

M.C.O.C. SPECIAL CASE NO. 21 OF 2006**DATE:17TH NOVEMBER 2011****EXT. NO.1748****DEPOSITION OF WITNESS NO.162 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Iqbal Hasan Shaikh

Age : 57 years

Occupation : Service (ACP, Colaba Division)

Res. Address : Flat No. 402, Sahil Appt., Off Carter Road, Bandra
(W), Mumbai-50

Examination-in-chief by SPP Raja Thakare for the State

1. I was attached to Police Head Quarters, Naigaon in 2006 as PI.

I was deputed to the ATS on 22/07/06. I was assigned investigation of CR no. 78/06 of Mumbai Central Railway Police Station on 23/07/06 regarding bomb blasts in the local trains that had occurred at Mahim on 11/07/06. I got acquainted with the facts of the case. I learnt during the course of investigation that one person by name Tafheem Akmal Hashmi was apprehended by Indian Army in Kashmir and he was in the police custody of D. H. Pora Police Station, Kulgam, Kashmir and he was suspected to be involved in the bomb blasts cases that had occurred on 11/07/06 in the local trains in Mumbai. Accordingly I put

up an application before the MM, 2nd Court, Mazgaon for his transfer warrant. The said Tafheem was brought to Mumbai under transfer warrant by the ATS staff on 02/09/06 and was arrested in CR No. 78/06 of Mumbai Central Railway Police Station. He was produced before the magistrate on 03/09/06 and he was remanded to police custody till 13/09/06. I could not gather any substantial and tangible evidence against him in this case. He was remanded to judicial custody on 16/09/06. He was in judicial custody upto 13/10/06.

2. ACP S. L. Patil, who was supervising the investigation, instructed me on 03/10/06 to take and produce the accused Kamal Ahmed Ansari before DCP Vinay Choube at his Bandra office at 1700 hours. ACP Patil gave me a letter to be given to him. Accordingly I made a station diary entry at 1620 hours and took the accused to the office of DCP Vinay Choube at Bandra and handed over the accused to him. The letter Ext. 1179 now shown to me is the same. The entry no. 9 in the original station diary is the same, its contents are correct. The contents of the true photocopy of that entry are as per the original. (It is marked as **Ext.1749**). DCP Choube asked me and my staff to withdraw from his office and go back.

3. I can identify the accused whom I had taken and handed over to DCP Choube. (Witness looks around the court hall and points to the accused no. 1 sitting in the dock. He is asked to stand up and tell his name, which he states as Kamal Ahmed Mohd. Vakil Ansari). He was the same accused. I returned back and made station diary entry to that effect. The entry no. 13 in the original station diary is the same, its contents are correct. The contents of the true photocopy of that entry are as per the original. (It is marked as **Ext.1750**).

4. Since there was no sufficient evidence against the accused Tafheem Hashmi, I put up a discharge application under Section 169 of the Code of Criminal Procedure before the MM, 2nd Court, Mazgaon on 13/10/06 and obtained orders. On the same day the accused Tafheem had sent an application through the jailor addressed to the court, which was forwarded to the ATS and it was marked to me. In that application the accused stated that he wanted to make a statement before the court. I presented the application before the magistrate. The accused was present there as he was brought there for the purpose of the discharge application. The magistrate recorded his statement in the open court under Section

164 of the Code of Criminal Procedure. I was not present at that time as the magistrate had asked me to go outside. There were ATS officers with me, but we all were outside the court. We applied to the court for sending back the said accused to Kashmir to be given in the custody of Police Station Doha. The accused was handed over to the ATS for his transit to Kashmir.

5. I and my officers recorded the statements of 33 persons and further statements of 56 persons during the course of investigation of the said offence. I handed over all case papers of CR No. 78/06 to ACP S. L. Patil on 13/10/06 as per his instructions, since all the seven cases of bomb blasts were clubbed together and the provisions of the MCOC Act were applied. I continued to assist ACP Patil in the investigation till 06/05/07.

Cross-examination by Adv Rasal for A1 & 4 to 6

6. PI Godbole of Mumbai Central Railway Police Station initially investigated CR No. 78/06. There had been no arrest by that police station till 23/07/06 and no one was brought as suspect before them.
7. I used to have discussions with ACP Patil about all the cases that were registered in connection with the investigation of bomb

blasts. I was coordinating with all the other investigating officers. I do not remember the other ATS officers present in the office on 03/10/06. I did not try to find out when DCP, Zone-IX contacted ACP Patil. The accused no. 1 was in the custody of the ATS in the lockup on that day. I do not remember the name of the officer who was interrogating the accused no. 1. I had no occasion to interrogate him. I did not make any effort to find out when the accused no. 1 had showed his willingness to make a confessional statement. I started from the ATS, Kalachowki unit with the accused no. 1. The station diary entry no. 9 is in my handwriting. I did not report to Police Station Bandra about taking the accused to the DCP. I reported to DCP Choube at 1700 hours. There was no one except DCP Choube in his chamber when I produced the accused before him. I handed over the custody of the accused to the DCP and then I withdrew. I do not remember the name of the officer who wrote the station diary entry no. 13. The DCP asked me the date of the remand of the accused. It was 5-6 days away from that day. There was no other talk except this between him and me. I immediately left his office with my staff after withdrawing. I had told the duty officer to make the station diary entry

no. 13. I had gone through the contents of the entry. It is correctly recorded as directed by me. It is true that it is not written in the entry that the accused was given in the custody of DCP Choube. It is written in the entry that the accused was given in the custody of PI Gaikwad. Entry no. 9 was written as per the facts that were existing at that time. The remark by the side of the entry says that ACP Patil had an occasion to take copy of the entry. I was not called by ACP Patil at any time for discussion in connection with this entry.

8. It is not true that I took the accused no.1 to the DCP on 03/10/06 along with draft copy of his confessional statement.

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

9. ACP Patil recorded my statement late in the evening on 13/10/06, but I do not remember the exact time. I had gone through it after it was recorded. I did not find any mistake in the statement at that time. The information about Tafheem Hashmi was given to me in the latter part of August 2006. I do not remember the exact date when I made an application in that connection to the magistrate, but it was in August itself. I had a strong belief at that time that he was involved in the bomb blasts. That belief was not supported by any document,

but the accused was shown on television along with army officers saying that he knows about the bomb blasts that had happened in Mumbai local trains. I do not remember distinctly, but it was probably telecast on Aaj Tak channel. I cannot tell the exact date and time of the telecast. It was during the news broadcast. It was for a few seconds. The accused was only shown with the army officers and printed news flashed about his knowledge, because of which I had the suspicion about him. I did not give copy of the application that I gave to the magistrate, to ACP Patil on that day. Copy of the application, order of the magistrate and the production warrant were in the case papers that I handed over to ACP Patil on 13/10/06. The accused Tafheem Hashmi was in my custody from 02/09/06 to 16/09/06. I did not obtain his custody from the JMFC, Kulgam on 02/09/06. PI Varpe had gone to Kulgam to bring the accused. He came back on 02/09/06 with the accused. I do not know when he had gone. I do not recollect on what date the application was moved before the JMFC, Kulgam and when the order was passed. I produced the said accused before the court for remand for the first time on 03/09/06. I interrogated him more or less daily. On some days

it was for hours and on some days it was for a few minutes. I had interrogated him for the maximum period of 6-8 hours on one day. I cannot tell that date. I moved the application for discharge in the morning on 13/10/06 with other ATS officers, but I do not remember their names. The accused was in judicial custody on that day. The accused was remanded to police custody on 03/09/06 upto 13/09/06. He was again remanded to police custody on 13/09/06 upto 16/09/06. No legal representative appeared for him in the court from 02/09/06 to 13/09/06. I do not remember whether the court provided him with any legal assistance. I do not remember whether any advocate approached me during his police custody and judicial custody period saying that he represents the accused. I do not remember the exact date, but it was probably on 24/09/06 that the provisions of the MCOC Act were applied. I did not have any occasion to interrogate that accused during his judicial custody period. No other ATS officers inquired with him during this period. The court in its own discretion remanded the accused to judicial custody on 16/09/06. I had asked for police custody on that day. I know that police custody cannot be granted for more than 15 days. I cannot say whether I had asked for

the police custody even then. I think it was the day of remand on 13/10/06 when I made the application for discharge. I did not realize upto 16/09/06 that the said accused was not involved in the bomb blasts. I realized this in October, but I do not remember the exact date. The ATS did not apply for taking the accused in police custody after the provisions of the MCOC Act were applied on 24/09/06. I did not feel it necessary at that time, therefore, I did not apply. It is true that I had come to the confirmed conclusion on 24/09/06 that he was not involved in the bomb blasts.

- 10.** I do not remember who brought the accused to the ATS office on 13/10/06 and at what time. I saw him in the ATS office in the evening at about 8.00 - 9.00 p.m. I do not know at what time he had been brought to the ATS office. I do not know whether he had been interrogated by any officer before I saw him, but ACP Patil recorded his statement thereafter. ACP Patil started recording his statement at about 8.00 or 9.00 p.m.. I do not know upto what time it continued. I did not see any other officer present when ACP Patil was recording his statement, except the staff member who was typing on the computer. I left the ATS office at about 10.30 – 11.00 p.m. and till that

time the recording of the statement was going on. I did not sit there continuously and see the recording of the statement. I was not in his office, but I saw ACP Patil doing so when I passed by in the corridor. I do not remember the exact date, but the said accused was sent back to Kulgam after the escort was arranged in a few days. I do not remember whether I saw him in the ATS office on 14/10/06 and when I saw him last after 13/10/06. I do not remember whether I had seen him after 13/10/06 in the ATS office.

11. It did not happen that I gave the application for discharge on 13/11/06. I did not make such a statement before ACP Patil. (Witness is confronted with the relevant portion from his statement. Hence, it is marked as 'A'). It may be a typographical error. I realized this error today itself. I do not know who accompanied the said accused to Kulgam and how he was taken. I was knowing the details of the crime of Police Station D. H. Pora in which the accused was in police custody, when I gave the application before the magistrate for production warrant. I do not remember whether the ATS had made any correspondence with that police station regarding the said accused before taking the production warrant, but as far as I

remember the information was obtained on telephone by me. I obtained the number of the police station from an STD booth. I do not remember the number now.

12. The application sent by the said accused through the jailor was received by me in the morning on 13/10/06. I do not know when exactly it was received in the ATS office. The application was dated 13/10/06. I do not remember the names of the ATS officers who were with me in the MM court on 13/10/06. I cannot tell the exact time when the magistrate started recording his statement, but it was in the morning session. I do not know when it ended, because I left the court after the recording of the statement started. I did not go back to the court on that day. I had gone to the court one or two days thereafter for taking copy of the statement. I do not remember when I applied for copy of the statement. I got the copy one or two days afterwards. I do not know what the magistrate did after he started recording the statement. I do not remember the names of the officers and the staff who remained on the ground floor, when I left the court. It did not happen that on that day the magistrate completed recording the statement of the accused, read it over to him, took his signature

and then I applied for the copy and was given an attested copy on that day by the court. I do not remember whether I made such a statement before ACP Patil on 13/10/06. (Witness is confronted with the relevant portion from his statement. Hence it is marked as 'B'). The contents of the portion are correct. I did not state to ACP Patil that the magistrate asked me and other officers of the ATS to wait outside and we waited on the ground floor. It is not true that I was present in the court hall when the magistrate recorded the statement of that accused, therefore it is not written in portion B of my statement that we were asked to go out of the court hall and we waited outside on the ground floor. It is not true that contents of portion marked B indicate that I was present in the court hall during the recording of the statement. It is not true that the said accused Tafheem was brought to Mumbai to prepare false evidence, that in order to pressurize him we kept him in custody for more than one month, that after pressurizing him his statement was taken before the magistrate in our presence, that his discharge is our gift to him, that we would not have discharged him if he would not have given the statement.

13. I knew on 13/10/06 that I had given the accused no. 1

Kamal Ahmed in the custody of DCP, Zone-IX on 03/10/06. I did not state about this to ACP Patil when I gave my statement. Witness volunteers - my statement was recorded in the context of the investigation of CR no. 78/06. Taking the accused no. 1 to the DCP on 03/10/06 was not a part of investigation of CR No. 78/06. I do not remember the exact date on which all the investigations were clubbed together, but I handed over the papers of investigation on 13/10/06. Provisions of the MCOC Act were applied before that date. All the crime numbers were clubbed together after that under CR No. 05/06 of the ATS.

(Adjourned for recess).

Date : 17/11/11

Special Judge

Resumed on SA after recess

Cross-examination by Adv Wahab Khan for A2, 7, 10, 12 & 13

14. I am Muslim by birth. We believe that god is one and prophet Mohammad was the last prophet. The prophet of Jews is David and Jesus Christ is of Christians. It is Muslim belief that David and Jesus Christ were the prophets of god. I do not know whether a Muslim who does not believe this is not a Muslim. It is true that

successors of Prophet Mohammad through his daughters and son-in-laws are respectable persons for all Muslims. I cannot comment whether Sunnis are the first amongst Muslims to go for ziarat at durgahs and to have the niyaz. I never go to durgah.

- 15.** I did not take the statement of PI Godbole who had investigated CR No. 78/06 of Mumbai Railway Police Station. The case papers were submitted to the ATS office by the railway officers under index. I had also received the case diary. All the documents and statements referred to in the case diary were received by me. On going through the case papers I realized that there were two eye-witnesses by name L. R. Pandey and Prabhakar Dattaram Sadekar and they had been injured. It is true that on coming to know of such witnesses, we write in the case diary about the further course of investigation in their connection like getting more details, preparing sketch, confronting them with the suspects, if any, in identification parade, showing of photographs in the MOB, etc. If the subsequent investigating officer thinks it necessary, he proceeds to take the further steps as discussed in the case diary. I called the said two witnesses during my investigation and recorded their supplementary

statements. Brief description of the suspects including the apparels that they were wearing was disclosed. Sketches of the suspects were prepared in the ATS with the help of the witnesses. I had discussed in my case diary about the further steps to be taken concerning the two witnesses, if suspects are found. If I would have come across any such steps remaining to be taken during the further investigation by the subsequent investigating officer, I would have pointed them to him. I had orally informed ACP Patil about the two eye-witnesses.

Q. Whether you had informed ACP Patil that these two eye-witnesses would be required to be called for identification parade?

A. No planter was found in CR No. 78/06, therefore, I did not inform accordingly to ACP Patil.

ACP Patil did not call and inquire with the two witnesses in my presence. No planter was detected in CR No. 78/06 upto 13/10/06. I do not know whether these two witnesses were not called for identification parade. I had read the final report filed by ACP Patil. It is true that it is written in the final report that as per my investigation in CR No. 78/06, the Indian and Pakistani accused in that CR were unknown and their total number was not revealed.

16. The case diary of the railway police investigating officer was handed over to me by the ATS office. It is not true that I found that it was tampered with. It is not true that I was given a bogus case diary. I did not find that there was inconsistency between the case diary and the documents that were given. (Witness is asked to go through the case diary CR No. 78/06 of Mumbai Central Railway Police Station). This was the same case diary that was given to me. There is no mention in the case diary about the statement of the eye-witness Lalji Ramakant Pande being taken upto 20/07/06. I maintained the case diary of this crime. (Witness is asked to go through his case diary of CR No. 78/06 of Mumbai Central Railway Police Station and see whether it contains the mention of recording statement of Prabhakar Dattaram Sadekar on 09/08/06 and of Lalji Ramakant Pande on 21/08/06). Case diary of 10/08/06 shows recording of Prabhakar Sadekar's statement on 09/08/06. There is no case diary of 09/08/06. Case diary of 21/08/06 shows recording of Lalji Pande's statement. Case diary of 18/10/06 shows recording of Subhash Nagarsekar's statement by PI Mandge. Other than the accused Tafheem Hashmi, I had not interrogated any other accused

in this case till the date the investigation was with me. I was never present during the interrogation of any accused by any other investigating officer. The accused in this case had been arrested till the time the investigation was with me. We used to sometimes pass on information received in each others investigations, if relevant. I knew that the accused were taken in police custody after one after the other in the different crimes. It is not true that I was knowing that the arrested accused were falsely implicated. The other investigating officers did not tell me to take the accused in my custody for the investigation of the crime that I was investigating. I did not ask for police custody of any accused. I did not feel it necessary to interrogate the arrested accused in the crime that I was investigating.

- 17.** Officers attached to police stations are deputed to the ATS for investigation. I was deputed to the ATS in 1992-93 when I was attached to Police Stations Santacruz and Vile Parle. Officers from other police stations and the crime branch were deputed for assisting in the investigations of this case. It is not true that such deputation is confidential. I cannot say exactly whether officers and constables from Azad Maidan, L. T. Marg, Mahim, Borivali, Matunga

and Bandara were deputed to the ATS for this purpose. Police officers and staff from various police stations were deputed on need based appointment to the ATS.

18. I do not know whether the Anti-Dacoity and Robbery Cell, Kurla Unit headed by PI Vijay Salaskar was assisting the ATS in the investigation of this case, whether some accused were kept in the Kurla unit for interrogation.

19. I cannot comment whether the ATS officers are experts in detecting the traces of explosive substance or its particles. I had not assisted in the investigation of Malegaon blast of 2006. I was in the ATS when it was investigated by the ATS. I do not remember whether I had interrogated any accused in that case and whether any recovery was made under my supervision, whether any explosive and traces of explosive were recovered from the garage of one of the accused. My colleagues did not inform me about the progress of that investigation. I used to read newspapers and watch the TV news channels sometimes. I know that some boys were arrested by the DCB CID on the allegation that they were members of the Indian Mujaheedin and having sent threat mail to Mumbai and committing

bomb blasts elsewhere. I do not know whether the accused by name Sadiq Israr Ahmed in that case was arrested in this case. I do not know whether Rakesh Maria had stated in a press conference that the boys arrested as Indian Mujaheedin had committed all bomb blasts in Mumbai upto 2005.

20. I had collected the railway time table. However, I had not taken the time table of the affected train, its scheduled time of arrival and departure at different destinations and the actual timings from the railway department. However, the motorman of that train, who was the complainant and the guard, who was the witness, had stated about it.

21. I had not attended any lectures or conferences in the ATS about investigation in terrorism cases and other things about terrorist organizations. No high ranking officers from other agencies had been called for giving such lectures till the time I was in the ATS. I did not record the video clipping of the news of the accused Tafheem Hashmi. I have heard the name of Lt. Col. Purohit and that he is arrested by the ATS. I do not know whether he was posted in the area where accused Tafheem was caught in Kashmir. It is not true

that on the instructions of my superiors I did a deal with the accused Tafheem that if he gives a statement to the magistrate as per the tutoring given to him, we would exclude him from this case. It is not true that I tutored him to give a false statement to the magistrate.

No re-examination.

R.O.

Special Judge

Date:-17/11/2011

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