

**M.C.O.C. SPECIAL CASE NO. OF 21/06****DATE: 19<sup>th</sup> July, 2010****EXT.No.510****DEPOSITION OF WITNESS NO.26 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Rahul Sachidanand Singh  
Age : 38 years  
Occupation : Service  
Res. Address : D.M's. Residence, Bhagalpur, Bihar.

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

1. At present I am posted as Collector and District Magistrate at Bhagalpur, Bihar. From 29/06/2006 to 15/03/2008 I was Collector and District Magistrate at Madhubani, Bihar. As a part of my designated duty I am required to accord sanction for prosecutions under the Arms Act and the Explosive Substances Act. Basupatti Police Station was under the jurisdiction of Madhubani district. I recollect having given a sanction under the Explosive Substances Act in connection with a crime of Police Station Basupatti. It was concerning a person by name Kamal Ansari. The order now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.511**). The Dist. Supdt. of Police, Basupatti had sent the proposal for according sanction. It was accompanied with the copy of the FIR and other documents. (Witness requests permission to refer to the papers with him. Permitted.) The crucial document was the report of the FSL, Mumbai, which said that Cyclonite (RDX) and charcoal are detected in the exhibit, Exhibit contains about 85% RDX and 15% Charcoal, (RDX is used as high explosive). I was satisfied that a *prima faice* case was made out for according the sanction as the contraband explosive was found in the house of the accused without licence.

2. On 14/06/07 I received a similar request from ATS, Mumbai. The proposal was accompanied by similar documents and an order of the Supreme Court transferring the entire FIR of Basupatti Police Station of recovery of RDX from the house of the accused to the Special Court under the MCOC Act. It was also reported that the RDX recovered from the house of the accused Kamal Ahmed Vakil Ansari was a part of the larger conspiracy involved in the said bomb blast. (Ld Adv Mokashi for the accused requests for furnishing copy of the letter from which the witness has read out the contents. Prosecution is directed to furnish copies of the letter). On the basis of the documents alongwith the proposal, I accorded the consent on 15/06/2007 for prosecution under the Sanction 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.512**).

**Cross-examination by advs Mokashi for A/1, 4,5 & 6**

3. (Ld Adv requests for time to go through the document for cross examining the witness. Time granted. Witness is asked to step down).

Date: 19/07/10

Special Judge

**Resumed on SA**

4. It is not true that Bihar police had no role to play in the first proposal. The seizure of the alleged RDX was done in the presence of the Bihar police. I cannot say whether Bihar police did not take any action in respect of the alleged seizure at the time of the seizure. I did not probe into this aspect *vis-a-vis* the alleged seizure. (Ld Adv Shetty for the accused has submitted that the consent order Ext.512 is not the original order as it does not bear the signature of the witness below the main order. On inquiry the witness states that the copy forwarded to the ACP of ATS is signed by him and the office copy that bears his signature below the main order is with him. Witness submits that the original order is not with him). Draft order was put up before me for approval. I am not suggesting that the

author of the draft order was someone other than me. I have the draft order with me. (Witness shows a document that is in his file to the Ld Adv). There is only one document of the final consent order and not two documents. I did not call the concerned officers of Police Station Basupatti to understand the issue, before grant of the consent order.

5. I was not aware as to when the officers of the ATS, Mumbai had come to Madhubani. It is true that even after the incident of the alleged seizure of RDX, no information was given to me. It is true that save and except the report of the FSL, I had no other material before me about the seized powder being RDX. It is not true that I did not take any pains to understand the issue after reading the report of the FSL. It is not true that I granted the consent order mechanically and without applying my mind. I did not get the sample analyzed from any government Forensic Science Laboratory in Bihar before grant of the sanction. It is not true that I got swayed by the report of the ATS, Mumbai, therefore, I gave the consent. It is not true that as the offence was portrayed as a serious offence, I gave the consent order.
6. It is true that the power to grant sanction/consent is bestowed on me by a notification. It is true that the consent order does not bear the details of the notification. It is not true that I have not ensured compliance of the provisions of the Explosive Substances Act.
7. It is not true that when the proposal came from the ATS, Mumbai I was not aware of the matter. It is not true that because I had granted the first consent, I granted the second consent mechanically. It is not true that there was no change in the proposal sent by the ATS over the proposal given by the Bihar police. I had a discussion with an ATS officer before giving the consent. It is true that I cannot tell the name and the designation of the ATS officer with whom I had a discussion. It is true that there is nothing on record to show that I had some discussion. Once a

draft is approved I put my signature. I put my signature on the original consent order. Original consent order is not retained in my office. It will not be correct to say that the copy which is retained in my office does not bear my signature below the main order but it only bears the word 'sd/-'. This means that my signatures should be on all the documents at the appropriate places wherever they are required. It is not true that Ext.512 is not the original order. It is true that it does not bear my signature below the main order.

Adjourned for recess

**(Y.D. SHINDE)**

**Date:- 19/07/10**

**SPECIAL JUDGE**

**Resumed on SA after recess**

**Cross-examination by Adv P.L Shetty for A/3, 9, 11,12,**

8. I was appointed as a Collector and District Magistrate for the first time on 05/07/2004. I was posted at West Champaran district. I do not remember in how many cases before 22/01/2007 I gave consent for prosecution under the Explosive Substances Act. However, I had given consent. I had given the sanction orders under the Arms Act earlier. I cannot say in how many cases I have given them. It is true that giving consent for sanction is not a mere formality. It is necessary to apply the mind before giving consent or sanction. I passed the order Ext.512 on 15/06/2007. On 14/06/2007 the proposal with the papers were put up before me for the first time. The order Ext.512 does not indicate this. It is true that the text of the order does not contain the date of passing it, i.e., 15/06/2007. My office has the official seal. It is true that Ext.511 and Ext.512 do not bear my official seal. It is required. It is my understanding that official seal is not required. There is no directive or circular either way that an official seal is required to be put or not on such an important order. In normal correspondence it is not the practice of

my office to affix the official seal but if certain order is passed as a quasi judicial authority, I affix the seal. It is not true that the orders Ext.511 and Ext.512 are not normal correspondence. The State Government had not authorized me to give consent. There was no delegation by the State Government but there was delegation by the Central Government. I do not remember when that order of delegation was passed and when I received it. There is no specific order in my name, therefore, I cannot produce it. The Act contains the delegation. The delegation is under Section 7 of the Explosive Substances Act. Beyond this provision there is no other order.

9. Before granting the consent I have to be satisfied about the *prima facie* commission of the offence. I have the authority to give consent about the offences committed within my jurisdiction. The first proposal, i.e., from the Bihar police was placed before me on 05/01/2007. The District Supdt. of Police Amrit Raj had placed the proposal before me. It will be correct to say that till that date I was not officially aware about the seizure of the black powder from Basupatti. The portion that I have now marked in red ink as pointed out by you, is the material in the order Ext.511 to show my subjective satisfaction about the commission of the offence. My subjective satisfaction is correctly reflected in two lines starting from the word 'Prativedan' and ending with 'Pramanit hota hai'. In these two lines the exact section of the Act of the offence is not written. It is true that it is kept blank. I say that the report on which I have passed the order is the material for passing the order. The report was dated 04/01/2007. I have that report with me now. (Ld Adv asks the witness to handover the report for his perusal and the witness hands over the file to him).
10. ATS, Mumbai had given a draft consent order with the proposal to me. I made some corrections in that order. I do not remember them. It is in the file with me. I have not made any corrections on that document. It will be correct to say

that the last paragraph on the first page and continued on the second page is my subjective satisfaction. It is true that the exact section of the offence and the particular Act is not mentioned in that paragraph. This paragraph is correctly recorded by me. Except the minor grammatical mistake, there is no other mistake in paragraph. The words 'of justice' means 'of law'. It is not true that this shows that there was absence of application of mind on my part.

11. The signatures in the two red encircled portions no.1 that I have now made and as pointed out by the Ld Adv, at the end of Ext.511 is probably by a head clerk. The signatures in the two red encircled portions no. 2 that I have now made and as pointed out by the Ld Adv at the end of Ext.511 are by the Dy. Collector, incharge of the legal section. Both the signatures appear to be dated 19/01/2007. The two words in the two red encircled portions no. 3 that I have now made as pointed out by the Ld Adv at the end of Ext.511 are 'upper Samaharta', i.e., Addl. Collector. I do not remember who was the Addl. Collector at that time. The writing of the designations in the three circles are by one clerk. I cannot tell the name of the clerk. It is true that the endorsement in between the encircled portions shows that copies of this order were issued on 22/01/2007 to various authorities. The endorsements are prior to the date on which I put my signature. It is not true that the order is not passed by me but by my subordinate or colleague. Ext.511 is the original order. The handwriting in the order is not mine. I cannot say whose handwriting it is. In the last paragraph of the order, the writing in black ink is not in my handwriting. It is true that the handwriting in blue ink differs from the handwriting in black ink in the order. It is not true that because of the so called lapses pointed out in the order Ext.511, the original order Ext.512 is not produced. It is not true that I passed the orders without applying my mind and I only signed on papers put up before me by my subordinates. It is not true that the order Ext.512 is prepared by the ATS, Mumbai and I just signed it.

**Cross-examination by Adv Wahab Khan for A/2,7,10 &13**

12. It is true that consent formats are available in the office. It is not true that there is no format in the office of refusing consent. The seizure was effected on 20/07/2006. It is true that if there is any doubt I can call for explanation from the concerned officer. I cannot say whether no document was prepared at the local police station on 20/07/2006. The FIR was registered in Police Station Basupatti on 09/09/2006. There was no document in the proposal given by DSP, Madhubani that the article was seized by the local police station. Our state language is Hindi. Within our state the correspondence is in Hindi. If any other state asks for translation of a Hindi order, it is sent. It is true that the order Ext.511 is for the prosecution in Bihar. Copies of the order were sent to the C.J.M., Madhubani, the A.C.J.M., Jhanjharpur, officer incharge of Police Station, Basopatti and the District SP. I do not know whether any final report was filed by Police Station Basopatti. I won't know whether I am not authorized to accord sanction for an accused outside Bihar. ATS, Mumbai did not request specifically for an order in English. As the Supreme Court transferred the FIR of Police Station Basopatti to Mumbai, I did not hand over the order Ext.511. There was no direction by the Supreme Court to issue sanction order to ATS, Mumbai. It is true that the form of the consent orders Exts.511 and 512 are different.

**Cross-examination by Adv Mokashi h/f S.D.Erande for A/8**

13. (Cross-examination by Advs. Mokashi, Shetty and Wahab Khan-adopted).  
(Ld SPP requests that the witness be directed to produce the office copy of the order signed by him and which is in his file, because it was asked about in the cross-examination. Ld adv Mokashi submits that prosecution cannot be permitted to fill in the gaps or lacunas which are opened during the evidence of the witness. Ld Adv Shetty submits that the request of the Ld SPP is not covered within the parameters of re-examination. When Ext.512 was produced it was

within the knowledge of the prosecution.

In my humble opinion, as the prosecution is not saying that Ext.512 is not the original order, there is no question of producing its office copy that is in the file of the witness).

**Re-examination by Adv Raja Thakare for the State**

14. Q- In the light of the answers given by you in the cross-examination about Ext.512, can you explain the words 'sd/' below the main portion of the order?

(Ld Adv Shetty submits that this question is again not covered by the requirements of re-examination and prosecution knew about the document and it is not something new that has cropped up in cross-examination. Ld Adv Mokashi submits that the witness is a highly qualified administrative officer and he knew the meaning of the questions that were put to him and the implications of the answers that were put to him. Therefore, in the re-examination prosecution cannot be permitted to fill up the lacunas.

In my humble opinion, considering the tenor of the cross-examination pertaining to the document Ext.512, an ambiguity can be said to be there about the document Ext.512. Hence, the question is allowed).

A- The practice in our state is that the office copy of the main order is signed and copies are issued to the concerned authorities and memorandum below the main order is signed. The copy issued is treated as original. There is no difference in the matter of Ext.512 and the office copy of it.

**Re-cross-examination by Adv Shetty for A/3, 9, 11 and 12**

15. It is true that the word 'sd/' is used below the copy of the order. The typist in the Collectorate typed Ext.512. I do not remember his name. I cannot say at what time it was typed.

Q. Ext.512 is not signed by you or your subordinate as a true copy?

A. It is signed by me as it is the original.



I cannot say after how much time after passing the order, Ext.512 was prepared. It is true that I signed in black pen. The words 'memo no. 116' refer to the entries regarding sending copies to the SP, Madhubani and to ATS, Mumbai. The corrections in the word 'referred' and in the last line in the matter of the memo just above my signature must have been done by the dealing clerk before I put my signature. The copies were issued after I put my signature. I have not put my initials on both the corrections. It is not true that I gave a false and deliberate explanation to the question by the SPP and I purposely suppressed the original order.

**Re-cross-examination by Adv Mokashi for A/1, 4,5 & 6 and h/f Erande for A/8**

16. It is true that the word 'copy' is used for the copy of the order forwarded to ATS.

Q- Will it be correct to say that the original order signed by me below the main order is not sent to the ATS, Mumbai?

A- As I clarified, the order containing the signature below the main order remains in the office.

It is not true that I have improved my version after the recess time.

**Re-cross-examination by Adv Wahab Khan**

17. Declined.

**No re-examination.**

**R.O.**

**Spl. Judge  
Date:- 19/07/10**

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