

M.C.O.C. SPECIAL CASE NO. 21 OF 2006**DATE:10TH OCTOBER 2011****EXT. NO.1633****DEPOSITION OF WITNESS NO.151 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Valsa Nair Singh
Age : 46 years
Occupation : Service
Res. Address : 21, Yashodhan, Dinshaw Vaccha Road,
Churchgate, Mumbai-20.

Examination-in-chief by SPP Chimalkar for the State

1. I was Collector and District Magistrate, Mumbai City from July 2006 to April 2007. I am posted as Secretary, Department of Environment, Government of Maharashtra at present. I got a proposal from ATS, Mumbai on 02/03/07 for consent order for prosecution of six persons under the Explosive Substances Act. (Witness requests permission to refer to the file that is with her. Permission granted). I again say that the proposal was for consent order for prosecution of accused persons as required under Section 7 of the Explosive Substances Act in CR No. 05/06 regarding the bomb blasts in seven local trains. I cursorily glanced through the proposal. I

had received a large bunch of documents with the proposal. On going through the proposal I realized that I would have to scrutinize it thoroughly. Therefore, I called the IO ACP S.L.Patil. I had three rounds of discussions with him and my staff. I scrutinized all the documents that were produced before me and after satisfying myself, I issued the consent order on 17/03/07 for prosecuting six accused persons under Section 7 of the Explosive Substances Act. The consent order now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext. 1634**). The consent order was forwarded by a forwarding letter by my tahasildar. The letter now shown to me is the same, it bears the signature of the tahasildar, which I know and identify, but I do not remember his name. (It is marked as **Art. 365**).

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

2. The signature on the order and the schedule Ext. 1634 seems to be a photocopy. The order and the schedule containing my original signature was sent to the office of the ATS. I do not know where it is now. There were four tahasildars in my office at that time. I do not recollect whether the letter Art-365 bears the seal of my office. I do

not know who typed it. I do not recollect the date when I called the IO for the first time and the dates on which I had discussions with him. ACP S. L. Patil came with other officers, but I did not ask their names. We had discussions for about one to two hours on each occasion. The order was passed on 17/03/07, because it was issued on that date. It is true that this date is not mentioned in the body of the order, which is in five pages and below my signature. It is not true that the date below my signature at the end of the schedule is 16/03/07. It is Roman numerals. (Witness is asked to go through the date below the signature). It is 17/03/07. The second digit and the last digit appear the same to me. I have no answer if you say that it is 16/03/07 and why I am saying that it is not so.

3. The entire order was prepared a day before it was issued. It was signed on the next day. I prepared notes when I had discussions with the IO. I did not prepare parts of the order. The order was prepared at one stretch. I dictated the schedule to my stenographer. I did not dictate the notes to my stenographer, but I made them in my handwriting. One Mr. Zanke was my stenographer. He typed the entire order and the schedule on the computer under my dictation. I

had only one stenographer. I used to give all the dictation to him.

4. The date of the proposal was 02/03/07. It was signed by S.L. Patil. It was typed and in English. I did not return the papers of investigation to the ATS. I asked him to produce some more documents during further discussions, but I cannot tell the date on which I asked. I have the proposal with me in the file that is with me. I looked at the proposal and the consent order and gave evidence. I did not check whether the proposal was sent with an index of the documents. The proposal was accompanied with copies of panchanamas, reports of FSL, etc. I do not recollect the other documents. I do not recollect the number of panchanamas as I did not count them. The panchanamas were concerning the same accused. There may have been some more panchanamas concerning some more accused, but I do not recollect. I did not count the number of the FSL reports. I do not recollect as to how many days prior to 02/03/07 the FSL reports were. I asked for copies of interrogation reports and statements before and after identification parades on the subsequent occasions. I do not remember the names of the witnesses whose statements I called for. I remember that there

were statements of witnesses concerning five accused and one was not there. I do not recollect the name of the accused person regarding whom the statement of witness was not there. Now I cannot specify the names of the five accused persons regarding whom the statements of witnesses were there. I received the proposal only once. The proposal did not contain the schedule. The proposal was of eleven pages. The IO had asked for consent for prosecution of nine accused. However, I accorded consent for six accused only. I did not pass any order refusing consent of the remaining three accused persons. I do not remember their names.

5. I do not remember on how many occasions I had given the consent for prosecution under the Explosives Substances Act, but I had given consent for prosecution on three occasions earlier. I do not remember under what Acts I gave the consent earlier. I do not remember whether I gave consent for prosecution after 16/03/07. One Mayekar clerk was working in my office at that time in the general administration department. I had a computer for my personal use in my office. I and my stenographer used it. Mayekar did not use it. The consent order and the schedule was prepared on my

computer. I cannot today give the details of the panchanamas that I considered.

6. The IO had placed before me four-five bound documents on each occasion. He had produced about four volumes of bound documents along with the proposal. He placed documents on the three occasions. I do not recollect how many documents he placed before me on every occasion. The documents placed before me on the 1st, 2nd and 3rd occasion were not pertaining to a particular blast out of the seven, but were comprehensive. I did not issue a letter to the IO on the first occasion to produce more documents. On going through the file, I say that there was no index of documents with the proposal. I agree that before according consent for prosecution I have to be satisfied that the offence for which the consent is asked for was committed. The last paragraph of the order reflects the satisfaction. The last paragraph does not specifically say that I have satisfied myself on going through the documents. Witness volunteers - it is indirectly reflected. The last paragraph in the order is the only portion of the order and the schedule that shows my satisfaction. (Learned advocate asks the witness to produce the proposal.

Learned SPP objects to the request. Learned advocate submits that the proposal is the document on which the consent order is based. It is not a privileged or confidential document. It is a document that should be supplied to the accused to have an effective cross-examination. The consent order requires application of mind by the concerned authority after studying the documents and it cannot be a replica of the proposal. Therefore, it is necessary that the document be produced before the court. Learned SPP submits that it is marked as a confidential document, the names of the witnesses are disclosed and they have not been disclosed in the copies of the chargesheet supplied to the accused and it contains certain other confidential information. As far as the consent order being a replica of the proposal, question about number of pages of proposal have been asked and the answer has come on record. Hence, the proposal cannot be produced on record. Learned advocate prays for time to produce case law on this point). The address of the file in the computer at the bottom of all the pages shows the name of one Mayekar as he may have formatted the settings of the order, however, I have no personal knowledge about it. Mayekar was

present during the discussions. Concerned tahasildar and Mayekar used to remain present during the discussions. I do not recollect the name of the tahasildar. Concerned tahasildar means the officer who handles the general administration desk. (Learned advocate requests that the proposal that is with the witness be kept in the safe custody of the court under seal. Witness is directed to handover the proposal and Sheristedar is directed to seal it and keep it with him).

(Adjourned at 1.45 p.m. at the request of Id adv to 12/10/11).

Date :10/10/11

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

Date: 12/10/11

Resumed on SA

7. (Witness is handed over the envelope in which the papers of her office file were kept on the last date in the custody of the sheristedar. In view of the order passed today, for the reasons separately recorded, the witness is directed to produce the proposal for perusal of the court and the defence).
8. The concerned clerk Mayekar had taken out a photocopy of the consent order. He took out only one copy. I retained one extra copy of the original and one office copy in my file. I did not retain a photocopy of the order that was sent to the ATS. Extra copy of the original and the office copy bears my signature in original. I did not retain any photocopy in my file.
9. After the consent order was sent to the ATS, I had occasion to go through my file for the first time in the last week, when I was requested to come and depose before the court. I had occasion to see the original copy and the office copy bearing my original signatures after receiving the file in the last week. Those papers were in the file when I gave evidence. I did not produce the original copy of

the consent order bearing my original signature, because the consent order was produced by the ATS yesterday.

10. I knew that the ingredients of sections 3, 4, 5 & 6 of the Explosives Substances Act have to be satisfied before according consent. Possession of explosives substance is sufficient to constitute an offence under the Explosives Substances Act. RDX and Ammonium Nitrate are some of the explosive substances. Hydrogen Peroxide, Acetone and Sulfuric Acid could be used in hospitals. I refused sanction for three accused as they were outside my geographical jurisdiction, which is from Colaba to Mahim and Sion. Vishwas Patil was the Collector of suburban Mumbai. I cannot recollect where Oka's Shopping Center in Millat Nagar is situated in Mumbai. I cannot say unless I see the consent order whether the consent was to proceed against the accused or to prosecute them. I did not send any other document to the ATS other than the covering letter and the consent order. I did not inform the ATS in writing that I have not given the consent against three accused persons and they should approach the appropriate authority.

11. (Witness is shown page 9 of the proposal). I do not

know who has written the words 'MSD' and 'Thane' in pencil by the side of the table. The words 'except Naved' in blue ink and the tick mark are made by me in the portion below. I have put the tick marks in blue ink on the side of few names of the accused person on pages 9 and 10. (Since the learned advocate is referring to the contents of the proposal, it is received in evidence and marked as **Ext. 1647**). The explanation for this is that it is concerning the five accused against whom the consent order was issued. The name of the remaining one accused was not in the list in the table concerning the identification parade. The ATS sent the draft sanction order along with the proposal. I do not know where the draft sanction order is. The description of the enclosures in the proposal included documents mentioned above and the draft sanction order. It is not the usual practice of the police or the prosecuting agencies to send draft sanction orders with the proposals. It is not a strange procedure followed by the ATS. I did not make any correspondence with the ATS after I received the proposal and before I gave the consent order. I was not aware on 17/03/07 as to whether the ATS had obtained the consent to prosecute the accused Kamal Ahmed from the appropriate

authority at Madhubani, Bihar. Since the proposal disclosed that 500 gms RDX was seized from Madhubani, it was necessary to obtain such consent from there. I did not get it clarified from the ATS whether they had obtained consent about the three accused against whom I had not given consent. It is true that in the bunch of documents that were placed before me there was no consent of any appropriate authority under the Explosives Substances Act.

12. It is not true that I did not apply my mind before passing the consent order and I simply signed on the draft sanction order that was sent with the proposal. I do not know whether this is the reason why the prosecution was objecting to the production of the proposal.

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

13. The articles that were found with the accused by name Dr. Tanveer, were covered under the explosives substances as per my understanding. I relied on the FSL report for this opinion. The FSL report said that if these articles are used with some other chlorate then it would be treated as explosives. It is true that hydrogen peroxide, acetone and sulfuric acid are not explosive substances in themselves. There was no recovery of any chlorate mixture.

14. I do not recollect why I did not give consent to prosecute the accused Shaikh Mohd. Ali. I will have to see the consent order to see whether there was recovery of any explosive from the possession of the accused Ehtesham or from his residence. Consent was given against him as he was the planter of the explosive, which indicates possession. I do not recollect the exact date, but I started studying the proposal after about 2-3 days after receiving it. There were innumerable proposals from other police for consideration during this period. I did not make a noting about the meetings and the timings of the meetings with the IO. I will have to inspect whether the draft sanction order is in the file. I may have signed the draft consent order. It is not true that I sent the draft consent order back to the ATS and Ext. 1634 is the same. (Learned advocate makes a request for inspection of the file that is with the witness. Learned SPP objects to the prayer on the ground that law does not require the sanctioning authority to produce any document and the defence cannot be allowed to go on a fishing expedition and call upon to produce documents, which the witness is not bound to produce nor which the law requires to be produced. In my humble

opinion, on the request of learned adv Shetty for the other accused, the witness was directed to produce the proposal for perusal of the court and the defence and his request for producing the entire file for inspection is not considered. Hence, the request is not allowed). It is not true that I signed the sanction order mechanically.

15. (Learned SPP makes a request to re-examine the witness for producing the original consent order in view of the order passed below Ext. 1645. Request granted).

Re-examination by SPP Raja Thakare for the State

16. (Witness is shown the consent order filed with Ext. 1645). The consent order now shown to me is the original consent order, it bears my signature in original on the order and the schedule and its contents are correct. (It is marked as **Ext. 1648**).

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

17. It is not true that I prepared this order after it was pointed out in the cross-examination that the order in the court bears the facsimile of my signature.

Re-cross-examination by Adv P. L. Shetty for A3, 8, 9, 11

18. Declined.

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

19. (Adopted cross-examination and re-examination by adv

Wahab Khan and Shetty).

No re-examination.

R.O.

Special Judge

Date:-12/10/2011

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