



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc. Second Bail Application No. 8807/2025

Pappulal S/o Bardichand Alias Bardu Gurjar, Aged About 38 Years, R/o Gujriya Khera, P.s. Rashmi, Dist. Chittorgarh (Presently Lodged In Central Jail Chittorgarh)

-----Petitioner

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Ashok Khilery
For Respondent(s) : Mr. Shri Ram Chaoudhary,AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable-

29/01/2026

1. The jurisdiction of this court has been invoked by way of filing an application under Section 483 BNSS at the instance of accused-petitioner. The requisite details of the matter are tabulated herein below:

S.No.	Particulars of the Case	
1.	FIR Number	16/2023
2.	Concerned Police Station	Rashmi
3.	District	Chittorgarh
4.	Offences alleged in the FIR	Section 8/15,29 NDPS Act and Section 134/187 M.V. Act
5.	Offences added, if any	-
6.	Date of passing of impugned order	20.08.2024



Facts of the Case

2. The present petitioner has been arrayed as an accused in FIR No. 16/2023 registered at Police Station Rashmi, District Chittorgarh, for the alleged offences under Sections 8/15 and 8/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. As per the prosecution case, on 17.01.2023, while on routine patrol, the police officials of P.S. Rashmi intercepted a Scorpio vehicle bearing No. RJ 09 UB 0633 and a pickup vehicle. On noticing the police party, the occupants of both vehicles allegedly fled from the spot. The driver of the Scorpio was identified as Ratanlal Jat, while the driver of the pickup vehicle was identified as Pappu. Upon conducting a search of the pickup vehicle, the police claimed to have recovered 248 kilograms of poppy husk.
3. On the basis of the aforesaid incident and written report, FIR No. 16/2023 came to be registered for offences under Sections 8/15 and 8/29 of the NDPS Act, whereupon investigation was set into motion and the present petitioner was arrested and has since remained in judicial custody. The petitioner's regular bail application was earlier rejected by the learned Special Judge, NDPS Act Cases No. 1, District Chittorgarh, vide order dated 20.08.2024. Thereafter, the petitioner preferred S.B. Criminal Miscellaneous Bail Application No. 13496/2024 before this Court, which was dismissed as not pressed on 21.05.2025, with liberty expressly reserved to file a fresh bail application after the



recording of statements of prosecution witnesses Manohar and Jagdish. It was also observed that the said witnesses be examined on priority. The statements of the said material prosecution witnesses, Manohar and Jagdish, have now been duly recorded by the learned trial court, thereby satisfying the condition stipulated by this Court. Hence, this second bail application.

4. It is contended on behalf of the accused-petitioner that no case for the alleged offences is made out against him and his 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-petitioner and he has been made an accused based on conjectures and surmises.
5. Contrary to the submissions of learned counsel for the petitioner, learned Public Prosecutor opposes the bail application and submits that the present case is not fit for enlargement of accused on bail.
6. I have heard and considered the submissions made by both the parties and perused the material available on record.
7. At the outset, it is apposite to note that the petitioner's earlier prayer for bail was declined primarily in view of the gravity of the allegations and the statutory embargo contained under Section 37 of the NDPS Act. However, the subsequent developments on record reveal that the trial has not progressed beyond an incipient stage and is still at its infancy. Having regard to the nature of proceedings under



the NDPS Act and the volume of evidence ordinarily involved, the conclusion of trial is not likely to take place in the near foreseeable future. The petitioner has remained in prolonged judicial custody and continues to languish behind bars. These cumulative circumstances have persuaded this Court to re-examine the prayer for bail on merits.

8. At this juncture, it becomes imperative to examine the matter through the prism of Article 21 of the Constitution of India, which mandates that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. The expression "procedure established by law" does not merely connote the existence of a statutory provision, but necessarily implies strict, fair, reasonable and scrupulous adherence to the procedure prescribed by law. Even assuming *arguendo* that the accused-petitioner may have committed a wrong, the constitutional and statutory obligation cast upon public officers does not stand diluted. The power to apprehend, arrest, detain and further continue custody of an individual can be exercised only within the four corners of the procedure expressly provided by law, and not otherwise. Any deviation, infraction or casual compliance strikes at the very root of the legitimacy of detention and renders the continued incarceration constitutionally suspect.
9. The Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 have been



promulgated on 23.12.2022 precisely to ensure that prosecutions under the NDPS Act, which entail extremely harsh and stringent punishments, particularly in cases involving commercial quantity, where the minimum sentence is ten years extendable up to twenty years are founded upon procedural sanctity, evidentiary purity and unimpeachable compliance. These Rules were brought into force in the backdrop of earlier Standing Orders of 1988 and 1989 and a catena of judicial pronouncements, which revealed a disturbing lack of uniformity and consistency in seizure and sampling procedures. The legislative intent behind the 2022 Rules is to eliminate arbitrariness, caprice and subjective discretion, and to infuse uniformity, transparency and credibility in the process of seizure, storage and sampling of contraband.

10. It is pertinent to note that the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 had already come into force on the very date of the alleged seizure in the present case, and therefore, the seizing and investigating officers were legally bound and duty-cast to strictly adhere to the procedure prescribed under the said Rules as they stood in force on that day. Any deviation therefrom cannot be treated as a mere irregularity but assumes significance while examining the legality of the seizure and the continued detention of the accused.



11. The relevant rules of Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling, and Disposal) Rules, 2022 are reproduced herein below-

3. Classification of seized material. –

(1) The narcotic drugs, psychotropic substances and controlled substances seized under the Act shall be classified based on physical properties and results of the drug detection kit, if any, and shall be weighed separately.

(2) If the narcotic drugs, psychotropic substances and controlled substances are found in packages or containers, such packages and containers shall be weighed separately and serially numbered for the purpose of identification.

(3) All narcotic drugs, psychotropic substances and controlled substances found in loose form shall be packed in tamper proof bag or in container, which shall be serially numbered and weighed and the particular of drugs and the date of seizure shall also be mentioned on such bag or container: Provided that bulk quantities of ganja, poppy straw may be packed in gunny bags and sealed in such way that it cannot be tempered with: Provided further that seized concealing material such as trolley bags, backpack and other seized articles shall be sealed separately.

(4) The classification, weighing, packaging and numbering referred to in this sub-rule shall be done in the presence of search witnesses (Panchas) and the person from whose possession the drugs and substances was recovered and a mention to this effect shall invariably be made in the panchnama drawn on the spot of seizure.

(5) The detailed inventory of the packages, containers, conveyances and other seized articles shall be prepared and attached to the panchnama.

5. Deposit in godowns. –

(1) All seized materials referred to in sub-rule (1) of rule 3, after seizure under the Act shall be deposited by the seizing officer in the nearest godown designated under rule 4 within forty-eight hours from the time of seizure alongwith a forwarding memorandum in Form-1: Provided that the said time period may be relaxed by further twenty-four hours after providing of





reasonable justification by the officer to whom the seized material has been forwarded under sub-section (3) of Section 52 of the Act.

(2) The officer in-charge of a godown, before giving an acknowledgement of receipt in Form-2, shall satisfy himself that the seized materials are properly packed, sealed and in conformity with the details mentioned in Form-1.

(3) The officer, who had seized the material, shall hand over the acknowledgement of receipt of seized material in Form-2, alongwith all other documents relating to the seizure, to the Investigating Officer for further proceedings.

8. Application to Magistrate. –

After the seized material under the Act is forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 of the Act or if it is seized by such an officer himself, he shall prepare an inventory of such material in Form-4 and apply to the Magistrate, at the earliest, under sub-section (2) of section 52A of the Act in Form-5.

9. Samples to be drawn in the presence of Magistrate. –

After application to the Magistrate under sub-section (2) of section 52A of the Act is made, the Investigating Officer shall ensure that samples of the seized material are drawn in the presence of the Magistrate and the same is certified by the magistrate in accordance with the provisions of the said-sub-section.

13. Despatch of sample for testing. –

(1) The samples after being certified by the Magistrate shall be sent directly to any one of the jurisdictional laboratories of Central Revenue Control Laboratory, Central Forensic Science Laboratory or State Forensic Science Laboratory, as the case may be, for chemical analysis without any delay.

(2) The samples of seized drugs or substances shall be despatched to the jurisdictional laboratories under the cover of the Test Memo, which shall be prepared in triplicate, in Form-6.

(3) The original and duplicate of the Test Memo shall be sent to the jurisdictional laboratory alongwith the samples and the triplicate shall be retained in the case file of the seizing officer.



12. Rule 3 of the 2022 Rules mandates that seized narcotic substances must be classified, weighed separately, properly packaged, serially numbered and sealed, and that such exercise must be carried out in the presence of search witnesses (panchas) and the person from whose possession the contraband is recovered, with a categorical mention thereof in the panchnama. Further, Rule 5 obligates the seizing officer to deposit the seized material in a designated godown within forty-eight hours, accompanied by a forwarding memorandum in Form-1, and requires the godown in-charge to ensure that the material is properly sealed and in conformity with the seizure details. Rule 8 casts a statutory duty upon the Investigating Officer to prepare an inventory and to apply to the Magistrate at the earliest under Section 52A(2) of the NDPS Act, while Rule 9 unequivocally mandates that samples must be drawn in the presence of the Magistrate and certified by him. Rule 13 further requires that such Magistrate-certified samples be dispatched to the forensic laboratory without any delay.

13. The rationale behind requiring the presence of a Magistrate at the stage of sampling is neither ornamental nor procedural ritualism. A Magistrate is a judicial authority, independent of the executive, and his presence lends credibility, purity and legal sanctity to the entire process. While it may not be feasible, prudent or advisable to summon a Magistrate at the very moment of interception or





seizure at the spot, the Rules consciously provide a structured mechanism whereby one sample may be drawn at the spot, the bulk seized material deposited in the godown, and thereafter fresh samples drawn from the very same seized material in the presence of a Magistrate, which alone are to be sent for forensic examination. This mechanism ensures that when the chemical examiner certifies the substance, the Court can repose confidence that the sample tested is indubitably traceable to the very contraband allegedly seized, thereby ruling out substitution, tampering or manipulation.

14. The gravity of the charge under the NDPS Act necessarily demands a correspondingly higher standard of proof. Where the statute prescribes such draconian punishment, the evidence forming the foundation of guilt, particularly the sample on the basis of which an individual may be condemned to ten or twenty years of imprisonment, must be of the highest, unimpeachable and impeccable quality. A person cannot be consigned to prolonged incarceration merely on the ipse dixit of a police officer. The liberty of an individual cannot be sacrificed at the altar of procedural shortcuts or casual compliance. The harsher the punishment, the greater must be the insistence on procedural exactitude and evidentiary purity.

15. When the aforesaid statutory framework is tested against the material on record, including the statements of



prosecution witnesses Jagdish and Manoj, glaring infirmities emerge. Jagdish, a seizure witness, has categorically admitted that the seized material was not homogenised by emptying each bag on a tarpaulin, and that he himself did not prepare any writing but merely signed certain documents.

16. More significantly, it has emerged on record that although samples were allegedly drawn at the spot, the Magistrate-certified samples were admittedly not forwarded to the Forensic Science Laboratory. Instead, the sample that was dispatched for chemical examination, for the purposes of detection of contraband and establishment of the essential NDPS element, was the one allegedly drawn by the police officer at the spot. Such a course of action runs directly contrary to the mandate of Rules 8, 9 and 13 of the 2022 Rules. Consequently, the forensic report based on a non-Magistrate-certified sample loses its evidentiary sanctity and, prima facie, does not advance the case of the prosecution in the manner contemplated by law.

17. Similarly, the statement of Manoj further compounds the procedural lapses. He admitted that information under Section 42 NDPS Act was not reduced into writing by him, that he himself did not carry out documentation at the spot, that no fingerprints were taken, that no photography or videography of the seizure was carried out, that the bags bore no identification marks, that the seized vehicle yielded



no document linking it to the alleged absconding accused, and that samples were drawn by the SHO himself without the presence of a Judicial Magistrate. He further conceded that the bags were not emptied and mixed to make the contents homogeneous and that samples were taken merely from the upper portion of the bags. These admissions strike at the very core of Rules 3, 8, 9 and 13 of the 2022 Rules.

18. Suffice it to observe that, at this stage, there exists neither any documentary material nor any oral evidence, even at the pre-charge stage, to demonstrate that samples were drawn from the original seized contraband in the presence of a Judicial Magistrate and that such Magistrate-certified samples were thereafter forwarded to the Forensic Science Laboratory for chemical examination.

19. The cumulative effect of these infirmities demonstrates a prima facie non-compliance with the mandatory NDPS Rules, 2022, which were enacted to precisely avoid such arbitrariness and to ensure that the process of seizure and sampling remains free from doubt. The absence of Magistrate-certified sampling and the admissions of key prosecution witnesses collectively erode the sanctity of the alleged recovery and cast a serious shadow on the prosecution case at this stage.

20. In matters where an individual's liberty is curtailed for years together and where the statutory punishment is exceptionally severe, the Court cannot shut its eyes to



foundational procedural lapses. The detention of the accused-petitioner, in the face of such apparent violations of the procedure established by law, prima facie offends the mandate of Article 21 of the Constitution. These aspects, taken cumulatively and without expressing any final opinion on merits, constitute substantial and compelling grounds for considering the enlargement of the accused-petitioner on bail, particularly when the material prosecution witnesses have already been examined as directed earlier by this Court.

21. Before examining the applicability of the embargo contained under Section 37 of the NDPS Act to the facts of the present case, it would be apposite to advert to the statutory provision itself. The section is laid down as:

Offences to be cognizable and non-bailable- — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.



(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.].

22. Moving on to the impediments contained under Section 37 of the NDPS Act, it is considered relevant to refer to the recent ruling passed by Hon'ble the Supreme Court in **Mohd Muslim @ Hussain V. State (NCT OF DELHI) Vs. State (NCT of Delhi)** passed by Hon'ble the Supreme Court in Special Leave Petition (Crl.) No.915 of 2023 vide order dated 28.03.2023, wherein while discussing the parameters of Section 37 of the NDPS Act, it was held that the provision cannot be construed in a manner that would render the grant of bail impossible. The accused-appellant in the aforementioned case was directed to be enlarged on bail looking to the long period of incarceration. The paragraphs of **Mohd. Muslim @ Hussain (supra)** relevant to the present matter are reproduced below:

"18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is "not guilty of such offence" and that he is not likely to commit any offence while on bail. What is meant by "not guilty" when all the evidence is not before the court? It can only be a prima facie determination. That places the court's discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 1 Special Leave Petition (CRL.) NO(S). 915 of 2023, decided on 28.03.2023. 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be





interpreted reasonably. Further the classification of offences under Special Acts (NDPS Act, etc.), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under Section 37 (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.” (Emphasis Supplied)

23. In the case of *Mohd. Muslim @ Hussain (supra)*, it has been propounded that at the stage of hearing a bail application under Section 439 Cr.P.C., although it is not possible for the Court to arrive at a definitive conclusion regarding the innocence of the accused, yet for the limited purpose of just and proper adjudication of a bail application,





a tentative and prima facie assessment of the material on record is both permissible and necessary to examine whether the embargo under Section 37 of the NDPS Act stands attracted. Formation of a final or conclusive opinion on guilt at this interlocutory stage would virtually amount to aborting the trial itself, which is neither desirable nor can ever be the legislative intent behind the scheme of criminal jurisprudence.

24. It is trite that while statutory provisions governing bail impose certain restrictions, they cannot be interpreted or applied in a manner that eclipses the overarching constitutional mandate enshrined under Article 21 of the Constitution of India, which guarantees that no person shall be deprived of his personal liberty except in accordance with the procedure established by law. Where the procedure prescribed by law is demonstrably not adhered to, continued detention of an individual ceases to have constitutional legitimacy. In a situation where an apparent conflict arises between a statutory restriction and a fundamental right, the constitutional mandate must necessarily prevail, the Constitution being supreme. It is equally well-settled that when mandatory procedural safeguards are not complied with, no coercive action, including prolonged incarceration, ought to be taken against an individual.



25. Though specific arguments may not have been elaborately addressed, looking to the fact that the accused is in custody, this Court is of the view that the accused is not required to establish his innocence at the stage of bail; rather, it is for the prosecution to justify the continued deprivation of liberty. It is for this reason that this Court has undertaken a careful examination of the facts of the case and the manner in which the proceedings have been conducted. If the surrounding circumstances do not align with the statutory stipulations and procedural safeguards, the personal liberty of an individual cannot be curtailed by consigning him to indefinite incarceration pending trial.

26. Having regard to the overall facts and circumstances of the case, the nature of evidence presently available on record, and the stage of the proceedings, there exists a substantial likelihood that the trial may not conclude within a reasonable period of time. In such circumstances, the continued incarceration of the accused-petitioner would serve no useful purpose. This Court is, therefore, of the considered view that the accused-petitioner deserves to be extended the benefit of bail.

27. It is a well-settled principle of criminal jurisprudence that at the pre-conviction stage, grant of bail is the rule and refusal an exception. The primary object of detaining an accused during the pendency of trial is to secure his



presence to face the proceedings and to ensure that he is available to undergo the sentence, if ultimately convicted. Save and except for this limited purpose, continued detention runs contrary to the foundational presumption of innocence, which operates in favour of an accused until guilt is established in accordance with law.

28. Accordingly, the instant bail application under Section 483 BNSS is allowed and it is ordered that the accused-petitioner as named in the cause title shall be enlarged on bail provided he furnishes 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 Judge for his appearance before the court concerned on all the dates of hearing as and when called upon to do so.

(FARJAND ALI),J

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