

M.C.O.C. SPECIAL CASE NO. OF 21/06**DATE: 8TH JUNE, 2011****EXT. NO. 1014****DEPOSITION OF WITNESS NO.102 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Sanjay Vilasrao Mohite

Age : 47 years

Occupation : Service (S.P. Jalna)

Res. Address : SP Bungalow, Jalna.

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

1. I was working as DCP (Preventive), Crime Branch, Mumbai from March 2006 to November 2008. I received a letter on 04/10/06 bearing O. No. 1874 dated 03/10/06 from the Jt. Commissioner of Police, ATS to record the confessional statement of the accused Dr. Tanveer Ahmed Mohd. Ibrahim Ansari, an accused in the railway bomb blasts case. I am producing the original, it bears the signature of K. P. Raghuvanshi, Jt. CP, ATS, Mumbai and my signature of having received it on 04/10/06. (It is marked as **Ext.1015**). Thereafter I issued two letters, one in the name of the IO ACP Sadashiv Patil directing him to produce the accused before me at 1400 hours on the same day. I am producing the office copy of that letter, it bears my signature, its contents are correct and it also bears the acknowledgment of an officer of the ATS. (It is marked as **Ext.1016**). I

addressed the second letter to Sr. PI Azad Maidan Police Station to send one PSI and two constables at 1400 hours to my office as I was going to record the confessional statement of the said accused. I am producing its office copy, its contents are correct. (It is marked as **Ext.1017**). Accordingly PI Khandekar of the ATS office produced the accused before me at 1400 hours and gave report. I am producing that report, it bears my signature in acknowledgment. (It is marked as **Ext.1018**).

2. After the accused was produced before me, I asked PI Khandekar to briefly narrate the facts of the case and after he had narrated them I asked all the policemen to go outside my chamber. I ascertained that the accused is not wearing a veil before me. I ensured that no other policeman would see and hear us. I made him comfortable by asking some preliminary questions. He knew Hindi, therefore, I asked questions to him in Hindi. I introduced myself. I told him that I am working as DCP (Preventive), Crime Branch and that I have no concern with the investigation of the crime in which he is arrested. I told him that he is taken in my custody from the custody of the ATS. I told him that till the time he is in my custody no ATS

officers can come in his contact and can pressurize him. When I had ascertained the facts of the case from PI Khandekar, I had also ascertained as to whether the period of the police custody of the accused was sufficient to enable me to give him time for reflection and to complete the confessional statement. I told him that his confessional statement will be recorded in a free and fair atmosphere. I also ascertained that he is comfortable and is not under any pressure. I asked him whether he was induced, threatened, coerced or pressurized by any person to give the confessional statement. He said no. I told him that any confessional statement that he gives will be used as evidence against him as well his co-accused and whether he is still ready to make the confessional statement. He said yes. During this questioning I was recording Part-I of the confessional statement in my own handwriting as per the questions that I put to him and the answers that he gave. I told him that I am giving him more than 24 hours time to think over whether to give the confessional statement and that he would be in my custody during this period.

3. I was satisfied that the accused was prepared to give his

confessional statement voluntarily. I read over the Part-I of the confessional statement to him and he accepted that it was correctly written as per his narration. Then I took his signatures and put my signatures on the concerned pages. I also put my counter signatures on all the pages and signed on the last page of Part-I. The Part-I of the confessional statement now shown to me is in my handwriting, it bears my signatures and signatures of the accused and its contents are correct. (It is marked as **Ext.1019**). I took out two photocopies of the Part-I, one for my record and one for giving to the IO. I put the original in an envelope, sealed it and endorsed it in my handwriting and kept in my possession. The envelope now shown to me is the same. The endorsement thereon is in my handwriting. (It is marked as **Ext.1020**).

4. I prepared a letter addressed to the Sr. PI Azad Maidan Police Station asking him to keep the accused in a separate cell in his lockup and to take care that no police officer and no one from the ATS as well as no other person meets him. I also directed to get him medically examined and to take care about his bedding and food so that he would be comfortable. I also directed him to produce the

accused before me at 5.00 p.m. on 05/10/06. PSI Gangurde had come there as per my letter along with two constables. I called him and handed over the letter and the accused in his custody and told him to take the above precautions. I am producing its office copy, its contents are correct and it also bears the acknowledgment of PSI Gangurde. (It is marked as **Ext. 1021**).

5. As per my instructions, PSI Gangurde produced the accused before me at 5.00 p.m. on 05/10/06. I ascertained from PSI Gangurde whether my instructions about keeping the accused in a separate cell, providing him medical aid and food and preventing anyone from meeting him were followed. He told me that he had got the accused medically examined and he was given food and water on time and the other directions were complied. He had given me a letter about producing the accused. I am producing it. It bears my acknowledgment. (It is marked as **Ext. 1022**). I took the accused in my custody and then asked PSI Gangurde and his staff to go outside my chamber. Then again I ensured that the proceedings between me and the accused cannot be seen or heard by anyone from outside. I again made the accused comfortable. I asked preliminary questions

as to whether he was medically examined and whether he was given meals on time. I asked him questions to ascertain whether he was pressurized, induced or intimidated by any person during the period that he was in the lockup and whether the period for reflection that I had given him was sufficient. He said that the period for reflection was sufficient and that no one had pressurized, induced or intimidated him to give the confessional statement. I again asked him whether he was still ready to give the confessional statement. I again told him that the confessional statement can be used as evidence against him and his co-accused and asked him whether he is still ready to give the confessional statement. He said yes. On his answers I was satisfied that he was ready to give the confessional statement voluntarily and that he was not under the influence or threat from any person. Thereafter I started recording his confessional statement in his own words and in his language. After it was finished, I read it over to him and asked him whether it was correctly written as narrated by him. He said yes. Then I obtained his signatures on all the pages and I put my counter signatures. I gave a certificate below the statement as per the provisions of the MCOC Act

and I signed it. Part-II of the confessional statement now shown to me bears the signatures of the accused on all the pages and my counter signatures and my signatures on it. Its contents are correct. (It is marked as **Ext.1023**). I took out two photocopies of the Part-II of the confessional statement, one for my record and one for giving to the IO. I put the original in an envelope, sealed it and endorsed it in my handwriting and kept in my possession. The envelope now shown to me is the same. The endorsement thereon is in my handwriting. (It is marked as **Ext.1024**). The entire proceedings were going on from 1700 hours to 2030 hours on 05/10/06. (Witness has referred to his file before answering).

6. Thereafter I prepared three letters. One was a forwarding letter addressed to the CMM, the second was addressed to the Sr. PI Azad Maidan Police station directing him to keep the accused in his custody and produce him before the CMM along with the two sealed envelopes on the next day. The third letter was addressed to the IO, ATS asking him to take possession of the accused at the court of the CMM after the work of the CMM was over. I am producing the office copies of all the three letters. They bear my signatures, their contents

are correct. The first one bears the signature of the clerk of the office of the CMM, the second one bears the signature and acknowledgment of PSI Gangurde of having received the accused in his custody along with the sealed envelopes. The third is the letter addressed to the IO to take the accused in his possession and to the court of the CMM. (They are marked as **Exts. 1025 to 1027**). Then I gave the accused in the custody of PSI Gangurde and also gave him the letters and the sealed envelopes. I will be able to identify the accused whose confessional statement I recorded. He is present in the court. (Witness points to the accused no.2, who is made to stand up and tell his name, which he states as Tanveer Ahmed Ansari). He was the same accused. (Ld SPP requests for exhibiting the letter received from the CMM forwarding the sealed envelope of the confessional statements. It is received in evidence and marked as **Ext.1028** as it is addressed to this court. The envelope is marked as **Ext.1028A**).

7. Jt. CP, ATS Raghuvansh had sent me a letter to record the confessional statement of another accused in the same case. (At his request the witness is permitted to refer to the file that is with him).

The letter O. No. 1976 dated 22/10/06 was received by me on 23/10/06 directing me to record the confessional statement of Mohd. Sajid Margub Ansari. I am producing it, it bears my acknowledgment and inward number. (It is marked as **Ext. 1029**). Then I prepared and sent two letters. One was addressed to the IO, ATS to produce the said accused before me on 24/10/06 at 9.00 a.m. I am producing its office copy, it bears my signature and the acknowledgment of ACP Patil, ATS. Its contents are correct. (It is marked as **Ext.1030**). The other letter is addressed to the Sr. PI Azad Maidan Police Station directing him to send a PSI and two constables on 24/10/06 at 9.00 a.m. to me. I am producing its office copy, it bears my signature and its contents are correct. (It is marked as **Ext.1031**).

8. Accordingly on 24/10/06 API Tambe of ATS produced the accused before me along with letter at 9.05 a.m. I am producing the letter, it bears my endorsement of having received it and the inward number. (It is marked as **Ext.1032**). When the accused was produced before me I ensured that he was not in veil. Then I asked API Tambe and his staff to go out of my chamber. I ensured that the talk between me and the accused cannot be seen or heard from outside the

chamber. I and the accused only were in my chamber. I asked him to sit and made him comfortable. I gathered that he was knowing Hindi and therefore I conversed with him in Hindi. I had ascertained the brief facts of the case from API Tambe before I asked him to go out. I asked the accused his name, occupation and residential address. I told him that I am a DCP (Preventive) and not connected with the case in which he was arrested. I asked him as to why he had been brought there and he said that he was brought there for giving his confessional statement as he had volunteered to do so. I told him that it is not binding on him to give a confessional statement. He said that he knows it, but even then he wants to give it. I told him that if he gives it, it can be used against him and his co-accused as evidence. He said that he knows it and even then he is ready to give it. I asked him whether he is induced, threatened, coerced or influenced by any police officer or any person to give the confessional statement. He said no and said that he wants to give it. I was simultaneously writing down all the questions that I asked him and the answers that he gave in Hindi in his own words and as narrated by him. I told him that I was giving him more than 24 hours for thinking over whether to give the

statement. I told him that during this period he would be in my custody.

(Adjourned for recess).

Date : 08/06/11

Special Judge

Resumed on SA after recess

9. After Part-I of the confessional statement was completed at 1050 hours, I read it over to the accused, who admitted that it was correctly written and as narrated by him. I then obtained his signatures on all the pages and I also countersigned. Part-I of the confessional statement now shown to me is the same, it bears the signatures of the accused and my countersignatures and it is correctly written. (It is marked as **Ext.1033**). I took out two photocopies of the Part-I, one for my record and one for giving to the IO. I put the original in an envelope, sealed it and endorsed it in my handwriting and kept in my possession. The envelope now shown to me is the same. The endorsement thereon is in my handwriting. (It is marked as **Ext.1034**). PSI Nana Shinde had come from Police Station Azad Maidan. I called him inside and gave the accused in his custody along with my letter addressed to the Sr. PI of Azad Maidan

Police Station. I am producing that letter, it bears my signature, its contents are correct and it bears the acknowledgment of PSI Shinde of having received the accused in his custody. (It is marked as **Ext.1035**). By this letter I directed the Sr. PI to get the accused medically examined, to keep him in a separate cell, to provide meals to him and to see that no one and no police officer meets him and talks with him during that period. I also directed that the accused should be produced before me at 1100 hours on 25/10/06 in veil.

10. PSI Shinde produced the accused at 1106 hours on 25/10/06 in veil with a letter. I am producing it, it bears my endorsement and signature. (It is marked as **Ext.1036**) I asked the accused to remove the veil. I asked PSI Shinde and his staff to go out of my chamber. I ensured that the proceedings between me and the accused cannot be seen or heard from outside. I asked the accused to sit comfortably. The first question that I asked him was whether the time of 24 hours given to him for reflection was sufficient. He said yes. I asked him whether anyone had met him in the lockup and whether anyone had pressurized, threatened or intimidated him. He said no. I told him that if he gives the confessional statement, it may

be used against him. He said he knows it and even then he wants to give it. I was therefore satisfied that he was willing to give the confessional statement voluntarily. Thereafter I started recording his narration in his own words and in my handwriting. After it was finished, I read it over to him and asked him whether it was correct as per his say. He said yes. I asked him to put his signatures and he signed on all the pages. I also countersigned on all the pages. The recording of the confession was over at 1430 hours. I wrote a certificate at the end of the confessional statement and signed it. Part-II of the confessional statement now shown to me is the same, it bears the signatures of the accused on all the pages and my counter signatures and my signature below the certificate. Its contents are correct. (It is marked as **Ext.1037**). I took out two photocopies of the Part-II of the confessional statement, one for my record and one for giving to the IO. I put the original in an envelope, sealed it and endorsed it in my handwriting and kept in my possession. The envelope now shown to me is the same. The endorsement thereon is in my handwriting. (It is marked as **Ext.1038**).

11. Thereafter I prepared four letters. One was a forwarding

letter addressed to the CMM. Two letters were addressed to the Sr. PI Azad Maidan Police Station. One was directing him to keep the accused in his custody and produce him before the CMM along with the two sealed envelopes on the same day. The other was addressed to the IO, ATS asking him to take possession of the accused at the court of the CMM after the work of the CMM was over. The last letter was addressed to the Sr. PI Azad Maidan police station to produce the copies of the relevant extracts of the station diary entries. I am producing the office copies of all the four letters. They bear my signatures, their contents are correct. The forwarding letter to the CMM bears the endorsement of PSI Shinde of having received the accused in his custody along with two sealed envelopes and forwarding letter, (It is marked as **Ext.1039**). Next is the letter addressed to the Sr. PI to produce the accused before the CMM, along with my covering letter and the two sealed envelopes. It bears the acknowledgment of PSI Shinde.(It is marked as **Ext.1040**). Next is the letter addressed to the IO. (It is marked as **Ext.1041**). Last is the letter addressed to the Sr. PI to produce copies of relevant station diary entries. (It is marked as **Ext.1042**).

12. Then I gave the accused in the custody of PSI Shinde and also gave him the letters and the sealed envelopes. I verified in the evening on the same day whether the accused had been produced before the CMM. I received a detailed report on 02/11/06 from PSI Shinde about following my directions. I will be able to identify the accused whose confessional statement I recorded. He is present in the court. (Witness points to the accused no.7, who is made to stand up and tell his name, which he states as Sajid Ansari). He was the same accused. (Ld SPP requests for exhibiting the letter received from the CMM forwarding the sealed envelope of the confessional statements. It is received in evidence and marked as **Ext.1043** as it is addressed to this court. The envelope is marked as **Ext.1043A**).

Cross-examination by adv Wahab Khan for A2, 7, 10 & 13

13. (Deferred to tomorrow at the request of the learned advocate at 3.30 p.m. Learned advocate submits that adv. Ponda is going to appear on behalf of the accused no. 13 and he would begin the cross-examination tomorrow at about 1200 hours after attending the matters in the High Court).

(Y.D. SHINDE)

Date 08/06/11**SPECIAL JUDGE****Date : 09/06/11****Resumed on SA****Cross-examination by adv H.H.Ponda for 13**

14. Since 2003 I am promoted to the rank of Supdt. of Police. I have recorded a few confessional statements under the MCOC Act thereafter upto 04/10/06, but not more than ten. I do not remember the date, month or year when I first recorded such a statement. I may have recorded it about one and a half years before 04/10/06. I had read the provisions of the MCOC Act before I started recording the confessional statement in this case. I did not read the provisions of the TADA Act relating to confessions at this time, but I knew them. I had decided how to proceed to recording the confessional statement on the basis of the provisions of these Acts and the Cr. P. C. and the Evidence Act. I did not prepare the questionnaire before I started recording the confessional statement. No questions were kept ready on the first day and on the second day at the time of recording of both the confessional statements.

15. I did not have the questions ready in writing before I

started recording Part-I of the confessional statement of the accused no.2 on 04/10/06. I asked the questions from my mind based on the law. Same procedure was followed while recording Part-I of the confessional statement of the accused no.7 on 24/10/06. I did not refer to the Part-I of the confessional statement of the accused no.2 at the time of recording the confessional statement of the accused no.7. I may have read Part-I of the confessional statement of the accused no.2 one or two days before. Similar procedure was followed for asking questions at the time of recording Part-II of the confessional statements of both the accused by asking questions from my mind based on law and my experience. (Witness is shown Ext. 1019). The portions in English on the first and second page are written from my mind and as per the events. Same is the case in respect of the portions in English at the end of Ext.1019. Same is the case about the portions at the beginning of Ext. 1023 and about the accused no.7 in Exts.1033 and 1037.

16. I received Ext. 1015 at about 9.45 a.m. I had no knowledge about the accused no.2 or that he was going to make a confessional statement till receipt of this letter. I do not remember

whether the letter was brought by an officer of the ATS.

(Adjourned for recess)

Date :09/06/11

Special Judge

Resumed on SA after recess

17. (Witness is shown Ext. 1015). It is true that I did not have any other knowledge about the accused no.2, except this document. It is not true that I decided to record the confessional statement of the accused on receiving this letter. I do not remember whether I contacted the Jt. CP or any ATS officer after I received this letter. I prepared the two letters Exts. 1016 and 1017 after receiving it. I did not have knowledge till that time as to when that accused was arrested and when he had made up his mind to make the confessional statement. I received the letter Ext. 1018 before 1400 hours. I dictated the letters Exts. 1016 and 1017 immediately after receiving the letter Ext. 1015, but I do not remember the exact time. I took about may be less than half an hour to prepare the letters Exts. 1016 and 1017. I was in my office at that time and till the time I received the report Ext. 1018 and upto the time I completed Part-I of the confessional statement. I do not remember whether no other

documents were received by me nor I prepared and sent any other document in this connection during this period. The ATS officer did not record my statement. Exts. 1015 to 1018 were not taken from me during the investigation of that case. They were in my custody upto the time I produced them in the court yesterday. It is not true that all these documents are fabricated and subsequently prepared just before I gave evidence.

18. The accused was with me for about two and a half hours, i.e., upto 4.30 p.m. on 04/10/06 after he was produced by the ATS officer and till the time I gave him in the custody of the police of Azad Maidan Police Station. I was writing down the contents of the Part-I of Ext.1019 as per the events that were happening. I wrote the contents of the first page on the basis of the letter Exts. 1015 and the things that took place in my presence. Then I had a talk with PI Khandekar and I wrote paragraph no.2 on the basis of that talk. There is no other document except this document about what happened between us. It is true that there is nothing to show in paragraph no.2 that the accused was present at that time. It is not true that I did not ask the accused on that day as to when he was arrested. I do not

remember whether I asked him about it before I started writing the questions or thereafter. It is true that it is not mentioned in Part-I. It is true that I did not write the brief facts of the case that were narrated by PI Khandekar. The accused was in veil when he was brought before me. It is not true that he remained in veil till I started asking him questions. I am aware that the accused should be questioned in the language in which he desires. I had asked him in which language he would be comfortable. It will not be correct to say that I decided on my own about the language in which I would question him. I asked him in Hindi whether he knows Hindi. I did not ask him in which language he would like to speak. It is not true that I decided to record questions and answers in Hindi as it was I who was going to write down his alleged answers on my own. It is true that my intention behind asking the questions no. 2 & 3 was to inform the accused that I am a high ranking police officer empowered to take his confessional statement and though the statements made to the police are not admissible in evidence, the confessional statement recorded by me is admissible in evidence. I do not remember whether it was proper that I should have disclosed to him specifically about my intention. It

is mentioned in question no.9.

19. It is true that I have not written the preliminary questions that I put to the accused to make him comfortable. Even the fact that I had done so is not mentioned. I had asked him more than once whether he was ill-treated. I wanted to make sure that he was not ill-treated by the police. I did not record the fact that I told the accused that any confessional statement made by him can be used against his co-accused. I have also not specifically mentioned that I am giving him more than 24 hours time for reflection. I do not think that the questions are not in proper order. I did not feel that I should have asked him his name and address first, that before I asked him about the ill-treatment, I should have asked him initially why he was produced before me. It is true that it is not mentioned in Part-I that I was satisfied that the accused was ready to make his confessional statement voluntarily. I read over the entire Part-I to the accused and he also read it. It is true that it is not mentioned that I read over Part-I to the accused. It is not true that I am improving today knowing that it is not mentioned in Part-I. There is no reason why I did not obtain the signature of the accused at the end of the Part-I

20. I got the two photocopies of Part-I from my office. I required about five minutes to get the photocopies and to seal the Part-I in the envelope. The envelope Ext. 1020 remained with me till the completion of Part-II. Ext.1019 was put in the envelope Ext. 1020. The two photocopies were not put in the envelope. The photocopy that I took out for my record is still in my possession. It is not true that it was taken out just before I gave evidence. I did not prepare any other copy of the letter that was handed over to PSI Gangurde except the office copy Ext.1021. The investigating officer did not take the office copy from me during the course of investigation. It is not true that Ext. 1021 is also fabricated subsequently.

21. It is true that I did not mention in Part-II that I ascertained from PSI Gangurde whether my instructions about keeping the accused in a separate cell, providing him medical aid and food and preventing anyone from meeting him were followed and that he told me that he had got the accused medically examined and he was given food and water on time and the other directions were complied. It is not true that I falsely deposed about it and to corroborate it, I falsely prepared Ext. 1021. I do not remember since

when I was in my office before 5.00 p.m. on 05/10/06. I used to reach the office usually at 9.30 a.m. and leave the office at about 8.00 p.m. I had come to the office during the period from 9.30 a.m. to 5.00 p.m. on that day and I was in the office till 8.30 p.m. It is not true that on 4th, 5th and 06/10/06 I was constantly deployed for the VVIP bandobast of Prime Minister Manmohan Singh and I was not in the office. I know DCP Lohiya, and officers Tayade, Satish Gaikwad, Dhum and Smt. Jaykar. I do not remember Kamble. There might be an order deputing me for the above bandobast, but I did not go as I was to record the confessional statement. I do not have any document with me now to show that I did not go for that work.

22. It is true that it is not mentioned in Part-II that I asked preliminary questions as to whether he was medically examined and whether he was given meals on time. It is not true that I am stating it for corroborating Ext. 1021 and my alleged talks with PSI Gangurde. I do not remember whether the accused was fasting (roza) during those days. I do not remember whether I asked him about it and whether I asked him after 6.30 p.m. whether he wants dates and fruits. It is true that it is not mentioned that I told the accused that his

confessional statement can be used as evidence against his co-accused and whether he is still ready to give the confessional statement and he said yes. It is true that the remark in English about my satisfaction after the questions and answers on page 3 of Part-II is concerning me and not concerning the accused. It was written as per the provisions of law. It is as per the MCOC Act, but I cannot show the provision. It is true that I knew that a certificate was required to be given at the end of the confessional statement as per the provisions of the MCOC Act and Rules. It is true that the specific questions I asked the accused about ill-treatment, inducement, coercion are not mentioned in the Act. They were formulated as per the provisions of the Act. It is not true that everything that is written in Part-I and Part-II was sent already prepared by the ATS officers and I just wrote it down in my handwriting. It is not true that I did not ask the questions and the accused did not give the answers as mentioned in Part-I and Part-II.

23. I cannot comment on whether most of the accused back out after having made confessional statements. I did not think it necessary to get the confessional statement in the handwriting of the

accused. I did not think it necessary to get it on mechanical device like cassettes, tapes or sound tracks, because it is time consuming and cumbersome as it involves preparing transcription, voice samples and analysis of voice samples and there is a possibility of losing the data over a period of time. It is not true that I did not record his confession, therefore I am giving this false explanation and that it would have been a better mode of recording the confessional statement. It is true that I have not asked the accused to initial certain corrections in Part-II. I know that the accused was speaking in Urdu language. I knew that his mother tongue is Urdu and he studied in Urdu medium. It is true that after writing the remark in English about my satisfaction after the questions and answers on page three of Part-II, I asked the accused to narrate whatever he wants to state. His narration is from there upto the last but one line in Hindi in page 9. The accused had used the words 'Parivar' on page 3, 'sanghatan' 'ayojeeet' 'sadasya' 'mukhyalaya' 'sarkar' on page 4, 'sakriya', 'adhyaksha' 'karyakarta' 'prati' 'atyachar' on page 5 and 'sampark' on page 6, 'binati' 'karyakartoke' 'pramukh' and 'bhashan' on page 7. It is not true that these are not Urdu words, but are Hindi words never

spoken by Urdu speaking people.

24. I typed the letters Exts. 1025 to 1027. It took about 30 minutes to prepare these letters. It is true that Exts 1026 and 1027, the office copies of the letters that I sent to the Sr. PI and to the IO, remained with me and were not collected from me by the IO. It is not true that these are fabricated documents prepared subsequently. I did not feel it necessary to ask the accused whether he wants to contact any advocate or relative before making the confessional statement. I do not remember whether I asked the ATS officer whether the accused had engaged any advocate. I had given the photocopy of Part-I and Part-II of the confessional statement to the IO subsequently at his request on 09/10/06.

(Adjourned at the request of learned advocate at 4.45 p.m.)

Date 09/06/11

**(Y.D. SHINDE)
SPECIAL JUDGE**

Date : 10/06/11

Resumed on SA

Cross-examination by adv H.H.Ponda for 13

25. I did not have any knowledge about the accused no. 7 before I got the letter Ext.1029 as to who he was or that he was going to make any confessional statement before me. I do not remember who brought that letter. On reading that letter, I decided to call the accused and to record his confession, if he was ready to do so. It is not true that I had already made up my mind to record his confessional statement. I did not contact the Jt. C.P. or the IO or any ATS officer either or phone or personally after receiving that letter. I could not gather from the letter as to when that accused was arrested and when he first expressed his desire to make the confessional statement. I prepared the letters Exts. 1030 and 1031 immediately on receiving the letter Ext.1029. At that time I did not feel that I should call him on 23/10/06 itself. I had not received any other document concerning the accused except the letter Ext. 1029 . On the basis of the letter Ext.1032 till I started recording Part I, I did not get knowledge as to when that accused was arrested and when he

first expressed his desire to make the confessional statement. The investigating officer did not collect the letters Ext.1029, 1032 and the office copies Exts.1030 and 1031 till I produced them in the court. It is not true that all these documents are fabricated and subsequently prepared. The portions written in English before the questions and answers in Hindi were written by me in Part I as per the events that took place before me. I wrote the first paragraph in Part I on the basis of the letters Ext. 1029 and 1032. I required about five minutes to ascertain the brief facts of the case from API Tambe. The brief facts were about the incident and the role of the accused. It is true that it is not mentioned in Ext.1033 that I ascertained the brief facts of the case and the role of the accused from API Tambe. The accused was produced before me in veil and I asked him to remove the veil after API Tambe went out of my chamber. On the first day of the recording of the confessional statement of the accused no.2 I knew that the incident had taken place within the jurisdiction of Mumbai. It is not true that, therefore, there was no necessity of again ascertaining about the jurisdiction from API Tambe. It is not true that I am stating about it as I have written about it in Ext.1033. It is not true that it was

mechanically done.

26. It is true that it is not mentioned in Ext.1033 that I asked the accused to sit and that I made him comfortable. It is not true that I only asked the accused whether he knows Hindi and I did not ask him in what language he wants to make the confessional statement. It is true that it is not so mentioned in Ext. 1033. It is true that my intention behind asking the questions no. 2 & 3 was to inform the accused that I am a high ranking police officer empowered to take his confessional statement and though the statements made to the police are not admissible in evidence, the confessional statement recorded by me is admissible in evidence. I do not remember whether it was proper that I should have disclosed to him specifically about my intention. It is mentioned in question no.9. It is not true that the English portions above the questions and answers in Hindi and the questions and answers, were provided to me by the ATS officers and I just copied it in my handwriting and that is the reason why they are not in a chronological order.

27. I agree that it is necessary to find out whether the accused is tortured or harassed by the police. One of the ways to

find it out it is to see whether he has any body injury. I did not try to find it out in this manner on 25/10/06. I cannot say whether I will be shocked to know that when the doctor examined the accused on that day, he found 8-10 injuries on his person that may have been caused within a period of 5-6 days. It is true that there is no mention in Ext.1037 that the accused was brought in veil and that I had ascertained from the police officer as to whether he was medically examined. It is not true that I had not given the letter Ext.1035 and the oral directions about it. It is not true that I did not make the inquiry about his medical examination and did not examine the person of the accused, because on that day he was not produced before me. It is true that it is not mentioned in Ext. 1037 that I asked the accused to be comfortable. It is not true that I did not ask the first question to the accused as to whether the time of 24 hours given to him for reflection was sufficient and he said yes. It is true that it is not mentioned in Ext.1037 that I asked him whether anyone had met him in the lockup and whether anyone had pressurized, threatened or intimidated him and he said no, that I told him that if he gives the confessional statement, it may be used against him. The recording of

the confessional statement was over at 14.30 hrs. I required about 2 minutes to write the certificate after that. I prepared the four letters within 2-3 minutes as the formats were already in the computer. I had typed similar letters on 3/10/06, i.e., Exts. 1025 to 1027. I do not remember whether the fourth letter was also prepared at that time itself. I was not informed that the accused was required to be produced urgently on 25/10/06 before the Spl. Court under the MCOCA. I am not aware that he was required to be so produced because of an application by his mother that he was tortured and harassed. It is not true that I was knowing that he was to be so produced, therefore, the bogus timing is written in Ext.1037 though he was not produced before me. It is not true that the alleged narration of the accused in Part II of the confessional statement was already prepared on the earlier day.

28. It is not true that accused no. 2 and 7 have not made any confessional statement before me and I gave false evidence.

Cross-examination by adv Wahab Khan for A2, 7 and 10

29. I have been assigned bandobast duty during visit of the Prime Minister many times during my work as DCP in Mumbai. The

Commissioner of Police is the superior officer to assign such duties to DCPs, ACPs, etc. The assignment of such duties is not in consultation with the DCPs. I do not know whether it is in consultation with the secretary. Addl. CPs and Jt. CPs are the superior officers who supervise over the compliance of the orders regarding bandobast duties. It depends upon the situation as to how much time or how many days before such duties are assigned. It is not true that assignment of such duties is the most important work for the CP, Jt. CP, etc., upto all the ranks below. It is true that one cannot defer the program of bandobast, but the duties can change. The role that the DCP has to perform depends upon the nature of the duty assigned. The bandobast duty starts at least 24 hours before the VVIP arrives and it continues till he reaches the destination. I do not personally have any record with me to show that I did not attend the bandobast duty but I was in my office. It may be in my office. I cannot produce that record as I am not posted in that office now. I do not remember what type of record may be in the office. I do not remember whether I sent any letter to my superiors that I cannot attend the bandobast duty because of this work. I do not remember whether I sent any

wireless message or a message through my PA. I do not remember whether my duty was assigned to a particular officer and his name.

30. There were few branches under my jurisdiction. I have to visit the branches as a part of the routine duty once a while as per my discretion. No record is maintained in the branches about such visits. Some times such record is maintained by my office. The record is in the nature of some letter, if any, that I write to the branch about compliance of certain things. I do not remember whether I did not visit any branch on 4, 5 and 6/10/06. I do not remember whether there was a meeting with the Jt. CP before 4/10/06 in connection with the bandobast at that time. I do not remember whether the Commissioner of Police had given specific directions about the nature of the duties of the DCP. I do not remember whether there was a joint meeting of all the DCPs in this connection. I do not remember whether I received directions about the bandobast duty. I do not remember whether I was given bandobast duty and its nature. It is not true that I was on bandobast duty on 4, 5 and 6/10/06. There is no record maintained in my office about my attending the office. It is not true that except my words there is no other record to show that

I had attended office on those days. The letters that I received, the confessional statements and the letters that I had prepared are the record. I do not remember what other document is there.

31. The words 'signature', 'Dr. Tanvir Ah. Md. Ibrahim Ansari' and 'Dr. T. A. M. I. Ansari' in Exts.1019 and 1023 are in my handwriting. It is not true that the signature of the accused on the last page above the certificate is different from his signatures on the another pages. It is not true that the last page does not contain his signature. It is not true that someone has tried to copy his signature on the last page.

32. It is not true that I did not ask both the accused when they were produced before me as to why they were produced before me. It was an important question. All important questions are necessary to be recorded. I had recorded this question in both the confessional statements. I did not ask the accused as to in which case they were in custody. I had asked the accused as to in what case they wanted to make the confessional statement and for what purpose, but I did not record this question. It was an important question. Accused had given answer to the question. I did not record

it though it was important. No one told me that the accused no.2 was in custody from 23/7/06. I again say that I do not remember. I do not remember whether anyone told me that he was in custody for more than 80 days. It is true that it is necessary to write the time of commencing to write the confessional statement and the time of finishing it in Part I and Part II. I have mentioned the time of commencement but not the time of completion in Part I of the confessional statement of the accused no.2. It is not true that the commencement and the completion time in Part II of Ext.1023 is put later on.

33. My office was provided with the seal. I do not remember whether I used the seal at the time of recording the confessional statements. It is not true that it is required to be used, because it is not provided for in the law. I do not know whether it is required or not. The seal is provided for the official correspondence, but it is not necessary that each and every letter should bear my seal. It is at my discretion. It is not true that it is necessary that all correspondence of my office should bear my seal to show that it is an official correspondence. There is no special reason why the seal is not used

for a particular type of correspondence. It is true that the official seal has not been put on any letter that I produced in this case. I do not remember whether it was put on the originals. My office was having a rubber stamp indicating my designation. It is not used in any of the letters in this case. I have heard the words 'taluk, khandan, darja, rukn, jamat, sadardaftar' from the accused. I do not know whether they are Urdu words commonly used by Urdu speaking people. I heard the words from the mouth of the accused no.2. I heard them during the conversation with him while recording his confessional statement. Sometimes I use these words. I do not know the meaning of 'sadardaftar' and 'rukn'. The meaning of 'darja' is rank. 'Jamat' means community. I asked the meanings of these words to the accused. I did not write so in the confessional statement. The accused did not tell me the meanings of the words that I asked him, but he told me that I should write whatever he states. Therefore, I recorded the words verbatim as stated by him.

Question : Can you point out the above words in Part I and Part II of the confessional statement of the accused no.2 ?

Answer : I was under the assumption that these words are in the

confessional statement, therefore, I stated that the accused had told these words and I recorded them.

34. I do not know whether the accused has a right to take legal advice during the period of reflection. It is not true that the accused were kept in solitary confinement. They were kept in isolation. I do not remember whether there was an apprehension in my mind that the accused would change their minds about giving the confessional statements. I do not know whether the accused may change their minds after meeting their parents. I do not remember whether I asked the accused whether they had engaged advocate. I do not remember whether I permitted the accused to talk with his parents. I had not given any specific directions about the kind and type of food that should be given, except the direction that the accused should be given proper food. I do not know whether fasting has a great importance in Muslim community. I do not remember attending about a hundred Iftar parties and how many I arranged. I do not know whether Muslims eat dates or salt for finishing the fast. I do not know whether Muslims cannot eat or drink anything during the fast period. I do not remember whether I asked the accused whether

they were fasting. I do not know what is required to be done at the time of finishing the fast. I do not remember whether I had made any arrangement for that.

35. I do not remember whether I have taken confessional statements in 2009, therefore, the question of remembering the number of the case, date, time, name of accused, etc., does not arise. I gave evidence about the confessional statements of the accused nos. 2 and 7 from my memory as well as the documents that I produced. I do not remember how many days before giving evidence I had read the documents. I do not remember whether I had taken a confessional statement on 14/1/09 and 15/1/09 of an accused Anwar Abdul Gani Bagwan.

36. I do not remember about arrest by Bombay Crime Branch of a group of around 21 boys allegedly belonging to the Indian Mujaheddin. I do not remember whether Commissioner of Police Hasan Gafoor, Rakesh Maria and Karkare had made statements in a press conference on 24/9/08 about the activities of Indian Mujaheddin persons who had been arrested. I do not know whether they had made a statement that the Indian Mujaheddin had carried out the 7/11

blasts.

37. My duty as DCP (Prevention) was to monitor preventive actions, MPDA and COFEPOSA detention and to maintain record of preventive action. It is not true that for this purpose I was keeping track of all the major offences committed within my jurisdiction, the persons arrested and the persons released on bail. The branches like Preventive Crime Branch, Crime Index Bureau, Missing Persons Bureau, Crime Record Branch, Modus Operandi Bureau, Cyber Cell, Finger Print Bureau, Computer Cell and Crime Branch (Preventive) may be under my jurisdiction.

(Adjd. for recess)

Date 10/06/11

**(Y.D. SHINDE)
SPECIAL JUDGE**

Resumed on SA after recess

38. I do not have any medical record of the accused no.7 and I have not produced it. However, he was medically examined after Part I and after Part II. I cannot tell the timings at which he was examined and the name of the hospital where he was examined.
39. As per the information given by the accused, he had taken

education in Urdu and his mother tongue was also Urdu. I do not remember whether while recording the confessional statement of the accused no.7 he had used the word 'mashrik', 'walid', 'rukn', 'naujavan', 'mutasir', 'peshkash', 'jamat', 'julm', 'vagera', 'behes', 'dahshatpasand', 'rabada', 'intekab', 'madat', 'khwahish', 'magrib'. I do not know whether these words are used by Urdu speaking people. It is true that the words 'purv', 'pitaji', 'karyakarta', 'yuvak', 'prabhavit', 'prastav', 'sangathan', 'atyachar', 'adi', 'charcha', 'atankawadi', 'sampark', 'chunav', 'sahayata', 'ichha' and 'paschim' are Hindi words. I cannot say whether these Hindi words are the translations of the above Urdu words. The accused may have used the Hindi words. I do not know whether the father's name of the accused no.7 was Marghoob. I wrote whatever he told me. I do not deliberately change the spelling of a word that I have written once. I do not know whether while copying a word that is in one language, it is written in another language as per its pronunciation. It may be that Marghoob and Marghoob are different words. It is true that in Part I in the answer to the question no.4 and on page 3 of Part II, I have written the word Marghoob. It is not true that in the certificate after Part II, it is written as Marhab. It is not true that I wrote Marghoob as per the

pronunciation from the prepared material that was given to me where it was written in English. It is true that in Ext. 1035 the word Margub is written.

40. I do not remember whether I had sealed the envelope before I handed over the custody of the accused after completing Part I, whether it was sealed before the officer was called inside or after the officer took away the accused. It did not happen that I sealed Part I twice on 24/10/06. I do not remember whether I sealed Part I before I prepared the letters. It did not happen that after completing a portion of Part I, I put it in the envelope and sealed it and then again reopened it, wrote the remaining portion and again sealed it. I do not remember whether I sealed Part II in the envelope before the officer came inside. It did not happen that I sealed Part II in the envelope after the accused was taken away. I do not remember whether I sealed the envelopes before preparing the letter to CMM. I prepared the letter after writing the certificate at the end of Part II. I did not prepare the letter before writing the certificate as the accused might have changed his confessional statement. I prepared the letter to the CMM immediately after writing the certificate.

41. I cannot say whether it will be correct if it is written in Part I that it is sealed after completing certain portion and thereafter it is again opened and resealed after completing the remaining portion. (Witness is shown the last sentence on page 5 of Ext.1033). Before this stage, I had not sealed Part I. I cannot say whether it will be incorrect if it is written in the earlier portions that it is sealed bearing my signature and office stamp. (Witness is shown the last but one paragraph on page 4 of Ext. 1033). It is not true that this means that Part I was sealed twice. It is not true that I had prepared the letter to the CMM before I wrote the certificate. (Witness is shown last paragraph on page 8 of Ext. 1037). I do not remember what exactly I did on that day. I cannot say whether that paragraph and the certificate thereafter were written in sequence. It did not happen that I wrote this without the events taking place. I do not remember whether I prepared the letter to the CMM before I wrote the certificate.

42. It is not true that I copied the portion of the Part I upto the end of the last but one paragraph on page 4 from the transcript provided by the ATS and then I wrote the subsequent portion. It is true that writing a forwarding letter to the CMM is a part that is to be done after

writing the certificate. I do not remember whether I asked the accused to sign at a particular place or whether at any place of his choice. It is not true that I had not given direction for getting the accused medically examined. It did not happen that both the accused were in severe pain because of torture and, therefore, I directed that they should be given medical aid as and when required. It did not happen that I gave direction that they should be given medical aid, if necessary. I cannot say whether it will be wrong if it is so written in my letter. The contents of the letter Ext.1035 are correctly written. I now say that I had given oral directions about getting the accused medically examined. I did not tell the accused that they cannot retract their confessional statement in future.

43. It is true that I had not given an order directly to PSI Gangurde to produce the accused no.2 before me. It is not true that I prepared false documents to oblige K. P. Raghuvanshi.

Cross-examination by adv P. L. Shetty for A3, 8, 9, 11 and 12

44. I do not remember whether I had any occasion to visit and inspect the general lock-up of Azad Maidan police station. I do not know how many rooms are there and the capacity of the lock-up.

I do not know the number of inmates that were lodged from 3rd upto 7/10/06 and whether any other accused in that case was lodged in that lock-up during that period.

45. I am aware of the provisions of Section 164 of the Cr.P.C.

It is true that time of completion of Part I is not mentioned in Ext. 1019. It is not true that the timings of starting and completing of the Part II of the confessional statement Ext. 1023 were interpolated after I signed and obtained the signature of the accused. It is not correct to say that I have done that interpolation. I do not remember whether it is mandatory to mention the date and the timings on which the confessional statements have been recorded. It is true that in the certificates below both the confessions, the timings and dates are not mentioned. (Attention of the witness is drawn to sub-section 3 of section 18 of the MCOC Act). It is true that putting date and time is mandatory as per sub-section 3. The certificates that I gave may be as per the rules under the MCOC Act. I had gone through the proforma of certificate given in the book. It is true that the certificates that I gave are not according to the proforma. It is true that it is not written in the certificates that it has been made before me and in my

hearing and has been recorded by me in the language in which it is made and as narrated by him and that I have read it over to him and he has admitted it to be verbatim and correct and containing also full and true account of the confession/statement made by him.

46. I cannot tell the dates of the duration of the police custody of the accused. The date of arrest as mentioned on page 2 of Ext.1019 is correct as per the record. I cannot contradict you if you say that the accused no. 2 was arrested on 23/07/06. It is true that I did not mention in the confessional statement of the accused no.7 as to on what date he was arrested and for how long he was in police custody. I had informed both the accused that even if they do not wish to give any confessional statement, I will not send them back in the custody of the investigating officer. I do not remember the dates when I so told them. It is not so written in their confessional statements. I stated so from my memory.

Cross-examination by Adv Rasal for A/1 and 4 to 6

47. Declined.

No re-examination

R.O.

Special Judge

Date:-10/06/2011

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