

CRM-M-44287-2016

[1]

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

(Sr. No.209)

CRM-M-44287-2016

Date of Decision:-March 24, 2017

Tajinder Singh

.....Petitioner

V/S

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. Naveen Sharma, Advocate,
for the petitioner.

Mr. Abhishek Chautala, AAG Punjab.

A.B. Chaudhari, J. (Oral)

Heard learned counsel for the rival parties.

The counsel for the petitioner has raised the question of law that Naresh Kumar No.446/LDH was the Head Constable not the Police Officer as contemplated by Sections 42 and 67 of the NDPS Act and, therefore, the offence could not have been registered in response to the same.

Affidavit of Ramandeep Singh Bhullar, PPS, Assistant Commissioner of Police, Atam Nagar, Ludhiana dated 23.03.2017 has been filed today in Court by the State counsel and the same is taken on record, Para-3 of which reads thus:-

“ 3. That above said official Naresh Kumar No.446/LDH was granted Local rank of Assistant Sub Inspector of Police by the competent authority i.e. the then Commissioner of Police, Ludhiana vide his office order No.123423-29/Pro.Cell dated 23.12.2011 (certified copy enclosed as Annexure R-1) w.e.f. 23.12.2011, vide which it

was made clear that he will exercise all powers of Assistant Sub Inspector of Police as per Police Rule and Act. ”

Para-12 of the Division Bench judgment of this Court in **CRA-558-DB of 2001 titled as Bikkar Singh Versus State of Punjab, 2006(3) R.C.R.(Criminal) 16**, in that context reads thus:-

“ 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. ”

To my mind, the law mandates that the concerned official ought to be the officer on substantive appointment, and the defence in Para-3 above, that he was granted the local rank of Assistant Sub Inspector, and, therefore, was competent, would not meet the mandate of law.

The Division Bench judgment of this Court is binding. It is true that the learned counsel for the State has pointed out that there are 6 more cases registered against the petitioner, but then looking to the mandate of law, I am inclined to grant bail. The petitioner-Tajinder Singh is ordered to be released on bail to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate concerned. The petitioner-Tajinder Singh is directed to cooperate with the investigating agency and he shall not tamper with the prosecution

evidence or influence the prosecution witnesses. The petitioner would undertake on affidavit that he would not indulge in such type of offences, falling which liberty is reserved in favour of the State to apply for cancellation of bail.

March 24, 2017

Pankaj

(A.B. Chaudhari)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No