

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

CRM No. M-38659 of 2016

Date of decision:- December 21, 2016

GURCHAND SINGH

....PETITIONER..

VS.

STATE OF PUNJAB

....RESPONDENT..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

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

Mr. RPS Sidhu, AAG, Punjab.

JASPAL SINGH, J. (Oral)

Through instant petition preferred under Section 439 of the Code of Criminal Procedure (for short, "Cr.P.C."), petitioner-Gurchand Singh has sought concession of bail during pendency of trial, in case FIR No.72, dated 18.05.2015, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Bhikhiwind, District Tarn Taran.

2. The case of prosecution is that on 17.01.2015 ASI Bachittar Singh along with other police officers was on patrolling duty and when they reached near village Bhikhiwind, the petitioner was intercepted and when he was subjected to search, it led to the recovery of 240 gms of intoxicant powder. After necessary formalities, FIR was registered and the investigation was put into motion. Subsequently, on conclusion of investigation, report under Section 173 (2) Cr.P.C. has been presented

before the Id. Jurisdictional Magistrate and now, the trial court is seisin of the matter.

3. The only contention of learned counsel for the petitioner is that on 17.01.2015, ASI Bachittar Singh was not holding the substantive rank of ASI. He was only granted adhoc promotion/rank of ASI and as such, he was not competent and authorised to perform the duty as an Investigating Officer for the commission of offence falling within the purview of the Act.

4. Undisputably, ASI Bachittar Singh was only granted adhoc promotion of ASI. He is being paid salary in the pay scale of the post of Head Constable. He has not qualified the requisite Departmental Promotion Examination/Course as is required under the statutory rules for being promoted to the post of ASI.

5. An identical issue with regard to exercise of powers under the provisions of the Act came up for consideration before the Division Bench of this Court in **“Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal)16”** in which the following observations were made:-

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 64 of the Act within the area of his jurisdiction.”

6. To the similar fact are the observations made by this Court in CRM No.M-43913 of 2015 (O&M) captioned as **“Rajwinder Kaur @ Pammi @ Rajji Vs. State of Punjab”** decided on May 04, 2016 as well as CRM No.M-12290 of 2016 captioned as **“Baljinder Singh @ Rambo Vs. State of Punjab”** decided on May 12, 2016.

7. Recently, similar question came up for hearing before this Court in case captioned as **“Gursewak Singh vs. State of Punjab”**, decided on 03.08.2016 passed in **CRM-M-22527-2016**.

8. It would also be pertinent to mention here that ASI Bachittar Singh even did not opt to inform the Gazetted Officer or the Magistrate before conducting the search of the petitioner.

9. Taking into consideration the aforesaid aspects but without expressing any opinion on the merits of the case, the petition is allowed and petitioner is ordered to be released on bail, during pendency of trial, at the satisfaction of trial Court/Duty Magistrate.

December 21, 2016
sonika

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes