

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM No. M-43913 of 2015 (O&M)
Date of Decision: 04.05.2016

Rajwinder Kaur @ Pammi @ Rajji

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Ashish Aggarwal, Advocate for the petitioner.

Ms. Anmol Grewal, A.A.G., Punjab.

TEJINDER SINGH DHINDSA.J

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case F.I.R. No.52 dated 30.5.2014 under sections 22, 61, 85 of N.D.P.S Act, registered at Police Station, Harike, District Tarn Taran.

Learned counsel for the parties have been heard.

The entire prosecution version is that on the basis of suspicion one ASI Puran Singh had apprehended the petitioner and an alleged recovery of 300 grams of intoxicant powder was effected and which upon receipt of the report of Chemical Examiner was found to be containing the salt Diphenoxylate Hydrochloride.

Prayer in the present petition is being opposed on the ground that the recovery effected from the petitioner would be construed as commercial quantity.

However, there is another aspect of the matter which would require consideration.

Counsel for the petitioner has placed reliance upon a notification dated 3.9.1987 issued by the Govt. of Punjab, Department of

Excise & Taxation and in terms of which it is only officers of the rank of A.S.I and above who could have exercised the powers and perform the duties specified under Sections 42 and 67 of N.D.P.S Act. It was contended that Puran Singh who had conducted the seizure was not holding the rank of ASI on the pertinent date i.e. 13.5.2014 as such police official while appearing before the Trial Court as PW-1 had admitted that even till the date of recording of his deposition he had been serving in the police department as a Head Constable.

Clarification in this regard was sought from the State Govt.

It is sought to be justified that Puran Singh previously Head Constable was promoted as ASI/Local Rank on completion of 10 years service by the D.I.G., Border Range, Amritsar in the light of order dated 2.10.2012. It has also been contended by the State counsel that as per notification dated 3.9.1987 there is no bar envisaged with regard to exercise of powers under sections 42 and 67 of N.D.P.S Act at the hands of a Head Constable, who may have been granted Local Rank of ASI.

The stand taken on behalf of the State, cannot be accepted.

Concededly, on the relevant date when the alleged recovery was effected, Puran Singh was not holding the substantive rank of ASI. He had only been granted an ad hoc promotion/Local Rank of ASI. It has gone uncontroverted that inspite of grant of such ad hoc promotion, Puran Singh continued in the pay scale of the post of Head Constable. Puran Singh had not qualified the requisite departmental promotion examination/course as mandated under the statutory rules to be promoted to the post of ASI.

The same very issue as regards exercise of powers under sections 42 and 67 of the N.D.P.S Act by an ad hoc promotee ASI came up

for consideration before a Division Bench of this Court in ***Bikkar Singh Vs. State of Punjab, 2006 (3) R.C.R (Criminal), 16*** and it was held as follows:-

“12. Secondly, it is evident from the cross-examination of PW-1 SI Gurmail Singh, who is the Investigating Officer in this case, that he was ad hoc A.S.I and had not passed the departmental course for promotion as A.S.I. Further, it is also admitted by him that he was receiving pay of Constable Grade II at the time of occurrence of this case. Not only that, DW-1 Constable Preet Inder Singh also proved from the summoned record that the substantive rank of SI Gurmail Singh was Constable Grade II and that his SI rank is only O.R.P (own rank promotion). He also proved that SI Gurmail Singh had never passed any course for promotion as Head Constable or that of Assistant Sub Inspector. In his further cross-examination, he admitted it to be correct that before promotion to the rank of SI, one has to pass the course of Head Constable and also that of ASI. In this view of the matter, it can be safely inferred that he was not competent to exercise the powers and perform the duties specified in Sections 42 and 67 of the Act within the area of his jurisdiction.”

In the light of such settled position, whereby the concerned police official i.e. Puran Singh lacked even the authority and jurisdiction to exercise powers under sections 42 and 67 of the N.D.P.S Act, this Court is of the view that the petitioner is entitled to the benefit of regular bail. Even otherwise, investigation is complete and the challan stands presented. It has gone uncontroverted that the petitioner had earlier been granted concession of interim bail awaiting report of the Chemical Examiner and thereafter arrested after the report was received. Petitioner had not misused the concession of interim bail that was granted.

Trial would take time to conclude.

Without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of C.J.M./Duty Magistrate, Tarn Taran.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

04.05.2016

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