

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

CRM-M-19395-2020 (O&M)

Date of decision : 11.08.2020

Piyara Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Amit Arora, Advocate for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

ANIL KSHETARPAL, J.

This is second petition for grant of bail pending trial to the petitioner in a criminal case arising from FIR No.46 dated 16.02.2015 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, at Police Station Patti, District Tarn Taran.

The petitioner had filed another application for grant of bail vide CRM-M-24239-2015 which was dismissed as infructuous on 15.10.2015 as the petitioner had by that time, released on bail under Section 167(2) Cr.P.C. As per the case of the prosecution, the petitioner was found in possession of 250 grams of intoxicating powder containing Diphenoxylate Hydrochloride, which falls in the category of commercial quantity.

Learned counsel for the petitioner contends that in the present

case, the Investigating Officer namely ASI Manpreet Singh was not holding the substantive rank of Assistant Sub Inspector when the alleged recovery was effected. Hence, he submits that the case of the prosecution is bound to fail on this ground. In support thereof, he relies upon a judgment of the Division Bench in **Bikkar Singh Vs. State of Punjab, 2006 (3) RCR (Criminal) 16.**

On the other hand, learned counsel for the State has pointed out that the petitioner was declared proclaimed offender on 26.07.2018 and was arrested in another case on 15.12.2018. He further submitted that Manpreet Singh was granted the local rank of Assistant Sub Inspector and, therefore, entitled to investigate.

This Court has considered the submissions of learned counsel for the parties.

Learned counsel for the State has produced the order dated 24.06.2011 granting local rank of Assistant Sub Inspector of Police to the Head Constable Manpreet Singh. It is apparent that the aforesaid local rank was for a period of six months and the official was neither entitled to extra pay nor seniority. Still further, the Division Bench in Bikkar Singh (Supra), has held 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.”

Without commenting on the merits of the case and keeping in view the judgment passed by the Division Bench in the case of Bikkar Singh (Supra), this Court is of the considered view that the petitioner in the present case deserves to be granted bail pending trial. Therefore, the petitioner is directed to be released on bail on his furnishing bail bonds/surety bonds to the satisfaction of the concerned trial Court/Duty Magistrate.

Accordingly, the present petition is allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

11.08.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No