

Gursewak Singh v. State of Punjab, (P&H) : Law Finder Doc Id # 785147  
**PUNJAB AND HARYANA HIGH COURT**

Before:- Jaspal Singh, J.

CRM No. M-22527 of 2016. D/d. 3.8.2016.

Gursewak Singh - Petitioner

**Versus**

State of Punjab - Respondent

For the Petitioner :- Ashish Aggarwal, Advocate.

For the Respondent :- A.S. Sidhu, AAG, Punjab.

### **NUTSHELL**

***Recovery or contraband - Search and Seizure made by Head Constable who was holding post of ASI on ad-hoc basis and was not authorised to investigate basis - Bail allowed to accused.***

**Narcotic Drugs and Psychotropic Substances Act, 1985 Section [22](#) Criminal Procedure Code, 1973 Section [439](#) Accused arrested in an offence under Section [22](#) of NDPS Act - Seizure and arrest made by an ASI - The ASI was holding the post of Head Constable and was promoted as ASI on ad hoc basis and drawing salary of the post of Head Constable - The ASI was not authorised to exercise the powers specified under Sections [42](#) and [67](#) of the Act - Bail allowed to accused - 2006 (3) R.C.R (Criminal) 16 Relied.**

[Paras 5 and 6]

Cases Referred :

[Bikkar Singh v. State of Punjab, 2006\(3\) R.C.R. \(Criminal\) 16.](#)

Rajwinder Kaur @ Pammi @ Rajji v. State of Punjab, CRM No. M-43913 of 2015 (O&M). D/d. 4.5.2016.

Baljinder Singh @ Rambo v. State of Punjab, CRM No.M-12290 of 2016. D/d. 12.5.2016.

### **JUDGMENT**

**Jaspal Singh, J.** - By virtue of the instant second petition preferred under section [439](#) of the Code of Criminal Procedure, 1973 the petitioner-Gursewak Singh has sought regular bail in case FIR No.159, dated July 06, 2014, under Section [22](#) of Narcotic Drug s and Psychotropic Substances Act, 1985 (for 'Act' only), registered at Police Station Bhikhiwind, District Tarn Taran.

2. The case of the prosecution is that on July 06, 2014, ASI Bachittar Singh along with other Senior Police officers were on patrol duty. When they reached near Village Chug, the petitioner came while carrying a polythene bag. He was intercepted by the ASI with the help of his colleagues. When subjected to search, it led to the recovery of 100 gms. of intoxicant powder. After necessary formalities, FIR was registered and the investigation was set into motion.

3. Learned counsel for the petitioner has contended that ASI Bachittar Singh was not holding the substantive rank of ASI and he was only granted ad hoc promotion/rank of ASI and as such he was not competent and authorised to perform the duty as an Investigating Officer for the offence falling within the purview of the Act.

4. Undisputably, ASI Bachittar Singh was only granted ad hoc promotion of ASI. He is being paid salary in the pay scale of the post of Head Constable. He has not qualified the requisite Departmental Promotion Examination/Course as is required under the statutory rules for being promoted to the post of ASI.

5. Though, learned State counsel has opposed grant of bail to the petitioner submitting that the recovery effected from the petitioner falls within the definition of "non-commercial quantity", but he could not dispute that ASI Bachittar Singh was only holding the rank of ASI but he has been continuing drawing salary in the pay scale of the post of Head Constable. In this regard, we can have the reference of the notification dated September 03, 1987 issued by the Punjab Government of Excise and Taxation which provides that only officers of the rank of ASI and above are competent and authorised to exercise the powers specified under Sections 42 & 67 of the Act. An identical issue with regard to exercise of powers under the aforesaid provisions of the Act by an ad hoc promotee like ASI Bachittar Singh came up for consideration before the Division Bench of this Court in "**Bikkar Singh v. State of Punjab, 2006(3) R.C.R. (Criminal) 16**" in which the following observations were made:

"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 64 of the Act within the area of his jurisdiction."

6. Similar observations were made by this Court in **CRM No. M-43913 of 2015 (O&M) captioned as "Rajwinder Kaur @ Pammi @ Rajji v. State of Punjab" decided on May 04, 2016** as well as **CRM No.M-12290 of 2016 captioned as "Baljinder Singh @ Rambo v. State of Punjab" decided on May 12, 2016**.

7. Here it would also not be out of place to mention that ASI Bachittar Singh even did not opt to inform the Gazetted Officer or the Magistrate before conducting the search of the

petitioner and search was straightaway conducted without informing the petitioner of his right of being searched in the presence of the Magistrate or the Gazetted Officer.

8. Taking into consideration the aforesaid aspects, but without expressing any opinion on the merits of the case, instant petition is allowed and the petitioner is ordered to be enlarged on bail, subject to the satisfaction of the concerned trial Court/CJM/Duty Magistrate.

9. While parting with this order, Senior Superintendent of Police, Tarn Taran is directed not to entrust the investigation of any case to ASI Bachittar Singh for the period of two years and during this period, he should be provided training in the field of investigation.

Copy of this order be sent to Senior Superintendent of Police, Tarn Taran, for necessary compliance.