

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

CRM-M-45038-2018

Date of decision:29.11.2018

Surinder Singh alias Soni

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

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

Ms. Ruchika Sabherwal, AAG, Punjab
assisted by ASI Baldev Raj.

GURVINDER SINGH GILL, J. (ORAL)

The petitioner seeks grant of regular bail in case registered vide FIR No.35 dated 23.04.2015 under Sections 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Chohla Sahib, District Tarn Taran.

As per the FIR, the petitioner was allegedly found in possession of 260 grams of Diphenoxylate Hydrochloride. Learned counsel for the petitioner has submitted that ASI Davinder Kumar who had effected the recovery was in fact an *ad-hoc* ASI and was in fact in the

substantive rank of Head Constable only and as such was not competent to conduct investigation and to effect recovery.

At the last date of hearing, this Court has specifically directed the State counsel to verify as to whether ASI Davinder Kumar was in fact not formally promoted as ASI on the date of recovery.

Learned State counsel upon instructions from ASI Baldev Raj has stated that ASI Davinder Kumar, at the time of effecting recovery, was getting salary of Head Constable and was working as *ad-hoc* ASI.

Learned counsel for the petitioner has drawn the attention of this Court to the cross-examination of ASI Davinder Kumar wherein he has admitted that as on the day the recovery was effected, he was getting salary of Head Constable.

In view of the afore-stated position and in the light of ratio of judgment *Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16*, it would certainly be debatable as to whether ASI Davinder Kumar was indeed competent to effect recovery or not since as per Notification dated 03.09.1987, it is only an officer of the rank of ASI and above, who can exercise the powers and perform the duties specified in Section 42 and 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Moreover, since the conclusion of trial, in its normal course, is likely to take some time, no fruitful purpose would be served by further detaining the petitioner behind bars for an indefinite period. Accordingly, petitioner-Surinder Singh @ Soni is ordered to be released on regular bail on his furnishing bail bonds/surety bonds to the satisfaction of learned trial Court/Chief Judicial Magistrate Tarn Taran.

It is, however, clarified that none of the observations made

above shall be taken to be an expression on merits of the main case.

This petition stands accepted accordingly.

29.11.2018

Gaurav Sorot

**(GURVINDER SINGH GILL)
JUDGE**

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

Whether reportable? **Yes / No**