

M.C.O.C. SPECIAL CASE NO. 21 OF 2006**DATE:22ND NOVEMBER 2011****EXT. NO.1761****DEPOSITION OF WITNESS NO.165 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Vishwas Mahipati Patil

Age : 52 years

Occupation : Service (Director of Culture, MS)

Res. Address : 701, Beach Apartment, Patel Wadi, Vile Parle (W),
Mumbai-49.

Examination-in-chief by SPP Chimalkar for the State

1. I was Collector of Brihanmumbai Suburban District from 15/12/06 to 21/05/10. I had the power to sanction the prosecution under Section 7 of the Explosive Substances Act. I got the proposal for grant of sanction to prosecute the accused in this case under the Explosive Substances Act in the first week of March 2007. After getting the proposal my office scrutinized it. I also scrutinized it. Then I, the Dy. Collector and Tahsildar went through the proposal and the documents that were sent with it, which included the FSL reports, statements, panchanamas, FIRs, etc., relevant documents. On perusing the documents and the proposal and applying my mind, I

was satisfied that the case was fit for granting the sanction for prosecution. Hence, I granted the sanction on 15/03/07. The sanction order now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext. 1762**). The sanction was given for prosecuting nine accused. The sanction order and the schedule that is a part of the order bear my signatures. I sent the order to the ATS.

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

2. I was posted as CEO, ZP in Raigad District in July 2006. I had not accorded any sanction under the Explosive Substances Act or under any other Act before March 2007. I do not remember if I have given any such sanction after March 2007. I had studied the Explosive Substances Act at that time. I can accord sanction under section 7 of Explosive Substances Act. I will have to see whether consent or sanction can be granted under section 7. Witness volunteers - The Central Government had issued notification in 1980 empowering the Collectors to grant the sanction and the State Government had also reissued it in 1983. I saw the notification when I was dealing with this case. I cannot tell the numbers and dates of

those notifications now. The notification of 1980 says that the District Collectors can grant permission for prosecution. The notification of the State Government of 1983 also says the same thing as the earlier notification was republished. I do not mean to say that I have been authorized only by the notifications of 1980 and 1983 to issue the sanction. I say that I was authorized by the notifications as well as the provisions of the Act. I believe the notifications clarify the provisions of the Act and the strength is derived from section 7. Section 7 gives the power to the Collector without notification. Without going through the notification I cannot say whether that notification was the delegation of power of section 7. Original power under section 7 as on the date of the order was with the Central Government. I will have to see the provision to say whether the power was to grant consent or sanction. I had seen the Explosive Substances Act as amended upto 15/03/07.

3. I have not mentioned the notification in the order. The notifications are not available with me now. I do not remember who had signed those notifications. I had referred to the Explosive Substances Act 1908 and not the Explosives Act 1885. I did not go

through any other Act at that time. (Witness is shown section 7 of Explosives Act, 1884). It is true that as per the provisions of section 7 as they were in March 2007, I as a District Collector was empowered to issue consent and not sanction. It is true that as per the said provision there was no necessity of delegation of that power by the Central Government or the State Government and also of any notification.

4. My office was in Bandra (E) for the eastern as well as the western suburbs. I had three Tahsildars working under me in the field offices and two-three in the District Headquarters. One Tahsildar and one RDC helped me in scrutinizing the proposal. I do not recollect the name of the Tahsildar. The RDC was one Amol Yadav. The proposal was received in my office on 03/03/07 from the ATS directly. I saw it on that day when the correspondence came to me. I marked it to the Tahsildar and RDC. The Tahsildar scrutinized it first. It was with him from 04/03/07 to 08/03/07. It was with the RDC upto 11/03/07. I had joint meeting with both of them on 11/03/07. There was no joint meeting thereafter. The proposal was not referred to any legal department. The Tahsildar and RDC did not prepare notes after their

scrutiny. They did not note down their observations, but only orally informed me that all documents are there as per report. They had put their initials along with the dates.

5. I do not recollect the number of documents that were with the proposal, but it was one big bunch. I do not exactly recollect, but there may be more than 200 pages. I do not remember whether there was an index of the documents. I do not remember the number of documents, FSL reports, FIRs, statements of witnesses and panchanamas that were there. The proposal was attached with the documents. It was signed by officer S. L. Patil. The proposal sought consent for prosecuting nine accused persons.

6. I had gone through the arrest panchanamas, but I do not recollect their numbers. I do not recollect the total number of panchanamas, but there were arrest panchanamas, gathering explosive substances from one doctor, from Govandi, from Perry Road, Bandra, one place from Dahisar and one from Bihar. After the proposal came to me on 03/03/07, I did not ask the proposing officer to submit further material. Witness volunteers - the material that was sent was sufficient. I was empowered to accord sanction under that

Act for carrying explosives and other unlawful activities under the Explosive Act. I cannot explain 'unlawful acts' as described under this Act. I could accord sanction only for the offences that were committed within my jurisdiction. The factors that are required to be considered for according sanction are as to whether the act happened within my jurisdiction. Happened means whether the explosives were gathered within my jurisdiction. The gathering of the explosive from Bihar does not come within my jurisdiction. Witness volunteers- but it was used in my jurisdiction. Possession of explosive substance is itself an offence under the Act. I do not remember whether any authority in Bihar had accorded sanction before 15/03/07. I did not direct the ATS officers to obtain sanction from Bihar. I do not recollect whether such a sanction was placed before me by the ATS. The ATS had asked for sanction for the nine accused persons, whose names are written in the schedule and I accorded sanction for them. I accorded sanction for the offences as described in column 2 of the schedule. I prepared the order and schedule in my computer. The ATS had not sent draft of the order and schedule. I do not have the file of the proposal with me now. It contains the proposal and the documents placed before me. I

can produce it. (Learned advocate requests the witness to produce the file. Witness is asked to step down and intimate the office to bring the file. He returned after a few minutes informing that the file has been brought from the concerned office). The file is brought from the concerned office as I had already intimated that office. The proposal is of eleven pages. At the end of the proposal there is a remark 'Enclosed: Documents as mentioned above'. There is no index of documents with the proposal. (Learned advocate requests for perusing the proposal file. It is given to him for inspection). A clerk had prepared the notes that are on the first page in the file. It is signed by me, the Tahsildar and the RDC. (Learned advocate requests that the said first page be taken on record. Learned SPP submits that the document is from a confidential file and is part of the concerned note. In my humble opinion, the accused cannot ask for production of a noting in the file of the proposal). It is not true that the clerk who prepared the note had prepared the order and the schedule and as per that note the clerk put up the order and the schedule before me for signature. It is true that in the last paragraph in that note it is mentioned that he is keeping the sanction order and the

schedule before me for my signature. Witness volunteers – after the order is prepared on the computer and printout is taken, it is verified by the concerned clerk, tahsildar and RDC as to whether the paging is correct and it is scrutinized whether the contents are correct and then it is placed before me for final signature. It is true that it is not so written in the notes. It is not true that I am deposing falsely that I have prepared the order and the schedule.

(Adjourned for recess).

Date : 22/11/11

Special Judge

Resumed on SA after recess

7. The schedule is kept separate as per my decision. Neither the RDC nor the tahsildar suggested that it should be kept separate. It could have been included in the body of the order. The creation of the schedule and typing it on separate pages is my own creation. It was not guided by any external source or influenced by some other draft. The sequence of the contents of the order and the schedule are based upon the proposal and the papers with it. Consent is given for prosecuting the accused and it is also for the case. I did not think on the line of giving the consent to prosecute some more accused than

those for which the consent was asked for. I thought on going through the material that was placed before me to give the consent to prosecute the accused for whom the consent was asked for.

8. I prepared the table that is on page four of the order. It is true that the blast sites at sr. no. 1 and 7 in the table were not within my jurisdiction. Witness volunteers - as the material was transported from Bandra to Churchgate, Perry Road in Bandra was in my jurisdiction. The blast site at sr. no. 2 in the table was not in my jurisdiction. Witness volunteers – as the material was gathered from Shivaji Nagar, Govandi, it was in my jurisdiction. All the material was gathered from Shivaji Nagar, Govandi and transported to Perry Road, Bandra and both the places come in my jurisdiction. Unknown persons are described as arrested and wanted in respect of the blasts at Mahim and Bandra. This was on the basis of the record. I do not recollect every document now on the basis of which I concluded these remarks. The title of the third column 'Accused involved in planting bombs' and dividing it in two sub-columns is by me. Accused involved in crime means an accused who is directly or indirectly or even remotely involved. It is true that the names of the accused in the

sub-columns in column no. 3 are the only accused who were involved in those crimes. I could not say who were the accused persons involved in respect of the blast at sr. no. 3, therefore, I mentioned unknown persons.

9. Planning of explosives is itself an independent offence. It is true that I will not show an accused as wanted, if it comes to the notice from the papers that he had died or was killed in an encounter. I did not come across the name of any person shown as wanted, as having died or killed in an encounter.

10. It is true that I have to give the consent only after being subjectively satisfied on going through the case papers that the offence has been committed. The provisions of the penal laws that are mentioned in column no. 2 of the schedule were mentioned in the proposal and the ATS papers. I do not recollect what documents were placed before me to show that the car seized on 22/10/06 was belonging to the accused Muzzammil. The description of the crimes at sr. no.1 to 7 on page 2 of the order are gathered from the documents with the proposal. Last three paragraphs of the order show my subjective satisfaction. Contents of all the earlier

paragraphs are on the basis of the material in the documents on which I arrived at my subjective satisfaction.

Q. Which paragraph in the schedule discloses your subjective satisfaction?

A. It is a part of the main order.

(Witness is shown Ext.1634). The format of the table on page 4 is similar to the format of the table in my order. The names of the accused are also common. The last three paragraphs in the order are similar to those in my order except my name. It is true that the contents of the order starting from page 1 by the word 'whereas on 11/07/06....' are similar to the contents of my order upto the end. I do not recollect whether the name of the accused no. 2 spelt as Tanvir is as per the documents or is my own creation. Same spelling is repeated in the second paragraph on page 3. However, the name is spelled as Tanveer in the last line of the third paragraph on the same page.. I do not recollect whether it has been copied from any other document or is my own creation. I cannot give any reason for difference in the spelling. Same things are repeated in the schedule and the order in Ext. 1634. I cannot give any explanation about the

similarities.

11. I do not recollect which document reflects the alias name of accused no. 13 Asif Khan as Abdullah as mentioned in the schedule. The said alias name is not mentioned in the second paragraph of page 4. It is true that same is the case in Ext. 1634. I cannot give any explanation about the similarities. I cannot say whether the font, space, margins, bold letters, table and all other things are similar in both the orders. I cannot say whether if a format is prepared on a computer and another copy is made with certain variations, similar type of printouts will be available.

12. It is not true that I signed on the papers that were put up before me by the ATS and that I did not apply my mind for arriving at subjective satisfaction, therefore, both orders appear similar.

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

13. (Witness is shown certified true copy of consent order dated 04/08/09 that is with the learned advocate). I cannot say whether this order was issued by me, because it does not bear my signature. (Learned advocate requests that it should be taken on record and received in evidence. Hence, it is marked as **Ext.1764**). I

do not remember whether the ATS asked me grant the consent as they wanted to file the chargesheet. I do not know whether the collector of suburbs was moved by the Chief IO of this case on or before 29/11/06 for according consent to prosecute the accused, because I took charge on 15/12/06. (Witness is asked to go through the proposal file and say whether such is the case). I cannot say on going through the file as to whether any such proposal was moved on 29/11/06. The ATS did not forward copy of final report or chargesheet with the proposal. There is no reference in the proposal and any document in the proposal file to show that the ATS had intimated me that they had filed chargesheet in the court. Date of arrest of the accused was conveyed to me. I do not recollect whether 90 days as per the Cr. P. C and 180 days as per the MCOC Act were over after the arrest of the accused. I cannot say whether I had thought about asking the investigating officer whether he had filed chargesheet. I do not recollect whether the proposal for consent was sent to my office by the ATS before 29/11/06. I do not know whether such a proposal was rejected by my office. I did not accord consent with regard to seizure of explosive substance from Bihar. It is true that the consent

can be accorded under the Explosive Substances Act in relation to the explosive substances that are described in the Act. I cannot give the consent for prosecution for possession of sulfuric acid only. Same can be said about acetone and hydrogen peroxide solution. It is true that I cannot accord sanction for possession of explosive substance by a person outside my jurisdiction. Mira Road was not in my jurisdiction. It was in Thane jurisdiction.

14. I was not informed about one or more persons being killed in police encounter or died in the blasts. It is true that the consent order does not indicate the involvement of any banned Indian or foreign organization. The proposal indicates the name of Rahil Shaikh as based in the UK and the name of Rizwan Dawrey as based somewhere in Dubai. The order does not indicate their names. They are not included in the order as separate proposal would be moved after they are arrested. The ATS did not ask for the consent against them.

15. There was no other collector in my office. All the proposals for consent that came to my office during my tenure were considered by me. The office has the proposal files about all the

consents that were given. (Witness is shown Ext. 1764). The date of this order is within my tenure. I do not recollect whether I had issued this order. I cannot say whether the police had intimated to me that the accused in that case had committed all the blasts in Mumbai after 2005. I cannot verify from my office even if I am given time as to whether I had issued that order.

- 16.** I do not recollect whether the format of the table and its contents were provided by the ATS. First column of the schedule gives the names and addresses of the accused, second column describes the CR numbers and all the offences for which the accused are charged. The third column describes the brief facts of the case. Paragraphs 1 to 3 of the order are based on the report of the IO, investigation papers and FSL reports. Thereafter upto the second last paragraph of page 5 is the narration of the investigation. It is not true that my subjective satisfaction is recorded only in the last paragraph. It is true that the specific section of the Explosive Substances Act for the prosecution of which the consent was given is not mentioned in the last paragraph of the order. I had accorded consent for prosecution for possessing explosive substance against Sajid Margub

Ansari, but not against Ehtesham Siddhiqui, against whom it was given for transporting. I basically relied upon the FSL report for according consent.

17. The FSL report O. No. 16303/06 is not referred in my order. It is not true that it was showing that no explosive was detected and therefore, I did not refer to it in my order. It is not true that I obliged the ATS officers by signing the draft order that was supplied by them.

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

18. Declined.

No re-examination.

R.O.

Special Judge

Date:-22/11/2011

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