

M.C.O.C. SPECIAL CASE NO. OF 21/06**DATE: 14th July, 2010****EXT.No.499****DEPOSITION OF WITNESS NO.22 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Ashokkumar Sitaram Prasad
Age : 55 years
Occupation : Business
Res. Address : Village and post Basupatti, Dist. Madhubani,
Bihar

EXAMINATION-IN-CHIEF BY SPP RAJA THAKARE FOR THE STATE.

1. I am a resident of Basupatti. On 20/07/2006 at 4.00 a.m. Mumbai police had called me in front of Prasad Cinema Hall. They told me that a panchanama is to be prepared and whether I would help the law. I consented. Two known persons from my village and police persons were present. One more unknown person was present there. Police asked a person his name and he told it as Kamal Ansari. Then police asked the name of the other person which he told as Khalid Aziz. Kamal Ansari was wearing a blue shirt and a cream pant. His body search was taken. A mobile was found in his shirt pocket. Police switched on the mobile and saw four missed calls, two received calls and nineteen dialed calls. Police asked him the number of the mobile. He told it as 9934610679. The battery was checked, it was made in Hungary. Cash amount of Rs. 460/- was found in his right side pant pocket. Then police took a search of Khalid Aziz. A mobile was found in his pant pocket. Police asked him the number of the mobile. He told it as 9934027715. There were two missed calls, four received calls and fifteen dialed calls. Cash amount of Rs. 260/- was found in his shirt pocket. Police pasted labels on the mobiles and I and another panch from Basupatti by name Rameshwar

Turbe signed on the labels. Some markings and some words in Marathi were written on the labels. Police prepared panchanama of all that had happened and we both signed it and the police officer also signed it. The panchanama Ext.467 is the same now shown to me, it bears my signatures at sr. no.2 on both pages, signatures of other panch Rameshwar at sr. no.1 and of the police officer by the side. It also bears the signatures of Kamal Ansari and Khalid Aziz. Its contents were read over to me in Hindi. The contents now explained to me in Hindi are correct. I will be able to identify the mobiles that were seized. (Witness is shown mobile Arts-37 and 38). The mobile Art-38 is the mobile that was seized from Kamal Ansari. Witness again says-the mobile Art-37 was seized from Kamal Ansari and mobile Art-38 was seized from Khalid Aziz. Out of those two, Kamal is present in the court. (Witness points to the accused no.1 sitting in the dock, who is asked to stand up and tell his name, which he states as Kamal Ahmed Vakil Ansari).

2. After the panchanama was over at 4.30 am I went home. I was sitting outside the house and after some time those persons came there. I stood up. Police asked me whether I am ready to witness another panchanama. I agreed. I then went with them. After some distance, there was a person by name Ramsevak Prasad. Police requested him to act as a panch witness and he consented. Then we reached the house of Kalam. Witness again says-we reached the house of Kamal Ansari. He knocked the door of the house. A woman opened the door. The police asked her name. She told it as Tabassum Sultana. Kamal said that she is his wife. Police told her that they wanted to search her house. She said ok. Police told her that she could take their and our searches. She declined and said that they could search her house. Khalid Aziz and two policemen stood outside the house and we all remaining persons went inside the house. The room, which was 10x12 feet, was searched. A wooden cot, a table, a chair, a landline telephone and household

articles were in the room. Below the cot there was a cloth bundle and an oil can. After they were taken out there was a polythene bag containing black powder behind them. After the police inspected the powder they asked Kamal what it is, but he remained silent. Police opened the bag, which was about half kilograms and took out some powder approximately 10 grams and put it in a small polythene bag. It was packed in khaki paper, tied by thread and labeled. The remaining powder was packed in the plastic bag, put in a plastic jar, tied by thread across the cap and a label was pasted. The alphabet A was written on the jar and A1 was written on the sample.

Q.- Why was the label pasted?

A.- The label was pasted for sealing and it contained our signatures.

A panchanama of all this was prepared and we signed on it. The panchanama now shown to me is the same, it bears my signatures at sr. no. 1, the signatures of the other panch Ramsevak at sr. no. 2, the signatures of the police officer by the side, at two places. It bears the signatures of Kamal Ahmed and his wife. The contents now explained to me in Hindi are correct. (It is marked as **Ext.500**).

3. I will be able to identify the plastic jar and the packet. (Witness is shown the plastic jar Art-39, the packet Art-40C, and the plastic bag Art-40A). The plastic jar Art-39 is the same, the label on it it bears my signature at sr. no.1, signature of the other panch at sr. no.2 and signature of police officer Tajane by the side. The label on the envelop Art-40C bears my signature at sr. no.1, signature of the other panch at sr. no.2 and signature of police officer Tajane by the side. The powder Art-40 is the same. The plastic bags Art-40A and 40B are the same. A carbon copy of the panchanama was given to Kamal and one was given to his wife and their signatures were taken. The landline number was 273679. Police took the seized articles and Kamal with them and I went home.

Cross-examination by adv Wahab Khan for A/2,7,10 &13,

4. Alongwith real and step brothers we were seven. None of my brothers was murdered. My younger brother Ramashankar Prasad died in Patna suddenly. No *post-mortem* was done on his body.
5. I know Kamal Ansari since my childhood. He is my neighbour. He grew up in front of me. On 10/07/06 there was marriage of Tayyab's daughter in the village. I was not invited. It is not true that on that day Kamal Ansari was in the village. Police station is 100 mtrs from my house. If any article is to be called from the police station to the house of Kamal Ansari, it can be called within ten minutes. I was not called by the police. I was called by the local police officer before the first panchanama when I was going from the road in front of the Prasad Cinema Hall. I was not taken to the local police station. The police officer was one Ranjankumar. I knew him as he used to come for patrolling, approximately since 5-6 months before the incident. It is not true that I am deposing falsely about it. I do not know whether he was posted in that police station three months before that incident. He had called me and told me to be a witness for a panchanama. He did not tell me that Kamal Ansari is caught and for that purpose panchanama is to be prepared. When I went there, I saw the police having surrounded Kamal Ansari. He was not caught in my presence by a trap. When I reached there I saw that Kamal Ansari whom I knew was caught by the police. I did not ask Kamal Ansari since when he is there and from where he was brought there. There were about 7-8 police persons. I did not think it necessary to ask the police or Kamal Ansari about it. I have passed B.Sc. It is not true that police had a bag with them. There were no weapons in their hands. The policemen other than the local police did not have anything in their hands. I did not see whether any articles were protruding outside their pockets. It is true that no articles were called from the local police station in my presence. It is not true that no lac seal was used to seal any article in my presence. I know what a lac seal is. Police had affixed red lac

seal in my presence on all the seized articles. I do not know which seal was used on the lac. Today I can try to identify the seal. There is no lac seal on jar Art-39 now shown to me. The jar was not sealed by lac seal. Lac seal was put on the khaki paper. The sample powder of approx 10 grams was put in a polythene bag, then it was wrapped in a khaki paper, tied with a thread and then sealed. The label was not sealed. The seal was not called for at the house of Kamal Ansari. It is not true that I was with the police from the first panchanama itself. I went to the shop which is in my house. When I was sitting in front of my house after the first panchnama, the police came there after some time and asked me whether I would witness the second panchanama. I did not tell the police at the time of the first panchanama that Kamal Ansari is my neighbour and I know him from my childhood. Police did not ask me whether I am related to Kamal Ansari and whether I have any enmity against him. When the police called me for the second time, police were with the accused no. 1 outside his house. It is not true that I do not know how they reached there, because I was with them.

6. About 5-6 persons reside in the house of Kamal Ansari. One is Kamal, his wife Tabassum aged about 29 years, mother whose name I do not know, her age is about 62-65 years, a daughter aged about 14 years and two sons aged about 11 and 8 years, whose names I do not know. His brother's wife does not stay there. The room on the ground floor is 10x12 feet and there is first floor.
7. Police did not ask Kamal Ansari to take out the articles in the house. Police did not give their searches to me. Police did not offer their searches to Kamal Ansari. It is true that police were handling all the articles in the house when they were searching. There was no lady police with us. Fingerprints were not lifted from any article. Police did not take photograph of any article. Other than Kamal Ansari police did not ask his family members about any articles. I do not know whether any construction work was going on in that house and whether cement,

sand and bricks were lying there.

8. It is not true that I am inimical with Kamal Ansari's family, that there was no search in my presence and nothing was seized in my presence. It is not true that I am close to police officer Ranjankumar, therefore I signed in the police station as per his say. It is not true that I identified the articles before the court on the say of police.

Cross-examination by adv Mokashi for A/1, 4,5 & 6

9. (Ld Adv submits that he adopts the cross-examination by Adv Wahab Khan in order to avoid repetition and he will cross-examine in addition). Jagdish Prasad is my cousin. It is not true that there was a tension between him and accused no.1 with respect to land. It is not true that village Basupatti is a backward village. It is not true that it is a small village having a small population. Basupatti is a taluka place comprising of many villages. It is true that the road in the market of Basupatti is isolated at 4.00 am. It is not true that the public lights are not good and it is dark. Shops were closed. There was no traffic. I did not tell the police where I was going at 4.00 am. It is true that I could not go for my work as I was engaged in the work of the panchanama. It is true that I was in a hurry to go to the place where I wanted to go. It was an important work for which I was going. When police stopped me, they did not inform me as to whom they had caught. They did not tell me for what purpose they are taking me as panch witness. I was going alone for my work. It is true that I was the only person on that road who came in contact with the police. Police could have called any other person from the neighbourhood. It is true that mobiles like Arts-37 and 38 are available in the market. It is true that police had already caught accused no.1 before I reached there. I knew that the person who was caught is Kamal Ansari. I did not ask him why he was caught. It is not true that at that time police did not have paper, carbon or stationery with them to write the panchanama. It is not true that there was no

sufficient light to write panchnama. It is not true that I was not present from beginning at the spot till the conclusion of the panchanama and even accused no. 1 was not present. It is not true that similarly the other panch was also not present. Before this incident I have not worked as a panch witness at any time. I know the second panch Rameshwar Purve. It is not true that after the first panchnama I did not go for my work but I went directly to the house. I do not know whether the police had arrested the accused no.1 till I was there. It is not true that I was not present at 4.00 am in the market place and I did not sign at that time. It is not true that the mobile numbers of the accused no.1 and the other person caught there were told to me later on. It is not true that the missed, received and dialed calls were not seen and noted in my present. There is a message option in a mobile. It was not opened in the present case. I have never sent any sms. I do not have a mobile. At that time also I did not have mobile. It is true that I did not have technical knowledge about mobile. I do not know Marathi. It is true that I did not know what was written in the panchanama. It is true that whatever was told to me as translated was taken by me as correct as I do not know Marathi.

(adjourned for recesses)

(Y.D. SHINDE)

Date:- 14/07/10

SPECIAL JUDGE

AFTER RECESS RESUMED ON SA

10. It is true that no pen was found in the search of the accused no.1. I signed on the panchanama with the help of the pen of the police officer. It was given by an officer other than the officer who wrote the panchanama. I do not remember who gave the pen to the accused no.1. It is not true that when police came to me for the purpose of the second panchanama at my house, sun had come out. I knew

accused no.1's house since beginning. Police told me about the reason for going to his house, viz., for preparing panchnama. Bihar police were present when the search at accused no.1's house going on. It is true that alongwith me and the other panch, Mumbai police and Bihar police were in the house when the search was going on. It is not true that so many people could not have space to stand in that room at the same time. It is not true that I was not present when each and every article in the house was searched. It is not true that no plastic bag containing black powder was seized by the police in my presence from that room. It is true that I did not know anything about the black powder in the plastic bag. Bihar police did not raise any objection about that black powder. I do not know whether Bihar police did not think it proper to seize the black powder. It will be correct to say that the ten grams sample was not taken by the Bihar police. I do not know whether Maharashtra police did not have a small plastic bag for taking sample. The black powder and the sample was not weighed. It is not true that the bag containing the black powder was lying open. It is not true that I cannot say who took the bag containing the black powder in his possession. It is not true that the plastic jar like Art-39 is not available in Bihar. It will not be correct to say that Maharashtra Police brought the plastic jar and put the bag containing the powder in it. It is not true that the plastic jar was not in the house of the accused. It was empty. There may be more such plastic jars in the house. It is not true that nothing was seized in my presence from that house. It is not true that neither accused no.1 nor his wife signed on the panchnama. It is not true that I deposed falsely.

Cross-examination by Adv P.L Shetty for A/3, 9, 11,12

11. I do hardware business from 7.00 am to 7-8.00 pm. My house and shop is in the jurisdiction of Police Station Basupatti. I have not heard the name of Police Station Kotwali. Patna is about seven hours by bus from Basupatti. When I signed the panchanama, I knew what a panchanama is. I knew that after signing

on the panchanama I would have to give evidence in the court. After I signed on the pachanama, I came to know that the case is of Mumbai. I guessed that I would have to go to Mumbai for giving evidence.

12. I came by Patna Patliputra Terminus to Chatrapati Shivaji Terminus Express. I came alone. I reached at 4.00 pm in Mumbai. I received summons on 08/07/2010. I was called on 12/07/10 but as there was Bihar Band, on 10/07/10, I came on 13/07/10. The ticket was taken by the ticket collector. I came in a general bogie as I did not have reservation. It is true that I do not have documentary proof to show that I came yesterday from Bihar. I do not have relatives in Mumbai. Since coming to Mumbai, I was resting in the guest house of ATS near Kalachowki. It is on the upper floor of the office of the ATS. I came to court with the ATS officers. There was no other witness from Madhubani in my room. There was no officer in the adjoining room. There are two-three rooms on the first floor. I do not know the name of the sarpanch of Basupatti. The mukhiya is Bharat Mandal. I meet him in the village. I met him on 9th or 10th of this month in connection with going to Mumbai. I knew that he was summoned to come to Mumbai. I did not ask him whether he was going to Mumbai. I told him that I was going to Mumbai.

13. It was sometime before 4.00 am on 20/07/2006 when I was called by the police. At that time I was going in search of labourers for unloading goods. After the first panchanama I went back to my shop. The police were going by the road when I was sitting outside the shop and at that time they asked me whether I was ready to act as panch witness again. About 5-10 minutes had gone by between the time when the first panchanama was over and upto the time when they asked me to act as panch witness again. When they asked me to help for another panchanama, I immediately accompanied them. The same policeman called me on both occasions. After signing on the second panchanama, I went back to my shop.

House of the accused no.1 is 40 mtrs from the spot of the first panchanama. I cannot tell the name of the police officer from Mumbai who wrote the first panchanama or the second panchanama. Both panchanamas were written by the same officer. He did not sign on the panchanamas but another officer signed. The local police officer gave me a pen to sign. Ranjankumar gave me a pen on both occasions. After signing I gave back the pen to him on both occasions. I do not know with which pen Rameshwar Purve signed on the panchanama. I signed first on the second panchanama. I did not give the pen to Ramsevak Prasad after I signed. I do not know with which pen he signed on the panchanama. It is true that I had seen both the other panchas signing on the panchanamas.

14. The police officer from Mumbai who signed on both the panchanamas is Vasant Tanjane. One inspector Vijay Bhandodkar of ATS took me to the room in the guest house. He had given me his mobile number at the time of serving summons. When I reached the railway station, I called him and he sent a person who took me Kalachowki. I did not call him before starting from Bihar. I cannot tell that mobile number as I do not remember it, it was written on a paper. It was with me from 08/07/10 till I reached Mumbai. I had called him once and talked with him on that number. In spite of this, I do not remember that number. I do not have that paper with me. It may be in my bag. Four years have passed since the panchanama.
15. It is true that I had not taken the mobiles in my hand at that time. It is true that after that day, I had no occasion to hear the numbers of those mobiles or to talk on them. My sons have mobiles. It is true that no police officer gave the two mobile numbers and the landline number on a paper to me. I had written them at my house on a paper. I did not bring the paper with me to Mumbai. I was carefully observing when the officer was writing the panchanamas. It is true that I saw that officer Tanjane signed on both the panchanamas. I do not know by which pen

Tabassum signed and who gave that pen to her. It is not true that I was not present at the time of the second panchanama, that police took my signatures on both the panchanams in the police chowki. I do not remember whether I signed on the labels on the plastic jar Art-39 and Art-40C before or after I signed on the panchanama. I do not remember who out of us panchas, signed first and who signed second on the second panchanama and the labels. I cannot say whether we both used the same pen for signing on the labels. The ink of my signature and that of the other panch on Art-40C is different. The ink of my signature and that of the other panch on the label on Art-39 appears to be same.

Cross-examination by Adv S.D.Erande for A/8

16.(Cross examination by advs Wahab Khan, Mokashi and Shetty adopted)

No re-examination.

R.O.

Spl. Judge
Date:- 14/07/10

(Y.D. SHINDE)
SPECIAL JUDGE
UNDER MCOC ACT,99,
MUMBAI.