

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

CRM-M No.10316 of 2020(O&M)

Date of decision:-12.11.2020

Kulwinder Singh @ Bhinda

....Petitioner

Versus

State of Haryana

.... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. D.S. Virk, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

RAJ MOHAN SINGH, J

[1]. Petitioner seeks regular bail under Section 439 Cr.P.C in case bearing FIR No.294 dated 28.11.2019 registered under Sections 22-B, 61 of NDPS Act at Police Station Kalanwali, District Sirsa.

[2]. FIR was registered on the basis of suspicion when the police apprehended the petitioner. A notice under Section 50 of the NDPS Act was issued to the petitioner and the petitioner opted for his search before the Gazetted Officer. Vice Principal, Government ITI, Odda was called and in his presence, search was effected. 600 tablets of Tramadol mentioning as Tramadol Hydrochloride tablets 100 mg on every leaf were recovered from the plastic bag hanging on the

handle of the motorcycle with batch number and date of manufacturing.

[3]. Learned counsel for the petitioner submitted that Vice Principal, Government ITI, Odda is not competent to act as a Gazetted Officer under NDPS Act. Learned counsel referred to notification dated 29.12.1986 issued by the Department of Excise and Taxation, Haryana, whereby officers of and above the rank of Assistant Excise and Taxation Officer in Excise and Taxation Department, of or above the rank of Tehsildars in the Revenue Department and of and above the rank of Deputy Superintendent of Police in Police Department were empowered to act as Gazetted Officers. Therefore, Vice Principal, Government ITI, Odda cannot be termed to be an empowered Gazetted Officer to undertake the assignment of Gazetted Officer.

[4]. Learned State counsel referred to memo No.20341-88/CR-3 dated 30.08.2019 issued by the Director General of Police, Crime, Panchkula to all the Commissioners of Police, Deputy Commissioners and other authorities along with list of empowered Gazetted Officers other than private officers. The said memo was issued as per direction(s) issued by the High Court on 28.05.2019 in CRM-M No.5074 of 2019 titled Joginder Singh Vs. State of Punjab and others. As per list attached with the said memo, name of Raj Kumar, Vice Principal, Government, ITI, Odda finds mention at serial No.8 of the list.

[5]. Learned counsel for the petitioner by referring to order dated 28.05.2019 passed in CRM-M No.5074 of 2019 titled Joginder Singh Vs. State of Punjab and others submitted that the direction was to prepare the list of empowered Gazetted Officers other than the Police Officers along with mobile phones in consultation with the Deputy Commissioner of concerned District and the same was to be prepared in PDF format and was to be given to the Investigating Officer so as to call a Gazetted Officer during the course of investigation. The empowered Gazetted Officers should be in the context of notification dated 29.12.1986.

[6]. Having considered the submissions of learned counsel for the parties, I am of the view that firstly the recovered contraband falls under commercial category. Vide notification dated 05/08.04.1996 issued by the Financial Commissioner and Secretary to Government of Haryana, Revenue Department, Naib Tehsildars of the Revenue Department were granted status of Class-II Gazetted Officers on their regular appointments after completion of prescribed departmental examination. An amendment was carried out vide Act No.9 of 2001 in Section 42 of the NDPS Act.

[7]. The Co-ordinate Bench of this Court in CRM-M No.15538 of 2020 titled Tejpal @ Teju Vs. State of Haryana decided the issue on 03.11.2020. Operative part of the order reads as *under:-*

".....Keeping in view the contentions raised, the State Government was called upon to explain as to how the Gazetted Officer from the Department of Panchayats was empowered.

Pursuant thereto attention of this court has drawn to the order issued by Deputy Commissioner, Sirsa dated 17.09.2019 giving a list of Gazetted Officers who have been empowered/authorized in this regard. The aforesaid order was issued by the Deputy Commissioner pursuant to request made by Superintendent of Police, Sirsa on 12.09.2019. There is a reason behind writing such letter and issuance of the order. On 28.05.2019, the High Court while deciding various criminal miscellaneous petitions had directed government to publish the name of officers who have been empowered. It is in compliance thereto the order has been passed.....

.....This aspect can be further examined from another angle. Section 50 of the Act of 1985 refers to Sections 41, 42 and 43 of the Act. On careful reading of Section 42, it is apparent that the Parliament while enacting the Act did specify that the Gazetted Officers before whom the search can be carried out must be posted in some particular department(s) enlisted therein. Apart from enlisting certain Departments in Section 42, the Parliament uses the phrase 'any other department' of the Central or the State Government. Thus, the Gazetted Officer can be from any Department. Only requirement is that he should be empowered in this behalf by general or special order by the Central or the State Government. It may be noted here that it is not the argument of learned counsel for the petitioners that the order passed by the Deputy Commissioner is not on behalf of the State Government or the concerned Deputy Commissioner was not authorized to issue such list....."

[8]. In view of aforesaid factual position on record, I do not find any reason to hold that Raj Kumar, Vice Principal, Government ITI, Odda was not authorized to act as Gazetted Officer. This petition is found to be totally devoid of merits and is accordingly dismissed.

[9]. Nothing expressed hereinabove, shall be construed to be an opinion on merits of the case.

(RAJ MOHAN SINGH)
JUDGE

12.11.2020
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No