RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Misc. Second Bail Application No. 15487/2026
CNR: RJHC020947042026 | URN: CRLMB / 28593U / 2026

Deepak S/o Mogaram, Aged About 38 Years, R/o Village Khorabisal, Police Station Kardhani, District Jaipur (Raj.). (Presently Confined In Central Jail, Jaipur)

----Petitioner

Rajasthan High Court
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Versus

State Of Rajasthan, Through PP

----Respondent

Connected With

S.B. Criminal Misc. Second Bail Application No. 15593/2026
CNR: RJHC020959602026 | URN: CRLMB / 28812U / 2026

Himanshu Mata @ Harsu Mata S/o Shri Prem Chand Mata, Aged About 31 Years, R/o Village Gheed, Police Station Kajpura, District Karnal Hariyana. (Presently Confined In Central Jail, Jaipur).

----Petitioner

Versus

State Of Rajasthan, Through PP

----Respondent

For Petitioner(s)	:	Mr. Rajveer Singh Gurjar, Adv. Mr. Nirmal Kumar Sharma, Adv. Mr. PL Saini, Adv.
For Respondent(s)	:	Mr. Amit Kumar, PP Ms. Arti Sharma, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE

02/11/2026

1. These second bail applications under Section 483 of BNSS have been filed on behalf of the petitioners, who have been arrested in connection with FIR No.233/2025, registered at Police

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Station Chaksu, Jaipur City (South) for offence punishable under Section 8/20 of NDPS Act. After completion of investigation, police filed charge-sheet in this case.

2. The first bail application filed on behalf of petitioner Deepak was dismissed as withdrawn by this Court vide order dated 08.01.2026 while giving liberty to renew the prayer for bail after recording testimony of the Seizure Officer. The first bail application filed on behalf of the petitioner Himanshu Mata @ Harsu Mata was dismissed as withdrawn by this Court vide order dated 22.01.2026. Now, Seizure Officer has been examined during the course of trial as PW-3, thus, these second bail applications have been filed.

3. Learned counsel for the petitioners submit that the petitioners have been falsely implicated in the present case. Counsel submit that from the testimony of Seizure Officer, it appears that there is total non-compliance of provisions of Section 42 of NDPS Act as action was taken in this matter on the basis of prior information received from the informer and it has been admitted by the Seizure Officer during the course of cross-examination that there is no document on record showing the fact that the information received from the informer was sent to the immediate superior officer. Counsel submit that it is settled law that non-compliance of mandatory provisions of Section 42 of the Act would vitiate the conviction.

4. It is further contended that it is an admitted case of prosecution that on the basis of secret information, vehicle of the petitioners was stopped and searched on 13.06.2025 at 09:30

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a.m. on National Highway. Counsel submit that no independent witness was associated during the search and seizure proceedings. Counsel submit that association of the independent witnesses contemplated under Section 103 of the BNSS (Corresponding to Section 100 of the Cr.P.C) is not a mere formality and concerned officer is required to make all endeavour to associate the independent witnesses from the same vicinity. He cannot escape from his obligation merely by saying that a person refused to become an independent witness and if any person refuses to become a witness, his name should be recorded and proper action should be initiated against him for disobeying the order of the public servant.

5. It is further submitted that the samples were not drawn in accordance with Rule 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 (for short "the Rules of 2022"). As per the prosecution case, the alleged contraband was recovered from fourteen different bags, each containing smaller packets. The Seizure Officer was required to take separate sample from each pouch, as prescribed under Rule 10 of the Rules of 2022. The procedure of sampling has to be done in accordance with the directions given by the Hon’ble Supreme Court in the case of **Gaunter Edwin Kircher vs State of Goa, Secretariat Panaji, Goa (AIR 1993 SC 1456) decided on 16.03.1993** in which it was clarified that sample has to be taken from each bag. Admittedly, no preliminary test was conducted to ascertain whether the substance contained in the different packets was identical in nature or whether the same was,

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in fact, *Ganja.* It is submitted that 21 samples were drawn from a single bag, which is contrary to the mandatory requirements of Rule 10 of the Rules of 2022, which requires the prosecution to draw sample from each packet/bag. It is submitted that the contraband was seized in this matter on 13.06.2025 while inventory was prepared on 02.07.2025. It is also evident from the record that samples drawn on 02.07.2025 were deposited in FSL on 16.07.2025 with the delay of 14 days, for which no plausible or reasonable explanation is available on record. Counsel relied upon the order dated 09.02.2026 passed by the Hon'ble Supreme Court in **Wajid Ali @ Tinku versus State of Rajasthan,** arising out of, **Special Leave to Appeal (Crl.) No.7049/2025,** where, after considering the fact that sample was deposited in the FSL after 21 days for which no appropriate explanation was available on record, benefit of bail was granted to the accused.

6. Counsel further submit that there is no criminal antecedent against the petitioners and trial is likely to take considerable time in its conclusion. Counsel submit that the petitioners are in custody since 13.06.2025 and further custody of the petitioners would serve no fruitful purpose.

7. Per contra, learned Public Prosecutor opposes the submissions advanced on behalf of the petitioners. It is submitted that contraband article i.e., Ganja weighing 407.97 kgs has been recovered in this case which falls under the category of commercial quantity. Counsel submits that looking to the rigor of Section 37 of the NDPS Act, benefit of bail should not be granted to the petitioners.

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8. Heard learned counsel for the parties and perused the material available on record.

9. First of all, this Court would like to consider as to whether Section 37 of NDPS Act imposes an absolute bar on grant of bail to the accused for offences punishable under Sections 19, 24 and 27A of the Act and also for offences involving commercial quantity.

10. I must hasten to clarify that the embargo contained under section 37 of the NDPS Act does not cast an absolute bar on the grant of bail. While considering a bail application in which an allegation of contravention of the provisions of the NDPS Act has been made, the only requirement is to examine the case with extra caution to ascertain the positive involvement of the accused and there is no need to record a positive finding that accused is not guilty. Only broad probabilities and the total effect of the evidence collected by the investigating agency are required to be taken into consideration. The language used in section 37 of the NDPS Act, in my considered opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant seeking bail has not committed an offence under the Act or is not guilty of such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction against the applicant. Such cannot be the intention of the Legislature. Section 37 of NDPS Act, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal or conviction and an order granting bail much before the commencement of trial. Similarly, the Court will be required to

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record a finding regarding the possibility of the accused committing an offence after the grant of bail. However, such an offence in future must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the Court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

11. I fortify my view from the judgment rendered by the Hon'ble Supreme Court in case of ***Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra reported in 2005 (5) SCC 294,*** in which it has been held as under: -

> "41. Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the Court to record such a finding? Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?
>
> 42. Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on records only for grant of bail and for no other purpose.
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> 43. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail

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should not be pushed too far. If the Court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the Court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

44. In Abdulla Mohammed Pagarkar etc. Vs. State (Union Territory of Goa, Daman and Diu) [AIR 1980 SC 499], it is stated:

> "15. Learned counsel for the State sought to buttress the evidence which we have just above discussed with the findings recorded by the learned Special Judge and detailed as items (a) to (e) in paragraph 5 and items (i) and (iii) in paragraph 6 of this judgment. Those findings were affirmed by the learned Judicial Commissioner and we are clearly of the opinion, for reasons which need not be restated here, that they were correctly arrived at. But those findings merely make out that the appellants proceeded to execute the work in flagrant

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disregard of the relevant Rules of the G.F.R. and even of ordinary norms of procedural behaviour of government officials and contractors in the matter of execution of works undertaken by the government. Such disregard however has not been shown to us to amount to any of the offences of which the appellants have been convicted. The said findings no doubt make the suspicion to which we have above adverted still stronger but that is where the matter rests and it cannot be said that any of the ingredients of the charge have been made out.

Apart from the findings and evidence referred to earlier in paragraph, no material has been brought to our notice on behalf of the State such as would indicate that the bills or the summaries in question were false in any material particular."

45. In C. Chenga Reddy and Others Vs. State of Andhra Pradesh [AIR 1996 SC 3390], it is stated:

"55. ...The learned counsel appearing for all the appellants also during the course of their arguments were unable to point out any error in those findings and according to them in the established facts and circumstances of the case, the irregularities, administrative lapses and violation of the codal provisions, could only have resulted in a departmental action against the officials but criminal prosecution was not justified. Their argument has force and appeals to us..."

46. Every act of negligence or carelessness by itself may not be a misconduct.

47. The provisions of the said Act, therefore, must receive a strict construction so as to pass the test of reasonableness.

48. Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the

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Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organized crime or abetment thereof must be judged objectively. Only because some allegations have been made against a high ranking officer, which cannot be brushed aside, may not by itself be sufficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the Court must also consider the question as to whether the circumstantial evidence is such whereby all the links in the chain are complete.

49. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

50. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although

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detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

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51. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, while may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."

12. Having regard to the totality of the facts and circumstances of the case; considering the arguments advanced by learned counsel for the parties, especially considering the testimony of the Seizure Officer (PW-3) particularly in respect of non-compliance of provisions of Section 42 of NDPS Act, and considering the observations made by the Hon'ble Supreme Court in the case of ***Ranjitsing Brahmajeetsing Sharma (Supra)*** and considering the fact that no previous case has been registered against the petitioners, so also considering the lacunae pointed out by learned counsel for the petitioners and trial is likely to take considerable time in its conclusion as well as looking to the custody period which is more than 16 months, but without commenting anything

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on the merits/demerits of the case, this Court deems it proper to allow these second bail applications on stringent conditions.

13. These second bail applications are accordingly allowed and it is directed that accused-petitioners **(1) Deepak S/o Mogaram** and **(2) Himanshu Mata @ Harsu Mata S/o Shri Prem Chand Mata**, shall be released on bail provided each of them 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 they 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.

14. The petitioners shall not involve in similar offences during currency of bail and shall mark their presence in the local police station where they are presently residing in the second week of every month till conclusion of trial. It is further directed that petitioners shall share their mobile number (in use) to the trial Court and investigating agency. They shall keep their mobile phones in active mode and shall not switch it off for longer period intentionally.

15. Concerned SHO shall enter attendance of the petitioners in the Roznamcha. In case the petitioners fail to mark their presence in the concerned police station, the concerned SHO is directed to immediately report the matter to the concerned Court in this regard.

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16. If any breach of these conditions is reported or comes to the notice of the Court, the same shall alone be a reason for the trial Court to cancel the bail granted to them by this Court.

17. Office is directed to send a copy of this order to the concerned SHO for necessary compliance.

18. The observations made hereinabove are only for decision of these bail applications and would not have any impact on the trial of the case in any manner.

(ANIL KUMAR UPMAN),J

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