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**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

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**CRM-M-21314-2021**

**Date of Decision: 27.07.2021**

Ajay Kumar @ Sonu

Petitioner

Versus

State of Haryana

Respondent

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Deepak Goyal, Advocate for the petitioner.

Ms. Dimple Jain, Assistant Advocate General, Haryana.

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**AVNEESH JHINGAN, J.**

[1] The matter is taken up for hearing through video conference due to COVID-19 situation.

[2] The petition is for grant of bail till receipt of FSL report in F.I.R. No. 47, dated 5<sup>th</sup> April, 2021 under Sections 22 (c) and 61 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') registered at Police Station Ding, District Sirsa.

[3] The police on 5<sup>th</sup> April, 2021, during routine patrolling, checked a car bearing registration No. HR26-DW-7236. The car was driven by Mukesh Kumar. Radha Devi, Ajay Kumar @ Sonu (petitioner) and Ravi Kumar were the occupants of the car. On search, from the dicky of the car two plastic bags were recovered. In each bag there were 50 boxes of Nrx Tramadol Hydrochloride Tablets. The box had

50 strips of 10 tablets each, having Batch No. 20J-T-1087, MFG Jan 2021 and expiry date as December, 2022. The total recovery was of 50,000 tablets of Tramadol which comes under the Category Sr. No. 238 ZH, NDPS Act published in Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) bearing number S.O. 1762 (E), dated 26<sup>th</sup> April, 2018. The petitioner approached the Special Judge-cum-Sessions Judge, Sirsa with the prayer for grant of interim bail till receipt of F.S.L. report. The application was rejected on 18<sup>th</sup> May, 2021, hence the present petition.

[4] Mr. Deepak Goyal, learned counsel for the petitioner submits that F.S.L. report is yet to be received, the case of the petitioner is squarely covered by the decision of the Division Bench of this Court in *Inderjeet Singh @ Laddi and others Versus State of Punjab, (2014) 3 RCR (Criminal) 953*, hence interim bail be granted.

[5] Ms. Dimple Jain, Assistant Advocate General, Haryana opposes the prayer for grant of bail. She submits that in the present case there is recovery of 50,000 tablets and that too of packed manufactured drugs, salt and potency of the tablets was mentioned on the packing.

[6] The Division Bench in *Inderjeet Singh @ Laddi's case (supra)* was dealing with the question:-

*“Whether an accused can be tried for an offence under the NDPS Act in case he is found in possession of 'manufactured drugs' which fall in the definition of 'manufactured drug' in terms of Section 2 (xi) of the NDPS*

*Act and has been notified as such by notifications dated 14.11.1985 and 29.1.1993 as 'manufactured drugs', but contain an exception as regards the percentage of dosage in the drug ?”*

[7] The Division Bench concluded that the person found in possession of bulk quantity of manufactured drugs forming part of narcotic drugs can be prosecuted under the NDPS Act.

[8] Before the Division Bench contention was raised that people validly transporting/carrying drugs were being harassed by the police. In that context it was observed that it would be for the State government to take necessary steps and the instructions issued by the Narcotics Control Bureau (hereinafter 'N.C.B.') though are for the purposes of investigation by the N.C.B. but can be used as guidelines.

[9] The Division Bench observed that wherever the need is felt by the Special Court dealing with the NDPS cases, that the matter is being unnecessarily delayed it may grant interim bail pending F.S.L. report and the matter be considered after receipt of report.

[10] Para 54 of the judgment is quoted below:-

*“54. Therefore, the presiding officer of a Special Court dealing with NDPS cases wherever the need is felt and where the matter is being unnecessarily delayed may grant interim bail till the receipt of the FSL report and thereafter considered the case after the receipt of the report.*

[11] From the quoted para, it is clear that grant of interim bail till receipt of F.S.L. report is not matter of routine. It is only where the

Court is satisfied that the matter is being delayed unnecessarily, recourse to interim bail pending F.S.L. report is to be taken.

[12] In the case in hand there is recovery of 50,000 tablets. Tablets were packed, manufactured in a factory, having batch number and expiry date. The salt, potency and weight of tablets were there on packing. It is not a case where the contents of the tablets were *prima faice* not known at all. Neither any case is made out of unnecessary delay nor any ground has been made for granting interim bail.

[13] It would be apt to mention at this stage that NDPS Act is a Statute dealing with the narcotic drugs by making stringent provisions for regulation of operations relating to narcotic drugs and psychotropic substances.

[14] The relevant provisions of the NDPS Act are quoted below:-

***“36A. Offences triable by Special Courts.***

XXX

XXX

XXX

*(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.*

**37. Offences to be cognizable and non-bailable. -- (1)**  
*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless--*

*(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*

*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.*

*(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail."*

[15] Sub-section 4 of Section 36A of the NDPS Act provides that offences punishable under Section 19, 24 or 27A or offences involving commercial quantity, the period of "ninety days" provided under Section 167 (2) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr. P.C.') would be construed as "one hundred and eighty days". The

proviso to Section 36A (4) further empowers the Special Court to extend the period upto one year.

[16] Section 37 of the NDPS Act provides that no accused of offence punishable under Section 19, 24 or 27A and also offences involving commercial quantity shall be released on bail unless prosecution is granted an opportunity to oppose the application and secondly, the Court is satisfied that accused is not guilty of offence and is not likely to commit the offence while on bail. Section 37 provides condition for granting bail under NDPS Act, in addition to one provided under the Cr.P.C.

[17] Facts of each case in view statutory mandate under Section 36 and 37 of the NDPS Act are to be considered for grant of interim bail during pendency of F.S.L. report.

[18] No case is made out by the petitioner for grant of bail during pendency of F.S.L. report, the petition is dismissed.

[19] It is clarified that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case.

**[AVNEESH JHINGAN]**  
**JUDGE**

**27<sup>th</sup> July, 2021**

*pankaj baweja*

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable         | : | Yes |