HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous 2nd Bail Application No. 17100/2025
CNR: RJHC021137802025 | URN: CRLMB / 32874U / 2025

Omprakash S/o Krishanram, R/o Gulahgyau Pid, Tehsil Patena, District Patiala, Punjab. (At Present Confined In Sub Jail Kotputli, District Kotputli Behror)

----Petitioner

Versus

State Of Rajasthan, Through P.p.

----Respondent

For Petitioner(s)	:	Mr. Madhukar Shyam, Adv. Mr. Sameer Sharma, Adv.
For Respondent(s)	:	Mr. NS Dhakar, PP Mr. Naresh Kumar Gupta, PP.

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

31/08/2026

1. This second bail application has been filed under Section 483 of BNSS on behalf of the petitioner, who has been arrested in connection with FIR No.225/2023 registered at Police Station Bhabru, District Kotputli-Behror for the offence punishable under Section 8/15 of NDPS Act and Section 420 of IPC. After completion of investigation, police filed charge-sheet in this matter for offence under Section 8/15 of NDPS Act and Section 482 of IPC.

2. The first bail application filed on behalf of the petitioner was dismissed as withdrawn by this Court vide order dated 21.02.2025 while giving liberty to the petitioner to renew the prayer for bail after recording testimony of Seizure Officer. Now, the said witness has been examined during the course of trial, thus, this second bail application has been preferred.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. Counsel submits that the Seizure Officer has been examined as PW-1 during the course of trial and there are major contradiction in his testimony. Counsel further submits that in cross-examination of the Seizure Officer, he has admitted the fact that the place of recovery is a National Highway and local restaurants are also situated nearby. Counsel submits that no independent witness was associated during the search and seizure proceedings and this fact has been admitted by the Seizure Officer in his statement. Counsel submits that simply saying that person refused to become a witness is not enough, especially considering the fact that ample provisions are available in the BNS, which empowers the Officer to take action against the person who refuses to become a witness in the proceedings. Counsel submits that it is apparent from the record that there is no reference of the name of the persons who refused to become a witness.

4. It is further submitted that Hon'ble Supreme Court has taken the view in the matter **of Devendra Kumar Mishra @ Bade Guru v. The State of Madhya Pradesh in Special Leave to Appeal (Crl.) No.14639/2023** and **Shince Babu v. State of Kerala, 2024 SCC OnLine SC 5829** (*3 Judges Bench*) that on the ground of period of incarceration suffered by accused, bail application under the NDPS Act can be considered for grant. Counsel contends that there are no criminal antecedents against the petitioner. Petitioner is in custody since 01.09.2023 and as such he has suffered incarceration of about three years and further custody of the petitioner would not serve any fruitful

purpose. Trial will take considerable time in its conclusion. Counsel submits that considering the aforesaid facts, this second bail application may be allowed.

5. Learned State Counsel opposes the argument made by learned counsel for the petitioner. He submits that the contraband recovered is of commercial quantity and the bail application of co-accused- Lakkhiram S/o Dhannaram, has already been rejected on merits by Coordinate Bench of this Court vide order dated 12.11.2025 passed in S.B. Criminal Misc. Bail Application No.5825/2025. Counsel submits that the case of the petitioner is not distinguishable from that of co-accused; therefore, considering the rigour of Section 37 of the NDPS Act and the fact that bail application of co-accused has already been dismissed, benefit of bail should not be granted to the petitioner.

6. Counsel for the petitioner submits that the case of the present petitioner is distinguishable from that of co-accused Lakkhiram. Counsel submits that five cases are registered against the co-accused including two cases under NDPS Act, whereas, the petitioner has no criminal antecedents.

7. I have considered the contentions.

8. Section 37 of the NDPS Act does not create an absolute embargo for grant of bail. Further, while considering an application for grant of bail, it is not required for the Court to record a positive finding that the accused is not guilty. The only requirement of law is that the Court would look at the material in a broad manner and reasonably see whether the accused's guilt may be proved. The satisfaction which courts are expected to record, i.e., the accused may not be guilty, is only prima facie,

based on a reasonable reading, which does not call for meticulous examination of the material collected during investigation.

9. The three Judges Bench of Hon'ble Supreme Court in the case of **Shince Babu (supra)** has granted the benefit of bail after taking into consideration the prolonged period of incarceration, the fact that investigation stands completed, conclusion of trial will take reasonable time and appellant does not have any criminal antecedents.

10. Therefore, having regard to the totality of the facts and circumstances of the case, considering the submissions advanced by learned counsel for the parties and particularly the observations made by the Hon'ble Supreme Court in the cases of **Devendra Kumar Mishra @ Bade Guru** (supra) and **Shince Babu** (supra) wherein considering the period of incarceration suffered by the accused, facility of bail has been granted, as also considering the testimony of the Seizure Officer (PW-1) and the fact that the case of co-accused Lakkhiram, whose bail application has been rejected by the Coordinate Bench is distinguishable from that of the petitioner inasmuch as the said co-accused has five criminal antecedents, two of which are under the NDPS Act, whereas the present petitioner has no criminal antecedents; and the fact that the petitioner has been languishing in jail since 01.09.2023 and trial is likely to take considerable time to conclude, but without expressing any opinion on the merits or demerits of the case, this Court deem it just and proper to allow the instant second bail application.

11. This second bail application is accordingly allowed and it is directed that accused-petitioner- **Omprakash S/o Krishanram**,

shall be released on bail provided he furnishes a personal bond in the sum of Rs.5,00,000/- together with two sureties in the sum of Rs.2,50,000/- each to the satisfaction of the learned Trial Court with the stipulation that he shall appear before that Court and any court to which the matter is transferred, on all subsequent dates of hearing and as and when called upon to do so.

12. The petitioner shall not involve in similar offences during currency of bail and shall mark his presence in the local police station where he is presently residing in the second week of every month till conclusion of trial. Breach of any of these two conditions shall alone be a reason for the trial court to cancel the bail granted to him.

13. The concerned SHO is directed to maintain a register recording his presence. In case the petitioner fails to mark his presence, as stated above, the concerned SHO is directed to intimate the matter to the concerned court forthwith.

14. The observation made hereinabove is only for decision of the instant bail application and would not have any impact on the trial of the case in any manner.

(ANIL KUMAR UPMAN),J

2/Manoj Solanki