

M.C.O.C. SPECIAL CASE NO. OF 21/06**DATE: 7th July, 2010****EXT.No.466****DEPOSITION OF WITNESS NO.18 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Nivrutti Bapurao Kolhatkar
Age : 42 years
Occupation : Service (API attached to HQ, Thane)
Res. Address : 201, Omkareshwar, Sector-21 Nerul, Navi
Mumbai. -----

EXAMINATION-IN-CHIEF BY SPP RAJA THAKARE FOR THE STATE.

1. In 2006 I was attached to police station Kurla as API. I was deputed to ATS on 17/07/06 as additional help in the investigation of the Western Railway bomb blasts. I was appointed at the office of ATS, Kalachowki unit. Different squads were formed for making the investigation in the bomb blasts. On 19/07/06 I was appointed in the squad investigating CR No. 77/06 of Mumbai Central Railway Police Station alongwith Sr. PI Tajane and PSI Kadam. On that day we three went by air to Patna, Bihar. Sr. PI Tajane met Sr. SP Kundan of Patna and told him about our visit and requested

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him to give help for going to Basupatti, Dist. Madhubani in Bihar and he also requested for a vehicle. He gave us a PSI and some constables of Police Station Kotwali of Patna and a vehicle. On the

same day at about 8.00 pm we started for Basupatti. We reached at about 2.30 am. We went to the local police station and PI Tajane informed PSI Rajan who was there about our visit and asked for assistance and told him the names of the two suspects whom we had come to arrest as Kamal Mohd. Vakil Ansari and his accomplice Khalil Aziz Shaikh. We confidentially enquired where the two suspects reside and whether they are in the village. We came to know that they were not in their house and that there was a possibility that they would come home. Therefore, PI Tajane and the local PSI and we laid a trap in the market area on the road going to the house of suspect Kamal Mohd. Ansari.

2. At about 4.00 am two persons came walking from the road leading to Basupatti and upto the place where we had laid the trap. PI Tajane accosted them and asked them their names. He signaled us and we surrounded them. PI Tajane told us that they were the two suspects whom they were searching. As it was necessary to take their searches before arresting them, the local PSI called two panchas. PI Tajane asked the panchas their names and addresses

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and also asked the suspects their names and addresses. PI Tajane told the suspects who we were and why we were taking them in custody. Kamal Mohd Ansari was searched. A mobile was found in his search. A panchanama of the search was prepared. He was asked the number of mobile. He told it as 9934610679. The dialed calls, received calls and the missed calls were seen and the numbers

were noted in the panchanama. The mobile handset was opened, the battery number, sim card number and IMEI number were noted. Cash amount of Rs. 460/- was also found with him.

3. Thereafter the second suspect, Khallil Aziz was searched. One mobile was found with him also. He was also asked the number of the mobile, which he told as 9934027715. It was verified. The dialed, received and missed calls on his mobiles were noted in the panchanama. The handset was opened and the battery, sim card and IMEI numbers were noted. All the articles found with both the suspects were packed and sealed and seized under panchanama.
4. I will be able to identify the mobiles (Ld SPP requests for opening a yellow coloured parcel bearing CR No. 77/06 addressed to the DCP, ATS, Nagpada, Mumbai by the Computer Forensic Division, Hyderabad. On opening the parcel it is found to contain three Nokia mobile handsets and one Reliance mobile handset

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bearing the labels of the laboratory pasted on the backside bearing no. CAH-38/042/06 Ext.M1,M1-SIM to M4 and M4-SIM, except the M3 which does not have SIM. They are shown to the witness. Witness identifies the Nokia mobile handset bearing the label marked as Ex-M1 and Ex-M1-SIM). This mobile handset was found with Kamal Mohd. Ansari. (The mobile handset is marked as **Art-37)**. (Witness identifies the Nokia mobile handset bearing the label marked as Ex-M2 and Ex-M2-SIM). This mobile handset was found with Khallil Aziz Shaikh. (The mobile handset is marked as **Art-38)**.

The yellow envelope with sponge lining is marked as **Art-38A**. The panchanama was started at 4.00 am and was over at 4.30 am on 20/07/06. Contents of the panchanama were dictated by PI Tajane and I wrote it. PI Tajane signed it. The panchanama now shown to me is the same, it is in my handwriting and its contents are correct. (It is marked as **Ext.467**). It bears the signatures of PI Tajane, the two panchas and the two accused as they were given carbon copies. Out of the two suspects, one is present before the court. (Witness points to the accused no.1 sitting in the dock, who is made to stand up and tell his name, which he states as Kamal Ahmed Mohd. Vakil Ansari.) He was the same person.

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5. After the panchanama was over, Kamal Ahmed was asked about his house and he told us that it was just near the vegetable market. Thereafter, we all went to his house, it was closed from inside. Kamal Ahmed knocked on the door and gave a call. A woman opened the door. He said that she is his wife. PI Tajane told her that we had taken Kamal Ahmed in our custody for the purpose of investigation and asked her permission to search the house. One panch out of the earlier two panchas was with us. Another panch was called. We asked the woman and the accused whether they wanted to take our searches. They declined. We explained the purpose of the search of the house and then searched it. There were four-five small children and an old woman. After opening the door there was a small passage and thereafter a room which was 10x12 feet. There was

another room on the first floor. In the room on the ground floor, there was a table, a green coloured landline telephone on the table, a cot, a suitcase, a tin box and household articles and kitchen articles. There were empty oil tins below the cot and old clothes. There was a polythene bag, the opening of which was tied in a knot. On opening the knot we saw black coloured powder. We asked Kamal Ahmed about the powder but he could not give satisfactory answers. It was about half kg

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weight. I suspected the powder to be explosive substance. Approximately ten grams powder was taken as sample. It was put in a plastic pouch and the pouch and the polythene bag were sealed and labels containing signatures of panchas were affixed. We put both these articles in a plastic jar having a cap, which was in the house. The cap of the jar was put in place and tied by thread running from the bottom and over the jar and on the cap from four sides and the cap was sealed and a label containing the signatures of the panchas and PI Tajane was pasted on it. It was taken in possession.

6. Then we went to the room on the first floor. There were household articles and a wooden cot. We did not find anything suspicious in that room. A panchanama was drawn, it was written by PSI Kadam and dictated by PI Tajane. The panchanama was over by about 5.30 am. A carbon copy was given to the accused. Thereafter, alongwith the seized articles and the accused, we went to the Police Station Basupatti and made entries. Thereafter, I was with the

accused in the police station and the other officers had gone to the village of the other suspect and searched his house but did not find anything suspicious. Entries were taken in the police station and then we all went to Patna. We made entries in Kotwali

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Police Station, Patna. PI Tajane told me to take the suspected explosives substance by road to Mumbai and he and PSI Kadam took the two accused to Mumbai by air. On 22/07/06 I reached Mumbai at 9.00 pm. I handed over the seized suspected explosive substance to ACP Shengal and made entry in muddemal register at sr. no. 39/06 in the office of the ATS at Kalachowki. ACP Shengal had sent the sample of the seized suspected explosive substance to the chemical analyzer and report of the chemical analyzer was received and it showed that it was RDX. Therefore, I registered a complaint against accused Kamal Ahmed Vakil Ansari with PI Tajane as the explosive substance was found in the house of the accused. The complaint was registered at zero number because the RDX was found in Bihar. I requested PI Tajane to send the original papers and the explosive substance to Police Station Basupatti, Dist. Madhubani in Bihar. I had given the complaint on 05/09/06. It is the same now shown to me, it bears my signature on three pages and its contents are correct. (It is marked as **Ext.468**, subject to objection by Ld Adv Shetty on the ground that it is not an FIR u/s 154 of the Code of Criminal Procedure but is a statement u/s 161 of the Code of Criminal Procedure). I will be able to identify the jar. (Ld SPP requests for opening a box which

is

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closed by brown cello tape. It contains a green envelope bearing the CR No. 102/06 of Police Station, Basupatti dated 09/09/07. Its mouth is closed by pins. There are seven thermocol pieces inside the box. On opening the envelope it is found to contain a plastic jar with a violet cap tied by thread from all sides from top to bottom and having a label pasted across the cap and a label in the middle describing CR No. 77/06 of Mumbai Central Railway Police Station, ATS, Mumbai M.M No. 39(1)/2006. It is shown to the witness). The plastic jar is the same. (It is marked as **Art-39**, the thermocol pieces are marked as **Art-39A(1 to 7)**, the box is marked as **Art-39B** and the green envelope is marked as **Art-39C**).

(Adjourned for recess).

(Y.D. SHINDE)

Date : 07/07/10

SPECIAL JUDGE

Resumed on SA

7. (SPP requests to open a sealed envelope at sr. no.2 of list Ext.16A. The envelope is a sealed envelope bearing the printed name of Forensic Science Laboratory, State of Maharashtra, Mumbai referring to Police Station ATS, CR No. 77/06, Mumbai Central Railway. On opening it, it is found to contain a small

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khaki envelope, which is closed by staple pins and which has thread on three sides and two seals and a white label on one side containing

the description of CR number and the contents of the envelope. On opening the staple pins, a plastic pouch in which there is a small one plastic bag containing black powder is found. Witness is shown the articles). The plastic pouch is the same and the powder is similar to the powder that was seized. The label on the envelope contains the signatures of PI Tajane and the panchas. (The powder in the small plastic bag is marked as **Art-40**, the small plastic bag is marked as **Art-40A**, the plastic pouch is marked as **Art-40B**, the envelope is marked as **Art-40C** and outer envelope is marked as **Art-40D**). The forwarding letter signed by PI Rathod and the CA report is the same now shown to me. (The report of the CA is marked as **Ext.469**).

8. On 9th or 10/10/2006 I and API Varpe were sent to Basupatti, Madhubani district for the purpose of investigation. At Basupatti I recorded the statement of accused no.1's wife Tabassum Sultana and had collected telephone and electricity bills.

Cross-examination by adv. Mokashi for A/1, 4, 5,6.

9. It is true that I was a junior member of the investigating team and I had superiors. It is true that information with respect to

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investigation is first received by seniors. I cannot say whether the seniors share the information so received with the junior officers if he thinks fit and it is not binding on him to share the information with the juniors. It will be correct to say that on 19/07/06 photograph of the accused no.1 was not received by me. I cannot say whether similarly it was not with my seniors. It is true that I did not have the description

of the accused no.1 and his address, but PI Tajane had told me that we were to go to Patna, Bihar. It is true that I personally did not have the exact information about the accused no.1. PI Tajane alone went inside the office of Sr. SP, Patna. It is true that I do not know what talk they had inside the office, but PI Tajane told me afterwards that he had asked for help.

10. My name was mentioned in the station diary entry when we left Mumbai. It is true that flight details are not mentioned in the station diary entry. It is true that there is no mention in the station diary about taking any vehicle to Bihar. It is true that the description of the accused alongwith his photograph is also not in the station diary. It is true that *en route* to Bihar, PI Tajane did not give the description of the accused no.1 or his photograph. (Ld Adv for the accused submits that he will cross-examine further

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tomorrow after receiving the copies of the examination-in-chief.)

Hence, adjourned to 08/07/2010.

Date:- 07/07/10

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

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11. It is true that it is necessary for a person traveling by air to have his boarding pass and ticket with him. However, if the ticket is a common ticket for more than one person, it may be with one person. It is true that I did not have a return ticket by air from Patna to Mumbai of any date. It is true that when we were traveling to Patna, we were aware that we are going for the investigation of a serious crime. Basupatti is about 250-300 kms from Patna. I cannot say whether Basupatti is a backward village. It is not true that I made this statement as I we had gone there at 2.30 am in the night and we could not have a look at the village. We had gone in a private jeep brought by the police of Patna, from Patna to Basupatti. It is true that the village was lonely when we reached there.

Q – Is it true that as the village was lonely when we reached, we could not make inquiry about the accused with anyone?

A- I personally did not make any inquiry, the other officers made confidential inquiry.

My seniors and the local police had gone and inquired there. We had made an entry in the Basupatti Police Station that we had

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come there for the purpose of making inquiry about the two persons, i.e., the accused no.1 Kamal Mohd. Vakil Ansari and Khalil Aziz Shaikh. I do not know whether these two persons reside in the jurisdiction of two different police stations. It is true that these two person do not reside on one address. One panchanama in the house of the accused no.1 was prepared in my presence but the second panchanama of the other person was not prepared in my presence. I know that it was prepared in village Malmal which is a different village. Malmal and Basupatti are two different villages. I cannot say whether Malmal is in the jurisdiction of another police station. I came to know the road leading to Basupatti when I reached there. It is not true that it was pitch dark in the village when we reached there and there were no public lights. It is true that there was less traffic on the road. It is correct that I did not have any identification details to recognize any person coming towards us. It is not true that the local police did not know the identification of the persons whom we had gone to search. It is not true that accused no. 1 and the other person Khalil Aziz Shaikh had not come to the market place on that day. It is

not true that we did not seize mobiles from them, that at 4.00 am there was no panch present. It is not true that I do not have

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knowledge about Bihari as it is spoken in Bihar. I understand it to some extent. I cannot converse with a person in Bihari. It is true that Maithili language is spoken in Bihar. Accused no.1 was not arrested at 4.00 am. It is true that I did not personally have paper and carbon to write the panchanama at that time. No notings were taken before writing the panchanama. It is true that the panchanama Ext. 467 does not bear the signatures of the local police officers and other staff. It is true that other than the mobile, I did not find any incriminating article with the accused no.1. It is true that accused no. 1 did not have any identity card in his name. It is true that we took the accused in our custody to his house. We did not make any entry in the police station that we have found the persons for whom we were looking and we were going to his house. It is true that I did not personally inform the superior officers at Mumbai about finding the persons.

12. It is not true that the house of the accused is 4-5 klms from the market place of Basupatti. We 5-6 persons had entered the house of the accused, including the local police. It is true that I do not have knowledge about handling explosives. It is true that I do not know how to identify explosive substance. I cannot say whether black cement, black charcoal powder, black tooth powder and RDX

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prima facie look identical. It is true that I do not have the expertise to identify whether a black powder is an explosive. It is not true that on that day we did not find any black powder packed in a polythene bag weighing approximately half kilograms in the house of the accused no.1. We all suspected the black powder to be explosive substance, therefore, there was no question of I telling the local police that the black powder is possibly an explosive substance. It is not true that the local police persons did not find anything objectionable about the powder. It is true that the local police did not take the powder in their possession. It is not true that the plastic jar Art-39 was not in the house of the accused no.1. It is true that the jar Art-39 appeared to be new. It is true that I had not carried a small plastic bag to take sample of 10 grams. I did not immediately personally inform the local police station or my superiors at Mumbai about finding the suspected explosive substance. Local police station officer was with us and after taking the black powder and preparing the panchanama, we had gone to the police station and made entry, therefore, there was no question of informing the local police about the seizure of the powder and arrest of the accused. It is true that the panchanama of the seizure of the powder and the arrest of the accused does not

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bear the signatures and stamp of the local police officers.

13. It is true that I was not with the other officers in the return journey as we all in the team suspected the powder to be explosive substance. As it was suspected explosive substance I carried the jar

with me. I did not give the jar in the possession of my immediate superior in my team, PI Tajane, but gave it in his presence to ACP Shengal. After receipt of CA report, I gave the complaint.

14. It is not true that there is an allegation against me by the Mumbai police that I participated in a party as I was close to an underworld criminal gang. It is true that there is a departmental inquiry against me, DCP Salvi, ACP Wani and others about attending a party. I do not know whether D.K.Rao and Farid Tanasha (deceased) were present in that party. It is true that because of that allegation I am presently under suspension. It is not true that I did not do any act as deposed by me and I deposed falsely on the say of my superiors. It is not true that I planted the 10 grams RDX. It is not true that we had not seized half kilograms RDX.

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Cross examination by adv Salunkhe h/f Wahab Khan for A/2, 7, 10 and 13

15. Declined .

Cross examined by adv P.L Shetty for A/3, 9, 11 and 12

16. I had written all that had happened and the steps that we took when I wrote the panchanama and nothing remained to be written. The mobile number told by the accused was verified by dialing it from our mobiles. I cannot say from which mobiles the mobile numbers 9934610679 and 9934027715 were dialed. I do not

remember the number of my mobile at that time. I do not remember the exact mobile number of PI Tajane, but the end digits were 8800 or 0088. I do not remember whether other than the complaint Ext.468, my any other statement was recorded. It is true that it is not written in Ext. 468 that we verified the two mobile numbers. It is true that it is not written in the complaint Ext.468 that we verified the two mobile numbers. It is true that in the list of missed calls in the two mobiles written in the panchanama, there is no number of any police officer. We had first checked the calls on the mobiles when we seized them. (Witness volunteers)-then the battery was removed and battery numbers and the IMEI numbers were noted and then again battery was inserted and

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missed call was given to verify the numbers. This is not mentioned in Exts.467 and 468. The fact of packing and sealing the articles found with the accused was written in the panchanama Ext.467. On reading the panchanama I say that this fact is not mentioned in it. It is not written in Ext.468 also.

17. I am using mobile since 7-8 years. It is true that details of the calls dialed, missed and received, like the date and time can be ascertained from the instrument itself. It is true that the dates and times of the dialed, received and missed calls in both the mobiles are not mentioned in the panchanama.
18. A sample of the black powder was sent to the CA on 29/07/2006 at Kalina, Mumbai. I do not know when the CA received it

and who had carried it. I saw the report of the CA in September, 2006, but I do not remember the exact date. I now again say that I saw it on 05/09/2006. I saw it in the Kalachowki unit but I do not remember who showed it to me. From the date the accused was brought to Mumbai, I was involved in the investigation of this crime with the ATS. The ACP of ATS involved in the investigation of this crime used to sit in the Kalachowki office. I was not going through the case diary of this case every day upto 05/09/06. No one instructed me to give the complaint. I do

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not remember whether I came to know when the CA report was received in our office. (Ld adv for the accused asks the witness to go through the CA report and say when it was received). The report was received on 11/08/2006. I was not the investigating officer of this case. I was a member of the investigating team. It is true that I had not seen the case papers of investigation from 11/08/06 to 05/09/06. It is not true that as there is delay in giving the complaint, I am deposing falsely that I did not see the case papers of investigation from 11/08/06 to 05/09/06.

19. I did not give a written report to Police Station Basupatti or to the Sr. SP., Patna about finding the suspected explosive substance. I do not know whether my senior officer gave such a report. Sr. PI Tajane was the senior officer. PSI Kadam who was with us, is junior to me. I do not know whether PSI Kadam gave such a report. My statement was not recorded by Sr. SP, Patna or Police

Station Basupatti. Station diary entries were made in Police Station Basupatti in between 7.45-8.00 am by the SHO of that police station. I did not sign the entries. I do not know whether Sr. PI Tajane Signed. We took the copies of the station diary entries. I cannot tell the name of the officer of Police Station Basupatti who made those entries. The PSO of that police station was a PSI. He

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did not record my statement. I do not know whether he did not record the statements of the others in our team. After going to Patna we did not go to the office of Sr. SP. I did not give any statement at Police Station Kotwali, Patna. I cannot say whether no member of my team gave statement there. The SHO of that police station did not ask me to give my statement. I did not voluntarily give my statement upto 05/09/06 after returning to Mumbai, about my suspicion that the black powder is an explosive substance.

20. There were houses adjacent to the house of the accused no.1. I did not take the statements of the woman in the house or of the neighbours. One of the panchas of the first panchanama was with us, second panch was called by local police. Even for the first panchanama, panchas were called by local police. PI Tajane typed the contents of Ext. 468 as narrated by me. It is true that all that had happened in our visit to Patna and Basupatti was within the knowledge of PI Tajane. Upto 05/09/06 PI Tajane had not told me to give statement about our visit. The name of the first panch in Ext.467 is Rameshwar Sunder Purve. He was taken for the second

panchanama also. The second panch Ashok Kumar was not present at the time of the second panchanama. As Ashok Kumar

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left after the first panchanama, he was not taken for the second panchanama.

21. The accused no. 1 was not arrested at Basupatti. He was arrested at Patna on 20/07/06. It is true that he was not arrested when his mobile was seized upto the time we went his house.

Q-As he was not arrested at that time, there was no question of informing him in what connection he was arrested?

A-He was taken in custody in connection with the investigation at that time.

The word 'arrest' is used only when a person is arrested. It is true that there is a difference between arresting a person and taking a person in custody for the purpose of investigation. I do not remember whether it happened that after the mobiles were taken in possession, the accused was taken into custody for further investigation after explaining him the grounds of his arrest. It is written in Ext.468. It is correctly written.

(Adjourned for recess).

Date:- 08/07/10

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

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Resumed on SA after recess

22. The officers who had gone to the house of Khalil Aziz Shaikh returned after about one hour and fifteen minutes or one hour and thirty minutes. During this period I was at the Police Station Basupatti. It is not true that no RDX powder was found in the house of accused no.1 on 20/07/2006 and it is planted on the accused no.1. (Cross examination on behalf of A/8 deferred in view of order to the Registrar (S) for appointing an advocate from the Legal Aid Panel to defend him till he appoints private advocate as per his submissions.

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

Date:- 08/07/10

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Date : 13/07/2010

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