

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

**CRM No. M-22891 of 2017
DECIDED ON : 03.10.2017**

ARUN KUMAR

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. A. S. Brar, Advocate,
for the petitioner.

Mr. Hittan Nehra, Addl. AG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner is seeking regular bail in FIR No.43 dated 16.04.2016 under Section 22 of NDPS Act (in short "the Act") registered at Police Station Baghapurana, District Moga.

Learned counsel for the petitioner contends that search was conducted by ASI Pahara Singh, who had only been given the rank of ASI, but in fact he was holding the substantive rank of Head Constable and drawing the salary of a Head Constable. In support of his contentions, he has relied upon the judgment of Division Bench in the case of "**Bikkar Singh v. State of Punjab**" 2006 (3) RCR (Criminal) 16. He also contends that in terms of the notification issued by State Government on 03.09.1987, only officials of the rank of ASI and

above are competent and authorized to exercise the powers specified under Sections 42 and 67 of the Act.

Learned counsel for the petitioner further states that petitioner is in custody for more than 01 year and 05 months ever since the date of his arrest on 16.04.2016.

Learned State counsel, upon instructions from ASI Jagsir Singh, states that investigation has been completed and the matter is now fixed for prosecution evidence, but none of the witnesses had been examined so far.

Heard learned counsel for the parties.

It was held by the Supreme Court in the case of **"Gurjant Singh @ Janta v. State of Punjab" 2013(4) RCR (Criminal) 874**, that an officer not holding the substantive rank of Deputy Superintendent of Police and drawing the pay of an Inspector, cannot be equated with the status of a Gazetted Officer who is authorized to conduct the search in terms of Section 50 of the Act. The relevant extract of the judgment is reproduced hereunder :-

"25. One of the grounds raised on behalf of the appellant was that P.W 3 was not holding the post of D.S.P in a substantive manner in order to hold that he was a Gazetted Officer on the regularly promoted D.S.P but was only an Inspector functioning as a D.S.P in a category called 'Own Rank Pay' D.S.P. According to the appellant, P.W 3 was drawing the pay of an Inspector from I.R.D and was not holding the post of such a person who was not duly promoted as D.S.P, cannot be equated to the status of a Gazetted

Officer in order to hold that a search was conducted in his presence was a valid search as contemplated under Section 50 of the NDPS Act. As far as the said point raised on behalf of the appellant, we do not find any material or a counter-stand taken to the effect that P.W 3 was a regularly promoted D.S.P or that as per the rules even as an 'Own Rank Pay' D.S.P, he could be equated to any other D.S.P, holding a substantive post. Unfortunately, as stated by us earlier, the trial Court having taken a view that Sections 42 and 50 were not applicable, completely omitted to examine the said defence raised on behalf of the appellant. We also do not find any contra evidence laid on behalf of the prosecution to counter the said ground raised on behalf of the appellant."

Similarly the Division Bench of this Court in **Bikkar Singh's case (supra)**, wherein an Officer who had conducted search, was holding the substantive rank of a Constable Grade-II and was given the rank of Sub Inspector in his 'Own Rank Pay', has held that search under Section 42 of the Act was vitiated as he was not competent to do so.

In the instant case, the search was conducted by ASI Pahara Singh who was holding the substantive rank of a Head Constable and was drawing the salary of a Head Constable. He had been given the rank of ASI. A co-ordinate Bench of this Court in **CRM No. M-11062 of 2017** titled as "**Gurjit Singh v. State of Punjab**" decided on 25.09.2017 had granted regular bail to the petitioner therein in similar circumstances.

In view of the aforementioned facts and circumstances, and without expressing any opinion on the merits of the case, the instant petition is allowed. Petitioner Arun Kumar is ordered to be released on bail on his furnishing bonds to the satisfaction of trial Court/Duty Magistrate.

(ANUPINDER SINGH GREWAL)
JUDGE

OCTOBER 03, 2017
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Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO