

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

CRM-M-5754-2020

Date of Decision : 16.09.2020

Chander ShekharPetitioner

Versus

State of Punjab ...Respondent

CORAM : HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

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

Mr.A.S.Sandhu, Addl.AG, Punjab.

TEJINDER SINGH DHINDSA, J.(ORAL)

Matter has been taken up through Video Conferencing via Webex facility in the light of the COVID-19 situation and as per instructions.

Petitioner seeks benefit of regular bail pending trial in FIR No.144 dated 12.08.2014 under Section 22 of NDPS Act, registered at Police Station Kambo, District Amritsar Rural.

Counsel for the parties have been heard.

As per prosecution version, alleged recovery of 100 grams of Dephenoxylate was effected from the petitioner.

Prayer in the instant petition is being opposed on the ground that the recovery effected would be construed as commercial quantity. Further submission made by learned State counsel is that the petitioner had evaded trial proceedings and had been declared as proclaimed offender and by virtue of such conduct he is disentitled to the concession of bail.

Counsel for the petitioner 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 in the present case ASI Malkit Singh, who had conducted the seizure, was not holding the rank of ASI on the pertinent date i.e. 12.08.2014. A reply on behalf of the State has been forwarded through email and in which it stands admitted that on the relevant date Malkit Singh was holding the local rank of ASI. Learned State counsel himself has conceded that there is a bar in so far as an Head Constable or an ASI holding a local rank from exercising the powers under Sections 42 and 67 of the NDPS Act. 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, Malkit Singh clearly lacked the authority and jurisdiction to exercise powers under Sections 42 and 67 of the NDPS Act.

As regards conduct of the petitioner is concerned, he was initially granted concession of bail to await the report of the Chemical Examiner. No doubt after presentation of the challan petitioner did not surrender before the trial Court and accordingly was declared a proclaimed offender. Be that as it may, petitioner was arrested on 16.07.2019. He has now faced incarceration for a period of 14 months approximately. Trial is not making a headway on account of current COVID-19 pandemic.

Without making any observation on merits, the present petition is allowed and the petitioner is held entitled to the benefit of bail.

Petitioner be enlarged on bail on his furnishing bail bond/surety bond to the satisfaction of the trial court/Duty Magistrate, Amritsar.

16.09.2020
dss

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No