



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

S.B. Criminal Miscellaneous Bail Application No. 11335/2025
CNR: RJHC010752492025 | URN: CRLMB / 23282U / 2025

Shakoor Khan S/o Nasardeen, Aged About 40 Years, R/o
Shaintanshingh Nagar, Ps Lohawat, District Phalodi (Rajasthan)
(At Present Lodged In Sub Jail Phalodi)

-----Petitioner

Versus

State Of Rajasthan, Through Its Public Prosecutor.

-----Respondent

For Petitioner(s) : Mr. Bhanwaru Ram
For Respondent(s) : Mr. Hanuman Prajapati, PP

HON'BLE MR. JUSTICE SANDEEP SHAH

Order

Reportable

- | | |
|--|------------|
| 1. Date of conclusion of arguments | 01.10.2026 |
| 2. Date on which order was reserved | 01.10.2026 |
| 3. Whether the full order or only the operative part is pronounced | Full Order |
| 4. Date of pronouncement | 06.10.2026 |

1. The accused-applicant has filed the present bail application under Section 483 of BNSS, being aggrieved against the order dated 01.07.2025 passed by the learned Additional Sessions Judge (Special Judge NDPS Cases), District Phalodi, in Criminal Misc. Application No.282/2025, whereby the bail application filed by the accused-applicant under Section 483 of BNSS was rejected. The accused-applicant is behind the bars, pursuant to the F.I.R. No.69/2024 registered against him at Police Station Lohawat, District Phalodi, for the offences punishable under Sections 8 and 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter mentioned as 'the Act of 1985').



2. Learned counsel for the accused-applicant submitted that the accused-applicant is innocent and has been falsely implicated in the present case. He submitted that the case of the prosecution rests on the alleged recovery of 210 Kg of poppy husk from a shed situated near the Dhani of Ilmuddin S/o Sher Khan, who is the father-in-law of the accused-applicant and that the said shed stands in the name of Ilmuddin. Except for the alleged presence of the accused-applicant at the said place, there is nothing on record to connect him either with the premises or with the contraband. The search of the Dhani did not result in recovery of any objectionable article from the residential portion and the accused-applicant is neither the owner nor in exclusive possession of the shed. He, therefore, submitted that mere presence at the place of recovery cannot give rise to an inference of conscious possession, which is essential to attract the rigours of Sections 8/15 of the Act of 1985.

3. The second limb of the argument of learned counsel for the accused-applicant is that there has been a violation of Section 42(1) of the Act of 1985. He submitted that the recovery was effected within the jurisdiction of Police Station Lohawat, District Phalodi, whereas the recovery officer, Mr. Dalpat Singh, was the S.H.O. of Police Station, Bhojasar. He referred to the charge-sheet, wherein it is mentioned that Mr. Shivraj Singh, S.H.O. of Police Station Lohawat, was ill and on medical leave and that Mr. Dalpat Singh was given charge of Police Station Lohawat on 14.03.2024 by the Superintendent of Police, Phalodi. He submitted that the said order of giving charge to Mr. Dalpat Singh has not



yet been exhibited and further no material has been placed on record to show that compliance of said order was made. He thus submitted that SHO concerned was not an authorised officer.

3.1. To buttress his submission, he relied upon the judgment of the Hon'ble Apex Court in **Roy V.D. vs. State of Kerala: (2000) 8 SCC 590**, decided on 10.11.2000, wherein it has been held that search and seizure conducted by an officer, who is not duly authorized, or who does not act in accordance with the statutory mandate under the Act of 1985, vitiates the prosecution and that such illegality strikes at the root of the case. He further relied upon the order of this Court in **Manfool s/o Lunaram vs. State of Rajasthan passed in S.B. Criminal Misc. Bail Application No. 5594/2026**, decided on 05.05.2026, wherein this Court has held that non-compliance with the mandatory requirements of Section 42 of the Act of 1985, particularly with regard to jurisdiction and authorization, creates serious doubt in the prosecution case and entitles the accused to bail at the threshold stage. He submits that in light of the aforesaid judgments, the safeguards under Section 42(1) of the Act of 1985 are mandatory and their non-compliance vitiates the search and seizure and renders the case of the prosecution doubtful at this stage.

4. The third limb of the argument of learned counsel for the accused-applicant is that no ground or reason for arrest was communicated to the accused-applicant, and the record is silent in this regard. He submitted that this is a violation of Article 22(1) of the Constitution of India and Section 52(1) of the Act of 1985.





4.1. To buttress his submission, he relied upon the judgment of the Hon'ble Apex Court in ***Vihaan Kumar vs. State of Haryana and Another: [(2025) 5 SCC 799]***, decided on 07.02.2025, wherein the Hon'ble Apex Court has held that the requirement of informing the arrestee of the grounds of arrest, is a fundamental right under Article 22(1) of the Constitution of India, that such information must be effectively communicated and failure to do so vitiates the arrest. He further relied upon the judgment of the Hon'ble Apex Court in ***Mihir Rajesh Shah vs. State of Maharashtra and Another: [2025 SCC OnLine SC 2356]***, decided on 06.11.2025, wherein it has been held that the grounds of arrest must be communicated to the arrestee in writing and in a meaningful manner and non-compliance thereof renders the arrest illegal and violative of Articles 21 and 22(1) of the Constitution of India. He also relied upon the judgment of the Hon'ble Madras High Court in ***Dhilip Kumar vs. The State represented by the Inspector of Police, PEW Ambattur Unit, Chennai: Crl. O.P. No. 24004/2026*** decided on 17.09.2026, wherein it has been held that where procedural safeguards relating to arrest and seizure are not complied with, the prosecution case becomes doubtful and such infirmities can be considered at the stage of bail. He submitted that as the arrest of the accused-applicant is in violation of these mandatory safeguards, the same is illegal and vitiated.

5. The fourth limb of the argument of learned counsel for the accused-applicant is that the accused-applicant has been in judicial custody since 14.03.2024, the charge-sheet has already





been filed and the trial is likely to take considerable time for its conclusion. He, therefore, prayed that the bail application of the accused-applicant may kindly be allowed on the ground of long incarceration.

6. Per contra, learned Public Prosecutor opposes the bail application and submitted that the bail may not be granted to the accused-applicant looking to the nature of allegation and evidence available on record

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

8. I have considered the arguments advanced by both sides.

9. At the outset, it is noted that the recovery, in the present case, is of 210 kg of poppy husk (poppy straw), which is well above the commercial quantity of 50 kg specified for poppy straw. The rigour of Section 37(1)(b) of the Act of 1985 therefore applies to the case in hand.

9.1. As far as the first limb of the argument of learned counsel for the accused-applicant (that there was no conscious possession) is concerned, it is not disputed that the shed stands in the name of father-in-law of the accused-applicant. However, the prosecution case is that the police acted on prior information from a secret source that the accused-applicant had brought a huge quantity of poppy husk and had hidden it in the shed near the house of his father in law. On the arrival of the police party, the accused-applicant, who was inside the house, tried to run away and was caught, and eleven plastic bags containing 210 kg of poppy husk were recovered from the shed near the house.



9.2. Furthermore, whether the accused-applicant was in conscious possession is a question of fact to be decided on evidence. The law on the concept of possession was explained by the Hon'ble Apex Court in **Mohan Lal vs. State of Rajasthan: (2015) 6 SCC 222**, wherein it was held as under (at page 233):

"12. The term "possession" consists of two elements. First, it refers to the corpus or the physical control and the second, it refers to the animus or intent which has reference to exercise of the said control. One of the definitions of "possession" given in Black's Law Dictionary is as follows:

...

The law, in general, recognizes two kinds of possession : actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it. The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint."

...Term 'possess', under narcotic drug laws, means actual control, care and management of the drug. ...Defendant 'possesses' controlled substance when defendant knows of substance's presence, substance is immediately accessible, and defendant exercises 'dominion or control' over substance...

...The defendants must have had dominion and control over the contraband with knowledge of its presence and character..."





9.3. This was followed in **Madan Lal vs. State of H.P.: (2003)**

7 SCC 465, wherein the Hon'ble Apex Court has held as under:

" **22.** The expression "possession" is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52]* to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in *Gunwantlal v. State of M.P. [(1972) 2 SCC 194 : 1972 SCC (Cri) 678 : AIR 1972 SC 1756]* possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control."

9.4. Applying the above principles, it is held that the contention, regarding the shed stood in the name of father-in-law of the accused-applicant, does not conclude the matter. Ownership of the premises was not the test. The test was whether the accused-applicant had knowledge of the contraband and the power and intention to exercise dominion or control over it, whether sole or joint, actual or constructive. On the material available at this stage, the accused-applicant was present at the place when the police party arrived and, according to the prosecution, accused-applicant attempted to run away on seeing the police party and was apprehended. The prosecution case, based upon the prior information, was specifically that the accused-applicant had



brought the contraband and concealed it in the shed near the house in question. Pursuant to the search, eleven plastic bags containing a total of 210 kg of poppy husk were recovered from the said shed. The contemporaneous proceedings further record the prosecution version that, when questioned regarding the source of the contraband, the accused-applicant disclosed that the poppy straw had been brought by Sunil Bishnoi, that he had purchased the same from him and had concealed it in the shed near the house. Not only this, the prosecution had collected the details of phone calls and chats between the accused-applicant and Sunil qua the transaction in question. The mobile location of both of them also connected the accused-applicant with the offence in question. Without expressing any opinion at this stage, regarding the evidentiary value of such statement, the prior information, the presence and conduct of the accused-applicant at the spot and the recovery of a substantial quantity of contraband from the shed, taken together, prima facie furnish material indicating his knowledge of and control over the contraband. Thus, merely because the shed stood in the name of his father-in-law would not, at this stage, be sufficient to exclude the possibility of conscious or constructive possession. The first limb of the argument of learned counsel for the accused-applicant therefore cannot be accepted.

10. The second limb of the argument of learned counsel for the accused-applicant is that there has been a violation of Section 42 of the Act of 1985. Since the search in the present case was conducted on prior information received from a special informant,





the provision of Section 42 of the Act of 1985 are attracted. It would therefore be relevant to quote Section 42 of the Act of 1985, for the proper enunciation of the issue involved in the present case. Section 42 of the Act of 1985 provides as under:

42. Power of entry, search, seizure and arrest without warrant or authorisation.—

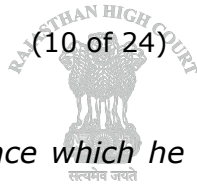
—(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,—

(a) enter into and search any such building, conveyance or place;

(b) in case of resistance, break open any door and remove any obstacle to such entry;

(c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any





animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and

(d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act:

[Provided that in respect of holder of a licence for manufacture of manufactured drugs or psychotropic substances or controlled substances granted under this Act or any rule or order made thereunder, such power shall be exercised by an officer not below the rank of sub-inspector:

Provided further that] if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) or records grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior."

10.1. Thus, as per Section 42(1) of the Act of 1985, the officer concerned has to be an authorized officer. By Notification S.O. 115 No. F.1(3)FD/EX/85-1 dated 16.10.1986, published in the Rajasthan Gazette, Extra., Part IV-C(II), at p. 269, the State





Government authorised all Inspectors of Police and Sub-Inspectors of Police posted as Station House Officers to exercise the powers mentioned in Section 42. The proviso to the notification provided that when the power was exercised by a police officer other than the Police Inspector of the area concerned, such officer would immediately hand over the person arrested and the articles seized to the concerned Police Inspector or S.H.O. of the police station concerned. The notification provides as under:-

"Published in the Rajasthan Gazette, Extra, Part IV-C(II)

Dated October 16th October, 1986 at p.269.

No.F.I(3)FD/EX/85-1, dated 16.10.1986

S.O. 115.- In exercise of the powers conferred by Section 42 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985) the State Government hereby authorise all Inspectors of Police, and Sub-Inspectors of Police, posted as Station House Officers, to exercise the powers mentioned in Section 42 of the said act with immediate effect:

Provided that when power is exercised by Police Officer other than Police Inspector of the area concerned, such Officer shall immediately handover the person arrested and article seized to the concerned Police Inspector or S.H.O. of the Police Station concerned."

10.2.It was not disputed that Mr. Dalpat Singh was a Sub-Inspector posted as S.H.O., Police Station Bhojasar. He was, therefore, an officer empowered under the notification. The notification authorised Sub-Inspectors posted as S.H.O.s by virtue of their rank and posting and did not restrict the exercise of such power to the territorial limits of the police station where they were ordinarily posted. The proviso to the notification itself contemplates exercise of such power by a police officer other than the officer of the area concerned and prescribes the course to be followed thereafter.





10.3. In the present case, the record shows that the regular S.H.O., Police Station Lohawat was on medical leave and, therefore, the Superintendent of Police, District Phalodi, vide Order No.121 dated 14.03.2024, directed Mr. Dalpat Singh to undertake the proceedings in relation to the information received within the jurisdiction of Police Station Lohawat. Pursuant thereto, Mr. Dalpat Singh proceeded to act in the matter. The contemporaneous record further shows that on 14.03.2024, Mr. Dalpat Singh received information regarding the accused-applicant Shakur Khan and concealment of illegal poppy straw in a shed near the house of his father-in-law at Shaitan Singh Nagar, within the jurisdiction of Police Station Lohawat. Upon finding the information to be reliable, he reduced the same into writing and forwarded the information contemplated under Section 42(2) of the Act of 1985, through Constable Shaitan Singh Belt No.1422 to the Superintendent of Police, District Phalodi and the Deputy Superintendent of Police, Circle Lohawat.

10.4. Thereafter, Mr. Dalpat Singh proceeded with the D.S.T., District Phalodi to the place disclosed in the information. According to the seizure proceedings, on seeing the police party, the accused-applicant attempted to run away and was apprehended. Mr. Dalpat Singh disclosed his identity and informed the accused-applicant about the proposed search. The accused-applicant was also informed in writing of his right regarding search before a Gazetted Officer or Magistrate. Thereafter, the search proceedings were carried out. During the search of the shed near the house, eleven plastic bags containing poppy straw were recovered. The



bags were separately weighed and their total weight was found to be 210 kg. The recovered contraband was taken into possession, samples were drawn and the articles were sealed in the manner recorded in the seizure proceedings. The accused-applicant was thereafter arrested and his personal search was also conducted.

The record further shows that the seized property was deposited under Section 55 of the Act of 1985 with Mr. Govardhan Ram, Head Constable Belt No.33, H.M. Malkhana. Upon registration of the case under Sections 8/15 of the Act of 1985, further investigation, in terms of the directions of the superior officers, was thereafter handed over to Shri Rameshwar, S.H.O., Police Station Phalodi on 15.03.2024.

10.5. Thus, the material available on record *prima facie* shows that Mr. Dalpat Singh was an empowered officer; that he had been specifically directed by the Superintendent of Police, District Phalodi to undertake the proceedings within the jurisdiction of Police Station Lohawat; that the prior information was reduced into writing and forwarded to the superior officers under Section 42(2); and that the search, seizure and subsequent proceedings were thereafter carried out in continuation thereof and subsequently investigation was handed over to the concerned S.H.O. At this stage, therefore, the contention that the proceedings were undertaken by an officer lacking authority or without compliance of Section 42 of the Act of 1985 does not find support from the material available on record

10.6. The judgment in **Roy V.D. (Supra)**, therefore, does not help the accused-applicant. That case concerned a search, seizure and



arrest by an officer who was not an empowered officer at all, whereas in the present case Mr. Dalpat Singh was admittedly a Sub-Inspector posted as S.H.O. and, therefore, fell within the class of officers empowered by the notification issued by the State. The Hon'ble Apex Court in the aforesaid judgment held as under:

" **16.** Now, it is plain that no officer other than an empowered officer can resort to Section 41(2) or exercise powers under Section 42(1) of the NDPS Act or make a complaint under clause (d) of sub-section (1) of Section 36-A of the NDPS Act. It follows that any collection of materials, detention or arrest of a person or search of a building or conveyance or seizure effected by an officer not being an empowered officer or an authorised officer under Section 41(2) of the NDPS Act, lacks sanction of law and is inherently illegal and as such the same cannot form the basis of a proceeding in respect of offences under Chapter IV of the NDPS Act and use of such a material by the prosecution vitiates the trial.

17. To the same effect is the view expressed by this Court in *State of Punjab v. Balbir Singh* [(1994) 3 SCC 299 : 1994 SCC (Cri) 634] . In para 13 *Jayachandra Reddy, J.* speaking for the Court observed thus: (SCC p. 313)

13. Therefore, if an arrest or search contemplated under Sections 41 and 42 is made under a warrant issued by any other Magistrate or is made by any officer not empowered or authorised, it would per se be illegal and would affect the prosecution case and consequently vitiate the trial.

10.7. Further, the proviso to the notification did not operate as a restriction upon the competence of an empowered officer, but



prescribed the procedure to be followed where the powers were exercised by an officer other than the officer of the area concerned. In the present case, the charge-sheet itself records that Mr. Dalpat Singh had been given charge of Police Station Lohawat on 14.03.2024 as the regular S.H.O. was on medical leave. Thus, on the material presently available, Mr. Dalpat Singh was himself acting as the officer in charge of the police station concerned on the relevant date and immediately thereafter, he had handed over the investigation to the S.H.O., Mr. Rameshwar Dayal. In such circumstances, the proviso requiring handing over the investigation to the officer of the concerned police station would by itself justify the initiation of proceedings as Mr. Dalpat Singh was Sub-Inspector and as S.H.O. having charge of a police station.

10.8. As far as the arguments raised by the counsel for the accused-applicant with regard to non-exhibition of the order No. 121 dated 14.03.2024 is concerned, the same by itself would not vitiate the proceedings or the recovery. As firstly, the second Investigating Officer Mr. Shivraj Singh is yet to be examined by the trial Court and he could very well exhibit the documents and secondly even otherwise, the notification dated 16.10.1986 by itself is clear whereby the Sub-Inspector posted as SHO can exercise the power under Section 42 of the Act of 1985, irrespective of him having charge of any police station.

11. The third limb of the argument of learned counsel for the accused-applicant is that no ground or reason for arrest was communicated to the accused-applicant. Article 22(1) of the



Constitution of India provides that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. A similar requirement is contained in Section 50(1) of the CrPC, 1973 and Section 52(1) of the NDPS Act, 1985. The provision of Section 52(1) reads as under:-

"52. Disposal of persons arrested and articles seized.—

(1) Any officer arresting a person under section 41, section 42 section 43 or section 44 shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under warrant issued under sub-section (1) of section 41 shall be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued.

(3) Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 shall be forwarded without unnecessary delay to--

(a) the officer-in-charge of the nearest police station, or

(b) the officer empowered under section 53.

(4) The authority or officer to whom any person or article is forwarded under sub-section (2) or sub-section (3) shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or article."

11.1. Learned counsel for the accused-applicant, in support of the aforesaid contention, relies upon the judgments of the Hon'ble Apex Court in **Pankaj Bansal vs. Union of India, (2024) 7 SCC 576, Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 254, Vihaan Kumar vs. State of Haryana, (2025) 5 SCC 799** and **Mihir Rajesh Shah vs. State of Maharashtra, 2025 INSC 1288**.



11.2. In the present case, however, the contention that no ground for arrest was communicated to the accused-applicant is not borne out from the contemporaneous record. The seizure proceedings dated 14.03.2024 specifically record that, after recovery of 210 kg of poppy straw and upon the offence under Sections 8/15 of the NDPS Act being found prima facie made out, the accused-applicant was informed of the grounds for his arrest and was thereafter arrested through the arrest memo.

11.3. The record thus contains a contemporaneous recital regarding communication of the reason for arrest, before the arrest was effected. This is, therefore, not a case where the record is altogether silent on the aspect of communication of the grounds for arrest. Even otherwise the accused-applicant has not been able to show that any prejudice has been caused to him due to the alleged non-communication of the grounds of arrest. The applicant having participated in the proceedings without raising this ground whatsoever in the entire proceeding, be it the remand proceeding or the bail application before the trial Court as well as before this Court, cannot be permitted to now raise this Court for the first time before this Hon'ble Court at the stage of arguments. The question as to the evidentiary value or sufficiency of such communication would ultimately be tested on the basis of the evidence to be led during trial; however, at the stage of consideration of bail, the contemporaneous record cannot be ignored.

11.4. Thus, on the material presently available i.e. recovery memo at page No. 44 and the arrest memo at page No. 62, it could not



prima facie be accepted that the accused-applicant was arrested without being informed of the reason for his arrest. The plea of complete non-communication was not supported by the record. It is also noted that this contention was not taken as a ground in the present bail application and was raised only at the stage of arguments, further no such objection was taken during remand proceedings or even before the trial Court while adjudication of the bail application. Nevertheless, since it was urged, this Court dealt with it to the extent necessary at the stage of bail. The third limb of the argument of learned counsel for the accused-applicant therefore cannot be accepted at this stage.

12. As regards the ground of prolonged incarceration is concerned, admittedly in the case in hand, the accused-applicant is behind the bars since 14.03.2024 and that by itself cannot be said to constitute prolonged incarceration.

13. The Hon'ble Apex Court, in the series of judgments, including ***Mohd. Muslim @ Hussain v. State (NCT of Delhi), (2023) 18 SCC 166***, has held that only in case the period undergone is genuinely long (7 years and 4 months incarceration in that case), then the same can be considered as prolonged incarceration. The relevant portion of the said judgment is reproduced hereunder:

"18. It is an undisputed fact that two co- accused persons (who also, were not present at the time of raid and from whom no contraband was recovered) - the accused (Virender Singh @ Beerey) who allegedly transferred money to the appellant's account as payment for the ganja, and the accused (Nepal Yadav @ Tony Pahalwan) from whom the original insurance papers and registration certificate of the car from which contraband was seized, was recovered18 - have



both been enlarged on bail. The appellant has been in custody for over 7 years and 4 months. The progress of the trial has been at a snail's pace: 30 witnesses have been examined, whereas 34 more have to be examined.

19. 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, 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.

20. 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."

14. The Hon'ble Apex Court, in the case of **Union of India vs. Vigin K. Varghese, 2025 SCC OnLine SC 2440**, while dealing





with an identical issue of prolonged incarceration, has held as under:

17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii) which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon appreciation of evidence which would be in the domain of trial court at first instance.

15. In **Union of India vs. Namdeo Ashruba Nakade, 2025 SCC OnLine SC 3049**, while dealing with the issue of long incarceration Hon'ble Apex Court has held as under:

"11. In the present case, this Court finds that though the Respondent-accused was in custody for one year four months and charges have not been framed, yet the allegations are serious inasmuch as not only is the recovery much in excess of the commercial quantity but the Respondent-accused allegedly got the cavities ingeniously fabricated below the trailer to conceal the contraband."

16. Very recently, the Hon'ble Apex Court, in the case of **State of Punjab vs. Balraj Singh @ Billa, 2026 SCC OnLine SC 1058**, has held that while dealing with bail applications involving commercial quantities of narcotic drugs, the embargo under Section 37 of the NDPS Act, 1985, has to be considered, and satisfaction regarding the conditions laid down therein has to be



recorded. The Hon'ble Apex Court, while considering the period of incarceration of 1 year and 7 months of the respondent therein, has held as under:

"18. Upon consideration of the case of the respondent against the twin conditions laid down in Section 37, we are of the view that no case for bail is made out. There are antecedents involving commission of offences of the very same nature under the NDPS Act, therefore it cannot be said that he is not likely to commit such an offence while on bail.

19. Moreover, the respondent has only undergone 1 year 7 months, and if found guilty a maximum sentence of twenty years may be imposed upon him. Therefore, it cannot be said that he has suffered incarceration for a long period, warranting interference in view of Article 21 of the Constitution.

20. While this Court has recognized on several occasions that prolonged incarceration warrants the grant of bail in view of Article 21 of the Constitution, we have noticed that the application thereof is not uniform. Moreover, there is no doubt that what constitutes "prolonged incarceration" for the purposes of bail, has not been expounded by this Court or the law of the land."

17. Again, in the case of **State of Punjab vs. Sukhvinder Singh @ Gora, 2026 SCC OnLine SC 671**, an identical issue came up for consideration before the Hon'ble Apex Court, and the Court has held as under:

"10. The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b) (ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is



undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has in this Court's view, committed an error."

18. This coupled with the fact that Section 479 of BNSS is a provision wherein the maximum period for which an under trial prisoner can be detained has been specified, wherein too it has been provided that except for offence for which the punishment of death or life imprisonment has been specified as one of the punishments under the law, an accused shall be entitled for grant of bail in case he has undergone one half of the maximum period of imprisonment specified for the offence under that law. Needless to emphasize that the provision deals with offences under any law.

The following provision reads as under:

"479. Maximum period for which undertrial prisoner can be detained.

(1). *Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:*

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention



for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.-In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2). Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3). The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."

19. In the case in hand, the maximum punishment for the offence in question specified under the Act of 1985 is imprisonment for a term not less than 10 years, but which may extend to 20 years along with fine. The accused-applicant, in the case in hand, has not even undergone half of the punishment specified, even assuming that the maximum punishment specified is ten years for the offence in question, thus, the ground of prolonged incarceration is not at all made out.

20. Thus, considering the ratio of the above judgments, bail applications cannot be decided merely on the basis of prolonged





incarceration; the twin conditions under Section 37 of the NDPS Act, 1985 must also be considered. The accused-applicant has been in custody since 14.03.2024, but the length of custody alone, in a case involving a commercial quantity, is not a ground to override the statutory embargo of Section 37, particularly when the trial is proceeding and accused-applicant has not even been behind the bars for one half of the period of maximum sentence as prescribed. The accused-applicant has not been able to satisfy this Court with regard to the twin conditions of Section 37, and therefore no case for grant of bail is made out. Accordingly, the bail application is **dismissed**.

21. Nothing in this order is an expression of opinion on the merits of the case, and the trial court shall decide the case independently based upon the evidence led before it without being influenced by any observation made by the court in this order.

(SANDEEP SHAH),J

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