

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

**1. CRM-M-34174-2018**

Ravinder Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

**2. CRM-M-44949-2018**

Rajesh Kumar

....Petitioner

Versus

Sate of Punjab

....Respondent

**Date of Decision :17.10.2018**

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**CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL**

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Present: Mr. Rishu Mahajan, Advocate  
for the petitioners.

Mr. A.S. Sandhu, Addl. A.G., Punjab  
assisted by SI Raminderpal Singh.

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**GURVINDER SINGH GILL, J. (ORAL)**

This order shall dispose of two petitions filed on behalf of  
Ravinder Kumar and Rajesh seeking grant of regular bail in respect of

FIR No.149 dated 03.11.2015 under Sections 21, 22 Narcotic Drugs and Psychotropic Substances Act, 1985 and Sections 61 of Punjab Excise Act, 1914, Police Station B Division, District Amritsar.

In nut-shell the allegations, as per FIR are to the effect that on the day of occurrence when the police party signalled a white coloured '*Canter*' to stop, the driver stopped the vehicle and two persons alighted from the rear side of the vehicle who were carrying polythene bags in their hands and who tried to flee from the spot but were apprehended by the police party. The bag carried by Rajesh Kumar was found to contain 500 grams of Diacetylmorphine. The other person namely Ravinder Kumar was also found to be carrying 500 grams of the same intoxicant. A search of the '*Canter*' led to recovery of 12 boxes of whiskey brand '*Crash*' which is attributed to the driver of the '*Canter*'.

Notice of the petitions were issued to the respondent-State. Learned State counsel has opposed the petitions and prayed for dismissal of the same.

Learned counsel for the petitioners has submitted that in the present case as far as the allegations pertaining to Narcotic Drugs and Psychotropic Substances Act, 1985 are concerned, the person who effected the search was not competent in terms of Section 42 and 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 inasmuch as he was not holding substantive rank of Assistant Sub-Inspector and as such, was not competent in view of the Notification dated 3<sup>rd</sup> September, 1987 (Annexure P-3), as per which, it is only an official of and above the rank of Assistant Sub-Inspector of Police who is authorised to exercise

the powers in terms of Sections 42 and 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

In view of the aforesaid submissions it would certainly be debatable as to whether a person who is not holding a substantive rank of Assistant Sub-Inspector, like in the present case where the recovery was effected by ASI Parminder Singh who was holding substantive rank of Head Constable as per information (Annexure P-4). As such, the aforesaid petitions are accepted and petitioners are ordered to be released on bail on their furnishing bail bonds/surety bonds to the satisfaction of learned trial Court.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

**17.10.2018**  
Gaurav Sorot

**( GURVINDER SINGH GILL)**  
**JUDGE**

Whether reasoned / speaking?      **Yes / No**

Whether reportable?      **Yes / No**