

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

CRM No. M-25498 of 2016.

Decided on: 22.08.2016.

Gursahib Singh @ Sabha

... Petitioner

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

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

Mr. Luvinder Sofat, AAG Punjab.

JITENDRA CHAUHAN.J.(ORAL)

This is a petition, under Section 439 Cr.P.C for grant of regular bail in FIR No.248 dated 27.11.2014 registered under Section 22 of the NDPS Act, 1989 at Police Station Bhikhiwind, District Tarn Taran.

The reply has been filed on behalf of the State in the Court, is taken on record.

The learned counsel for the petitioner contends that the petitioner has been falsely implicated in the present case at the instance of ASI Gurvail Singh. The alleged search upon the petitioner was carried out by the said ASI Gurvail Singh, who was not qualified to conduct the search and in support of his assertion as he has not been promoted on regular basis as ASI, he refers to '**Rajwinder Kaur @ Pammi @ Rajji Vs. State of Punjab**', passed in CRM-M-43913 of

2015 and '**Bikar Singh Vs. State of Punjab**', 2006(3) RCR (criminal)

16 wherein it was 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.”

On the other hand, the learned State counsel submits that ASI Gurvail Singh, who carried out the search upon the petitioner was fully competent in view of the notification issued by the Department of Excise and Taxation dated 03.09.1987 which reads as under :-

“No. S.O.33/C.A.61/85/Ss, 42 and 67/87- In pursuance of the provisions of sub-section (I) of the Section 42 and Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), the President of India is pleased to empower the officers of and above the rank of Assistant Sub-Inspector of Police to exercise the powers and perform the duties specified in aforesaid Sections 42 and 67 within the areas of their respective jurisdiction.”

The learned State counsel further submits that it is a chance recovery and any police officer is empowered to conduct the search. However, he fairly admits that ASI Gurvail Singh had not been promoted as Assistant Sub-Inspector on regular basis.

Heard.

This Court is not inclined to record a finding with regard to the competency of the officer who carried out the search upon the petitioner. However, considering the period of incarceration and

without adverting to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of the trial, on his furnishing bail bonds/surety bonds, to the satisfaction of the trial Court.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

22.08.2016.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No