

**M.C.O.C. SPECIAL CASE NO. 21 OF 2006****DATE: 2ND AUGUST, 2011****EXT. NO.1242****DEPOSITION OF WITNESS NO.118 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Ashutosh Karbhari Dumbre  
Age : 42 years  
Occupation : Dy. Chief Vigilance Officer, Air India.  
Res. Address : 274, Twin Tower, Prabhadevi, Mumbai.

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

1. I was posted as DCP, Headquarters-I in Mumbai Police Commissioner's office in 2006. I had an occasion to record the confessional statement of an accused in the railway bomb blasts case. I received a letter dated 03/10/06 from the Jt. CP, ATS, Mumbai K.P.Raghuvanshi on 04/10/06 directing me to record the confessional statement of accused Sohail Mehmood Shaikh. I am producing that letter, it bears the signature of Jt. CP and it is addressed to me. (It is marked as **Ext.1243**). On receipt of this letter I wrote a letter to ACP Sadashiv Patil of ATS directing him to produce the said accused

before me on 05/10/06 at 1200 hours. I am producing office copy of that letter, it bears my signature and its contents are correct. (It is marked as **Ext.1244**).

2. When I came to my office on 05/10/06, I made a telephonic call to the officer on duty of L. T. Marg Police station and directed him to provide a PSI and escort to my office by 1130 to 1200 hours. My orderly told me at 1145 hours that PSI Thakur from L.T.Marg police Station had come to the office with staff. I asked him to wait outside my office. PI Deshmukh of ATS produced the accused before me at 1210 hours along with the letter of ACP Patil. I am producing that letter, it bears my endorsement of having received the accused in my custody and my signature. (It is marked as **Ext.1245**). I asked preliminary information about the facts of the case from PI Deshmukh and about the police custody of the accused. The accused was produced in veil. I then asked PI Deshmukh to leave my cabin. Only the accused and myself remained in my cabin. I ensured that the proceedings between me and the accused in my cabin would not be seen and heard by anybody from outside. I asked the accused to remove his veil. I then introduced myself by telling my name and that

I am a DCP, that I am competent to record confessional statement of accused under Section 18 of the MCOC Act. I also told him that I am not concerned with the investigation of the case. I made the accused comfortable and I realized that he is comfortable in speaking in Hindi language. I then asked him whether he knows that he had been brought before me for recording of his confessional statement, to which he replied in the affirmative. I then asked him whether his advocate is with him. He answered in the negative. I asked his name. He told his name as Sohail Mehmood Shaikh. I asked him about his age, residence and profession. He said that he was 38 years old, a danner by profession and that he stays in Bhimpura area of Pune. I then inquired about his education. He said that he has studied upto 10<sup>th</sup> class and he knew how to speak, read and write Hindi very well. I then asked him whether he is ready to make his confessional statement, to which he replied in the affirmative. I asked him whether he had been threatened, tortured or lured by the police or the ATS to ascertain his voluntariness, to which he replied in the negative. I then asked him if any police officer had promised him to take him out of this case or promised to make him an approver. He replied in the

negative. I again told him that he is not in the custody of the ATS now and whether he really wants to make the confessional statement voluntarily. He replied in the affirmative. I also told him that the confessional statement may be used against him and whether he was aware of this fact. He said that he was aware of this fact. I then told him that I would give him 24 hours to again think about whether he wants to make the voluntary confessional statement. I had reduced all these questions and answers in my own handwriting in Devnagari script. The questions and answers were being recorded from 1215 hours to 1345 hours. I then gave the written papers to the accused for reading. He read the papers and told me that it was as per what he had stated. He then signed the papers and I countersigned it. Part-A of the confessional statement now shown to me is the same, it is in my handwriting, it bears the signatures of the accused and my countersignatures on all the pages and its contents are correct. (It is marked as **Ext.1246**). I recorded the proceedings of the day below the questions and answers portion and the roznama proceedings also. I then took one photocopy of all the papers, sealed the original in an envelope under my signature and kept the envelope in my lock

and key. The envelope now shown to me is the same, it bears my signature. (It is marked as **Ext.1247**).

3. I then asked my orderly to check with PSI Thakur whether he had brought a vehicle and a veil. The orderly went out and came back and informed me that PSI Thakur had not brought vehicle and veil. So I asked my orderly to convey to PSI Thakur to go to the police station and bring back a vehicle and a veil. In the meantime, I prepared two letters addressed to the Sr.PI of L.T. Marg Police Station. One I put in an envelope and closed it. It contained instructions about keeping the accused in the lockup of his police station in a separate cell and not to allow any officer or staff of the ATS or any other branch of the police to talk with him. The other letter that was addressed to the Sr. PI also contained the same instructions with additional directions to produce the accused before me at 1500 hours on 06/10/06. I am producing the office copy of the second letter, it bears my signature, its contents are correct and it contains the acknowledgment of PSI Thakur. (It is marked as **Ext.1248**). I had taken the endorsement of PSI Thakur about taking custody of the accused on the letter of ACP Patil. The endorsement on Ext.1245 is

the same, it contains my directions to PSI Thakur to take the accused in his custody and to produce him before me for recording his confessional statement. I then got the message that PSI Thakur has come back with vehicle and veil. I called him in my chamber and handed over the accused and the letters to him with the instructions to conduct the medical examination of the accused, always cover the face of the accused with veil while escorting him and to keep him in a separate cell in the lockup. I also instructed him to produce the accused before me at 1500 hours on 06/10/06. PSI Thakur veiled the accused and took him out of my cabin.

4. PSI Thakur produced the accused before me at 1500 hours in veil on 06/10/06. I asked PSI Thakur to remove the veil and inquired with him whether the medical examination of the accused was done. PSI Thakur informed me that it was done. I confirmed it by perusing the medical papers of the GT Hospital. I then asked PSI Thakur to leave my cabin and asked the accused to sit on a chair. I ensured that the proceedings between me and the accused in my cabin would not be seen and heard by anybody from outside. I then asked the accused whether he wants to make the confessional statement

voluntarily, to which he replied in the affirmative. I told him that he is in my custody and is not bound to make a confessional statement. I inquired whether he still wants to make the confessional statement, to which he replied in the affirmative. I then asked him whether the period of 24 hours given to him was enough, to which he replied in the affirmative. I asked him whether he wanted some more time to think about his decision to make the voluntary statement. He informed me that he did not need any more time. I again told him that there is no force or pressure on him to give the confessional statement. He said he understood it, but wanted to give it. I again questioned him whether he has been threatened, lured or pressurized to give the confessional statement, to which he replied in the negative. I told him that I would record his confessional statement only if it is voluntarily given and only if it is without force and pressure. He told me that he understood this and still wanted to make the confessional statement voluntarily. Thus, I was satisfied about the voluntariness of the accused for making the confessional statement. I was writing down the questions and answers. I then started recording his statement as per his narration in my own handwriting in the

language that he used. The recording continued upto 2000 hours. I then handed over the written part to him for reading. After he read it, I read it over to him again. He told me that it is as per his say and then he signed all the pages. I also countersigned. Part-B of the confessional statement now shown to me is the same, it is in my handwriting, it bears the signatures of the accused and my countersignatures on all the pages and its contents are correct. (It is marked as **Ext.1249**). I took a photocopy of Part-B, put the original in an envelope and sealed it under my signature. The envelope now shown to me is the same, it bears my signature. (It is marked as **Ext.1250**). Honestly I do not remember under what circumstances I did not prepare the certificate after completing Part-B.

5. I then prepared two letters. One addressed to the Sr.PI of L. T. Marg Police Station directing him to keep the accused in the lockup in a separate cell and to follow the instructions as given on the earlier day and to produce him before the CMM on the next day at 1100 hours. I am producing office copy of that letter, it bears my signature and its contents are correct. (It is marked as **Ext.1251**). It bears the acknowledgment of PSI Thakur under his signature, time and date,



i.e., 2115 hours of 06/10/06. The second letter was addressed to the CMM forwarding the accused and the sealed envelopes of the confessional statement of the accused to him. I am producing office copy of that letter, it bears my signature and its contents are correct. It bears the acknowledgment of PSI Thakur. (It is marked as **Ext.1252**). I handed over the custody of the accused to PSI Thakur along with these two letters and the two sealed envelopes and instructed him to keep the accused in a separate cell in the lockup of his police station and to follow the instructions given on the earlier day and to produce him before the CMM on 07/10/06 at 1100 hours.

6. PSI Thakur came to my office on 07/10/06 and informed me that the accused had been produced before the CMM. I gave him a letter addressed to the ACP of ATS informing him that I am handing over custody of the accused back to the ATS. PSI Thakur also informed me at that time that all the instructions given by me in the letter to the Sr. PI had been complied with. I am producing office copy of that letter, it bears my signature, its contents are correct and it bears the acknowledgment of ACP Patil. (It is marked as **Ext.1253**). This copy was returned to me by PSI Thakur in the evening.

7. I will be able to identify the accused whose confessional statement I had recorded. (Witness looks around the court hall and points towards the accused no. 10 sitting in the dock. He is made to stand up and tell his name, which he states as Sohail Mehmood Shaikh). He was the same accused. (Ld. SPP makes a request to exhibit the letter received from the CMM. It is received in evidence and marked as **Ext.1253** as it is received by this court from the CMM. The envelope is marked as **Ext.1253-A**).

(Adjourned for recess).

**Date : 02/08/11**

**SPECIAL JUDGE**

**Resumed on SA after recess**

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

8. I was aware about the provisions of the MCOC Act and Section 164 of the Cr. P. C. before October 2006. I had recorded a confessional statement once before October 2006. I do not remember the date and the specific details of the confession, but it was a case of Crime Branch pertaining to robbery and murder. I realized about a week back that I had not given the certificate in this case. I am aware

that the certificate is an integral and essential part of the confessional statement. If the confessional statement contains the ingredients of voluntariness of the confession of the accused, mere absence of a formal certificate should not be an obstacle in reading the confessional statement in evidence. This is not the reason why I did not give the certificate. I do not remember whether I had given certificate at the time of the confessional statement that I recorded earlier to this case. I have recorded one more confessional statement after this case, that of one accused by name Mohd. Ali in the Malegaon Blast case of 2006. I do not remember whether I gave certificate in that case. I do not remember the details of that confessional statement regarding date, timings, name of the officer and other details. It is true that I gave evidence after I refreshed my memory by going through the office copies of the documents one week before. It is not true that one week before the ATS provided me all the documents.

9. I came to know about the blast of 11/07/06 on the same day. I was DCP, HQ-I at that time also. I did not visit a single spot of the blasts on that day. I did not try to gather any information about the

blasts. I did not pay special attention to the news about the blasts in the electronic and print media.

**10.** I do not remember at what time I received the letter Ext.1243 on 04/10/06 and who brought it, but it was brought by a constable from the ATS. I prepared the letter Ext.1244 to ACP Patil half an hour thereafter. I did not use my letterhead and the office rubber stamp for that correspondence, because I did not feel it necessary as it was under my signature. Letterhead is used for important information or instructions. In this case I did not use the letterhead as it was just a matter of producing the accused before me. It is not true that Exts. 1244 and 1245 were prepared on the same computer with the common formats. There is no reason why four dots are appearing after the words in the subject column in both the letters. I did not use the office seal on the letter Ext.1248.

**11.** I did not prepare any portion from Part-A and Part-B in anticipation of certain events. It is not true that the commencement and concluding timings are not mentioned at the end of Part-A. However, they are not mentioned at the end of Part-B. There is no specific reason for this. I sealed Part-A after completing the questions

and answers part, signatures and writing the proceedings and roznama. They were as per the occurrence of events. It did not happen that Part-A was sealed after I called the escort party inside and handed over custody of the accused to them and gave them instructions. I had sealed Part-A before the escort party came in my cabin.

**Q.** What you have to say if your record shows that before sealing of the Part-A the officer and staff of the escort party were called in your cabin, the accused was handed over to them and they were given instructions for compliance?

**A.** This has not happened.

The last two pages of Part-A was sealed along with Part-A. It was not prepared in anticipation. It was prepared as per occurrence of events. It is not true that the officers were present when I was writing. It did not happen that I gave the custody of the accused and then I prepared that portion. I now say that after occurrence of the events written in the last two pages, the entire Part-A was sealed. I now say that when the officers were called in the cabin, Part-A was not sealed. Till the custody of the accused was handed over and the instructions

were given, Part-A was not sealed. It is not true that this part was written in the presence of the officers. It was written after the officers left with the accused. My earlier version that Part-A was sealed before the escort party came in my cabin is not correct. The letters were not prepared in the presence of the escort party. I had given the oral instructions to the escort party.

- 12.** I did not record all the questions that I asked to the accused in Part-A. The accused replied to all questions. I did not record the answers to the questions that I did not record. First paragraph in Part-A is about the information that I got from the correspondence with the ATS and Jt. CP. Paragraphs 2,3 and 4 are regarding the steps taken by me. I did not attend any meeting in connection with recording of the confessional statement under the MCOC Act. I did not consult anyone specifically in respect of the manner of questions, language and format to be used for recording confessional statement. I prepared the questions on my own. I do not remember whether I had attended any class with my colleagues with regard to the manner of questions, type, pattern in the Part-A and Part-B. It is correct that the prime question to be asked to an

accused who is produced before me for the first time is as to whether he knows why he is produced before me. I do not think that the first and foremost question that is required to be asked is as to in what case he wants to make the confessional statement and for what purpose.

**Q.** Is it true that answers given by an accused to important questions have to be recorded?

**A.** The answers given to questions relating to the voluntariness of the confessional statement and fulfilling the legal obligation under the law have to be recorded.

(Adjourned at the request of the Id advocate of the accused at 4.35 p.m.)

**Date : 02/08/11**

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

**Date : 03/08/11**

**Resumed on SA.**

13. It is true that it is not written in Part-A or Part-B that when I came to my office on 05/10/06, I made a telephonic call to the officer on duty of L. T. Marg Police station and directed him to provide a PSI and escort to my office by 1130 to 1200 hours, that my orderly told me at 1145 hours that PSI Thakur from L.T.Marg police Station had come to the office with staff and that I asked him to wait outside my office. As per my knowledge the word 'roznama' is an Urdu word and it is used in Marathi also and it means record of the proceedings of that day. Roznama is separate from the confessional statement. There is no document in the record having the title 'roznama'. I started writing the roznama after completing Part-A and the proceedings. I have not written roznama in any other case. It was written as per my understanding. There is no roznama in Part-B. I cannot tell under what circumstances I forgot to write it. I was aware



while writing Part-B that certificate is required to be given as per the law. I did not consciously think about writing the roznama. I cannot say whether I did not think of writing the certificate or forgot about writing it after Part-B was over. I am in the habit of going through the contents before putting my signature. I am in the habit of verifying things before sealing them. I go through the contents to check whether whatever is written is correct. I did not realize at that time while reading Part-B and while sealing it that the certificate is not there. It is not true that I did not read the contents and it was not sealed by me. It is true that it is not written in the Part-A that I then asked him whether he knows that he had been brought before me for recording of his confessional statement, to which he replied in the affirmative, that I then asked him whether his advocate is with him and he answered in the negative. I did not feel it necessary to write it at that point. I was writing at that time. It is true that it is not written in the Part- A that I asked the accused about his residence. I cannot assign any specific reason for this. It is true that the word 'voluntarily' is not written in the questions in Part-A that I again told him that he is not in the custody of the ATS now and whether he really wants to

make the confessional statement, that I would give him 24 hours time to think over before giving the confessional statement. It is true that it is not mentioned in the Part-A that I then asked my orderly to check with PSI Thakur whether he had brought a vehicle and a veil, that the orderly went out and came back and informed me that PSI Thakur had not brought vehicle and veil, that so I asked my orderly to convey to PSI Thakur to go to the police station and bring back a vehicle and a veil. It is true that it is not written in the Part-B that PSI Thakur produced the accused before me at 1500 hours in veil on 06/10/06, that I asked PSI Thakur to remove the veil and inquired with him whether the medical examination of the accused was done, that PSI Thakur informed me that it was done and that I confirmed it by perusing the medical papers of the GT Hospital. It is true that the word 'voluntarily' is not mentioned in the question in Part-B when I asked the accused whether he wants to make the confessional statement. It is not true that it is not mentioned in Part-II that the recording of the confessional statement concluded at 2000 hours. I do not have certificate or roznama of Part-B in my file. I gave copy of the confessional statement to the IO. To my knowledge I did not give

copy of certificate to him. I started to write the proceedings just below the questions and answers part in Part-A as there was space to write. I did not commence the roznama below the proceedings as it was not part of the statement.

**14.** It is not true that the letter Ext. 1248 was prepared in the presence of escort party. I prepared two letters Exts. 1251 and 1252 on 06/10/06 after completion of Part-B on computer. My staff typed them. I called PSI Thakur in my cabin around 9.10 -9.15 p.m. on 06/10/06. It is not true that about 75 minutes were required to prepare those two letters.

**15.** The word 'phir' can be translated as 'again' in English. The words in Hindi 'tumhe phir daraya dhamkaya to nahi' can be translated in English as 'were you threatened again'. The question no. 4 in Part-B can be translated as 'did the police or any other person threatened you again?'. I did not question the accused whether any ATS officer had met him during the intervening period or whether any one had discussed with him regarding the confessional statement. I had asked the accused whether he was provided food and had sleep. It was an important question and its answer was also

important. I did not write this question and answer in the Part-B. I did not give specific direction about the time at which the food was provided. I did not make any special arrangement for specific food and time. It is true that the accused was observing fast during the entire day. It commences in the early hours of morning and is upto sunset. I did not make any special arrangement for specific food in my office as I did not realize before the commencement of the statement that it would take so much time. I had offered a glass of water to the accused when he was brought before me, but he declined saying that he was observing roza. I provided him with a fruit that was in my tiffin in the evening on 06/10/06, but I do not remember the exact time. It is not written in the Part-B.

- 16.** The staff of other police stations are deputed in case of emergencies. Duties of PSI, PI and Sr. PI can be ascertained from the police stations or their supervisory officers. The main investigation in these blasts was with the ATS. I am not aware whether initially the FIRs were registers at the local police stations. I am not aware about the officers who were deputed from other police stations and branches to help the ATS in the investigation. I did not make any

inquiry whether any officer from that police station was deputed to the ATS, before sending the accused to their lockup. I did not think it important to do so at that time as the officer that comes with the escort party comes from the police station. I do not remember whether any ATS officer told me the date of the arrest of the accused. I did not ask them since when the accused was in the police custody. I only asked upto what period the police custody of the accused was. I do not remember the exact date upto which the accused was in the police custody, but I ensured that he was in the police custody beyond the period during which I was supposed to take his confessional statement. I did not ask the accused when he was arrested and for how many days he was in the police custody. I did not ask him whether he had retained any advocate. According to my understanding the accused has the right to consult his advocate. As the accused said no, there was no question of permitting him to consult his advocate. It is true that it is not written in Part-A or Part-B that I asked him about advocate.

17. I am aware that the confessional statement is to be recorded in the language of the accused. I had asked him in which

language he had taken education. He stated that he studied in English medium upto 4<sup>th</sup> and 5<sup>th</sup> standard. I then asked him in which language he is more comfortable and he told me that he was more comfortable in Hindi. I did not write it in the statement, because at that time I did not feel that it was necessary. I do not remember the accused telling me that his mother-tongue was Urdu or pure Hindi. I do not know whether the words 'samay', 'pitaji', 'janam', 'kaksha', 'kaaran', 'karyakarta', 'karyakram', 'adhyaksh', 'sanghatan', 'karyalaya', 'sammelan', 'pravas', 'atankvadi', 'nagarik', 'awadhi', 'sweekar', 'jankari', 'charcha', 'atyachar', 'ityadi', 'suraksha' are pure Hindi words. I do not remember whether station diary or lockup diary was or was not produced before me. I cannot say whether prisons and lockups of the police stations in Mumbai are always overcrowded. Each general lockup is having capacity for keeping particular number of accused. I had sent the accused to the police lockup. I cannot say whether police station lockup is always smaller than the general lockup. I did not ascertain the capacity of the lockup where I sent the accused and whether there was space to keep him. The accused was not produced before me on 07/10/06. PSI Thakur

alone came to me in the morning before lunch, but I do not remember the exact time. I did not inquire with him as to where the accused was at that time. I do not know whether he was with the ATS officers.

18. It is true that it is not written in the confessional statement that I informed the accused that I am authorized to record a confessional statement under the MCOC Act. It is not true that the accused had not specifically used the words that he is ready to make the confessional statement. It is in the answer to the question no.7 in the Part-B. Such a answer is not in the Part-A.

19. It is not true that I had copied from the format that was provided by the ATS, that the accused was not produced before me at any time and he did not sign before me, that he never expressed his desire to make the confessional statement, that I rendered my assistance to oblige my superiors and that I identified the accused as he was pointed out to me by the ATS officer.

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

20. This is my first occasion to give evidence regarding confession in an MCOC case. The questions in Part-A and Part-B were formulated by me without assistance from anyone. I had a

stenographer by name Mrs. Prabhune at that time. I had one or two orderlies who could type on the computer. There was a computer in my cabin and there was one more computer with the staff. Ext.1244 was prepared under my dictation at my office. (Witness is shown Exts.1224 and 1244). It is true that the contents of both the letters are similar except the particulars of the accused, the inward number and outward number, reference. The format of the letters is similar. I cannot explain why there are some dots after the word 'statement' in the subject column in Ext.1244. Similar dots are there in Ext.1224, however, the number of dots are different. Similar dots are there in Ext.1245. I agree that several dots are not necessary after the word 'statement'. (Witness is shown Ext.1225). Similar dots are there after the word 'statement', which are unnecessary. It is not true that the ACP, ATS provided me with the letters that I say I prepared in my office.

- 21.** I knew DCP Brijesh Singh on 5<sup>th</sup> and 06/10/06. We had no occasion to discuss the procedure of recording of confessional statements before those two days. I was well aware about the precautions that were to be taken and the questions that were to be



asked during recording of confessional statement, as I had recorded one before this case. I do not remember whether I had prepared the footnotes and roznama in that case and whether I had annexed the certificate. I have not been called so far for giving evidence with respect to the confessional statement that I recorded before this case and after this case. I prepared the footnotes and the roznama on my own understanding. I had asked eight questions in the Part-A. It is true that it is not mentioned in the question no. 2 that I asked the accused his age. I did not ask him whose business he is carrying on, though I asked him what he does. I had asked the accused about his age and residence, but it is not written in the statement. I forgot to write it down at that time. It is true that it is not written in the question no.3 that I asked the accused in which language he is fluent. I had asked that question, but I forgot to write it down. The answer to question no. 3 does not show in which language he studied. It is true that there is no contemporaneous record to show the other questions that I asked and the answers that he gave, which I have not written. I say so on the basis of my memory.

(Adjourned for recess)

**Date :03/08/11****SPECIAL JUDGE****Resumed on SA after recess**

22. I was on the same post on 11/07/06. The bomb blasts took place in the jurisdiction of Commissioner of Police, Mumbai. I am not aware whether some blasts had taken place within the jurisdiction of the Commissioner of Police, Thane. Bomb blasts did not take place on that day in any other part of Maharashtra. (Witness is shown Exts. 1212 and 1246). It is true that the contents of paragraph no. 2 in Ext.1212 and the contents of first paragraph in Ext.1246 are similar, except the name and the particulars of the accused, the name of the police officer who produced him, the time and date of production. I do not know whether the ATS officer referred to in both these letters is the same person. It is true that as per sequence and factually the contents of paragraphs 3,4 and the paragraph no.1 given below in Ext. 1212 are similar to paragraph nos. 2,3 and 4 in Ext.1246, except the stroke, comma and full stop and Ext.1246 being handwritten. The question no.1 and its answer in both are same. The question no.2 is same. Though the question about the age was not asked, the answers in both show that the accused stated his age. The question

no.3 is same in both. It is true that though the question about fluency in a language was not asked, the accused have given that answer. It is true that though the accused were not asked as to in what medium they had studied, they gave answer about it. Questions no. 4 to 8 and their answers in both are same. The footnotes in both are substantially the same, except the name and particulars of the accused and the name of the police officer. Both have roznama. It is true that the rozنامas in both are substantially the same, except the name of the police officer and the date and time. (Witness is shown Exts. 1218 and 1249). It is true that contents of paragraph 1 in both are same, except the name and the particulars of the accused, the name of the police officer and the date and time of production. It is true that the contents of paragraph 4 in Ext.1218 are the same as the contents of paragraph 2 in Ext.1249. It is true that the contents of paragraph 5 in Ext.1218 are the same as the contents of paragraph 3 in Ext.1249. It is not true that the question no. 1 in both is the same, however the answers are the same. The question no.2 and 3 and their answers are the same. The question no. 5 in Ext.1218 and the question no.4 in Ext.1249 and their answers are the same. In both

questions the word 'phir' is used before the words 'daraya' 'dhamkaya'. The question no. 6 in Ext.1218 and the question no. 5 in Ext.1249 and their answers are the same. Except the use of word 'kabuli bayan' in Ext.1249 instead of the word 'bayan' in Ext.1218, the question no.6 in Ext.1249 and question no.8 in Ext.1218 and their answers are the same. As per my knowledge 'confessional statement' can be translated in Hindi as 'kabuli jawab' or 'kabuli bayan'. 'Jawab' and 'bayan' mean only statement. It is true that questions no. 7,8, and 9 in Ext.1249 and their answers are the same as questions no. 9, 10 and 11 in Ext. 1218, except the word 'kabuli jawab'. It is true that the notes below the questions and answers in both are the same word to word and there is no certificate attached to them. I do not remember why the time of conclusion of the statement was not written.

- 23.** I did not express my desire to examine the body of the accused and I did not do so. I do not know the number of rooms in the lockup of L. T. Marg Police Station. I did not verify the number of accused kept in that lockup on 5<sup>th</sup> and 06/10/06. The accused persons in police custody are kept in that lockup. I do not know as to of how many police stations accused are kept in that lockup. I do not

remember whether I have visited L.T. Marg Police Station and its lockup. I do not remember the name of the Sr. PI of that police station at that time. Since I was DCP at the headquarters, L.T. Marg Police Station was not directly under my jurisdiction. My office was in the Commissioner's office area. L.T. Marg Police Station is 2-3 minutes walking distance from my office. I had given written directions to the Sr. PI. I did not direct the Sr. PI or PSI Thakur to file a written report about the compliance of my instructions, except asking the Sr. PI to send the compliance report to me in Ext.1251 of 06/10/06. This letter was sent after completion of Part-B. I did not ask for written compliance report in the letter Ext. 1248 of 05/10/06. It is true that there is no direction in it for medical examination of the accused. The accused was medically examined after Part-A and before Part-B. I cannot substantiate this by the documents in the court and those that I produced. I do not remember the exact time and the date on which the accused was medically examined.

- 24.** I could not know from the entire correspondence as to when the accused was arrested and for how long he was in the police custody. The record of the confessional statement does not show that

I asked the accused as to when he was arrested, how long he was in detention and the officer who arrested and interrogated him and the places of interrogation. I did not get any information from the documents as to when the accused first expressed his desire to make the confessional statement and to whom. I had asked some more questions, which I do not know whether they are minor or major, but they were not recorded. It is true that the record does not show that I informed the accused that I have no connection with the investigation of the case in which he was arrested or with the investigating officers. The accused was taken away from my office at about 1415 hours on 05/10/06. However, it is not mentioned in any document. I cannot tell the exact time when I signed the letter Ext. 1244 and when I handed it over to the concerned officer. I do not remember the name of the officer who collected that letter. I cannot say from which police station the officer collected that letter.

- 25.** The record does not show that I informed the accused that he would not be sent back to the custody of the ATS if he does not make the confessional statement. It is difficult to tell what important questions I asked and the accused answered, but which I

did not write. I agree that whatever the questions I put and the answers the accused gives are to be faithfully recorded. Precautions taken are to faithfully recorded. I do not remember which are the other vital and important questions that i asked and that remained to be recorded. It is not true that a prepared statement was placed before me and I wrote it down in my own handwriting, that the accused has not made any voluntary statement before me.

**Cross-examination by adv Rasal for A1 and 4 to 6**

- 26.** The words on the envelops Exts. 1247 and 1250 are not in my handwriting and I cannot tell the name of the staff member who wrote it. I did not try to personally contact ACP Patil after I received the letter Ext.1243. I did not inquire with ACP Patil as to when the accused first expressed his desire to make the confessional statement to him. I did not try to find out in whose custody the accused was prior to being produced before me and who had questioned him. I did not make any efforts to find out the stage of the investigation. I was aware that the accused was produced before me from the custody of the ATS. I also knew that the investigation was in progress. The custody of the accused with me was for a limited

purpose of recording the confessional statement and thereafter he was to be again sent back to the custody of the ATS. The question no.5 in Part-A was concerning the ATS officers as well as any other person. The words 'any other person' refers to 'any other police officer'. I had inquired with PSI Thakur whether the medical examination of the accused had been carried out. The police officers whom I referred to in the question no.4 in Part-B were the officers in plain clothes or any other private person. It is not true that the reason behind asking this question was a suspension in my mind about the police making an attempt to meet the accused in plain clothes. It is true that I have not written in Part-B that I informed the accused that any confessional statement that he makes can be used against him.

- 27.** I did not give the letters Exts. 1252 and 1253 on the same day. I had given Exts. 1252 and 1253 to PSI Thakur. Same officer had carried the accused and the envelopes to the CMM. I was aware while recording the confessional statement that I have to take the signature of the accused at the end of the complete statement. It is not true that the signatures are obtained mechanically on the statement.



MCOC SPL.21/06

PW 118/33

Ext.1242

No re-examination

R.O.

**Special Judge**

**Date:-03/08/2011**

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