

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

CRM -M-45583 of 2016 (O&M)

Date of decision: 12.01.2017

Sukhchain Singh @ Soni

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

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

Ms. Harsimrat Rai, DAG, Punjab.

Jitendra Chauhan, J. (Oral)

By filing the present petition, under Section 439 of the Code of Criminal Procedure, the petitioner has sought regular bail in FIR No. 46 dated 22.04.2013, registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Chohla Sahib, District Tarn Taran.

It is contended that the petitioner was admitted to statutory bail on 06.11.2013. After release, the petitioner had been regularly appearing, however, the petitioner was falsely roped in another FIR. The alleged search upon the petitioner was carried out by the ad hoc ASI who was not qualified to conduct the search. In support of his assertion, the learned counsel refers to '**Rajwinder Kaur @ Pammi @ Rajji Vs. State of Punjab**', passed in CRM-M-43913 of 2015 and '**Bikar Singh Vs. State of Punjab**', 2006(3) RCR (criminal) 16 wherein it

was 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.”

On the other hand, the learned State counsel submits that ASI who carried out the search upon the petitioner was fully competent in view of the notification issued by the Department of Excise and Taxation dated 03.09.1987 which reads as under :-

“No. S.O.33/C.A.61/85/Ss, 42 and 67/87- In pursuance of the provisions of sub-section (I) of the Section 42 and Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985), the President of India is pleased to empower the officers of and above the rank of Assistant Sub-Inspector of Police to exercise the powers and perform the duties specified in aforesaid Sections 42 and 67 within the areas of their respective jurisdiction.”

She further submits that the petitioner is involved in 08

other FIRs.

Heard.

This Court is not at this stage inclined to record a finding with regard to the competency of the officer who carried out the search upon the petitioner. However, considering the period of incarceration and the fact that the petitioner was allowed statutory bail in the instant FIR, without advertng to the merits of the instant case, this petition is allowed. The petitioner be admitted to bail during the pendency of the trial, on his furnishing bail bonds/surety bonds, to the satisfaction of the trial Court.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

12.01.2017

sumit.k

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No