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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5428 of 2016

Date of decision: March 18, 2016

Daljit Singh

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. P.S. Sekhon, Advocate
for the petitioner.

Ms. Simsi Dhir Malhotra, DAG, Punjab.

M.M.S. BEDI, J. (ORAL)

Learned counsel for the petitioner submits that the petitioner was arrested and the case was investigated under NDPS Act by ASI Gurtej Singh who was not competent to investigate under Section 42 and 47 of the NDPS Act.

I have heard learned counsel for the petitioner in context to the provisions of Section 42 of the NDPS Act, amended w.e.f. 02.10.2001 which reads as under:-

“42. Power of entry, search, seizure and arrest without warrant or authorisation-

(1) Any such officer (being an officer superior in rank to a peon, sepoy or constable) of the departments of central excise, narcotics, customs, revenue intelligence or any other department of the Central Government including para-military forces or armed forces as is empowered in this behalf by general or special order by the Central Government, or any such officer (being an officer superior in rank to a peon, sepoy or constable) of the revenue, drugs control, excise, police or any

other department of a State Government as is empowered in this behalf by general or special order of the State Government, if he has reason to believe from persons knowledge or information given by any person and taken down in writing that any narcotic drug, or psychotropic substance, or controlled substance in respect of which an offence punishable under this Act has been committed or any document or other article which may furnish evidence of the commission of such offence or any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act is kept or concealed in any building, conveyance or enclosed place, may between sunrise and sunset,

- (a) enter into and search any such building, conveyance or place;*
- (b) in case of resistance, break open any door and remove any obstacle to such entry;*
- (c) seize such drug or substance and all materials used in the manufacture thereof and any other article and any animal or conveyance which he has reason to believe to be liable to confiscation under this Act and any document or other article which he has reason to believe may furnish evidence of the commission of any offence punishable under this Act or furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under Chapter VA of this Act; and*
- (d) detain and search, and, if he thinks proper, arrest any person whom he has reason to believe to have committed any offence punishable under this Act.*

Provided that if such officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place at any time between sunset and sunrise after recording the grounds of his belief.

(2) Where an officer takes down any information in writing under sub-section (1) of record grounds for his belief under the proviso thereto, he shall within seventy-two hours send a copy thereof to his immediate official superior.”

A perusal of the above said provision indicates that the officer superior in rank to a peon, sepoy or constable in the Departments, mentioned hereinabove, is empowered to arrest and search. An order passed by the DIG Police Bathinda Range granting promotion to HC Gurtej Singh on 16.07.2015 has been brought to the notice of this Court which prima facie shows that the investigation has been undertaken by an authorised police officer. However, without intending to prejudice the right of the petitioner to take up the defence regarding the authority of ASI Gurtej Singh, I dismiss this petition on account of bar created under Section 37 of the NDPS Act.

However, a direction is issued to the trial Court to conclude the trial within a period of six months from the next date of hearing and also adjudicate upon the defence plea, if properly raised during trial.

(M.M.S. BEDI)
JUDGE

March 18, 2016
Dinesh Bansal