

Date of Decision : 02.08.2021

...Petitioner

Versus

....Respondent

Present : Mr. Kuldeep Singh Siwach, Advocate for the petitioner.

Mr. Naveen Kumar Sheoran, DAG, Haryana and
Mr. Pawan Kumar Longia, DAG, Haryana.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to Covid-19 pandemic.
2. Prayer in the petition under Section 439 CrPC is for grant of interim bail to the petitioner in case FIR No.57 dated 18.03.2021, registered under Section 22 (C) NDPS Act, 1985 at Police Station Nathusari Chopta, District Sirsa till the receipt of FSL report in view of the decision of a Division Bench of this Court in case titled as **Inderjeet Singh @ Laddi v. State of Punjab, 2014 (3) RCR (Crl.) 953.**
3. Learned counsel for the petitioner contends that the petitioner is in custody since 18.03.2021 and that samples of the alleged recovery of 864 capsules of *Tramadol* were sent for chemical examination on 24.03.2021 but report from the FSL has not been received till date, besides, the petitioner is not involved in any other case,

therefore, he is entitled to be released on interim bail till the receipt of the FSL report in view of the decision of the Division Bench of this Court in **Inderjeet Singh @ Laddi's case (Supra)**.

4. Learned State counsel on instructions from SI Puran Chand states that it is factually correct that the petitioner was arrested on 18.03.2021 as also that report of the chemical examiner qua sample of the alleged recovery of 864 capsules of Tramadol sent for chemical examination on 24.03.2021 has not been received so far, besides, the petitioner is not involved in any other case under the NDPS Act.

5. I have considered the submissions of learned counsel for the parties.

6. The learned Special Judge, Sirsa vide order dated 20.05.2021 rejected the prayer of the petitioner under Section 439 CrPC. Admittedly, the petitioner is in custody since 18.03.2021, whereas report of the chemical examiner qua sample of the alleged recovery of 864 capsules of Tramadol sent for chemical examination on 24.03.2021 has not been received so far, besides, as averred in the petition and confirmed by learned State Counsel on instructions from SI Puran Chand that the petitioner is not involved in any other case under the NDPS Act. Hon'ble the Division Bench of this Court in **Inderjeet Singh @ Laddi's case (Supra)** in para Nos.53 and 54 (viii) of its decision has held as under:-

“53. Ministry of Home Affairs, must take special steps to ensure standardisation of equipment across the various forensic laboratories to prevent vacillating results and disallow a

*litigant an opportunity to challenge test results on that basis. Indeed the delay in testing the sample does result in prejudice to an alleged offender as till the results are available there can be no definite certainty with regard to the contraband in respect of which there has been a contravention or that has been recovered. In such cases to await the outcome of the final FSL report where there is likely to be delayed, the accused may be released on interim bail. In **Sukhwant Singh v. State of Punjab, 2009(4) RCR (Criminal) 868 : (2009) 7 SCC 539**, it has been held by the Hon'ble Supreme Court as follows:-*

*..... following the decision of this Court in **Kamlendra Pratap Singh v. State of U.P., 2009(3) RCR (Criminal) 401 : 2009(4) Recent Apex Judgments (R.A.J.) 151 : (2009) 4 SCC 437** we reiterate that a court hearing a regular bail application has got inherent power to grant interim bail pending final disposal of the bail application. In our opinion, this is the proper view in view of Article 21 of the Constitution of India which protects the life and liberty of every person.*

*When a person applies for regular bail then the court concerned ordinarily lists that application after a few days so that it can look into the case diary which has to be obtained from the police authorities and in the meantime the applicant has to go to jail. Even if the applicant is released on bail thereafter, his reputation may be tarnished irreparably in society. The reputation of a person is his valuable asset, and is a facet of his right under Article 21 of the Constitution vide **Deepak Bajaj v. State of Maharashtra, 2008(4) RCR (Criminal) 961 : 2008(6) Recent Apex Judgments (R.A.J.) 357 : (2008) 16 SCC 14**. Hence, we are of the opinion that in the power to grant bail there is inherent power in the court concerned to grant interim bail to a person pending final disposal of the bail application. Of course, it is in the discretion*

of the court concerned to grant interim bail or not but the power is certainly there.

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.*

As a consequence of the above, it may be noticed that:-

(i) to (vii) xxx xxx xxx

(viii) *It is suggested that the State authorities should get the drugs in respect of which there is a contravention and that are recovered examined by the Chemical Analysts at the earliest and a report provided to the offender at the earliest so that the position can be ascertained as to whether the alleged offender was in possession of permissible quantity of the drug or otherwise. In case there is delay this would entitle the offender to at least interim bail till the report is finally received.*

(ix) to (xi) xxx xxx xxx ”

7. Accordingly, in the light of the position noted above, as also receipt of report of the FSL being delayed and in view of the fact that the petitioner is not involved in any other case under the NDPS Act as also in view of the decision of the Division Bench of this Court in *Inderjeet Singh @ Laddi's* case (Supra), the instant petition is allowed and the petitioner is ordered to be released on interim bail till the receipt of the report of the FSL subject to his furnishing bail bonds/surety to the

satisfaction of the learned Chief Judicial Magistrate/Trial Court/Duty Magistrate concerned provided he is not required in any other case. However, in case the petitioner is involved in any other case under the NDPS Act while on interim bail in the instant case, prosecution would be at liberty to move an application for cancellation of interim bail granted to the petitioner. The petitioner would ensure his presence before the learned trial Court on each and every date and in case of report of the FSL being against the petitioner, the petitioner would forthwith surrender before the learned trial Court.

8. Petition allowed in the aforementioned terms.

(B.S. Walia)
Judge

02.08.2021
'Amit'

Whether speaking/ reasoned : *Yes/No*
Whether reportable : *Yes/No*