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| Mohamed Atif Hafizulla Ansari | ...Applicant  |
| vs.                           |               |
| State of Maharashtra          | ...Respondent |

Mr. Dilip Mishra i/b Mr. Ayaz Khan for the Applicant.  
Mr. S. R. Agarkar APP for the Respondent-State.  
Mr. Dattatray S. Sanap API, Manpada police station present.

**CORAM : S. M. MODAK, J.**

**DATED : 5TH JULY 2023**

P. C. :

1. Heard learned Advocate for the Applicant and learned APP for the Respondent-State.
2. The only contention raised is samples sent to the Chemical Analyser were taken at the spot and not before the learned Magistrate. So the contention is, that if the analysis is done in future, even though positive, cannot be considered as evidence at the time of trial. It is true that the Hon'ble Supreme Court in case of *Union of*

*India Vs. Mohanlal and Anr.*<sup>1</sup> has deprecated the practice of drawing samples at the spot. It is also true that the Supreme Court in case of *Simranji Singh Vs. State of Punjab*<sup>2</sup> has refused to accept the evidence of analysis relating to the samples drawn at the spot. What is primary evidence is the procedure followed before the learned Magistrate and documented therein as contemplated under section 52(A)(4) of NDPS Act. Unfortunately, these things have not happened in this case.

3. The present Applicant was one amongst two, who were found in open ground on Manpada. They were found on 2nd July 2022, they were traveling in car. After completing procedure, the search was taken and seven gunny bags were found in the car. All bags consisted of Ganja, all of commercial quantity. They have taken seven samples, one each from one gunny bag. The FIR is lodged by ASI with Manpada police station on 2nd July 2022.

4. Finally, the charge-sheet is filed against four accused persons. The present Applicant is accused No.2, who was occupant of that car.

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1 (2016) S SCC 379

2 Cri.Appeal No.1443/2023 dt. 9/05/2023 Supreme Court

Page 22 consists of description of samples drawn at the spot, whereas page 73 is letter written to the Chemical Analyser there by forwarding those seven samples. Whereas page 84, is certificate issued by the Magistrate about inventory, before him samples were not taken. So question of sending it to the Chemical Analyser does not arise. On this background the evidence adduced before the trial Court will not withstand the scrutiny of law, so the bar under section 37 of the NDPS Act is lifted. Hence, the case for bail is made out and the following order is passed :

#### O R D E R

- (a) The Applicant-Mohamed Atif Hafizulla Ansari be released on bail in connection with C.R. No.518 of 2022, registered with Manpada police station for the offences punishable under Sections 8(c), read with 20(c) and 29 of the NDPS Act, on furnishing personal bond and surety bond of Rs.50,000/-
- (b) The Applicant shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The Applicant shall cooperate the police as and when required.
- (d) Needless to say, violating of the condition above will make the

Applicant liable for cancellation of bail, after notice to the Applicant.

5. Application is disposed of accordingly.
6. These are my prima facie observations and the trial Court may not be influenced by that.
7. All the parties to act on an authenticated copy of this order.

**[S. M. MODAK, J.]**