



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

S.B. Criminal Miscellaneous Bail Application No. 6014/2026
CNR: RJHC010451152026 | URN: CRLMB / 13341U / 2026

Nand Kishore S/o Omparkash, Aged About 19 Years, R/o Village Bhatelai Purohitan, Police Station Balesar, District Jodhpur, At Present R/o Vishnoiyan Ka Bass, Gajanand Colony, Sunthala, Police Station Partap Nagar, District Jodhpur, (Rajasthan) (Lodged In Central Jail, Jodhpur)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Bhagirath Ray Bishnoi
Mr. Manohar Singh Hada
For Respondent(s) : Mr. Hanuman Prajapati, PP assisted
by Mr. Omprakash Choudhary

HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Order

Reportable

Date of conclusion of arguments	12.08.2026
Date on which judgment was reserved	12.08.2026
Whether the full judgment or only operative part is pronounced	Full
Date of pronouncement	25.08.2026

1. The applicant has filed the present bail application under Section 483 of BNSS, being aggrieved against the order dated 27.04.2026 passed by the learned Special Judge, NDPS Act Cases No.01, Jodhpur, District Jodhpur, in Criminal Misc. Application No. 299/2026, whereby the bail application filed by the accused-applicant was rejected. The accused-applicant is behind the bars pursuant to F.I.R. No.280/2024 registered at Police Station Pratap



Nagar, District Jodhpur, for offences punishable under Sections 8/21 of the NDPS Act, 1985.

2. The brief facts of the present case are that, upon receipt of secret information, the SHO reached the house of Saiyad Mustak at about 10:00 PM and found two persons, namely Bajrang and Nand Kishore, sitting there. Upon their personal search 157.25 gm of Mephedrone (MD) was recovered from Bajrang and 180 gm. of Mephedrone (MD) was recovered from petitioner Nand Kishore. Both the accused were arrested. After investigation the charge sheet has been filed The petitioner filed the bail application before the learned special court, however the same was rejected vide order dated 27.04.2026. hence the preset bail application has been filed.

3. Learned counsel, while arguing the matter submits that it is an admitted position that the search was conducted between sunset and sunrise, at about 10:00 PM, and therefore, the statutory safeguards contemplated under Section 42 of the NDPS Act were squarely attracted. He further submits that although the information was received at about 08:30 p.m., no warrant was obtained despite sufficient time being available. Learned counsel further submits that the recovery memo was prepared at about 00:05 a.m. on 15.12.2024, and the same does not disclose that any warrant had been obtained for conducting the search of the premises under section 42(1).

4. Learned counsel further argues that although the prosecution claims that the information was communicated to the higher



officials within the period of 72 hours as contemplated under Section 42(2) of the NDPS Act, there is no document on record demonstrating that such information was in fact communicated to the superior officer within the prescribed period. The document alleged to be prepared is after though and prepared subsequently, and not prior to the search. In the absence of any contemporaneous document evidencing such communication, the alleged compliance with Section 42(2) remains unsubstantiated. Further, mere recording that warrant could not be obtained by itself, cannot amount to complete compliance with the statutory requirements.

5. It is submitted that once the prosecution seeks to rely upon the exception contained in the proviso, it was incumbent upon the prosecution to demonstrate strict compliance with the safeguards accompanying such exercise of power. Learned counsel, therefore, submits that failure to establish compliance with the mandatory statutory safeguard goes to the root of the prosecution case, and vitiates the proceedings arising out of the alleged search and recovery. Hence, it is submitted that the petitioner cannot be kept behinds the bars and he deserves to be enlarged on bail.

6. Learned counsel for the petitioner has also relied upon the order passed by the Coordinate Bench of this Court in **Arjun v. State of Rajasthan**, passed in S.B. Criminal Misc. Bail Appl. No. 3320/2015, decided on 15.07.2026, and submitted that, in similar circumstances, this Court had enlarged the accused on bail upon



finding non-compliance with the provisions of Section 42 of the Act.

7. Per contra, learned Public Prosecutor submits that the information under Section 42 of the Act of 1985 was duly written down, and after recording the reasons for emergent action, the copy of the same was forwarded through Constable Bagda Ram, thereby complying with the requirement of Section 42(1) & (2), and the same was received in the office of the superior officer at about 11:00 PM on 14.12.2024. He therefore submits that in the present case there is due compliance of the provisions of section 42, and no case of any bail is made out, specially when the contraband recovered from the petitioner is above commercial quantity.

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

9. Section 42 of the NDPS Act empowers an authorised officer to enter, search, seize and arrest without warrant in respect of a building, conveyance or enclosed place, where the officer has reason to believe, from personal knowledge or information received, that a narcotic drug or psychotropic substance is concealed there. Such information must ordinarily be recorded in writing, and a search should normally be conducted between sunrise and sunset. However, where a search is required between sunset and sunrise, the second proviso to sub-section (1) provides that the officer must record the grounds for believing that



obtaining a warrant would allow the offender to escape or evidence to be concealed. Further, sub-section (2) provides that a copy of such information or the grounds of belief must be sent to the immediate superior officer within 72 hours.

10. The Constitution Bench of the Hon'ble apex court in **Karnail Singh v. State of Haryana, (2009) 8 SCC 539**, after considering the scheme and provisions of the NDPS Act, has held that compliance of Section 42 is mandatory. It was observed 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 Sajjan 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."

11. The Hon'ble Apex Court has observed that where information is received while the officer is on patrol duty or otherwise on the move and calls for immediate action, compliance with Section 42 may, in an emergent situation, be postponed for a reasonable period. However, total non-compliance with the requirements of Section 42(1) and (2) is impermissible.

12. Applying the aforesaid principles to the facts of the present case, the material available on record reveals that secret information from the informer was received by the SHO at about 08:30 p.m. on 14.12.2024, while he was on patrol in the area. The information was to the effect that Bajrang and Nand Kishore were sitting in the rented house of Saiyad Mustaq and that immediate action was required. The said information was reduced into writing at 08:30 p.m., and the grounds for proceeding without



obtaining a warrant were also recorded. The grounds so recorded disclose an apprehension that delay in obtaining the search warrant would afford an opportunity for concealment or removal of the contraband. The memo of written information along with the grounds for emergent action was forwarded to the immediate superior officer, while the SHO proceeded to the place to take necessary action. The said communication was received by the superior officer at about 11:00 p.m. on 14.12.2024. He attempted to procure independent witnesses, however, none agreed to participate, where after two police personnel were taken as witnesses, and memo was prepared at about 09:40 p.m. and 09:50 p.m., respectively, near the place of search. Thereafter, the police party proceeded to the house of Saiyad Mushtak, at about 10:00, where two persons were found present, and disclosed their names as Bajrang and Nandkishore. Notices under Section 50 of the NDPS Act were served at 10.20 p.m. During their personal search 157.25 grams of MD was recovered from Bajrang, whereas 180 grams of MD was recovered from Nandkishore. The quantity recovered was above the notified commercial quantity under the Act. Thereafter the detailed seizer memo was prepared at 00:05 AM on 15.12.2024. Both the accused were arrested from the spot and charge sheet has been filed against them. The petitioner is in judicial custody since 14.12.2024.

13. Thus, the information and the grounds contemplated under Section 42(1) of the NDPS Act were recorded before the search and were thereafter forwarded to the immediate superior officer within the period prescribed under Section 42(2) of the Act. The



fact that the search was conducted during night hours, by itself, therefore, does not render the search contrary to Section 42 of the NDPS Act.

14. The contention that there was sufficient time between the receipt of the information and the search to obtain a warrant does not, by itself, render the action of the SHO contrary to Section 42 of the NDPS Act. In the present case, in fact there was no such time lapse, as the police party reached the spot at about 10:00 p.m. Moreover, the grounds recorded by the SHO disclose an apprehension of concealment or removal of the contraband, which, at this stage, prima facie appears to be satisfactory while considering the present bail application. Nevertheless, the entire evidence, including the question of compliance with the statutory requirements under Section 42 of the NDPS Act, shall be meticulously examined by the trial court at the appropriate stage of the trial.

15. However, at this stage, in view of the foregoing discussion, this Court prima facie finds due compliance with the requirements of Section 42 of the NDPS Act. Consequently, the contention of learned counsel for the petitioner regarding non-compliance with Section 42 of the NDPS Act does not merit acceptance.

16. The reliance placed by learned counsel for the petitioner upon the decision of the Coordinate Bench in *Arjun v. State of Rajasthan*, decided on 15.07.2026, does not advance the case of the petitioner, as the facts of the said case are distinguishable from those of the present case. In *Arjun* (supra) the Coordinate



Bench found that there was total non-compliance with Section 42 of the NDPS Act, whereas in the present case, the material on record shows that the information was reduced into writing, the grounds for proceeding without warrant were recorded before the search, and the same were forwarded to the immediate superior officer, which was received at about 11:00 p.m. on 14.12.2024.

Thus, the said decision does not assist the petitioner.

17. Further, the prosecution alleges recovery of 180 grams of Mephedrone from the petitioner, which is above the notified commercial quantity. Consequently, the rigours of Section 37 of the NDPS Act are attracted. On consideration of the material available on record, this Court is unable to record a satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of the alleged offence. Thus, the statutory conditions for grant of bail under Section 37 are not satisfied."

18. Consequently, no ground for grant of bail is made out. The bail application is, accordingly, dismissed. It is, however, clarified that the observations made herein are confined to the adjudication of the present bail application and shall not prejudice the trial.

(BALJINDER SINGH SANDHU),J

35/Sanjay Tanwar