 8/25 of NDPS Act.
2. The first bail application filed on behalf of the petitioner was dismissed by this Court vide order dated 18.08.2025. Now, police has filed charge-sheet in this case before the concerned Court thus, this second bail application has been filed on behalf of the petitioner.
3. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case. It is also contended that the petitioner has nothing to do with the alleged recovery of

contraband. Compliance of provisions of Sections 42 & 50 of the NDPS Act has also not been done in the instant case.

4. He contends that as per the prosecution case, MDMA weighing 16 grams 09 milligrams was recovered from the possession of the petitioner while as per the FSL report dated 15.12.2025, Mephedrone was found in the sample packet (Mark 'S'), sent to the FSL for analysis. He argues that the commercial quantity of MDMA is 10 Grams whereas with respect to Mephedrone, it is 50 Grams. As per the FSL report, Mephedrone was found in the sample packet and thus, the recovery of substance which is weighing 16 grams 09 milligrams, allegedly effected from the petitioner is below commercial quantity. He submits that if contraband recovered from the possession of the co-accused is also added, even then it will not fall under the category of commercial quantity. It is contended that there are no criminal antecedents against the petitioner and trial will take considerable time in its conclusion. Counsel submits that the petitioner is in custody since 09.07.2025 and further custody of the petitioner would not serve any fruitful purpose.

5. Per contra, learned Public Prosecutor opposes the bail application. He submits that looking to the rigour of Section 37 of the NDPS Act, benefit of bail should not be extended to the petitioner.

6. Heard. Perused the material available on record.

7. As per the prosecution case, recovery was allegedly effected on 09.07.2025. The recovered contraband was observed and perceived as MDMA on the basis of past experience of the Seizure Officer and thereafter, sample (mark 'S') was sent to the FSL vide

letter dated 07.08.2025 but the FSL report was prepared and issued on 15.12.2025 that is almost after nearly 130 days of its receipt opining that Mephedrone was found in the sample packet. It is well-established law that a seizure officer cannot be said to be an expert within the meaning of Section 45 of the Evidence Act but only on the basis of observation and opinion, based on past experience of the seizure officer, liberty of a person is put to stake, which in my considered opinion, is not justified in any manner. Apart from it, this determination/classification/ of the contraband on the basis of so-called past experience of the seizure officer not only effect the rights of an accused but it also give impact on the trial and investigation.

8. Section 167(2) Cr.P.C. confers powers on the Magistrate to commit to custody an accused person and there is limitation of 90 days and 60 days, as the case may be. This provision is related to information to the police and their powers to investigate. Any further remand to judicial custody beyond 90 days and 60 days without the charge-sheet being presented before the Court will be without the authority of law.

9. Sub Section (4) of Section 36A of the NDPS Act provides that:-

“In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to “ninety days”,

where they occur, shall be construed as reference to "one hundred and eighty days"

10. Thus, whether the investigation is to be completed within sixty days or one hundred and eighty days is totally dependent upon FSL report. If the FSL report affirms the idea/estimation or presumption of the seizure officer and matter involves recovery of commercial quantity, investigation should be completed within 180 days. But in case, FSL report does not match with the opinion of the Seizure officer and give report of presence of any other substance which may not be punishable under the NDPS Act or if punishable under the NDPS Act but if the recovered quantity is below commercial, in that eventuality, investigation is to be completed within 60 days and not in one hundred and eighty days.

11. In my thoughtful consideration, FSL report is the most important thing in an NDPS case upon which, entire investigation and trial revolve. In the instant case, FSL report was issued after almost 130 days of receipt of the samples and upon analysis, 'Mephedrone' was detected. As per the prosecution case, contraband weighing 36 grams 86 milligrams was recovered from the petitioner and co-accused Sunil Kumar whereas commercial quantity of 'Mephedrone' prescribed under the Act is 50 Grams. Thus, the maximum time period to complete investigation and to file result of investigation is 60 days. Any further remand to judicial custody beyond 60 days without the charge-sheet being presented before the Court will be without the authority of law. Here in this case, charge-sheet has been filed on 06.10.2025 whereas FIR has

been registered on 09.07.2025 and on the same day, the petitioner was arrested.

12. 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 fact that as per FSL report, upon analysis, Mephedrone was detected in the sample, as also the fact that recovered contraband is below commercial quantity and trial will take considerable time in its conclusion as well as looking to the fact that petitioner is in custody since 09.07.2025, but without commenting anything on the merits and demerits of the case, I deem it proper to allow the second bail application.

13. This second bail application is accordingly allowed and it is directed that accused-petitioner- **Jitendra Kumar S/o Shri Pokharmal** 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.

14. It is made clear that the accused petitioner shall not involve in any similar offence during currency of the bail and he shall mark his presence in the concerned local police station in the first week of every month till conclusion of trial.

15. 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.

16. 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.

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

18. 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.

19. In identical facts and circumstances, this Court, vide order dated 14.02.2025 passed in S.B. Criminal Misc. Bail Application No.164/2025, issued directions to the Director General of Police, Jaipur, to take concrete steps to ensure that FSL reports are made available within a period of 60 days from the date of arrest. Hence, the Director General of Police, Jaipur, is directed to apprise this Court, on the next date of hearing, of the steps taken or the mechanism formulated, in pursuance of the directions issued by this Court in the aforesaid identical matter, to ensure that FSL reports are obtained on a priority basis, preferably within a period of 60 days.

20. A copy of this order be sent to Director General of Police, Jaipur forthwith.

21. List this case on 21.01.2026 for necessary compliance.

(ANIL KUMAR UPMAN),J