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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20097-2018

Date of decision: 16.07.2018

Dev Raj @ Debu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. D.R. Punia, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for grant of regular bail in FIR No.11 dated 01.02.2015 under Sections 22/61/85 of NDPS Act, registered at Police Station Subhanpur, District Kapurthala.

Learned counsel for the petitioner submits that co-accused of the petitioner namely Sunny has already been granted the concession of regular bail vide order dated 27.03.2018 passed in CRM-M-46033-2017, by passing the following order: -

“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.11 dated 01.02.2015, under Sections 22/61/85 of NDPS Act, registered at Police Station Subhanpur, District Kapurthala.

Prosecution version is that ASI Balwinder Singh had apprehended the petitioner and an alleged recovery of 200 grams

of intoxicating power was effected and which on receipt of the report of Chemical Examiner was found to be containing Alprazolam.

Prayer in the present petition is opposed on the ground that 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 perform the duties specified under Sections 42 and 67 of the NDPS Act. It was contended that Balwinder Singh, who had conducted the seizure was not holding the rank of ASI on a substantive basis on the pertinent date i.e. 01.02.2015.

During the course of hearing today, learned State counsel would concede that till date Balwinder Singh continues to draw the 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 of ASI.

Stand taken on behalf of the State cannot be accepted.

Concededly, on the relevant date when the alleged recovery was effected, Balwinder 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.

It has gone uncontroverted that inspite of the grant of such adhoc promotion, Balwinder Singh continues in the pay scale 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 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.”

Learned counsel for the petitioner further submits that recovery from the petitioner is of 170 grams of intoxicant powder and his case is on

similar footings.

Learned State counsel, on instructions from ASI Khema Lal, has not disputed the factual position as observed in the aforesaid order dated 27.03.2018.

Without commenting anything on merits of the case, considering the fact that recovery from the petitioner is non-commercial quantity and co-accused of the petitioner has already been granted the concession of regular bail, this petition is allowed and the petitioner is directed to be released on regular bail subject to furnishing his bail/surety bond to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

Petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

16.07.2018
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No