

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

**Criminal Misc. No.M-26459 of 2017
Date of Decision: 01.09.2017**

Malwinder Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Mr. Bhupender Beniwal, AAG, Punjab.

HARI PAL VERMA, J. (Oral)

Prayer in the present petition filed under Section 439 of the Code of Criminal Procedure, 1973 is for grant of regular bail to the petitioner in case FIR No.42 dated 24.01.2015 under Section 22 of the NDPS Act registered at Police Station A Division, District Amritsar City.

Learned counsel for the petitioner states that the alleged recovery made from the petitioner is 170 grams of intoxicant powder which contained the Alprazolam salt. While drawing the attention of this Court to notification dated 3.9.1987 issued by the Department of Excise and Taxation, Government of Punjab, learned counsel for the petitioner has argued that only an officer of the rank of ASI or above is empowered to exercise the powers and perform the duties, as provided under Sections 42 and 67 of the NDPS Act within the area of his jurisdiction. In the case in

hand, the complainant was an *ad hoc* ASI and was not drawing the salary of an ASI, rather he was drawing the salary of a Head Constable. He has relied upon a Division Bench judgment of this Court in the case of **Bikkar Singh v. State of Punjab 2006(3) RCR (Criminal) 16** wherein it has been held that on recovery of contraband, when the Investigating Officer was an *ad hoc* ASI and receiving pay of a Constable Grade-II, he was not competent to exercise the powers and perform the duties as specified in Sections 42 and 67 of the NDPS Act.

On the other hand, learned State counsel has fairly stated that the Investigating Officer was working as an *ad hoc* ASI and he was drawing the salary of Head Constable. However, he has referred to judgment of Hon'ble Apex Court in the case of **State of Punjab v. Balbir Singh 1994(1) RCR (Criminal) 736** to contend that since present is a case of chance recovery, it is not necessary that the Investigating Officer should be holding a substantive post of ASI or above.

I have heard learned counsel for the parties.

It is not in dispute that the recovery of the contraband was effected by the Investigating Officer who was not holding a substantive post of ASI. Relying upon the judgment in the case of **Bikkar Singh v. State of Punjab** (*supra*), and considering the fact that trial in the case may take long time, I deem it appropriate to release him on regular bail.

Accordingly, the present petition is allowed and the petitioner is admitted on regular bail, subject to furnishing of his bail bonds/surety bonds to the satisfaction of trial Court.

However, it is made clear that observations made hereinabove shall not be construed as any expression on the merits of the case and the trial in the case shall be conducted by the trial Court without taking into consideration the observations made in this petition.

September 01, 2017
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No