

\$~6

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

BAIL APPLN. 234/2018

CHIBUZO BATHLOMEW IFEKUDO

..... Petitioner

Through: Mr. K. S. Singh and Ms. Kranti
Verma, Advocates.
Mr. Vikas Gautam, Advocate.

Versus

NARCOTIC CONTROL BUREAU

..... Respondent

Through: Mr. P.C. Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

%

05.10.2018

On 04.09.2018, the Court had recorded as under:-

“The petitioners seek bail. He has been incarcerated since 24.10.2013 for charges of possession of 450 grams of cocaine. The learned counsel for the petitioner submits that the prosecution is unsure of whether the contraband allegedly recovered from the petitioner was 450 grams, 4500 grams or 45 grams. He submits that, according to the petitioner, the alleged contraband was recovered from the petitioner in the presence of a public witness Mr. Shambhu Dayal Jain (PW5), who had stated that on the said date of recovery, the contraband of 4.500 grams was recovered. The quantum was negligible. It cannot be 450

grams and surely not 4500 grams. Indeed, this alleged recovery itself has been found odd by the learned Trial Court, that while recording the deposition of said PW5, it noted as under :-

"(Court observation: At this stage the witness has stated that inadvertently he had mentioned the weight of contraband yesterday as 4.5 kg, whereas it was 450 grams.) Ld. Defence counsel has objected to the same stating that there is no procedure in law to record any such averment of witness during cross examination and after one day. In my view this contention has no merit. The court has recorded, whatever the witness has stated in court and he is still under cross-examination.

I had mentioned the weight of the contraband as 450 grams in my statement u/s 67 of NDPS Act before the NCB officials.

Q Please see your statement recorded u/s 67 of NDPS act ExPW1/K where in the sentence mark DX1 to DX2 the weight of the contraband has been mentioned as 4500 grams. What do you have to say?

A. The weight of the said contraband here has been mentioned as 4.500 grams.

Q Yesterday you told the weight of the contraband to be 4.5 kg. Today you corrected it to 450 grams. In your statement u/s 67 of NDPS act you mentioned the weight at 4.500 grams. What is the reason for mentioning different weights at different times?

A. In my statement u/s 67 of NDPS Act I wrote the weight as 450 grams. Today also I told the weight as 450 grams. Inadvertently yesterday I told the weight to be 4.5 kg. I do not remember if I had mentioned the fact of the stay of the accused Chibuzo Bathlomew in my statement ExPW1/K recorded u/s 67 of the NDPS Act. I can tell the said fact after seeing the judicial record. After seeing the judicial file, it is admitted by the witness that he had not mentioned in his statement about the factum of staying of Chibuzo Bathlomew with his tenant Prince."

The learned counsel further submits that the deposition of PW5 is not trustworthy, because it is for the first time that PW5 has stated that the petitioner was his tenant, if indeed it were so, he could have made this disclosure during the course of the investigation and such intimation would have been reflected in the chargesheet filed. The statement of PW5 is an obvious improvement, only to show that the said witness knew the petitioner. Such self-serving improvisation on behalf of the prosecution cannot be accepted as evidence against the petitioner.

At this stage, the learned proxy counsel for the respondent seeks a passover. Case has been passed over.

It is 16:45 hours, even now the main counsel for the respondent has not appeared.

List on 06.09.2018."

The learned counsel for the respondent has no additional information or instructions apropos deposition of their main public witness i.e. PW5. The Court would note that the said public witness had given conflicting versions of the amount of the contraband recovered from the accused-

petitioner. In the first instance, in his statement under section 67 of the NDPS Act, he has mentioned such contraband to be weighing 4.500 grams, subsequently, he altered it to 4.5 kgs., i.e. over a thousand time more and later he said it was 450 grams. Additionally, the said witness improved his earlier statement, which did mention that he knew the petitioner as his tenant. If the petitioner were indeed his tenant and he was in such familiarity with the petitioner, then ordinarily such familiarity and personal knowledge would have been disclosed in the beginning of any statement of his to the authorities. His statement is evidently contradictory about the quantum of recovery of the contraband and as to his claim of affinity or prior knowledge about the petitioner, would need to be re-examined, at the appropriate stage.

In view of the above, the petitioner is granted bail on his furnishing a personal bond in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the Trial Court concerned, subject to the following conditions:-

- (i) the petitioner will regularly appear on each and every date of hearing to be fixed by the Trial Court concerned;
- (ii) the petitioner will not try to influence, contact or meet the complainant and prosecution witnesses in any manner;
- (iii) the petitioner will not leave the country without prior permission of the Court and the passport, if any, shall be deposited with the Trial Court concerned; and
- (iv) in case of change of his new address or contact number, the petitioner will promptly intimate to the SHO/IO of the case and intimate the Trial Court.

The petition stands disposed-off in the above terms.

Nothing stated in this order shall be deemed to be an adjudication on the merits of the case.

A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master. Additionally, a copy of the same shall also be delivered upon the Jail Superintendent through the police.

NAJMI WAZIRI, J.

OCTOBER 05, 2018

sb