

Ghatkopar Bus Depot in a Honda Accord Car bearing registration No.MH-02 AV-4878 to sell *ganja*. After complying with the procedural requirements the ANC team laid a vigil at the said spot. At about 11.30 am. a grey Honda Accord car MH-02 AV-4878, which matched the description, approached towards Ghatkopar flyover, which was intercepted in front of Ghatkopar Bus Depot. The applicant was at the wheel of the said car. Co-accused Ismail Shaikh was beside the applicant on the front seat of the car. Upon being enquired, the applicant and the co-accused disclosed that the packets containing the contraband articles were concealed in the car. Co-accused pointed out the packets kept in the rear side of the car, which contained the flowering and fruiting tops of the cannabis. The applicant had allegedly pointed out the packets, which were concealed in the doors of the car. The cannabis fruiting and flowering tops pointed out by accused No.1 weighed 90 kg. whereas the contraband article pointed out by the applicant weighed 25 kg. The contraband articles were seized. The applicant came to be apprehended.

4. The learned Counsel for the applicant submitted that the search, seizure and sampling stand vitiated as the seizure panchnama would indicate that the raiding party had mixed

entire contraband articles and, thereafter, five samples were collected. Inviting the attention of the Court to the report of the chemical analyst, which indicates that only five samples were sent for analysis, the learned Counsel submitted that, at this stage, there is no certainty as to the substance which was allegedly recovered from the possession of the applicant. Mixing of the samples was in clear contravention of the standing instructions 1 of 1989. It was submitted that though the applicant was driving the car in which the contraband article was allegedly found yet the applicant cannot be said to be in conscious possession of the contraband article.

5. The learned APP contested the prayer for bail. It was submitted that the investigating agency had complied with all the statutory requirements. There is a scrupulous compliance with the mandate containing Sections 42 and 50 of the NDPS Act, 1985. Moreover, the inventory of the contraband articles seized from the possession of the applicant was held before the learned Magistrate on 31st January, 2022 in conformity with Section 52A of the NDPS Act, 1985.

6. The learned APP submitted that the claim of the applicant that he was unaware that the car was laden with contraband articles does not merit acceptance as the manner in which the contraband article was concealed indicates the conscious possession of the applicant and co-accused.

7. I find substance in the submission of the learned APP. The material on record *prima facie* indicates that the applicant and co-accused were found in possession of huge quantity of the contraband articles. The manner in which the packets containing contraband articles were concealed in the car betrays a clear case of conscious possession with a design to conceal the substance. In the face of the material on record it would be rather difficult to accede to the submission on behalf of the applicant that the applicant was unaware of the contraband article being transported in the car.

8. It is true, the investigating agency had forwarded five samples to the FSL for analysis. However, it does not appear that those samples were collected by the raiding party at the time of the alleged seizure. On the contrary, the inventory panchnama conducted before the Magistrate in compliance with the provisions contained in Section 52A of the NDPS

Act, 1985 indicates that the entire bulk allegedly recovered from the possession of the applicant and the co-accused was produced before the learned Magistrate and samples were collected in the presence of the learned Magistrate and those samples were forwarded for analysis to FSL. Thus, the submission on behalf of the applicant that the search and seizure was vitiated on account of mixing of the contents of the packets recovered from the car *prima facie* does not merit acceptance.

9. At this stage, the certificate issued by the learned Magistrate under Section 52A(3) of the NDPS Act, 1985 deserves full weight.

10. In any event, huge quantity of contraband was recovered from the possession of the applicant. There is no ground which would justify an inference that the applicant may not have committed the offences with which he has been charged. Thus, the interdict contained in Section 37(1)(b) of the NDPS Act, 1985 comes into play. I am, therefore, not inclined to accede to the prayer for bail.

11. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]