

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

**CRM NO. M-35145 OF 2017
DECIDED ON : 02.11.2017**

Charanpreet Singh @ Cheenu

...Petitioner

versus

State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present : Mr. Amit Arora, Advocate,
for the petitioner.

Mr. Sandeep Vermani, Addl. AG, Punjab.

ANUPINDER SINGH GREWAL, J. (ORAL)

CRM NO. 34576 OF 2017

This is an application for placing on record the letter dated 14.10.2017 as Annexure P-7.

For the reasons mentioned in the application, same is allowed and document Annexure P-7 is taken on record.

MAIN CASE

The petitioner is seeking regular bail in FIR No.84 dated 14.07.2015 under Section 22 of NDPS Act registered at Police Station Goindwal Sahib, District Tarn Taran.

Learned counsel for the petitioner contends that the allegations against the petitioner are that 270 gms of Alprazolam is stated to have been recovered from the bag being carried by the petitioner. He further contends that although recovery is

effected from the petitioner, the person of petitioner was also searched by ASI Dalwinder Bir Singh, who was holding the substantive rank of only Head Constable and drawing the salary of Head Constable. In support of his contentions, he has placed reliance upon the judgment of **"State of Rajasthan v. Parmanand and another" 2014(5) SCC 345** and a Division Bench judgment of this Court 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 the 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 further contends that petitioner is in custody for over a year.

Learned State counsel, upon instructions from ASI Sanjeev Kumar, states that the investigation has been completed and two prosecution witnesses have been examined.

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 v. State of Punjab*** (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 Dalwinder Bir 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.

It has been held by the Supreme Court in the case of "**State of Rajasthan v. Parmanand and another**" (*supra*) that even in the cases where recovery is effected from the bag and the person of the petitioner has also been searched, it would be necessary to comply with the provisions of Section 50 of NDPS Act.

In view of the above and without expressing any opinion on the merits of the case, the instant petition is allowed. Petitioner Charanpreet Singh @ Cheenu is ordered to be released on bail on his furnishing bonds to the satisfaction of trial Court/Duty Magistrate.

(ANUPINDER SINGH GREWAL)
JUDGE

NOVEMBER 02, 2017
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Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO