

Kulwant Singh alias Kaku v. State of Punjab, (Punjab And Haryana) : Law Finder Doc Id # 1080615

PUNJAB AND HARYANA HIGH COURT

Before:- Mr. Tejinder Singh Dhindsa, J.

CRM No. M-15557 of 2017 (O&M). D/d. 09.05.2017.

Kulwant Singh alias Kaku - Petitioner

Versus

State of Punjab - Respondent

For the Petitioner:- Mr. Ashish Aggarwal, Advocate and Mr. Varun Sharma, A.A.G., Punjab.

Criminal Procedure Code, 1973 Section 439 Regular bail - FIR under Section 22 of the NDPS Act - Recovery of 130 grams intoxicant powder report of Chemical Examiner, was found to be containing Diphenoxylate Hydrochloride - Petitioner contended that Harpal Singh, who had conducted the seizure, was not holding the rank of ASI on the pertinent date i.e. 29.09.2014 - Held, the concerned police official had no authority and jurisdiction to exercise powers under Sections 42 and 67 of the N.D.P.S Act - Investigation is complete and the challan stands presented - Moreover, petitioner had not misused the concession of interim bail that was granted - Therefore, bail granted - Petition allowed.

[Paras 5 and 10]

Case Referred :

[Bikkar Singh v. State of Punjab, 2006 \(3\) R.C.R. \(Criminal\) 16.](#)

JUDGMENT

Tejinder Singh Dhindsa, J.(Oral) - The instant petition has been filed under Section 439 Cr.P.C., 1973 seeking benefit of regular bail to the petitioner, pending trial in case FIR No.124 dated 29.09.2014, under Section 22 of the NDPS Act, registered at Police Station Verawal, District Tarn Taran.

2. The prosecution version is that Head Constable Harpal Singh had apprehended the petitioner and an alleged recovery of 130 grams intoxicant powder was effected and which on receipt of the report of Chemical Examiner, was found to be containing Diphenoxylate Hydrochloride.

3. Prayer in the present petition is opposed on the ground that the recovery effected from the petitioner would be construed as commercial quantity.

4. However, there is another aspect of the matter which would require consideration.

5. 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 performed the duties specified under Sections [42](#) and [67](#) of the NDPS Act. It was contended that Harpal Singh, who had conducted the seizure, was not holding the rank of ASI on the pertinent date i.e. 29.09.2014.

6. During the course of hearing today, learned State counsel would submit that Harpal Singh till date is drawing the salary of post of Head Constable. Although, he has been granted adhoc local rank promotion to the post of ASI.

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

8. The stand taken on behalf of the State cannot be accepted. Concededly, on the relevant date when the alleged recovery was effected, Harpal Singh was not holding the substantive rank of the post of ASI. He had only been granted an adhoc promotion to the local rank of ASI. It has gone uncontroverted that in spite of the grant of such adhoc promotion, Harpal Singh continues in the pay scale of the post of Head Constable. Harpal Singh, furthermore, has not even qualified the requisite departmental promotion examination as mandated under the statutory rules, to be promoted to the post of ASI.

9. The same very issue as regards exercise of powers under Sections [42](#) and [67](#) of the N.D.P.S Act by an adhoc promotee ASI, came up for consideration before a Division Bench of this Court in ***Bikkar Singh v. 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 adhoc 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."

10. In the light of such settled position, whereby the concerned police official i.e. Harpal Singh lacked even the authority and jurisdiction to exercise powers under Sections [42](#) and [67](#) of the N.D.P.S Act, this Court is of the view that the petitioner is entitled to the benefit of regular bail. Even otherwise, investigation is complete and the challan stands presented. It has gone uncontroverted that the petitioner had earlier been granted concession of interim bail awaiting report of the Chemical Examiner and thereafter arrested after the report was received. Petitioner had not misused the concession of interim bail that was granted.

11. Trial would take time to conclude.

12. Without making any observations on merits, present petition is allowed. Petitioner be enlarged on bail subject to the satisfaction of C.J.M./Duty Magistrate, Tarn Taran.

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