

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

CRM No.M-24007 of 2018 (O&M)
Date of Decision: September 11, 2018

Ranjit Kaur alias Rano

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this second petition under Section 439 Cr.P.C. for grant of regular bail in case FIR No.164 dated 31.05.2015 under Section 22 of the NDPS Act, registered at Police Station Patti, District Tarn Taran.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

Learned counsel for the petitioner argued that in the present case, 282 grams of intoxicating powder (heroin) was recovered from the present petitioner, which falls under commercial quantity. It is argued by

learned counsel for the petitioner that in the present case, the Investigating Officer was not empowered officer as per notification. He was not a regular ASI nor promoted ASI as per law. Learned counsel for the petitioner further contended that even he has not completed the required training of six months before registration of the FIR, which is clear from the reply filed by the State.

The perusal of the record, especially the reply shows that ASI Jaswinderpal Singh had got completed his 12 years service as Head Constable on 21.09.2011 and he had gone to six months' training course since 18.12.2016 to 31.03.2017 and thereafter, consequent upon approval accorded by the Director General of Police, Punjab, Chandigarh, vide his office order, whereby senior-most Head Constable of District Cadre were granted the charge and rank of Assistant Sub Inspector in order to provide the requisite supervisory officials to the expanding and modernization force. As per the reply, training has been conducted from 18.12.2016 to 31.03.2017 but the FIR in the present case is of 30.05.2015 i.e. before the present petitioner took the training. It is not clear that since when ASI Jaswinderpal Singh was holding the local rank of ASI. Even if it is taken that on the date of occurrence, he was holding local rank of ASI, even then, prima facie, it looks that he was not empowered to exercise and perform the duties specified under Sections 42 and 67 of the NDPS Act.

In support of his arguments, learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in ***Gurjant Singh @ Janta vs. State of Punjab, 2013(4) RCR (Criminal) 874***, has held as under:

“25. One of the grounds raised on behalf of the appellant was that P.W.3 was not holding the post of D.S.P. in a substantive manner in order to hold that he was a Gazetted officer on the date of search. According to the appellant, P.W.3 was not a regularly promoted D.S.P. but was only an Inspector functioning as a D.S.P. in a category called ‘Own Rank Pay’ D.S.P. According to the appellant, P.W.3 was drawing the pay of an Inspector from I.R.D. and was not holding the post of D.S.P. on a regular basis. It was, therefore, contended that such a person who was not duly promoted as D.S.P., cannot be equated to the status of a Gazetted officer in order to hold that a search conducted in his presence was a valid search as contemplated under Section 50 of the NDPS Act. As far as the said point raised on behalf of the appellant, we do not find any material or a counter-stand taken to the effect that P.W.3 was a regularly promoted D.S.P. or that as per the rules even as an ‘Own Rank Pay’ D.S.P., he could be equated to any other D.S.P., holding a substantive post. Unfortunately, as stated by us earlier, the trial Court having taken a view that Sections 42 and 50 were not applicable, completely omitted to examine the said defence raised on behalf of the appellant. We also do not find any contra evidence laid on behalf of the prosecution to counter the said ground raised on behalf of the appellant.”

In the judgment passed by Hon'ble Division Bench of this Court in ***Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16***, it is held as under:-

“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.”

I have gone through the above-cited judgments and the same fully apply to the facts of the present case.

The petitioner has been in custody since long. She is not required for investigation or interrogation purposes as she is in judicial custody. The trial of the case will take long time. No useful purpose will be served by keeping the petitioner in custody till the disposal of the case.

In view of the law cited above and keeping in view the facts and circumstances of the present case, without discussing the facts in minute detail and without expressing any opinion on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to her furnishing personal/surety bonds in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial Court/Duty Magistrate.

However, nothing stated above, shall constitute my opinion on merits of the case.

September 11, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No