



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



S.B. Criminal Miscellaneous Bail Application No. 164/2025

Dheeraj Singh Parmar S/o Basant Singh Parmar, Aged About 32 Years, R/o Behind Govt. Senior Secondary School Gadhi, Police Station Gadhi, District Banswara, At Present Tenant At 4Th Floor, Jai Kapish Enclave, Plot No. 137, Patrkar Colony, Police Station Mansarovar, Jaipur (Raj.). (Presently Confined In Central Jail, Jaipur).

-----Petitioner

Versus

State of Rajasthan, Through PP

-----Respondent

For Petitioner(s) : Mr. Rajveer Singh Gurjar
For Respondent(s) : Mr N.S. Dhakar, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

14/02/2025

(Reportable)

1. The instant bail application under Section 483 BNSS has been filed on behalf of the petitioner who is in custody in connection with FIR No.276/2024 registered at Police Station Mansarovar Jaipur for offence under Section 8/22 of the NDPS Act.
2. Learned counsel for the petitioner contends that the petitioner has falsely been implicated in this case. It is also contended that the petitioner has nothing to do with the alleged recovery of contraband. Compliance of provisions of Sections 42 & 50 of the NDPS Act has also not been done in the instant case.
3. He contends that as per the prosecution case, MDA weighing 24.75 grams was recovered from the petitioner while as per the FSL report dated 11.09.2024, methamphetamine was found in the



sample packet (Mark X), sent to the FSL for analysis. He argues that the commercial quantity of MDA is 10 Grams whereas with respect to Methamphetamine, it is 50 Grams. As per the FSL report, methamphetamine was found in the sample packet and thus, the recovery of substance which is weighing 24.75 Grams, allegedly effected from the petitioner is below commercial quantity. The petitioner has been arrested on 18.03.2024 and since then, he is in custody. Trial of the case would take long time in its conclusion.

4. Per contra, learned Public Prosecutor opposes the bail application. He submits that one other case (FIR No.146/24) under NDPS Act is already registered against the petitioner at Police Station Shyam Nagar. It is argued that looking to the rigour of Section 37 of the NDPS Act, bail should not be granted.

5. Heard. Perused the material available on record.

6. As per the prosecution case, recovery was allegedly effected on 20.03.2024. The recovered contraband was observed and perceived as MDA on the basis of past experience of the seizure officer and thereafter, sample (mark X) was sent to the FSL vide letter dated 26.04.2024 but the FSL report was prepared and issued on 11.09.2024 that is almost after nearly 130 days of its receipt opining that methamphetamine was found in the sample packet. It is well-established law that a seizure officer cannot be said to be an expert within the meaning of Section 45 of the Evidence Act but only on the basis of observation and opinion, based on past experience of the seizure officer, liberty of a person is put to stake, which in my considered opinion, is not justified in any manner. Apart from it, this determination/ classification/ of



the contraband on the basis of so-called past experience of the seizure officer not only effect the rights of an accused but it also give impact on the trial and investigation.

7. Section 167(2) Cr.P.C. confers powers on the Magistrate to commit to custody an accused person and there is limitation of 90 days and 60 days, as the case may be. This provision is related to information to the police and their powers to investigate. Any further remand to judicial custody beyond 90 days and 60 days without the chargesheet being presented before the Court will be without the authority of law.

8. Sub Section (4) of Section 36A of the NDPS Act provides that:-

“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”

9. Thus, whether the investigation is to be completed within sixty days or one hundred and eighty days is totally dependent upon FSL report. If the FSL report affirms the idea/estimation or presumption of the seizure officer and matter involves recovery of commercial quantity, investigation should be completed within 180 days. But in case, FSL report does not match with the opinion of the Seizure officer and give report of presence of any other substance which may not be punishable under the NDPS Act or if punishable under the NDPS Act but if the recovered quantity is



below commercial, in that eventuality, investigation is to be completed within 60 days and not in one hundred and eighty days.

10. In my thoughtful consideration, FSL report is the most important thing in an NDPS case upon which, entire investigation and trial revolve. In the instant case, FSL report was issued after almost 130 days of receipt of the samples and upon analysis, 'methamphetamine' was detected. As per the prosecution case, contraband weighing 24.75 grams was recovered from the petitioner whereas commercial quantity of 'methamphetamine' prescribed under the Act is 50 Grams. Thus, the maximum time period to complete investigation and to file result of investigation is 60 days. Any further remand to judicial custody beyond 60 days without the chargesheet being presented before the Court will be without the authority of law. Here in this case, charge sheet has been filed on 12.09.2024 whereas FIR has been registered on 20.03.2024 and on the same day, the petitioner was arrested.

11. In backdrop of the aforesaid discussion, this Court deems it just and proper to direct Director General of Police, Jaipur to ensure that henceforth, FSL reports be obtained from the FSL on priority basis preferably within 60 days and for this purpose, proper coordination be made with the concerned Directors, FSL as life and liberty are priceless and they can't be compromises except with the sanction of law. For the aforesaid purpose, DGP shall take concrete steps for expeditious and speedy receipt of the reports from the FSL and apprise the Court about the steps taken, on the next date of hearing.



12. Having regard to the totality of the facts and circumstances of the case; considering the arguments advanced by learned counsel for the parties so also the fact that as per FSL, upon analysis, methamphetamine was detected in the sample; the recovered contraband is below commercial; the petitioner is in custody since 20.03.2024 and trial will take time in its conclusion but without commenting anything on merits and demerits of the case, I deem it proper to allow the bail application.

13. This bail application is accordingly allowed and it is directed that accused-petitioner- Dheeraj Singh Parmar S/o Basant Singh Parmar shall be released on bail provided he furnishes a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand only) together with two sureties in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) 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.

14. It is made clear that the accused petitioner shall not involve in any similar offence during currency of bail and he shall mark his presence in the concerned local police station in the first of every month till trial is concluded.

15 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.

16. List on 18.03.2025. A copy of this order be sent to Director General of Police, Jaipur forthwith.

(ANIL KUMAR UPMAN), J

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