



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous Bail Application No.9702/2026

Kaluram S/o Ramdayal Adopted S/o Mangi Lal, Aged About 58 Years, R/o Dewaliya, P.S. Sarana, District Ajmer (Raj.).
(At Present Lodged In Sub-Jail, Kekri).

----Petitioner

Versus

State Of Rajasthan through P.P.

----Respondent

For Applicant(s) : Mr. Jai Prakash Gupta
Mr. Achin Singhal
Mr. Yashovardhan Agarwal
For Respondent(s) : Mr. N.S. Dhakar, PP with
Mr. Shubham Sain

JUSTICE ANOOP KUMAR DHAND

Order

29/06/2026

1. The instant bail application under Section 483 BNSS has been filed by the applicant in connection with the FIR No.94/2026, registered at the Police Station Sarwar, District Ajmer for the offences punishable under Sections 8/15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act").
2. Learned counsel for the applicant submits that recovery of 7.550 kg of *Doda Post* was effected at the instance of the co-accused Jodharam, who has already been granted indulgence of bail by the Court of Judicial Magistrate, Sarwar, District Ajmer vide order dated 30.03.2026. Learned counsel further submits that there is no evidence against the applicant to connect him with the alleged incident and he has been implicated as an accused on the basis of the information given by the co-accused Jodharam under Section



23(2) of the Indian Evidence Act. Learned counsel also submits that the applicant does not have any criminal antecedents and he is in custody and trial will take its own time to conclude, therefore, indulgence of bail be granted to him.

3. *Per contra*, learned Public Prosecutor opposed the bail application.

4. Heard and considered the submissions made at the Bar and perused the material available on record.

5. Considering the arguments put forward by learned counsel for the applicant and looking to the fact that recovery of the alleged contraband has been effected from the co-accused Jodharam and the applicant has been implicated as an accused on the basis of the information furnished by the co-accused Jodharam and trial will take its own time to conclude and without expressing any opinion on merits and demerits of the case, this Court deems it just and appropriate to grant indulgence of bail to the applicant under Section 483 BNSS.

6. Accordingly, the instant criminal misc. bail application under Section 483 BNSS is allowed and it is ordered that the accused-applicant **Kaluram s/o Ramdayal** arrested in connection with the aforementioned FIR, may be released on bail; provided he furnishes a personal bond of Rs.50,000/- with two surety bonds of Rs.25,000/- each to the satisfaction of the learned Trial Court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.

7. Before parting with the order, it is worthy to mention here that the learned Judicial Magistrate, Sarwar, District Ajmer, who





was having link charge, has granted bail to the co-accused Jodharam, who is an accused under Section 8/15 of the NDPS Act.

8. As per the mandate contained under Section 36A of the NDPS Act, the offences punishable under the NDPS Act are exclusively triable by the Special Courts and as per Section 36 of the NDPS Act, a Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

9. For ready reference, the relevant provisions contained under Sections 36 and 36A of the NDPS Act are reproduced, as under:-

36. Constitution of Special Court.—(1) The Government may, for the purpose of providing speedy trial of the offences under this Act, by notification in the Official Gazette, constitute as many Special Court as may be necessary for such area or areas as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

Explanation.—In this sub-section, "High Court" means the High Court of the State in which the Sessions Judge or the Additional Sessions Judge of a Special Court was working immediately before his appointment as such Judge.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge.

36A. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;





(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers—

(i) when such person is forwarded to him as aforesaid; or

(ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;

(c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;

(d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.





(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days. (5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.

10. Bare perusal of Section 36A(1)(b) of the NDPS Act indicates that it is a non-obstante clause which overrides the provisions contained in the Cr.P.C. It states that where a person accused of or suspected of commission of an offence under the NDPS Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of Section 167 of the Cr.P.C., such Magistrate may authorise the detention of such person in such custody, as he thinks fit, for a period not exceeding 15 days in the whole where such Magistrate is a Judicial Magistrate, and seven days in the whole where such Magistrate is an Executive Magistrate. The proviso apprehended to the provision states that in such cases, where the offence is triable by the Special Court, where such Magistrate, after expiry of the period of detention, considers that the detention of such person is not necessary, **he shall order such person to be forwarded to the Special Court having jurisdiction.**





11. Section 36A(1)(c) of the NDPS Act provides that the Special Court can exercise all such powers, which a Magistrate is empowered to exercise under Section 167 of Cr.P.C.

12. A bare perusal of the aforesaid Section indicates that the legislature thought it fit to impose an embargo over the power of Magistrate in the matters of bail relating to any offence under the NDPS Act. In case the Magistrate is of the opinion that remand of the accused is not necessary for the offence under the NDPS Act, he cannot grant bail and shall order such person to be forwarded to the Special Court having jurisdiction.

13. In the instant case, the alleged offence is punishable under Section 8/15 of the NDPS Act. A bare perusal of the FIR indicates that 7.550 *Doda Post* is alleged to have been recovered at the instance of co-accused Jodharam. The aforesaid quantity of the contraband is more than the small quantity and less than the commercial quantity.

14. As per Section 15 of the NDPS Act, if any accused is found involved in such like offences, where the quantity of the contraband involved is lesser than the commercial quantity but greater than the small quantity, then the said accused shall be punishable with imprisonment for a term which may extend up to 10 years and with a fine which may extend to one lakh rupees.

15. Looking to the overall facts and circumstances of the case, this Court deems it just and proper to formulate a question, which is required to be answered:-

“Whether a Judicial Magistrate is having jurisdiction to hear and decide the bail application filed by the accused





for the offence punishable under the NDPS Act, more particularly when Special Courts have been constituted for trial of such offences, in terms of Section 36 and 36A of the NDPS Act?"

16. The learned Members of the Bar are requested to assist the Court on the aforesaid issue.

17. The Registrar (Judicial) is directed to publish a note in the cause-list inviting Members of the Bar to address on the aforesaid issue.

18. In the meantime, an explanation be also called from the concerned Judicial Magistrate on the issue raised in this bail application.

19. Office is directed to list this matter on 09.07.2026.

(ANOOP KUMAR DHAND),J

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