

**M.C.O.C. SPECIAL CASE NO. 21 OF 2006****DATE:3RD OCTOBER 2011****EXT. NO.1602****DEPOSITION OF WITNESS NO.149 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Ruprao Natthuji Deshmukh

Age : 56 years

Occupation : Service

Res. Address : H-3/504, Mhada Colony, Pratiksha Nagar, Sion (E),  
Mumbai-22.

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**Examination-in-chief by SPP Raja Thakare for the Statement**

1. I am working as Jt. Secretary, Home Department, Mantralaya, Maharashtra Government from June 2005. The power to accord sanction under Section 196 of the Cr. P. C. are with the State Government. These are exercised by the Minister of the Home Department and the sanction order is issued under the signature of the Secretary, Jt. Secretary, Dy. Secretary or Under Secretary.
2. Our department had received a proposal from the Jt. CP of ATS, Mumbai dated 12/12/06, which we received on 13/12/06 for according sanction to prosecute the accused in CR No. 05/06 for the offences under sections 121A, 122, 123 and 124A. It was a 40 pages

proposal giving the entire facts of the case and accompanied with evidence. I studied the proposal and called the IO ACP S. L. Patil of the ATS. I discussed the proposal with him for 2-3 days and prepared draft of the sanction order on 18/12/06 and submitted it on the same day for the approval of the Secretary. I sent it to the Law and Judiciary department on the same day after getting the approval of the Secretary. The Law and Judiciary Department gave the approval on 06/01/07. After receiving the file it was submitted to the minister on 09/01/07. The minister gave approval on 07/02/07. I issued the sanction order on 09/02/07. The approval was given at every stage after due application of mind. The sanction order now shown to me is the same, it bears my signature, the seal of the Government of Maharashtra and its contents are correct. (It is marked as **Ext.1603**). It was sent by my section officer with his forwarding letter to the Jt. CP of the ATS. The forwarding letter now shown to me is the same, it bears the signature of the section officer that I know and identify. (It is marked as **Ext. 1604**). The sanction was issued against 13 arrested accused and 15 wanted accused as described in the column 1 of the order.

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

3. I have brought the sanction file with me. (Learned advocate requests for permission to inspect the file. Learned SPP objects on the ground that it is a confidential file and cannot be inspected). I have accorded sanctions under the Unlawful Activities (Prevention) Act, 1967, but not in this case. It is true that till 21/06/07 the power to sanction prosecution in respect of the offences punishable under Chapter-III of the Act were with the Central Government and by notification dated 21/06/07 these powers were delegated to the secretaries of the State Governments. (Witness is shown certified true copies in Marathi and English of notifications dated 17/11/04 and 21/07/06 issued by the Home Department (Special), Mantralaya, Mumbai under the Cr. P. C.). It is true that the Dy. Secretary P. B. Hirlekar had issued the notification dated 17/11/04 declaring the office of the ATS at Byculla as police station for the crimes under Chapters VA, VII and XVIII of the IPC, the Arms Act, the NDPS Act, the Explosive substance Act and the official Substances Act. I issued a notification on 31/08/06 amending the earlier notification by inserting the UA (P) Act, 1967 and the MCOC Act, 1999 or any other law

relating to acts of terrorism and offences against the State, etc. (Letter dated 21/01/11 received by accused no.4 from Public Information Officer, Directorate of Archives, Government of Maharashtra is marked as **Ext.1606**, letter dated 21/01/11 received by accused no.4 from the Director, Directorate of Archives, Government of Maharashtra is marked as **Ext. 1607**, certified true copy of notification dated 17/11/04 in Marathi and English is marked as **Ext.1608 (1 and 2)**, certified true copy of notification dated 31/08/06 in Marathi and English is marked as **Ext.1609 (1 and 2)**, letter dated 21/05/11 received by accused no. 4 by Public information Officer, Home Department, Government of Maharashtra is marked as **Ext.1610**, certified true copy of notification dated 08/07/04 is marked as **Ext. 1611** and certified true copy of notification dated 08/02/08 is marked as **Ext.1612**).

4. I did not prepare a roznama about the date and time when I had discussions with ACP Patil. I have no official record to show that he was called for discussions. There are no endorsements in my record about the meetings. I cannot tell the exact times and dates on which I had the discussions. I and my section officer prepared the

draft sanction order on 16/12/06. I did not describe in the sanction order the evidence and documents that were sent with the proposal and were perused by me. The sanction order does not mention any personal meeting with the IO. I did not have meeting or discussion with the then CP. A. N. Roy in this connection. I never had any meeting or discussion with him in any other case. I had issued a notification dated 08/02/08 amending the notification dated 08/07/04. the certified copies of the said notifications are the same now shown to me. I do not know whether the accused had made an application before this court on 25/01/08. It is not true that I issued the amended notification on 08/02/08 because of that application. I had received a request in writing for issuing the notification from the ATS. I can produce it. (Learned advocate calls upon the witness to produce the written request sent by the ATS).

5. I do not remember whether there was evidence in the proposal about attack on the defence forces. It is not true that the sanction order was issued without application of mind at the request of CP A. N. Roy and the ATS and no proposal with documents was sent to the Government by the ATS. It is not true that I did not have any

discussion with the IO ACP Patil, that I am deliberately not allowing inspection of the file.

(Adjourned at the request of Id adv at 4.00 p.m.)

**Date :03/10/11**

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

**Date: 04/10/11**

**Resumed on SA**

6. I am producing true photocopy of the written request sent by the ATS as asked. I have brought the original with me. The contents of the true copy are as per the original. (It is marked as **Ext.1613**).
7. I studied the proposal for sanction from 13/12/06 to 16/12/06. I cannot tell how many hours, minimum and maximum, I spent for the study. Other routine work was going on during this period. I cannot say how many pages of the proposal I read during this period. It is true that it is necessary to mention in the sanction order the documents that were referred. It is true that sanction is accorded only for the charges that are necessary. It is true that sanction is not necessary for sections 201, 212 and 120-B. Sanction was asked for these sections also. It is true that I accorded sanction for these sections also. I was not doubtful about the correctness of the sanction order and any discrepancy in the schedule. It was intimated to the ATS that if there is any discrepancy in the order or schedule, then they should report. I cannot explain why it was so written in the covering letter. It was prepared after the sanction order was signed.

The endorsement in the margin of the forwarding letter Ext. 1604 is not of the Mantralaya. It is our practice to write in the forwarding letter about reporting about any discrepancy in the orders. It is true that it is necessary to specify the sections for which the sanction is given. It does not happen that along with the sections for which the sanction is asked for, we accord sanction for any other offences. It did not so happen in this matter. It is so written in the sanction order in this case as it is a practice. It is correctly written.

8. The first paragraph of the sanction order is concerning the information provided by the ATS. The second paragraph is concerning the offences committed by the accused. The third paragraph is concerning the examination of material. The fourth paragraph is the power conferred on the government and the last paragraph is regarding according sanction. It is true that the sections for which the sanction was granted is not specifically mentioned in the last paragraph. It is not correct to say that the schedule that is with the sanction order was provided by the ATS. The first column of the schedule is the description of the accused. The second column contains the description of the CR number, police station and the

charges/sections. The third column is about the acts alleged against the accused. It cannot be said that the first two paragraphs in column no. 3 have no concern with the accused. I cannot tell what documents were placed before me for writing the contents of the paragraphs 1 to 3. I do not remember whether the ATS had placed before me printed booklets, whether I had read them and whether translations of the books were provided. I was not provided with any government order to show that any particular books were banned by the government. I cannot now tell what material was placed before me for writing the second paragraph on page 2 of the order. Propagation of the ideology of the banned organization means publication, distribution, communication of the literature concerning that organization. I do not remember what material was placed before me about it and about raising and collecting funds. I do not remember whether all post-mortem reports and injury certificates were sent to me. One Chitkala Zutshi was a sanctioning authority later on. I do not know in what matters she had given sanctions. I do not know whether she had given a sanction order to prosecute the accused in the case of Indian Mujaheedin wherein it was mentioned that those accused had

committed all the blasts from 2005 to 2008 including in Mumbai. I do not remember whether confessional statement of one Sadiq Israr, accused in Indian Mujaheedin case, was placed before me.

9. It is true that initially the ATS was formed for investigating the particular cases only and further powers were conferred by the notification dated 31/08/06, Ext. 1609. These powers were not with the ATS before that notification. (Witness is shown photocopy of a letter dated 20/11/04 by Jt. CP, ATS addressed to the Addl. Chief Secretary (Home), GOM, Mumbai). I will have to see the file to say whether the notification was issued on the basis of such a letter. I will have to see whether whenever such letter was received, the ATS sent draft of the amended notification. It is true that this notification was issued after two years of the notification dated 17/11/04 declaring the office of the ATS at Byculla as a police station. It is not true that it took two years to issue the amended notification as the government was reluctant to give more power to the ATS. I have not come across any notification barring the ATS from registering and lodging FIR with a local police station.

**Cross-examination by Adv Wahab Khan h/f Rasal for A1 & 4 to 6**

10. (Adopted cross-examination by adv Wahab Khan).

**Cross-examination by Adv P. L. Shetty for A3, 8, 9, 11**

11. The section officer prepared the covering letter Ext. 1604 on his own. It was not dictated by me. I was working as Jt. Secretary, Home Department (Special), Government of Maharashtra. There is no mistake in last four lines in Ext. 1604. The meaning of the four lines can be explained as : that the sanction order is being sent, if there are any discrepancies therein, then they should inform the Government, otherwise they should proceed and take further action. These lines were with reference to the sanction order Ext.1603. I did not receive any report or request for any clarification pursuant to the letter Ext. 1604. The word 'you' in the last but one line should in fact be 'your'. I had no occasion to sign any such forwarding letter in this case.

12. There were other documents like evidences alongwith the 40 pages proposal. There were many documents. I have the proposal with me in my file, but not the material that was sent with the file. Jt. CP of the ATS had signed the proposal. I and my desk officer prepared the schedule with the help of the IO. The schedule contains

the facts and the allegation against the arrested and wanted accused. Page 1 of the sanction order is the sanction. Signature is not put below the concluding part of the sanction order as it is put on the last page of schedule. The minister incharge R. R. Patil was the sanctioning authority. He did not sign the sanction order or the schedule. The forwarding letter and the sanction order were sent to the Special IG only after approval of the Home Minister. If the proposing authority makes any suggestion, the sanctioning authority may change the sanction order already passed by it. In this case also if the proposing authority had reported any discrepancy in the sanction order, the sanctioning authority would have changed the order. It is true that the sanctioning authority has to apply its mind for granting the sanction. It has to arrive at a subjective satisfaction on going through the proposal and the material and then it can accord sanction. It is not therefore necessary to mention in the sanction order the material that was examined and which influenced the mind of the sanctioning authority to accord sanction. These things are mentioned in the file. I cannot say whether the file is not a part and parcel of the sanction order. I and my section officer prepared the

sanction order. I gave the dictation to the steno. I cannot say which portions were dictated by me and which were dictated by my section officer. I know what is subjective satisfaction. The third paragraph in the sanction order shows the subjective satisfaction. The specific offences are not mentioned in paragraph 3 as they are mentioned in the earlier paragraphs. I do not agree that this paragraph is vague.

- 13.** It is not true that the sanction order is not given with due care and proper application of mind, that I signed whatever was prepared by the police officer, that the letter Ext.1604 was also furnished by the police.

No re-examination.

R.O.

**Special Judge**

**Date:-04/10/2011**

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