

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

Decided on: 25.04.2018

1. CRM-M No.4997 of 2018

Sachin Ghai

....Petitioner

Versus

State of Punjab

....Respondent

2. CRM-M No.9255 of 2018

Ajay Kumar Ghai

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in these petitions is for grant of regular bail to the petitioners namely Sachin Ghai and Ajay Kumar Ghai in FIR No.2 dated 04.01.2017 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') at Police Station Sadar Rajpura, District Patiala.

Counsel for the petitioners has submitted that the recovery was effected by the Assistant Sub-Inspector and on the date of the recovery, he was given the charge and rank of Assistant Sub-Inspector

and as such, being an *ad hoc* Assistant Sub-Inspector, he was not competent to effect the recovery. Counsel for the petitioners has relied upon the order dated 21.03.2018 passed in CRM-M No.5089 of 2018 wherein this Court has granted the concession of regular bail to the accused person on the ground that as per notification dated 03.09.1987 issued by the Government of Punjab, Department of Excise and Taxation, stating that only officers of the rank of Assistant Sub-Inspector and above can exercise the powers and perform the duties specified under Sections 42 and 67 of the NDPS Act. Counsel for the petitioners has also relied upon the judgment **“Bikkar Singh vs State of Punjab”**, 2006(3) RCR (Criminal) 16, wherein the Hon'ble Division Bench of this Court has observed 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.”

Counsel for the State has already filed the affidavit of the Assistant Sub-Inspector namely Gurjit Singh, who has stated that he was given the charge and rank of Assistant Sub-Inspector on 12.12.2015 by the Deputy Inspector General of Police, Patiala Range, Patiala vide order dated 12.12.2015 (Annexure R1) and at the time of registration of the FIR No.2 on 04.01.2017, he was holding the charge and rank of Assistant Sub-Inspector and was promoted as Assistant Sub-Inspector on 25.07.2017.

Without commenting anything on merits of the case and considering the fact that Gurjit Singh was an *ad hoc* Assistant Sub-Inspector and following the dictum laid down in ***Bikkar Singh's case (supra)***, this petition is allowed and the petitioners namely Sachin Ghai and Ajay Kumar Ghai are ordered to be released on bail subject to their furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate/Duty Magistrate.

However, it will be open for the prosecution to apply for cancellation of bail, if the petitioners are found misusing the concession of bail, in any manner.

(ARVIND SINGH SANGWAN)
JUDGE

25.04.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No