

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40284-2023

Fernando Benz @ Chibuike Benjamin Nneji

....Petitioner

Vs.

State of Haryana

....Respondent

Reserved On.: 05.02.2024

Pronounced On: 07.02.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Pranshul Dhull, Advocate
for the petitioner.

Mr. Randhir Singh, Addl, A.G., Haryana.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioner prays to order his release by considering his name as Fernando Benz @ Chibuike Benjamin Nneji, in case FIR No.384 dated 03.10.2022 registered at Police Station Khedki Daula, Gurugram under Section 21-B/61/85 of NDPS Act and Section 14 of Foreigner Act.

2. As the perusal of the paper-book reveals, in case FIR No.384 dated 03.10.2022 registered at Police Station Khedki Daula, Gurugram under Section 21-B/61/85 of NDPS Act and Section 14 of Foreigner Act, petitioner applied for regular bail before the Court of Sessions, by referring his name as 'Fernando Benz son of Fernando', as is evident from the order dated 21.02.2023 (Annexure P-1). Bail was allowed to him but with certain stringent conditions. Petitioner challenged that order before this Court by filing CRM-

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M-12562-2023 so as to modify the conditions of bail. Said petition was disposed of by this Court vide order dated 22.03.2023 (Annexure P-2).

3. The operative part of the order dated 22.03.2023 is as under:-

“In view of the above, the condition of bail allowed to the petitioner is hereby modified to the following effect:-

- 1. Petitioner shall be released on bail on his furnishing personal bail bonds. In addition petitioner shall deposit an amount of ₹2,00,000/- before the Trial Court. Upon the deposit of such amount, the Trial Court shall get the same invested in some FDR with some nationalized bank with a direction to the Manager of the concerned bank not to encash the same except under the order of the Court. In case, petitioner is declared innocent or acquitted and such acquittal attains finality, the petitioner shall be entitled to proceed of the said FDR. However, in case, the petitioner absconds or is found guilty and is convicted and such conviction attains finality, the same shall be forfeited to the State.*
 - 2. Apart from above, petitioner shall surrender his passport before the Trial Court.*
 - 3. Petitioner shall provide his mobile number to the Trial Court and will not change the same without intimation to the Court.*
 - 4. Petitioner shall not make any attempt to prolong the trial and shall appear on each and every date of hearing. He shall not move any application for seeking exemption except in case of medical emergency.*
- With the aforesaid modified directions, present petition stands disposed of.”*

It may be noted here itself that aforesaid petition i.e. CRM-M-12562-2023 was also filed by the petitioner by referring his name as ‘Fernando Benz’.

4. Now, by way of the present petition, petitioner contends that his real name is ‘Chibuike Benjamin Nneji’; and that Fernando Benz is his nick name. He further submits that veracity of the passport of the petitioner was also verified by the Deputy Commissioner of Police, Gurugram through High Commissioner of Nigeria, New Delhi on 27.07.2023 and his passport was

found to be genuine. Petitioner has now prayed, firstly to direct his release by considering his name as Fernando Benz @ Chibuike Benjamin Nneji in respect of FIR in question, in compliance of the order dated 22.03.2023 (Annexure P-3) passed by this Court. Second prayer made by the petitioner is to reduce the amount of the FDR from ₹2,00,000/- to ₹1,00,000/-.

5. Learned counsel for the petitioner has drawn attention towards copy of the passport (Annexure P-3) bearing passport number A098131466, which is in the name of 'Chibuike Benjamin Nneji', a national of Nigeria. Annexure P-4 is the copy of a letter dated 27.07.2023 written by High Commissioner of Nigeria, New Delhi and addressed to Deputy Commissioner of Police, Crime, Gurugram, as per which the aforesaid passport number A098131466 in the name of 'Chibuike Benjamin Nneji' is genuine.

6. Learned counsel for the petitioner conceded that he had not placed on record any document to show that petitioner was known by both the names i.e. 'Fernando Benz as well as 'Chibuike Benjamin Nneji'. In these circumstances, notice of motion was issued and State was directed to file its response to the petition.

7.1 In the reply filed by way of an affidavit dated 25.08.2023 of Shri Kapil Ahlawat, HPS, Assistant Commissioner of Police, Crime-II Gurugram, it is submitted that at the time of arresting the petitioner, he had produced photocopy of passport No.A11639752 purported to have been issued in the name of 'Fernando Benz', carrying the date of validity as 08.11.2024. Along with the passport, petitioner had also produced a VISA authorizing his entry into Republic of India with effect from 14.07.2021 to 13.01.2022. The VISA

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carried the stamp of Indian Immigration authorities. Copies of the passport and that of the VISA are Annexure R-1 & R-2.

7.2 The reply of the respondent- State further reveals that as petitioner could not produce the original passport and VISA, the documents were found to be fake and so, offence under Section 14 of the Foreigners Act was added to the case. It is further submitted that though the passport bearing No. A09813146, now relied by the petitioner in the present petition, in the name of 'Chibuike Benjamin Nneji' has found to be a genuine document, but it was never contended by the petitioner that he was known by two names and had two different passports in two names.

7.3 Ld state counsel contends that the circumstances as above clearly show that two different passports having different numbers were issued in two different names i.e. passport No.A11639752 in the name of 'Fernando Benz' (copy Annexure R-1); and passport No.A09813146 (copy Annexure P-3) in the name of 'Chibuike Benjamin Nneji'. It is submitted that in the light of aforesaid material, Fernando Benz and Chibuike Benjamin Nneji are not the same persons.

8. Although petitioner filed a counter-affidavit in response to the status report filed by the respondent- State, in which he reiterated that Fernando Benz is his nick name and that his real name is Chibuike Benjamin Nneji but the said rejoinder is absolutely silent as to how a different passport and VISA in the name of Chibuike Benjamin Nneji was produced by him before the police authorities at the time of his arrest.

9. Having regard to all the aforesaid facts and circumstances, it is

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found that petitioner has not been able to convince that Fernando Benz is his
nick name and that his real name is Chibuike Benjamin Nneji. His contention
is not found to be correct to the effect that Fernando Benz and Chibuike
Benjamin Nneji are the names of one and the same person.

Dismissed.

(DEEPAK GUPTA)
JUDGE

February 07, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No