



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Miscellaneous Bail Application No. 3320/2025
CNR: RJHC010220122025
URN: CRLMB / 7290U / 2025

Arjun S/o Hariram Ji, Aged About 23 Years, R/o Peethawas,
Police Station Dangiawas, Dist. Jodhpur (Rajasthan).
(Presently Lodged At Sub Jail, Bali)

-----Petitioner

Versus

State Of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Bhagirath Ray Bishnoi
For Respondent(s) : Mr. Hathi Singh Jodha, PP

HON'BLE MR. JUSTICE SANDEEP SHAH
Order

REPORTABLE

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| 1. | Date of conclusion of arguments | 14/07/2026 |
| 2. | Date on which judgment was reserved | 14/07/2026 |
| 3. | Whether the full judgment or only the operative part is pronounced: | Full Judgment |
| 4. | Date of pronouncement | 15.07.2026 |

1. The applicant has filed the present bail application under Section 483 of BNSS being aggrieved against the order dated 29.01.2025 passed by the learned Additional Sessions Judge, Desuri, District Pali in Criminal Misc. Application No.20/2025, whereby the bail application filed by the accused-applicant under Section 483 B.N.S.S. was rejected. The accused-applicant is behind the bars, pursuant to the F.I.R. No.24/2024 registered at Police Station Desuri, District Pali against the accused-applicant for offences punishable under Sections 8/15 and 29 of NDPS Act 1985.

2. The brief facts of the case are that on 12.02.2024, during a regular Nakabandi/blockade being undertaken, the police officials



left the Police Station premises at 4:50 AM and commenced the Nakabandi/blockade. At around 5:00 AM, a secret information was received by the SHO, Ravindra Pal Singh, to the effect that a pickup vehicle carrying poppy husk, along with a small car escorting the same, was about to travel from Charbhuja to Nadol, and therefore, appropriate proceedings be undertaken. Based upon the said information, Head Constable Kanaram, posted at Police Chowki, Ghanerao, was informed and directed to reach the place of Nakabandi/blockade, where he arrived at 5:15 AM. During the Nakabandi/blockade, at around 5:20 AM, a Baleno car was seen approaching, which was stopped. Upon being intercepted, the driver disclosed his name as Surender Singh, while the co-occupant disclosed his name as Dewa Ram. Upon checking the mobile phone of the driver, it was found that several calls had been made to one particular number and, upon being questioned in this regard, he refused to divulge any information. In the meanwhile, at around 5:23 AM, a white-coloured pickup bearing Registration No. RJ-19 GC-7267 was seen approaching. However, upon noticing the police officials, the driver suddenly attempted to take a U-turn, whereupon the police officials chased the pickup in their government vehicle and simultaneously informed the toll booth as well as the Police Control Room, Pali, regarding the chase being undertaken.

2.1 Ultimately, the pickup was overtaken by the police vehicle. However, in the meanwhile, two occupants of the vehicle ran away except for the driver. Upon being asked, the driver disclosed his name as Arjun son of Hariram, and further informed that the persons who had fled were Dinesh son of Hiraram, and Gopal



Dewasi. He further disclosed that the pickup contained a few sacks of poppy husk. Thereafter, the police officials served a notice under Section 50 of the Act of 1985 upon the accused-applicant and searched him and the vehicle. Upon search, 162.800 kg of poppy husk was recovered from the vehicle in question. It was further found that the accused-applicant was not only the driver but also the owner of the vehicle in question.

2.2 The accused-applicant was thereafter arrested and the FIR in question came to be registered. Upon completion of the investigation, the charge-sheet has been filed and, as of now, the trial is yet to commence inasmuch as the charges have not been framed. The same is apparent from the communications dated 30.01.2026 and 29.05.2026 sent by the learned Trial Court to the Deputy Registrar of this Court in response to the information sought by this Court regarding the stage of the trial. It has been informed therein that the matter is pending consideration on account of the non-service of the arrest warrant upon co-accused Devaram, whose bail bonds had been forfeited long back and who has not been apprehended since then.

3. Learned counsel for the applicant raises two primary grounds. Firstly, that there is non-compliance of the mandatory provisions of Section 42 of the Act of 1985, inasmuch as no information was forwarded to the superior officers under Section 42(2). He further submits that there is also non-compliance of Section 42(1), as no authorization was obtained for undertaking the search, which admittedly was conducted between sunset and sunrise. Secondly, he submits that the case in hand is also one of long incarceration, inasmuch as the accused-applicant was



arrested on 12.02.2024, and till date, the trial has not even commenced, with no fault attributable to the accused-applicant in this regard. He submits that the accused-applicant has neither delayed the trial nor contributed to any such delay. He further submits that the accused-applicant does not have any criminal antecedents, and therefore, if enlarged on bail, there is no apprehension of his getting involved in any kind of criminal activity whatsoever. He, therefore, implores this Court to allow the bail application of the accused-applicant.

4. *Per contra*, learned Public Prosecutor opposes the bail application and submits that the case in hand is one of chance recovery, and therefore, the provisions of Section 42 would not apply. He further submits that since a commercial quantity of the narcotic substance has been recovered, the embargo contained under Section 37 of the Act of 1985 would apply with full rigour, and the accused-applicant has not been able to satisfy the twin conditions as envisaged under Section 37 of the Act of 1985.

5. Heard learned counsel for the applicant as well as the learned Public Prosecutor and perused the material available on record.

6. As regards the argument with regard to applicability of Section 42 of the Act of 1985, is concerned, it will be trite to quote Section 42 of the Act of 1985, which provides as under:-

"42. Power of entry, search, seizure and arrest without warrant or authorisation.—

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including paramilitary forces or armed forces as is





empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,--

- (a) enter into and search any such building, conveyance or place;*
- (b) in case of resistance, break open any door and remove any obstacle to such entry;*
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and*
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:*

Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power



shall be exercised by an officer not below the rank of sub-inspector.

Provided further that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

6.1 A perusal of the same will reveal that, if the Officer authorized is having any **reason to believe from personal knowledge or information given by any person and, taken down in writing that Narcotic Drug or Psychotropic Substance or Controlled Substance in respect of which an offense punishable under this Act has been committed** or other ancillary aspects qua the same, then he can **between sunset and sunrise**, enter into the premises, break open the door, undertake seizure of the contraband, detention and search, and arrest of the person concerned. Thus, it is clear that the powers envisaged under Section 42(1) of the Act of 1985 are ordinarily to be exercised between sunrise and sunset. If such search or seizure is to be undertaken between sunset and sunrise, then the arrest warrant or the authorization contemplated under Section 41 of the Act of 1985 is mandatory. However, the proviso to Section 42(1) of the Act of 1985 provides that where the officer concerned has reason to believe that a warrant or authorization cannot be obtained without affording an opportunity for the



concealment of evidence or the escape of the offender, he may undertake the search at any time **between sunset and sunrise** after recording the grounds of such belief. Section 42(2) further provides that where such grounds of belief have been recorded, a copy thereof shall be forwarded to the immediate superior officer within a period of 72 hours.

6.2 Needless to emphasize, the compliance of Section 42 of the Act of 1985 has, time and again, been held to be mandatory by the Hon'ble Apex Court after considering the scheme and provisions of the NDPS Act, 1985. The Constitution Bench of the Hon'ble Apex Court, in the case of **Karnail Singh v. State of Haryana, (2009) 8 SCC 539**, held as under:-

"35. In conclusion, what is to be noticed is that Abdul Rashid did not require literal compliance with the requirements of Sections 42(1) and 42(2) nor did Sajan Abraham hold that the requirements of Sections 42(1) and 42(2) need not be fulfilled at all. The effect of the two decisions was as follows:

(a) The officer on receiving the information [of the nature referred to in sub-section (1) of Section 42] from any person had to record it in writing in the register concerned and forthwith send a copy to his immediate official superior, before proceeding to take action in terms of clauses (a) to (d) of Section 42(1).

(b) But if the information was received when the officer was not in the police station, but while he was on the move either on patrol duty or otherwise, either by mobile phone, or other means, and the information calls for immediate action and any delay would have resulted in the goods or evidence being removed or destroyed, it would not be feasible or practical to take down in writing the information given to him, in such a situation, he could take action as per clauses (a) to (d) of Section 42(1) and thereafter, as soon as it is practical, record the



information in writing and forthwith inform the same to the official superior.

(c) In other words, the compliance with the requirements of Sections 42(1) and 42(2) in regard to writing down the information received and sending a copy thereof to the superior officer, should normally precede the entry, search and seizure by the officer. But in special circumstances involving emergent situations, the recording of the information in writing and sending a copy thereof to the official superior may get postponed by a reasonable period, that is, after the search, entry and seizure. The question is one of urgency and expediency.

(d) While total non-compliance with requirements of sub-sections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance with Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending of a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

6.3 The Hon'ble Apex Court has also dealt with a contingency, as in the present case, where the information is received by the officer while he is not present at the Police Station but is on patrol duty or otherwise on the move. Even in such circumstances,





delayed communication of the information has been held to be permissible. However, total non-compliance has been held to be impermissible.

7. Coming to the facts of the present case, a perusal of the secret information recorded at 5:00 AM by the officer concerned reveals that the same was received at 5:00 AM. At the relevant time, the SHO concerned was not present at the place where the Nakabandi/blockade was being undertaken and, thereafter, directed Head Constable Kanaram, posted at Police Chowki, Ghanerao, to reach the site of the Nakabandi/blockade, whereafter the vehicle in question came to be intercepted. A bare perusal of the seizure memo (page No. 33 of the paper book) reveals that the officer concerned had sufficient time to comply with the provisions of Section 42 of the Act of 1985; however, the same was not done. Not only this, even after receiving the information and undertaking the entire proceedings during the period between sunset and sunrise, no memorandum under Section 42 of the Act of 1985 was forwarded to the superior officers. The officer concerned, however, complied with the provisions of Section 50 of the Act of 1985, which is evident from the notice served upon the accused-applicant (page No. 40 of the paper book), wherein the fact of receipt of the secret information has also been specifically mentioned. Thus, even though the alleged search has been shown to have been undertaken at 11:10 AM, the vehicle had already been intercepted at 5:23 AM, and there has been total non-compliance with the provisions of Section 42(2) of the Act of 1985, inasmuch as no information was ever sent to the superior officers. In the entire paper book, there is not a single memorandum or document



prepared by the Seizure Officer or the SHO concerned indicating that the information was forwarded to the superior officers in compliance with Section 42 of the Act of 1985. Furthermore, the present case cannot be said to be one of chance recovery, as the secret information regarding the transportation of the contraband had admittedly been received prior to the seizure being undertaken. Thus, prima facie, there appears to be total non-compliance with the provisions of Section 42 of the Act of 1985 in the case at hand.

8. Coming to the second argument advanced by learned counsel for the applicant with regard to the delay in the trial; it is true that delay in the trial, by itself, cannot be a ground to enlarge an accused-applicant on bail. The Hon'ble Apex Court, in the cases of ***Union of India v. Vigin K. Varghese, 2025 SCC OnLine SC 2440, Union of India v. Namdeo Ashruba Nakade, 2025 SCC OnLine SC 3049, State of Punjab v. Balraj Singh @ Billa, 2026 SCC OnLine SC 1058, and State of Punjab v. Sukhwinder Singh @ Gora, 2026 SCC OnLine SC 671***, has categorically held that even in cases of delay, the satisfaction mandatorily required under Section 37 of the Act of 1985 has to be recorded. However, in the present case, the delay is not attributable to the accused-applicant, who has remained behind bars for almost two and a half years without the trial having even commenced, which is evident from the reports submitted by the learned Trial Court to the Deputy Registrar General of this Court, as specified supra. Even otherwise, the accused-applicant has been able to prima facie demonstrate that he is not guilty of the offence, inasmuch as there appears to be non-compliance with the



mandatory provisions of Section 42 of the Act of 1985. Furthermore, the accused-applicant does not have any criminal antecedents, and the learned Public Prosecutor has not been able to point out any material to indicate that the accused-applicant is likely to commit any offence while on bail. Thus, the twin conditions envisaged under Section 37 of the Act of 1985 stand *prima facie* satisfied in the facts of the present case.

9. Considering the overall facts and circumstances of the case, particularly the *prima facie* non-compliance with the mandatory provisions of Section 42 of the Act of 1985, coupled with the gross delay in even commencing the trial, this Court deems it appropriate to enlarge the accused-applicant on bail.

10. Consequently, the bail application under Section 483 B.N.S.S. is **allowed**. It is ordered that the accused-applicant **Arjun S/o Hariram Ji**, arrested in connection with F.I.R. No.24/2024 registered at Police Station Desuri, District Pali, shall be released on bail, if not wanted in any other case, provided he furnishes a personal bond of Rs.50,000/- and two sureties of Rs.25,000/- each, to the satisfaction of learned Trial Court, for his appearance before that Court on each & every date of hearing and whenever called upon to do so till completion of the trial.

11. It is further, made clear that findings recorded/observations made herein-above are for limited purposes of adjudication of bail application and the same shall not prejudice the trial of the case in any manner.

(SANDEEP SHAH),J