

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

Crl. Misc. No. M-33369 of 2019

Date of decision :- 06.08.2020

Davinderdeep Singh @ Aafta

...Petitioner

versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rishu Mahajan, Advocate, for the petitioner

Mr. J.S. Ghuman, D.A.G Punjab

RITU BAHRI, J. (Oral)

Prayer in this petition is for grant of regular bail to the petitioner, in a case arising out of FIR No. 298 dated 19.12.2015 (P-1), registered at Police Station Chherretta, District Amritsar, who has been booked for having committed the offence punishable under Section 21/22 of NDPS Act and Section 61 of Punjab Excise Act.

Learned counsel for the petitioner has argued that the recovery in the present case was made by ASI Gurjeet Singh who had not been regularly promoted to the post of ASI and he was getting the salary of Head constable and he was not competent as per section 42 and 67 of NDPS Act to make search and register the case. Learned counsel has referred to judgment of Hon'ble the Supreme Court in a case of ***Gurjant Singh @ Janta vs. State of Punjab, 2013 (4) R.C.R Crl 874*** wherein it has been held that an adhoc ASI is not competent to conduct the search and the convict was acquitted. The operative part of the judgment reads as under:-

“25. One of the grounds raised on behalf of the appellant was that P.W.3 was not holding the post of D.S.P. in a substantive manner in order to hold that he was a Gazetted officer on the date of search. According to the appellant, P.W.3 was not a regularly promoted D.S.P. but was only an Inspector functioning as a D.S.P. in a category called ‘Own Rank Pay’ D.S.P. According to the appellant, P.W.3 was drawing the pay of an Inspector from I.R.D. and was not holding the post of D.S.P. on a regular basis. It was, therefore, contended that such a person who was not duly promoted as D.S.P., cannot be equated to the status of a Gazetted officer in order to hold that a search conducted in his presence was a valid search as contemplated under [Section 50](#) of the NDPS Act. As far as the said point raised on behalf of the appellant, we do not find any material or a counter-stand taken to the effect that P.W.3 was a regularly promoted D.S.P. or that as per the rules even as an ‘Own Rank Pay’ D.S.P., he could be equated to any other D.S.P., holding a substantive post. Unfortunately, as stated by us earlier, the trial Court having taken a view that [Sections 42 and 50](#) were not applicable, completely omitted to examine the said defence raised on behalf of the appellant. We also do not find any contra evidence laid on behalf of the prosecution to counter the said ground raised on behalf of the appellant.”

In the judgment passed by Hon'ble Division Bench of this Court in ***Bikkar Singh vs. State of Punjab, 2006(3) RCR (Criminal) 16***, it is 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.”

The above judgments had been followed by this Court while granting regular bail in CRM-M-15274-2018, decided on 23.04.2018 and CRM-M-15557-2011, decided on 09.05.2017.

Learned State counsel is not disputing the fact that ASI Gurjeet Singh on 19.12.2015 was not promoted to the post of ASI and was Head Constable. As per custody certificate dated 24.07.2020, the petitioner has undergone 01 year 09 months and 05 days.

Heard.

Petitioner is in custody since 19.12.2015.

Keeping in view the above judgments and the fact that the trial is likely to take some time to conclude, the present petition is allowed. Petitioner is ordered to be released on bail during pendency of the trial of the present case, subject to his furnishing bail bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, Amritsar.

06.08.2020
G Arora

(RITU BAHRI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No