

Sr. No.215

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

CRM No. M-5089 of 2018 (O&M)

Date of Decision: 21.03.2018

Pardeep Kumar

... Petitioner

Versus

State of Punjab

... Respondent

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

Present:- Mr. Sandeep Verma, Advocate,
for the petitioner.

Mr. S.S.Sandhu, AAG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

State counsel has filed in Court today an affidavit of the Deputy Superintendent of Police, Rajpura along with Annexure R-1. The same is taken on record. A copy has been furnished to counsel opposite.

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.39 dated 02.05.2016, under Sections 18/61/85 of NDPS Act, registered at Police Station Sadar Rajpura, District Patiala.

Prosecution version is that ASI Mohd. Nasim had apprehended the petitioner and an alleged recovery of 10 kgs opium was effected.

Prayer in the present petition is opposed on the ground 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 has placed reliance upon Notification dated 03.09.1987 issued by 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 Mohd. Nasim who had conducted the seizure was not holding the rank of ASI on a substantive basis on the pertinent date i.e. 02.05.2016.

During the course of hearing, learned State counsel in the light of an affidavit placed on record of the Deputy Superintendent of Police, Rajpura would concede that till date Mohd. Nasim 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, Mohd. Nasim 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 in spite of grant of such adhoc promotion, Mohd. Nasim 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 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) 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 the petitioner is held entitled to the benefit of regular bail.

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

Without making any observations on merit, present petition is allowed. Petitioner be enlarged on bail subject to satisfaction of the trial Court/Duty Magistrate, Patiala.

Disposed of.

21.03.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No