

premises. They were celebrating party. One of them found in suspicious condition. He was concealing something in his pant pocket. Police apprehended all the persons. Search was conducted. Co-accused Haris Faijan Khan was found in possession of 12 grams of M.D. Samples were taken. The persons, who were present at the place of incident, were apprehended. The case of the prosecution is that, the applicant is one of the person, who had consumed the contraband. Blood samples were sent for examination to the Directorate of Forensic Science Laboratory. Applicant was arrested. He was granted bail by the learned Special Judge vide order dated 8th October 2020.

3. Learned Advocate for petitioner submitted that, there is no evidence to connect the applicant in the crime. The case of the prosecution is that the co-accused was found in possession of 12 grams mephedrone. However, no recovery was made at the instance of the applicant. There is no evidence to establish that the applicant was acting in connivance with co-accused. Although, it is the case of the prosecution that, the applicant had consumed contraband, it is not established by any evidence.

4. Learned APP submitted that, role attributed to the applicant is that he had consumed contraband. During the course of

investigation, blood and urine samples of the applicant were obtained and the same were sent to FSL. Photocopy of the FSL report has been produced which indicate that the examination of blood and urine does not indicate the presence of narcotic drugs like heroin, cocaine, Morphine, Caffeine, Ketamine, Methamphetamine, Lorazepam, Alprazolam and Cannabis constituents. Mephedrone is not detected in exhibit samples.

5. Thus, the factual matrix of this case would indicate that, the prosecution case is that police raided the premises after hearing the loud noise. One of the persons was found in possession of the contraband. There is no evidence to show that, the applicant was in any manner conniving with the co-accused, who was found in possession of contraband. The case of the prosecution against the applicant is that, he had consumed the contraband. It is not clear as to on what basis it was presumed that the applicant had consumed mephedrone or any other contraband. Even otherwise, the blood samples and urine samples of the accused were forwarded to FSL and the report is negative. In the absence of any evidence to connect the petitioner with the said crime, the petitioner cannot be prosecuted for the said offences.

ORDER

- i) Criminal Writ Petition No.2912 of 2022 is allowed and disposed off;
- ii) The impugned proceedings in Special NDPS Case No.852 of 2022 arising out of FIR dated 2nd October 2020 registered with Bandra Police Station vide Special LAC No.109 of 2020, is quashed and set aside, qua the petitioner.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)