

**CRM-M-38194-2021 (O&M)**

**Through video conference**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

**CRM-M-38194-2021 (O&M).  
Decided on: September 15, 2021.**

**Amandeep Singh**

**.. Petitioner**

**VERSUS**

**State of Punjab**

**.. Respondent**

**\* \* \***

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

**\* \* \***

**PRESENT      Mr.Nirmaljeet Singh Sidhu, Advocate,  
for the petitioner.**

**Mr.Randhir Singh Thind, DAG, Punjab.**

**JASGURPREET SINGH PURI, J. (ORAL)**

The present petition has been filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail in FIR No.87 dated 26.5.2021, registered under Sections 21/22/61/85 of the Narcotic Drugs and Psychotropic Substances Act, at Police Station Talwandi Sabo, District Bathinda.

As per the FIR, the petitioner along with one another co-accused was found sitting in the car and as there was suspicion, the police

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surrounded the car with the help of other officials and found that two persons sitting in the car were counting the tablets strips. One of the said two persons was the present petitioner namely Amandeep Singh son of Shadi Singh. Thereafter, the procedure under Section 50 of the NDPS Act was followed and they were given an option to be searched before a gazetted officer or a Magistrate but both the apprehended persons gave consent for making the search on the spot. Thereafter, the petitioner filed an application for regular bail and since FSL report was not received by the police, the learned Additional Sessions Judge, Bathinda, granted interim bail to the petitioner so as to await the FSL report. Thereafter, the FSL report was received and it was found that total weight of 100 tablets of LIVA 0.50 comes out to be 13.56 grams (approx.) containing salt Etizolam and since the commercial quantity as defined under the NDPS Act was 2.5 grams, the seized quantity came out to be commercial quantity and the bail application of the petitioner was dismissed on 6.8.2021. Thereafter, the petitioner instead of surrendering before the Court has chosen to file the present petition for the grant of anticipatory bail.

Learned counsel for the petitioner has submitted that the petitioner has clear antecedents and is not involved in any other case and so far as the quantity of the contraband seized is concerned, the same was made from two persons and therefore, the petitioner may be considered for the grant of anticipatory bail.

On the other hand, Mr.Randhir Singh, learned DAG, Punjab, has submitted that once the FSL report has come in which the

quantity of the salt contained in the seized contraband is of commercial nature and falls within the purview of the schedule of the NDPS Act, it was incumbent upon the petitioner to have surrendered before the Court instead of filing the present petition for anticipatory bail. He has further submitted that the present petition is also hit by the bar contained under Section 37 of the NDPS Act, as no ground is available to the petitioner for making the departure from the aforesaid bar.

I have heard the learned counsel for the parties.

In the present case, the petitioner was granted interim protection on the ground that FSL report was not received and thereafter, on the receipt of FSL report, the petitioner instead of surrendering before the Court has chosen to file the present petition for anticipatory bail. The seized quantity in the present case is admittedly commercial in nature. The petitioner was caught on the spot along with another co-accused and as per the FIR the procedure contained under Section 50 of the NDPS Act has been complied with. The argument raised by the learned counsel for the petitioner that the petitioner has clear antecedents and recovery was made from two persons would not be sustainable in view of the fact that case of the petitioner is hit by the bar contained under Section 37 of the NDPS Act. Although in certain circumstances, departure can be made from the bar contained under Section 37 of the NDPS Act but that can be done only when the other conditions which are co-existent and specified under Section 37 of the NDPS Act, are fulfilled. However, in the present case, no ground is made out for making departure from the bar contained under Section 37

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of the NDPS Act, and therefore, no concession of anticipatory bail can be granted to the petitioner.

In view of above, there is no merit in the present petition for anticipatory bail and consequently, the same is hereby dismissed.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant only for the purpose of decision of present petition.

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|-----------------------------|---------------------------------|
| <b>September 15, 2021.</b>  | <b>(JASGURPREET SINGH PURI)</b> |
| <b>raj arora</b>            | <b>JUDGE</b>                    |
| Whether speaking / reasoned | Yes / No                        |
| Whether reportable          | Yes / No                        |