

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRM-M-2283-2017

Date of Decision: 08.03.2017

Jagjit Singh alias Jeeta

.....Petitioner

vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr. Rajesh Mehta, Addl. Advocate General, Punjab.

AMOL RATTAN SINGH, J. (ORAL)

This petition has been filed invoking Section 439 Cr.P.C., for grant of 'regular bail' to the petitioner in case FIR No. 368 dated 01.11.2014, registered at Police Station Chherretta, District Amritsar, for the alleged commission of offences punishable under Sections 21/22 of the NDPS Act, 1985.

2. Mr. Aggarwal, learned counsel for the petitioner, has made the same averments as have been made by him today in the case of Sukhjinder Singh @ Sukhwinder Singh @ Nita vs State of Punjab (CRM No.M-5059 of 2017), which are not being reproduced in detail, they being identical arguments. A copy of the order passed in CRM No.M-5059 of 2017 would therefore, be annexed along with the order passed in the present petition.

Learned State counsel, on instructions from the police official who is present in Court to assist him, does not dispute the fact that sampling of the intoxicant powder stated to have been seized from the petitioner, was

not done before a Magistrate.

However, as contended by him in the other petition with regard to another argument raised, he submits that there being no distinction drawn in the notification dated 3.9.1987, as regards a substantive or an ad-hoc Assistant Sub Inspector, therefore, even if the Assistant Sub Inspector who had apprehended the petitioner was not on a substantive post, he would still be empowered to exercise jurisdiction under Sections 42 and 67 of the Act of 1985.

Having considered the aforesaid arguments, as already observed in the order passed in the other petition, this Court is bound by the judgment of Division Bench in Bikkar Singh vs. State of Punjab, 2006(3) RCR (Crl.) 16, even though prima facie this Court may be in agreement with the contention of learned State counsel on that issue.

However, in view of the fact that the sampling was not done before a Magistrate and therefore, prima facie, there would be a violation of the directions given by the hon'ble Supreme Court in Union of India vs. Mohanlal and another, 2016(1) RCR (Crl.) 858, without making any final observation on that issue, which would be considered by the learned trial Court on its own merits, this petition is allowed and the petitioner is directed to be admitted to bail upon his furnishing adequate bail and surety bonds to the satisfaction of the learned trial Court.

(AMOL RATTAN SINGH)
JUDGE

March 08, 2017
nitin

Whether speaking/reasoned

Yes

Whether Reportable

No.