

CRM-M-34327-2017

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

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Date of Decision: 15.12.2017

Satnam Singh alias Satta

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr. Ayush Sarna, AAG, Punjab

INDERJIT SINGH, J.

Petitioner-Satnam Singh alias Satta has filed this petition under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail in case FIR No.327 dated 30.11.2014, registered at Police Station Patti, District Tarn Taran, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

Notice of motion was issued. Learned State counsel appeared and contested the instant petition. Reply was also filed.

I have heard learned counsel for the petitioner as well as learned State counsel and gone through the record.

At the time of arguments, learned counsel for the petitioner argued that Investigating Officer in the present case was not authorized to conduct the proceedings as he was not a regular ASI.

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In the reply filed by the State, it is stated that ASI Manpreet Singh had completed his 05 years service as Head Constable on 24.06.2011 and thereafter, consequent upon approval accorded by the Director General of Police, Punjab, Chandigarh, vide his office order dated 24.06.2011, Manpreet Singh Head Constable was specially granted the charge and rank of Assistant Sub Inspector in order to provide the requisite supervisory officials to the expanding and modernization force.

Learned State counsel admitted that neither ASI Manpreet Singh is a regular ASI nor has been promoted from the post of Head Constable and only rank of ASI has been given.

It is also admitted at the time of arguments that ASI Manpreet Singh is withdrawing the salary of Head Constable.

At this stage, it is still a debatable issue as to whether ASI Manpreet Singh was competent to conduct investigation in the present case or not.

In support of his arguments, learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in ***Gurjant Singh @ Janta vs. State of Punjab, 2013(4) RCR (Criminal) 874***, has held as under:

“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 date of search. According to the appellant, P.W.3 was not a 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 D.S.P. on a regular basis. It was, therefore, contended that such a

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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 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."

In the judgment passed by Hon'ble Division Bench of this Court in ***Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16***, it is held as under:-

"12. 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 67 of the Act within the area of his jurisdiction."

I have gone through the above-cited judgments and the same fully apply to the facts of the present case.

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In view of the above law, at this stage, without discussing the facts in minute detail and without expressing any opinion on the merits of the case, the present petition is allowed and the petitioner is ordered to be released on bail subject to his furnishing personal/surety bonds in the sum of ₹50,000/- with one surety in the like amount to the satisfaction of the trial Court/Duty Magistrate.

However, whatever is stated above, does not constitute any opinion of this Court on merits and it is only for the purpose of disposal of the bail application.

15.12.2017

parveen kumar

**(INDERJIT SINGH)
JUDGE**

Whether speaking/reasoned	:	Yes
Whether reportable	:	No