HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Miscellaneous II[nd] Bail Application No. 9834/2026
CNR: RJHC010691612026 | URN: CRLMB / 21489U / 2026

Shubhkaran S/o Tilokram Jaat, Aged About 49 Years, R/o Bagdoda P.S, Fatehpur Kotwali District Sikar. (Presently Lodged In Dist. Jail Chittorgarh)

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s)	:	Mr. Mangi Lal Vishnoi
For Respondent(s)	:	Mr. Surendra Bishnoi, PP

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

10/08/2026

1. The applicant has filed the second bail application under Section 483 of BNSS being aggrieved against the order dated 11.02.2026 passed by the learned Special Judge, NDPS Cases, and (Additional District and Session Judge), Bengu, District Chittorgarh, in Criminal Misc. Case No.38/2024, 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.09/2024 registered at Police Station Bengu, District Chittorgarh for the offences punishable under Sections 8 and 15 of NDPS Act 1985.

2. Learned counsel for the applicant submits that two persons, namely the present accused-applicant and co-accused Sandeep were apprehended from the vehicle in question. He submits that co-accused Sandeep has already been enlarged on bail by this Court vide order dated 13.07.2026 passed in S.B. Criminal

Miscellaneous Bail Application No.11678/2025 (Sandeep v. State of Rajasthan). He, therefore, implores this Court to allow the present Criminal Miscellaneous Bail Application on the ground of parity as well as on merits.

3. *Per contra*, learned Public Prosecutor opposes the bail application. However, he is not in a position to dispute the fact that the similarly situated co-accused Sandeep has already been enlarged on bail by this Court.

4. Heard learned counsel for the applicant and learned Public Prosecutor and perused the material available on record.

5. I have considered the arguments advanced by learned counsel for the parties and have also considered the record as well as the order passed by this Court in the case of co-accused Sandeep, which reads as under:-

> *"1. The applicant has filed the present bail application under Section 483 of BNSS being aggrieved against the order dated 04.08.2025 passed by the learned Special Judge, NDPS Cases (Additional Sessions Judge), Begun, District Chittorgarh in Criminal Misc. Case No.321/2025 (Sessions Case No. 36/2024), whereby the bail application filed by the accused-applicant under Section 483 of B.N.S.S. was rejected. The accused-applicant is behind the bars, pursuant to the F.I.R. No.09/2024 registered at Police Station Begun, District Chittorgarh for the offence punishable under Sections 8/15 of NDPS Act.*
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> *2. Briefly stated, the prosecution case is that, acting upon secret information received regarding the transportation of a huge quantity of poppy straw in a Scorpio car bearing Registration No. RJ-10-UA-9154, on 19.01.2024 at 3:55 A.M., a blockade was arranged and at about 4:15 A.M., i.e., before sunrise, the said Scorpio car was seen approaching the blockade and allegedly attempted to flee. However, a stop stick was placed, due to which the tyre of the car got punctured, and subsequently, the persons*

travelling in the Scorpio car were apprehended. On being asked, the driver disclosed his name as Sandeep S/o Amilal, whereas the co-occupant disclosed his name as Shubhkaran S/o Tilokram. Upon inspection of the Scorpio car, several black-coloured sacks were found, which were allegedly containing poppy husk. Upon weighment, the total quantity of the contraband was found to be 346 kilograms and 800 grams. After filing the charge-sheet before the competent Criminal Court, charges were framed, and the trial is presently going on, inasmuch as, out of the 17 prosecution witnesses, 4 witnesses have been examined by the learned trial Court.

3. Learned counsel for the applicant submitted that the search of the vehicle in question was conducted between sunset and sunrise, and no reasons for conducting such search were recorded, whereas, as mandated under Section 42(1) of the NDPS Act, the seizure officer is required to record the reasons of his belief before carrying out such search. He further submitted that, admittedly, the samples were sent to the Forensic Science Laboratory after a gross delay of 170 days, which amounts to total non-compliance with the Narcotic Drugs & Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (hereinafter referred to as "the Rules of 2022"). Learned counsel further contended that Chandrashekhar S/o Sh. Ramesh Chandra, Seizure Officer (PW-3) has admitted the aforesaid fact that there was an inordinate delay in sending the samples and that there was non-compliance with the Rules of 2022 insofar as the sampling procedure is concerned. He further submitted that the Seizure Officer has also admitted that even samples were neither prepared nor produced before the Magistrate, as mandatorily required under Section 52-A of the NDPS Act, and that the requisite certification by the Magistrate is also missing in the present case. Learned counsel further submitted that the applicant has been in judicial custody for the last two and a half years, and despite such prolonged incarceration, only 4 out of the 17 prosecution witnesses have been examined by the learned Trial Court. Learned counsel, therefore, prayed that the applicant be enlarged on bail.

4. Per contra, learned Public Prosecutor opposed the bail application and submitted that a commercial quantity of the

narcotic substance has been recovered in the present case. It was, therefore, argued that the rigours of Section 37 of the NDPS Act are fully attracted. Learned Public Prosecutor further submitted that, having regard to the nature and gravity of the allegations and the statutory embargo contained in Section 37 of the NDPS Act, the applicant does not deserve to be enlarged on bail. Learned Public Prosecutor further submitted that the bail application filed by the co-occupant Shubhkaran has already been rejected by a co-ordinate Bench of this Court vide order dated 26.09.2024 passed in S.B. Criminal Miscellaneous Bail Application No. 11050/2024 (Shubhkaran v. State of Rajasthan). Learned Public Prosecutor, therefore, prayed that the bail application filed by the applicant be dismissed.

5. Heard learned counsel for the parties and perused the entire record of the case.

6. It is true that the rigours of Section 37 of the NDPS Act apply with full force, and bail can be granted only if the Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of the alleged offence and is not likely to commit any offence while on bail.

7. For the aforesaid purpose, the Court is required to examine whether the mandatory provisions of the NDPS Act, 1985 and the Rules framed thereunder have been complied with. In the present case, admittedly, the search and seizure of the vehicle in question was conducted during the period between sunset and sunrise. As per the time mentioned in the charge-sheet and other documents, the search of the vehicle was conducted at 4:15 A.M. Therefore, in terms of Section 42(1) of the NDPS Act, it was mandatory for the seizure officer either to obtain a search warrant or to record in writing the reasons for undertaking such search. In the present case, the seizure officer has himself admitted that no reasons were recorded, nor is any such memorandum available on record. Thus, prima facie, there appears to be non-compliance of the mandatory provisions of Section 42 (1) of the NDPS Act. The statement of the Seizure Officer further categorically reveals that he had neither prepared any memorandum nor recorded any reasons before conducting the search.

8. The Seizure Officer has further categorically admitted that he did not comply with the procedure prescribed under

Section 52-A of the NDPS Act and the Rules of 2022 with regard to drawing of samples. He has also admitted that the samples were not drawn in the presence of the Magistrate, as mandatorily required under Section 52-A of the NDPS Act. Rather, according to his own statement, the entire sampling procedure was carried out in violation of the provisions of Section 52-A of the NDPS Act. The Seizure Officer has also admitted that although the samples were drawn on 19.01.2024, they were sent to the Forensic Science Laboratory only on 02.07.2024, after an unexplained delay of 170 days, and he has assigned no reason whatsoever for such inordinate delay. Thus, Prima facie, it is apparent that the procedure prescribed under Section 52-A of the NDPS Act and the Rules of 2022 relating to the collection, preservation and dispatch of samples has not been followed.

9. Further, the applicant has remained in judicial custody since 19.01.2024, and only 4 out of the 17 prosecution witnesses have been examined. It is, therefore, a case of prolonged incarceration, particularly when the non-compliance with the mandatory provisions of the NDPS Act has been admitted by the seizure officer himself during his cross-examination. The Court is well aware that satisfaction of the dual test as provided under Section 37 of the Act of 1985 has to be recorded prior to granting bail. In the present case, due to the admitted non-compliance with the provisions of the Act of 1985, especially Section 42, which is a mandatory provision, the presumptions under Sections 35 and 54 would not arise, and rather, the applicant has been able to prove that he is not guilty of the offence in question. There is nothing on record to show that the applicant has criminal antecedents of an identical nature, and therefore, the prosecution has not been able to point out anything to show that the applicant is likely to commit any offence while on bail.

10. Accordingly, having regard to the overall facts and circumstances of the case, this Court is of the prima facie view that the applicant has been able to make out a case that there are reasonable grounds for believing that he is not guilty of the alleged offence on account of the apparent non-compliance of the mandatory provisions of the Section 42 of NDPS Act, 1985 and non compliance of provisions of the Rules of 2022, pertaining to collection of samples,

preservation and sending the same for FSL. The Court is well aware that, as per the judgment passed by the Hon'ble Apex Court in the case of ***Bharat Aambale vs. State of Chhattisgarh*** *reported in* ***(2025) 8 SCC 452****, the provisions under Section 52-A and those pertaining to the collection and dispatch of samples as per the Rules have not been treated as mandatory. However, it has clearly been observed that non-compliance with the same would raise a serious suspicion with regard to the story of the prosecution and may lead to drawing of an adverse inference. The same is to be considered at the stage of trial. However, in the present case, it is apparent that there has been non-compliance with the mandatory provisions of Section 42 of the Act of 1985 and, further, non-compliance with the other provisions of the Act of 1985 and the Rules framed thereunder and collectively for the reasons above mentioned, the applicant deserves to be enlarged on bail.*

11. Consequently, the bail application under Section 483 B.N.S.S. is ***allowed****. It is ordered that the accused-applicant* ***Sandeep S/o Amilal Punia*** *arrested in connection with F.I.R. No.09/2024 registered at Police Station Begun, District Chittorgarh 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.*

12. It is further, made clear that the 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.

13. Looking to the laconic manner in which the mandatory provisions of the NDPS Act, 1985 and the Rules of 2022 were ignored by the Seizure Officer and his admitting the same in his cross examination, a copy of this order be forwarded to the Director General of Police, Jaipur, for taking appropriate action against the officer concerned. The Director General of Police shall also ensure that the police officers concerned are given proper training regarding the mandatory provisions of the NDPS Act, 1985 and the Rules of 2022, so that such lapses do not occur in future."

5.1 Considering the entire record, the case of the accused-applicant is not found to be distinguishable from that of co-accused Sandeep, who has already been enlarged on bail by this Court. In the case in hand also, there is a *prima facie* non-compliance of the provisions of Section 42(1) of the NDPS Act. Thus, considering the overall facts and circumstances of the case, without expressing any opinion on merits/demerits of the case, this Court is inclined to enlarge the accused-applicant on bail.

6. Consequently, the second bail application under Section 483 B.N.S.S. is **allowed**. It is ordered that the accused-applicant; ***Shubhkaran S/o Tilokram Jaat,*** arrested in connection with F.I.R. No.09/2024 registered at Police Station Bengu, District Chittorgarh, 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.

7. 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

53/Devraj Pandey