

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

**CRM No. M-11035 of 2017 (O&M)
Date of Decision:26.04.2017**

Prince Kumar @ Prince

... Petitioner

Versus

State of Punjab

... Respondent

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

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

Mr. Varun Sharma, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL).

The instant petition has been filed under Section 439 Cr.P.C., seeking benefit of regular bail to the petitioner, pending trial in case FIR No.273 dated 11.11.2014 under Section 22 of the NDPS Act, registered at Police Station Sadar Amritsar, District Amritsar City.

The entire prosecution version is that Head Constable Sarabjit Singh had apprehended the petitioner and an alleged recovery of 175 gm intoxicant powder, which on receipt of the report of Chemical Examiner, was found to be containing Diphenoxylate Hydrochloride.

Prayer in the present petition is 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, during the course of arguments, has placed reliance upon notification dated 03.09.1987 issued by the Government of Punjab, Department of Excise and Taxation and in terms of

which, it is only officers of the rank of ASI and above, who could have exercised the powers and performed the duties specified under Sections 42 and 67 of the NDPS Act. It was contended that Sarabjit Singh, who had conducted the seizure, was not holding the rank of ASI on the pertinent date i.e. 11.11.2014.

On the last date of hearing i.e. 05.04.2017, clarification in such regard was sought from learned State counsel.

During the course of resumed hearing, learned State counsel would submit that Sarabjit Singh, the concerned police official is present in Court. He further submits that Sarabjit Singh till date is drawing the salary of the post of Head Constable, although, he has been granted adhoc local rank promotion to the post of ASI.

Learned State counsel contends that as per notification dated 03.09.1987, there would be no bar envisaged with regard to the exercise of power under Sections 42 and 67 of the NDPS Act at the hands of Head Constable, who otherwise has been granted the 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, Sarabjit Singh was not holding the substantive rank of the post of ASI. He had only been granted an adhoc promotion to the local rank of ASI. It has gone uncontroverted that in spite of the grant of such adhoc promotion, Sarabjit Singh continues in the pay scale of the post of Head Constable. Sarabjit Singh, furthermore, has not even qualified the requisite departmental promotion examination 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 adhoc 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 adhoc 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. Sarabjit 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 the satisfaction of C.J.M./Duty Magistrate, Amritsar.

(TEJINDER SINGH DHINDSA)
JUDGE

26.04.2017
harjeet

Whether speaking/reasoned Yes

Whether Reportable Yes