

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28788 of 2017 (O&M)
Date of Decision:24.11.2017

Jatinderpal Singh @ Lally

...Petitioner

Vs.

State of Punjab

...Respondent

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

Present: Mr. Gursimran Singh, Advocate,
for the petitioner.

Mr. Avinit Avasthi, A.A.G., Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

The present petition has been filed under Section 439 Cr.P.C seeking the benefit of regular bail to the petitioner in case FIR No.40 dated 06.04.2015, registered under Sections 22, 61 and 85 of NDPS Act at Police Station Kartarpur, District Jalandhar.

Counsel for the parties have been heard.

The entire prosecution version is that on the basis of suspicion one ASI Paramjit Singh had apprehended the petitioner and an alleged recovery of 180 grams of intoxicant powder was effected and which upon receipt of the report of the Chemical Examiner was found to be containing the salt Alprazolam.

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 03.09.1987 issued by the Government of Punjab, Department of Excise & Taxation and in terms of which it is only officers of the rank of ASI and above who could have exercised the powers and perform the duties specified under Sections 42 and 67 of the NDPS Act. It was contended that Paramjit Singh who had conducted the seizure was not holding the rank of ASI on the relevant date i.e 06.04.2015. Counsel for the petitioner has even adverted to the deposition of Paramjit Singh recorded before the Trial Court as PW3 and appeared during the cross-examination, he has admitted that his regular rank was that of Head Constable and he was also drawing the salary of the post of Head Constable.

Clarification in this regard was sought from learned State counsel.

Mr. Avinit Avasthi, AAG Punjab upon instructions from HC Nishan Singh has apprised the Court that Paramjit Singh was granted Local Rank of ASI on 11.04.2013 and as such under notification dated 03.09.1987, there would be no bar with regard to exercise of powers under Sections 42 and 67 of the NDPS 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, Paramjit Singh was not holding the substantive rank of ASI. He had only been granted an *ad hoc* promotion/Local Rank of ASI.

It is the admission of Paramjit Singh himself before trial Court that he continued to draw salary of the post of Head Constable.

The same very issue as regards exercise of powers under

Sections 42 and 67 of the NDPS 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 Paramjit Singh lacked even the authority and jurisdiction to exercise powers under Sections 42 and 67 of the NDPS Act, this Court is of the view that petitioner is entitled to the benefit of the regular bail.

Learned State counsel has also informed the Court that out of eight prosecution witnesses cited, only three have been examined till date.

Trial as such would take time to continue.

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

Magistrate, Jalandhar.

Petition disposed of.

(TEJINDER SINGH DHINDSA)
JUDGE

24.11.2017

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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>