

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

1. CRM-M-47931-2017

Sunil Kumar @ Sonu

.....Petitioner

Versus

State of Punjab

.....Respondent

2. CRM-M-33951-2017

Usha Rani

.....Petitioner

Versus

State of Punjab

....Respondent

Date of decision: 01.12.2018

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, AAG, Punjab.

GURVINDER SINGH GILL, J. (ORAL)

This order shall dispose of two petitions filed on behalf of

Sunil Kumar @ Sonu and Usha Rani seeking grant of regular bail in respect of FIR No.44 dated 05.04.2017 under Section 22 Narcotic Drugs and Psychotropic Substances Act, 1985, Police Station Maur Bathinda, District Bathinda.

The allegations in nut-shell are that on the day of occurrence i.e. on 05.04.2017 when the police was patrolling, they came across one person accompanied by a lady who were taking plastic bags in a shop and who upon noticing the police party tried to escape from the spot but were apprehended by the police party. A search of the said bags led to recovery of 2200 bottles “Corex” and 37,000/- tablets of “Carisoma”. Upon chemical analysis “Corex” was found to contain ‘Codeine Phosphate’ which is a manufactured drug and the recovered quantity falls within the category ‘commercial quantity’.

Vide order dated 28.09.2018, this Court had directed the State to verify as to whether ‘Tarjinder Singh’ who had effected recovery was holding substantive rank of Assistant Sub-Inspector or not.

The learned State counsel has today filed an affidavit of Mr.Jagdish Kumar, DSP, Maur, District Bathinda wherein it has been deposed that Tarjinder Singh was not holding the substantive rank of Assistant Sub-Inspector on the day of recovery and was holding rank of Head Constable on the said day.

The learned counsel has submitted that as per Notification dated 3rd September, 1987, it is only an official of the rank of Assistant Sub-Inspector of Police and above, who is authorised to exercise the powers in terms of Sections 42 and 67 of the Narcotic Drugs and

Psychotropic Substances Act, 1985, and since Tarjinder Singh who effected recovery and investigated the matter was holding rank of Head Constable only therefore, the entire proceedings stand vitiated and under these circumstances the petitioners deserve to be released on bail. Learned counsel in this context places reliance upon *Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16*.

On the other hand, learned State counsel has submitted that although, Tarjinder Singh was Head Constable but he was performing the duties of Assistant Sub-Inspector for all intents and purposes and under these circumstances, the recovery cannot be said to be vitiated and has thus prayed for dismissal of the aforesaid petitions.

Having considered rival contentions addressed before this Court and bearing in mind the ratio of judgment *Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16*, it would certainly be debatable as to whether Tarjinder Singh 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 Assistant Sub-Inspector 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. The petitioners, in any case have been behind bars since last 1 ½ years and only 2 witnesses out of 9 cited prosecution witnesses have been examined so far. The conclusion of trial, in its normal course, is likely to take some time, and thus no fruitful purpose would be served by further detaining the petitioners behind bars for an indefinite period. Accordingly, petitioners-Sunil Kumar @ Sonu and Usha Rani are ordered to be released on regular bail on their

furnishing bail bonds/surety bonds to the satisfaction of learned trial Court.

The aforesaid petitions are accepted in the above-mentioned terms.

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

01.12.2018
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

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

Whether reportable? **Yes / No**