

Sr. No.225

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

CRM No. M-16113 of 2018 (O&M)

Date of Decision: 25.04.2018

Sukhwinder Kumar @ Lakha

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. Parvinder Singh Ahluwalia, Advocate,
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

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.13 dated 18.02.2017, under Section 22 of NDPS Act, registered at Police Station Sadar Rajpura, District Patiala, Punjab.

As per prosecution version, the alleged recovery effected in the present case was of 3000 tablets of Lomotil weighing 186 grams as also Rs.2,75,000/-.

As per report of the Chemical Examiner salt of Diphenoxylate Hydrochloride has been found.

Prayer for bail is opposed by learned State counsel by contending that the recovery effected from the petitioner would be construed as heavy and commercial in nature.

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 perform the duties specified under Sections 42 and 67 of the NDPS Act. It was contended that Gurjit Singh who had conducted the seizure was not holding the rank of ASI on a substantive basis on the pertinent date i.e. 18.02.2017.

Learned State counsel upon instructions from ASI Baljinder Singh, Sadar Rajpura, Patiala would concede that till date Gurjit Singh continues to draw salary of the post of Head Constable, even though, he was granted ad hoc local rank promotion to the post of ASI.

State counsel contends that as per Notification dated 03.09.1987 there would be no bar envisaged with regard to exercise of powers under Sections 42 and 67 of the NDPS Act at the hands of a Head Constable, who otherwise has been granted the local rank promotion as ASI.

Stand taken on behalf of the State cannot be accepted.

Concededly on the relevant date when the alleged recovery was effected, Gurjit Singh was not holding the substantive rank of the post of ASI. He had only been granted ad hoc promotion to the local rank of ASI.

The same very issue as regards exercise of powers under Sections 42 and 67 of the NDPS Act by a ad hoc promotee

ASI came up for consideration before a Division Bench of this Court in **Bikkar Singh Vs. State of Punjab, 2006 (3) RCR (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.”

By following the dictum laid down in **Bikkar Singh's case (supra)**, this Court is of the considered view that petitioner is entitled to the benefit of regular bail.

Even otherwise investigation is complete and the challan stands presented. Trial would take time to conclude.

Without making any observations on merits, petitioner

is held entitled to the benefit of bail.

Petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the trial Court/Duty Magistrate concerned.

Disposed of.

25.04.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No