

M.C.O.C. SPECIAL CASE NO. 21 OF 2006**DATE:23RD NOVEMBER 2011****EXT. NO.1765****DEPOSITION OF WITNESS NO.166 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Sambhaji Sadashiv Zende

Age : 53 years

Occupation : Service (CEO, SRA, Bandra)

Res. Address : Flat No.1, Ground Floor, Leaflet building,
Pochkhanwala Road, Worli, Mumbai

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

1. I was the Collector and District Magistrate, Thane from December 2006 to September 2008. I was the competent authority to issue consent for prosecution under section 7 of the Explosive Substances Act as a District Magistrate. I had received a proposal at the beginning of March 2007 from the ATS, Mumbai to issue consent for prosecuting accused involved in the serial bomb blasts that had taken place in Mumbai in July 2006. Panchanamas, statements, FSL reports, etc., documents were with the proposal. There is a home branch in our office looking after the magisterial work. After such a proposal is received, it is discussed with the Additional District

Magistrate, the home tahsildar and then we accord the consent. Considering the gravity of the offences, I had a discussion with the ATS officer Patil in connection with the documents and incident. Then I sent the proposal to the home branch. I had discussions with the ADM twice or thrice in that connection. I asked the home branch to put up a draft of the consent order on the lines of the discussions that we had. After the draft was put up before me, I went through it, made the necessary corrections and then sent it back for typing it finally. I was subjectively satisfied on the basis of the documents that were sent with the proposal and the discussions that I had with officer Patil and my staff that the case was fit for according consent. The proposal was for consent for prosecution of nine accused. I realized that only three accused were concerned with the incidents that had taken place within the jurisdiction of Thane District. Therefore, I accorded consent for prosecuting three accused on 09/03/07. The consent order including the schedule now shown to me is the same, it bears my signatures below the order and the schedule, it bears the office seals and its contents are correct. (It is marked as **Ext.1766**).

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

2. The proposal was received around 02/03/07. I do not remember the number of the pages of the proposal. There were many documents, but I do not remember their numbers. I cannot say how many FSL reports, panchanamas and FIRs were there. The proposal and the documents were in one file. I do not remember whether the draft sanction order was sent with the proposal. I had given similar consent regarding the incident at Gadkari Rangaytan at Thane. I have not given any such consent after 09/03/07. I cannot say whether the investigating officer of that case was from the local police or the ATS. I cannot tell the date of that consent order or whether it was before or after 09/03/07. I gave evidence in that case, but I cannot tell the exact date when I gave the evidence. I do not remember whether as per this case, in that case also I had issued the consent order attached with a schedule. The proforma of the consent order and schedule were on my own. The home branch prepared the draft of the consent order and schedule and placed it before me. We had discussed together about the points and paragraphs of the order and schedule. Additional District Magistrate and others participated in the discussions, but I do not remember their names. The typing of the

order was done by the typist as per our discussions and the draft prepared by us. The draft was discussed by us and the home branch prepared it. I cannot say whether the draft of the order was placed before me on 7th or 09/03/07.

3. The power to accord consent vests in the District Magistrate as per section 7 of the Explosive Substances Act. It is an express provision. I had not gone through any other notification. I agree that application of mind by me is necessary for giving consent for prosecution. The acts of persons mentioned under sections 3 to 6 of the said Act, are the acts for which consent for prosecution can be given. I accorded the consent in this case for the offences described in the schedule. I have to satisfy myself before giving the consent that the offence has been committed by the accused persons. I was not authorized to accord prior approval or sanction under the MCOC Act. Sanction was not asked for under the Unlawful Activity (Prevention) Act. Sanction for prosecution under the Prevention of Damage to Public Property Act, 1985, Railways Act, 1989 and Passport Act 1967 was not asked for and it is not within my jurisdiction.

4. Names of the accused for whom the consent for prosecution

was given are disclosed only in the schedule. It is a decision of our team to prepare a schedule in three columns under different headings. The entire consent order is as per my personal satisfaction. It had not been influenced by any third factor. Last but third paragraph of the order reflects my subjective satisfaction. The last paragraph only mentions that I was authorized to issue the consent order and I accorded the consent.

5. The incidents for which the consent was applied for took place on 11/07/06. The place where the explosives were planted as well as the place where they blasted are required to be considered. The places where the explosives were prepared, stored and found are also required to be considered. I did not inquire whether consent for prosecution under the Explosive Substances Act had been sought from any District Magistrate from Mumbai or elsewhere. Planting of explosive is necessary for an explosion to happen. Consent for prosecution should be obtained from both jurisdictions in relation to the place of planting as well as explosion.
6. Preparation and planting of the explosives in this case was not within my jurisdiction. Both are acts prior to the explosion. I did not

verify whether consent for preparation and planting was sought for and obtained before 09/03/07. My jurisdiction started from Mira Road after Dahisar in the western suburbs. Dahisar is part of Greater Bombay. Dahisar subway is in Thane district. The panchanama was the document that showed that the explosive material was found near Dahisar subway, which was in the geographical area of Thane district. The Dahisar subway is about one and a half kilometers north of Dahisar where the boundary of BMC ends. It is actually in Mira Road. The proposing authority had asked for the consent for planting explosive by an accused that exploded in my jurisdiction and for finding explosives within my jurisdiction in respect of two accused. Preparation, planting and explosion of explosives by a person and subsequent recovery of remaining explosives is a continuous offence. Obtaining the consent for preparation and planting of explosive is not sufficient. It should also be taken in relation to the explosion that took place.

7. I did not discuss this issue with my counter parts in Mumbai. It was not necessary. I did not dictate the contents of the order starting with the words "Whereas on 11/07/06" in the first paragraph upto the

contents of the order before my signature. I dictated the third last paragraph and the last paragraph. Remaining contents of the order are prepared as per my instructions by the home branch. The last but one paragraph was prepared by the home branch as per my instructions. I do not feel that the words 'accused persons' used in that paragraph and in the last paragraph are too vague.

8. I do not remember whether the FSL report regarding the accused Kamal Ahmed was placed before me. I do not remember from where the accused Asif Bashir Khan was arrested, as it was not my subject. I do not know as to in which area he resides. I cannot tell his exact postal address in Mira Road, but it must be in the file. It is true that neither the address nor the place Mira Road is mentioned in the schedule. The sequence of the crimes mentioned in the order is as per the report of the proposing authority. It appears that the contents of the order Ext. 1762 starting from page 1 with the words 'whereas on 11/07/06....' are similar to the contents of my order upto the end. I do not see any difference in both the orders. It is true that the name of the accused is spelt as 'Tanvir' in the last paragraph on page 2. However in the next paragraph on page 3 it is spelt as

'Tanveer'. I cannot explain why this is so. It may be a typographical error. I noticed it for the first time today. Spellings of name cannot be changed, but there can be a typographical error. Same things are repeated at the same places concerning the same accused in Ext. 1762.

9. The last but one paragraph on page 3 of my order describes the accused as Asif Bashir Khan @ Junaid. The alias name Abdullah is added to his name in the table in the order. It may be an omission at the first place. Same things are repeated on page 4 of Ext. 1762 as same omission may have taken place at the first place. The use of word 'Pakistani' in the last but one line on page 2 of my order is not correct. It should be 'Pakistan'. Similar wording/mistake is found in the third paragraph on page 3 of Ext. 1762. It is a coincidence of typing errors in respect of similarities and dissimilarities in both the orders. There is no overwriting in the date in my order. I do not remember the earlier date that was typed at that place. The dispatcher may have written the date in ink over the typed date.

10. It is not true that I got retyped the order that was placed before me by the ATS, that I did not prepare the order before signing

it.

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

11. The ATS had requested for consent order for prosecuting accused under the Explosive Substances Act in connection with the bomb blasts of 11/07/06. The report comprised of brief description of several incidents that had taken place on that day. I have not brought the proposal with me to court. The report made it clear as to under which section I had to accord the consent. It comprised of the names of the accused against whom the order was sought. I was concerned with three out of the nine accused. The report comprised of all the events that had taken place. It is my practice to mention the brief history of the case in the order. I cannot tell the number of panchanamas, statements of witnesses and FSL reports in each crime. It is true that my order does not exactly describe the particular statements and panchanamas. The documents referred to in items no. 1 to 3 in the beginning in the order were the documents that were discussed by me and my subordinates.

(Adjourned for recess).

Date : 23/11/11**Special Judge****Resumed on SA after recess**

12. One Shri Bhise was the ADM at that time. I do not recollect the name of the Naib Tahsildar. It is not always necessary that documents prepared by my subordinates like note sheets, should be initialed by them. I cannot tell the name of the persons who had prepared the draft. It is true that it is not mentioned in the order Ext. 1766 as to with whom I had discussions and who had prepared the draft and the order. Consent order is one of the important documents that I prepared. Normally I put date below my signature on important documents. I have not put the dates below my signatures in the order and the schedule in this case. I do not agree that the order is silent about the particular section of the Act in respect of particular accused. It is true that the last paragraph does not describe the particular section of the Act for which consent was given against particular accused. Column no.2 in the schedule describes the police station, crime number and date in which I have mentioned the sections of the Act. Column no. 3 describes the act, but it does not describe the sections of the particular law.

13. It is not true that I did not apply my mind to the facts of the case and mechanically I copied down the draft of consent order that was supplied to me by the ATS, that I am deliberately suppressing the fact of supply of the draft consent order by the ATS.

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

14. (Adv Fakruddin submits that adv Wahab Khan is busy in CR No. 31 in the cross-examination of the complainant and would come within 15 minutes. He requests that the cross-examination be kept back. Hence, K.B. Witness is asked to step down).

Later on resumed on SA

15. It is not true that I did not go to my office on 09/03/07. I went by the government car from my house to the office. I used that car regularly. Its number was probably 555. it is not true that I had not gone to the office from 9th to 12/03/07. I used to sign on the log book of the vehicle whenever I used it. I used to make common signatures for 8-10 visits. Entries used to be made in the log book whenever I used it and were not made when I did not use it. Witness volunteers – the collector did not have only one vehicle at his disposal. I am not ready to produce any record to show that any other vehicle was used

by me on 9th to 12/03/07. Witness volunteers – Collector has office at his residence also. I do not remember whether I signed the order at the office or at the residence.

16. The proposal file is not brought to the court. I do not remember whether officer Patil of the ATS informed me in the documents or in the discussion that chargesheet is filed in the court. I do not remember having asked this to him. I do not remember whether copy of chargesheet was sent with the proposal. I am not concerned whether filing of chargesheet was important or not. I knew as a general knowledge that chargesheet is to be filed within 90 days as per the provisions of the Code of Criminal Procedure and within 180 days as per the MCOC Act. I knew that without consent order the accused cannot be prosecuted under the provisions of the Explosive Substances Act. I knew that chargesheet is required to be filed for prosecuting the accused. I did not give any direction for filing chargesheet against the accused as it was only a consent order. I do not remember whether the police had informed me at any time that chargesheet is filed in this case.

17. There are different kinds of offences under the

Explosive Substances Act. It is true that I am required to specify in the order the provision of the Explosive Substances Act under which the offence alleged falls. It is true that it was not the case of the police that there was an attempt to cause explosion.

Q. Whether it was the case of the police that there was making or possession of explosive substances under suspicious circumstances?

A. The case of the police was that these people were found in possession of explosive substances. This is my answer to the question. I had given consent for whatever had already taken place.

Q. Did you accord consent for possession or making of explosive substances under suspicious circumstances?

A. I accorded sanction for being found in possession of explosive substance.

It is not true that I did not accord consent for abetting the offence of explosion. It is true that I did not mention the individual sections in the consent order. I accorded consent for all the penal sections, 3 to 6. I had gone through the provisions of law to ascertain which of the provisions would be applicable. Section 3 is in respect of causing

explosion. Section 4 is in respect of attempt to cause explosion, making or keeping explosive substance with intent to endanger human life. Section 5 is in respect of possession of explosives under suspicious circumstances. Section 6 is in respect of abetment. I remember having given such consent twice including this one. I do not exactly remember whether I granted the consent for all four sections.

18. The existence of common conspiracy being informed by officer Patil was not an issue that was specifically discussed between us. It was revealed in the discussion as well as documents that some more arrested accused were involved in the incident. I do not know whether reasons are required to be given if consent is refused. It is not specifically mentioned in the order that consent as against six accused was not given and the reasons are also not given. I do not know whether there is any authority that can question my decision about refusing to give consent. I do not know further course of action if consent is refused.

19. It is not true that the order, schedule and table were prepared by the ATS and brought to my residence for my signatures

and without perusing the documents I signed them, that therefore, there are similar similarities and dissimilarities in my order and the other orders. As Collector and District Magistrate I am supposed to protect the interest of the district and state. I have to interact with different departments of the government and coordinate with the police department. I was aware that the ATS was formed specially for handling the terrorist cases. I was knowing that their jurisdiction is throughout the state, that status of police station is given and that they are given special training. It is not true that I obliged the ATS being impressed with its status, that the blast at Mira Road was done by a group of boys by name Indian Mujaheedin as per the claim made by the DCB CID.

No re-examination.

R.O.

Special Judge

Date:-23/11/2011

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