RAJASTHAN HIGH COURT
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 1368/2026
CNR: RJHC010057532026 | URN: CRLMB / 3209U / 2026

Rajasthan High Court
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Kamal Sen S/o Shyamlal Sen, Aged About 35 Years, Resident Of Village Kheri, Gram Panchayat Aral, Police Thana Kotwali Chittorgarh, Tehsil And District Chittorgarh (At Present Lodged In District Jail Chittorgarh)

----Petitioner

Versus

Union Of India, Through Special Public Prosecutor (Cbn)

----Respondent

Connected With

S.B. Criminal Miscellaneous Bail Application No. 473/2026
CNR: RJHC010023092026 | URN: CRLMB / 1139U / 2026

Rajmal S/o Bagdiram Kumawat, Aged About 45 Years, R/o Gram Kheri, Gram Panchayat Aral, Police Station Kotwali District Chittorgarh, Rajasthan. (At Present Lodged In District Jail Chittorgarh)

----Petitioner

Versus

Cbn, Through Special Pp

----Respondent

For Petitioner(s)	:	Mr.Shiv Kumar Bhati
For Respondent(s)	:	Mr.M.R.Pareek,Spl. PP

HON'BLE MR. JUSTICE FARJAND ALI

Order

20/11/2026

1.The jurisdiction of this Court has been invoked by way of filing the instant applications under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, at the instance of the accused-petitioners seeking their enlargement on bail in connection with

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the same FIR. Since both the applications arise out of the same set of facts and involve a common alleged recovery, they are being decided together by this common order. The requisite particulars of both the applications are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	38/2025
2.	Concerned Police Station	C.B.N., Neemuch
3.	District	Chittorgarh (Rajasthan)
4.	Offences alleged in the FIR	Sections 8/18 and 8/29 of the NDPS Act for Kamal Sen Sections 8/18 and 8/25 of the NDPS Act for Rajmal
5.	Offences added, if any	-
6.	Date of passing of impugned order	19.12.2025 (Kamal Sen) 14.10.2025 (Rajmal)

2. The concise facts of the case, as emanating from the prosecution story, are that on 14.04.2025, acting upon secret information, the preventive team of the office of the Deputy Narcotics Commissioner, Neemuch, proceeded towards the service road connecting the Chittorgarh-Kota Highway. Upon reaching the said location, the team allegedly intercepted an Alto car bearing registration No. RJ-06-CB-3357, which was coming from Ghatiyawali Road. The occupants of the vehicle allegedly attempted to flee upon being signalled to stop; however, they were apprehended by the team. Upon inquiry, the driver disclosed his identity as Rajmal S/o Bagdiram Kumawat, whereas the co-driver disclosed his identity as Kamal Sen S/o Shyamlal Sen. It is alleged that upon conducting a search of the vehicle, 6.148 kilograms of contraband opium, packed in four plastic packets and

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kept inside a plastic bag, was recovered. Since the occupants allegedly failed to produce any valid permit or authority for possessing and transporting the said contraband, the proceedings under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, were initiated. Consequently, FIR No. 38/2025 came to be registered at Police Station C.B.N., Neemuch, for the offences punishable under Sections 8/18 and 8/29 of the NDPS Act qua petitioner Kamal Sen and under Sections 8/18 and 8/25 of the NDPS Act qua petitioner Rajmal. Upon completion of the investigation, the charge-sheet was filed against the accused-petitioners, and they were remanded to judicial custody. Their respective bail applications came to be rejected by the learned Special Judge, NDPS Act Cases No. 01, Chittorgarh, vide orders dated 19.12.2025 and 14.10.2025, respectively. Hence, the present applications.

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3. It is contended on behalf of the accused-petitioners that no case for the alleged offences is made out against them and their incarceration is not warranted. There are no factors at play in the case at hand that may work against grant of bail to the accused-petitioners and they have been made an accused based on conjectures and surmises.

4. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail applications and submits that the present case is not fit for enlargement of accused on bail.

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5. Have considered the submissions advanced by learned counsel for the parties and have meticulously perused the material available on record, including the statements of the prosecution witnesses recorded during trial. This Court finds that certain circumstances emerging from the cross-examination of PW-2, who is one of the material witnesses associated with the alleged search and seizure proceedings, warrant due consideration.

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5.1 A perusal of the cross-examination of PW-2 reveals that the alleged place of occurrence is situated approximately 60 kilometres away from the CBN office, Neemuch. The witness has admitted that there are several villages situated in between and that the highway remains frequented by members of the public. He has further admitted that no independent witness was taken along by the team from the route, though he volunteered that certain persons passing by were requested to become witnesses but declined on account of their personal engagements. Significantly, he admitted that no action whatsoever was taken against those persons who allegedly refused to participate in the proceedings. He also stated that approximately three to four persons were stopped at the spot, but their names and addresses were not remembered by him.

5.2 More importantly, the cross-examination of PW-2 brings to the fore a significant circumstance concerning the manner and place in which the search and seizure documentation was completed. Although the prosecution maintains that the alleged recovery was effected at the spot on 14.04.2025, the seizure panchnama

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(Exhibit P-2) admittedly bears the date 15.04.2025. In an attempt to explain the discrepancy, the witness stated that the seizure proceedings had commenced on 14.04.2025 and continued in the form of a running panchnama, which was ultimately completed and printed on 15.04.2025. He further stated that the contraband had been seized and sealed at the spot on 14.04.2025 itself, whereas the panchnama was being simultaneously prepared on the official computer.

5.3 However, the said explanation has to be appreciated in conjunction with the other admissions made by the witness. PW-2 categorically admitted that the documents marked as Exhibits P-3, P-4 and P-5 were prepared at the Neemuch office. The petitioners were brought to the office on 14.04.2025 and were kept in the room of the Superintendent of the office during the night. Their statements under the NDPS Act were not recorded on 14.04.2025; rather, the statement of petitioner Rajmal was commenced at 9:00 AM on 15.04.2025 and concluded at 12:30 PM. The witness also admitted that the formal seizure panchnama was printed on 15.04.2025. Further, the videography-related documentation and the vehicle-related proceedings are also stated to have been prepared at the office on 15.04.2025.

5.4 Another relevant circumstance emerging from the cross-examination is that the team had reached the alleged place of occurrence at approximately 7:30 PM on 14.04.2025, by which time it had become dark. The witness also admitted that the

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proceedings were conducted at a location situated approximately 60 kilometres away from the CBN office. Thus, the admitted circumstances concerning the distance of the place of occurrence, the non-association of independent witnesses, the preparation of material documents at the departmental office and the subsequent completion and printing of the seizure panchnama assume significance while examining the sanctity of the alleged recovery.

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5.5 At this juncture, it would be apposite to refer to the decision rendered by this Court in **S.B. Criminal Misc. Third Bail Application No. 13299/2024, Dharmendra Singh S/o Jaswant Singh Rajput v. Union of India, through CBN**, wherein this Court, while dealing with an analogous circumstance concerning the preparation of seizure proceedings at a place other than the alleged place of recovery, observed as under:

> *14. Dealing with the aforesaid aspect, this Court has passed an order dated 08.05.2024 in SBCRLMB No.5457/2024 (Major Singh Vs. State of Rajasthan) while observing as under :-*
>
> > *"13. The admission made by the above witnesses has put a serious dent on the story of the prosecution to the effect that a vehicle was intercepted by the police at a particular place and time and certain quantity of contraband got recovered from it. In order to sanctify the search and seizure of contraband, it was expected from the Seizure Officer to prepare the memos at the crime place that too in the presence of the independent witnesses if available nearby the place. Present is a case where several persons were available at or nearby the crime place but not a single independent witness*

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has corroborated the factum of recovery memo. Taking of the vehicle and the accused from the crime scene to the police station and then preparation of memos within the close precinct of the police station, as per their convenience has lost the sanctity of the search and seizure. Law requires that if certain thing is recovered at a particular place on the given time then the memos should be prepared at the same place in the presence of witnesses and accused. Although, it is a prima face and tentative opinion of this Court only for the purpose of justifiable disposal of the bail application.

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14. Discussing the above circumstance, this Court has taken a view in SBCRLMB No.11544/2023 titled as Kamlesh Kumar Vs. Union of India decided on 30.10.2023. The relevant part is reproduced as under:

5. Have considered the submissions made by both the parties and have perused the material available on record. The circumstances created by the Police team in this matter brings the recovery into doubt. The statement of the seizing officer recorded under Section 164 of Cr.P.C. reveals that the process of seizure was conducted at the Office of Superintendent CBN, Neemach instead of the place where the recovery took place and the same is corroborated by the Panchnama Japti. He submits that the sanctity of the seizure made in the premises of Police Station is highly doubtful and no explanation furnished by the team members as to why the search and seizure was not made at the place where the vehicle was intercepted. It is not comprehensible as to what was the need to conduct the seizure at a place located 20-25 kms away from the place where the vehicle was intercepted; that too, at the premises

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of Office of Superintendent CBN, Neemach and no reasonable explanation has been furnished for the same. When the actual recovery had already been made and search and seizure had already been conducted at the shop and warehouse of the petitioner beforehand, then why was the memo regarding the same prepared after a significant period of time had passed at another place (CBN, Neemach) making it seem as if seizure/recovery memo can be prepared as a paper formality whenever it is convenient when the actual, physical recovery had been made at a different place, thus, watering down the sanctity of seizure/ recovery memo.

15. The credibility of the seizure memo looses significance if the thing is recovered at a distant place and it is taken by the police from the crime scene to the police station and then memos got prepared in the police station. If it is allowed then why not in every case the things may be taken from the crime scene and wherefter, the entire proceeding be undertaken in the premises of police station and then why not in every case the accused can be detained from any place and whereafter his/her/their memo of arrest be prepared in the police station. This Court is of the view that if anything or any incriminating material is collected or recovered from a particular place and at a particular time then the seizure memo/recovery memo should have been prepared at the same place and that too in the presence of the witnesses of the same locality. A slight departure or deviation can be permitted in case when no other person is available to verify the fact of recovery at the crime scene then the members of the police party can be made witness of the fact of recovery. In certain circumstances, when there is heavy rain or there is heavy traffic on the

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highway or other like situation, in that cases also, the seizure memo can be prepared at a nearby place so that the proceedings can be undertaken calmly or safely. However, it is not permissible for a police officer to pick the contraband from a particular place then carry with him to the police station which is situated at a far place and whereafter prepare the seizure memo in the police station premises. The moment this kind of practice is permitted; the day is not far when there would be a trait that the police officers will claim that though the memos were prepared in the police station but the things were recovered from a different place. In that situation, the purity, originality, genuineness and virtuousness would be lost and at the same time, there would be serious aspersions regarding fairness and genuineness of factum of seizure."

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5.6 The aforesaid observations assume relevance in the present case as well. The prosecution version, when examined in the light of the admissions made by PW-2, raises a pertinent question as to why the material documentation relating to the alleged seizure, videography and vehicle proceedings was completed at the departmental office on the following day, particularly when the alleged place of recovery was situated approximately 60 kilometres away and the proceedings are stated to have commenced at the spot on 14.04.2025. The fact that the formal seizure panchnama (Exhibit P-2) bears the date 15.04.2025, coupled with the admission that Exhibits P-3, P-4 and P-5 were prepared at the Neemuch office, lends significance to the petitioners' contention regarding the manner in which the proceedings were conducted.

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5.7 It is also noteworthy that both the witnesses associated with the seizure proceedings are stated to be officials of the Narcotics Department itself. Although the mere non-association of independent witnesses, by itself, may not necessarily vitiate a search or seizure, the said circumstance cannot be viewed in isolation. It has to be examined cumulatively with the distance of the alleged place of recovery from the departmental office, the admitted preparation of material documents at the office, the discrepancy in the dates appearing on the seizure documentation and the absence of any satisfactory explanation for not completing the formal proceedings at the alleged place of recovery.

5.8 This Court is conscious of the fact that the question as to whether the alleged recovery was actually effected in the manner asserted by the prosecution, and whether the subsequent preparation of the documents affects the evidentiary value of the recovery, would ultimately be adjudicated by the learned trial Court upon appreciation of the entire evidence. Nevertheless, at this stage, the admissions elicited during the cross-examination of PW-2 cannot be brushed aside as inconsequential, particularly when they directly concern the sanctity and authenticity of the foundational search and seizure proceedings.

5.9 So far as the embargo contained in Section 37 of the NDPS Act is concerned, this Court is mindful that the alleged quantity of 6.148 kilograms of opium falls within the category of commercial quantity and, consequently, the statutory rigours of the aforesaid

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provision are attracted. However, the application of Section 37 cannot be considered in disregard of the material circumstances emerging from the prosecution's own evidence. The Court is required to undertake a prima facie assessment of the material available on record to ascertain whether reasonable grounds exist for believing that the accused may not be guilty of the alleged offence and whether there is any likelihood of their committing an offence while on bail.

5.10 In the present matter, the admissions made by PW-2 during cross-examination, particularly concerning the preparation of the seizure-related documents at the departmental office on the following day, the non-association of independent witnesses despite the availability of persons in the vicinity and the other circumstances discussed hereinabove, create substantial doubt, at this stage, regarding the manner in which the alleged search and seizure proceedings were conducted. These circumstances, when considered cumulatively, furnish reasonable grounds for entertaining a prima facie belief in favour of the petitioners for the limited purpose of consideration of their bail applications.

5.11 It is further noticed that the investigation has culminated in the filing of the charge-sheet and the petitioners are already facing trial. Having regard to the nature of the controversy, the evidence required to be appreciated and the time ordinarily consumed in the adjudication of such matters, there is a likelihood that the trial may take considerable time to conclude. Continued

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incarceration of the petitioners, in the aforesaid circumstances, would not serve any useful purpose, particularly when their presence during trial can be secured by imposing appropriate conditions. Thus, without expressing any final opinion on the merits of the case, this Court is of the considered view that the petitioners have made out a case for grant of bail.

6. It is trite law that at the pre-conviction stage, grant of bail is the rule and its denial is an exception, subject, of course, to the statutory restrictions governing the grant of bail in particular offences. The object of keeping an accused in custody during the pendency of trial is not punitive but primarily to secure his presence during the proceedings and to ensure that the administration of justice is not obstructed. The fundamental presumption of innocence continues to operate until the guilt of the accused is established in accordance with law. In the present case, having regard to the peculiar circumstances emerging from the cross-examination of PW-2, the prima facie doubts surrounding the search and seizure proceedings and the likelihood of protracted trial, this Court finds it appropriate to extend the benefit of bail to the accused-petitioners, subject to the conditions imposed hereinafter. Needless to observe that the observations made hereinabove are confined strictly to the adjudication of the present bail applications and shall not prejudice the trial on merits.

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7. Accordingly, both the instant bail applications under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, are allowed. It is ordered that the accused-petitioners, namely, Kamal Sen and Rajmal, as named in the cause title, shall be enlarged on bail in connection with FIR No. 38/2025, registered at Police Station C.B.N., Neemuch, upon each of them furnishing a personal bond in the sum of Rs.50,000/- with two sureties of Rs.25,000/- each to the satisfaction of the learned trial Court, with the stipulation that they shall appear before the Court concerned on all dates of hearing as and when called upon to do so.

(FARJAND ALI),J

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