

M.C.O.C. SPECIAL CASE NO. OF 21/06

DATE: 9th September, 2010

EXT.No.579

DEPOSITION OF WITNESS NO.40 FOR THE PROSECUTION

I do hereby on solemn affirmation state that:

My Name : Arvind Kumar Singh

Age : 50 years

Occupation : Jt. Comm. Of Customs

Res. Address : B-1, Customs & Central Excise Colony, Katrak Road,
Wadala(W), Mumbai -31

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

1. I am working as Jt. Commissioner of Customs & Central Excise Department. I joined in 1987 as Supdt./Appraiser in this department. In 2006 I was working as Assistant Director in the Enforcement Directorate of Government of India, Zonal Office, Mumbai.
2. There were a lot of news about the railway bomb blast in 2006 and while going through the news items, we came to know that police had seized some foreign currencies, viz., Saudi Riyals from the residential premises of some persons. One of my officers Sanjay Tripathi was deputed and he went

to the office of ATS and discussed with them regarding the seizure of the foreign currency. Thereafter on 04/08/2006 the Special Director of E.D. wrote a letter to the Jt. Commissioner, ATS for furnishing the case details regarding the seizure of the foreign currency and for handing it over. We came to know that the accused are already arrested. In fact, we wanted to interrogate the accused and take over the currency. Then we moved the concerned court at Mazgaon and prayed for an order. On 18/08/2006 an order was passed by the Addl. CMM, 2nd Court, Mazgaon, Mumbai, allowing us to interrogate the accused and to take over the currency. I now shown the memo of the order. (It is marked as **Ext.580**). (The witness is referring to the documents in the file with him).

3. We took this order to the ATS on 21/08/2006 and requested them to allow interrogation of the accused Mohd. Faisal Aatur Rehman Shaikh from whose residence 15,000/- Riyals were recovered and seized by police. The accused was in police custody and we requested the ATS officers to shift him to a separate room for his interrogation. Accordingly he was shifted to another room and I along with my two officers interrogated him in that separate room. People used to come for supplying tea and snacks inside the room. They were not barred from entering. We wanted to interrogate the

accused for the purpose of the violation under Foreign Exchange Management Act, 1999 (the FEMA). After we get an information about foreign exchange violation, we open a file and after we gather the intelligence about it we again open another file. In this case we opened the Investigation File No. T-3/77-B/2006.

4. We thought that the accused may not be knowing English, therefore, my officer started writing the headnote in Hindi but after talking to him we came to know that he is very fluent in English and he was also willing to give his statement in English. While recording the statement under the FEMA we administer oath. Therefore, in this case I administered the oath to him and then asked him about the seizure of the foreign currency. We start with the bio-data and full personal details of the person. We told him that he should give a true and correct statement and that it can be used against him under any other law. Then we started with his personal details. He himself volunteered to write his statement. He wrote about his family background, members of his family. We asked him about his profession and what he was doing for so long. He told that he was a bright student upto S.S.C. and passed with good marks. After that he became a dropout in polytechnic as he failed there and he became a member of SIMI and came in contact with

members of SIMI. He stated that he had visited foreign countries four-five times. Two times he had gone to Pakistan, once to UAE, once to Iran and some other middle-east country. I asked him about the purpose of foreign visits. He told us that first time he visited Pakistan through land border and met some people of extremist outfits like Lashkar-e-Toiba. He had visited many places in Pakistan during his first visit. He told us that he had gone to Muzafarabad where there was a training camp. He told us that during his second visit, he had gone there through some other route and at that time he took an elaborate training in terror camps organized by militant organization.

5. Then we asked about the foreign currency part, because we were basically concerned with it. On that point he told us that he was getting money from one Azam Cheema through Rizwan Dawre who was based in UAE and via hawala mode. The money that was recovered from his house was a part of that. If such type of channel is there, we go deep into the mode of transactions. He then told us that he received the money through his cousin sister Khaleeda. He also told that the money recovered from the house of Abdul Rehman Daware, amounting to Saudi Riyal 11,200/- was also sent by Rizwan Dawre for him. After that we asked the motive as to what for he was getting the money. Then he told us that he was using this

money to give it to other young people for going to Pakistan for arms training, etc., being imparted to such young youths from India.

Question by SPP – Did he tell the names of the persons whom he had sent for training?

Ans- He told the names of Sohail Ahmad, Dr. Tanveer Ansari, Ghaswala, etc., He told the names of four-five persons and it is a matter of record as it is written in the statement.

(Ld SPP has asked the witness as to how long the statement took on that day.

LD Adv Wahab Khan objects to this question on the ground that it is a leading question. In my opinion, it is not a leading question because it does not suggest any answer). It took about 5-6 hours on that day to write his statement. However, it was not completed on that day. I informed the ATS by letter on that day that we could not complete it and we would come on the next day. The letter now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.581**).

6. On 22/08/2006 accused was to be produced in the court, therefore, we could not record his statement on that day. On 23/08/2006 we were busy in some other matter. Therefore, we continued his statement on 24/08/2006. On that day we got the earlier statement confirmed by the accused and then

we continued further interrogation broadly regarding hawala transactions. We gathered that the terror financing network was, that Azam Cheema used to send money to Rizwan Dawre in UAE, Rizwan Dawre used to send the money through hawala to Faisal, either through his cousin sister or through some other people. That way he admitted his violations under the FEMA. He gave all the details of money transactions and that resulted into issuance of show cause notice by Enforcement Directorate to Faisal, his sister and Abdul Rehman Dawre, from whose residence 11,200/- Riyals were recovered. I took the foreign currency seized by the ATS, total amounting to 26,200/- Riyals was taken over and seized by Directorate of Enforcement. The Directorate of Enforcement on completion of investigation of the FEMA violation has issued a show cause notice to Faisal, his sister Khaleeda and Abdul Rehman Dawre. I am producing a certified true copy of the notice which was issued by my Deputy Director Sameer Bajaj. I am also producing the complaint filed by my successor I. Vikraman. The action was taken on the basis of investigation that we had done and the copies of the documents are of the documents maintained in the ordinary course of our official duties. (Notice is marked is marked as **Ext.582** and complaint is marked as **Ext.583** subject to objection by the ld advs).

Q-How did the statement end?

A-It ended with the remark of the accused that it is recorded without any fear, threat or coercion and that the statement is voluntary. He also wrote that during the recording of the statement no police officer was present. On 24/08/2006 after the statement was completed, I again gave letter to the ATS that we have completed the statement and if necessary we will again come for interrogation. The letter now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.584**). I have brought the original statements with me today. The zerox true copies in the court record are as per the original statements. (They are marked as Exts. **585 (1&2)**). (At the request of the Id advs, the original statements are kept in the record upto the cross-examination and will be returned thereafter to the ED as per their application Ext.578).

7. The first page has the signature of the accused Faisal at the bottom. The statement was written by the accused and signed by him in my presence. His handwriting starts from the third paragraph on the first page starting with the words 'I am as above'. On the second page, below the first three lines, on the left side there is a signature of accused Faisal below the words 'oath taken' and on the right side is my signature below the words 'oath

administered'. On all the pages of both the statements at the bottom the accused and I have signed and he has also signed on all corrections.

8. We have recorded the statements of Mrs. Khaleeda and Abdul Rehman Dawre in connection with the receipt of hawala payments from overseas. Mrs. Khaleeda has confirmed the statement given by Faisal regarding receipt of hawala payments via Rizwan Dawre. She also confirmed that such type of money was being received by her through hawala and was given to Faisal or his brother Muzzammil. Abdul Rehman Dawre in his statement confirmed that Rizwan Dawre had sent the money through other than normal banking channels for giving to Faisal.

Q.- How did you confirm that Mrs. Khaleeda and Abdul Rehman Dawre were talking of the same accused Faisal?

A-We showed photographs of Faisal to both of them and they put their signatures on confirmation.

I have brought their original statements with me in court. The zerox true copies now shown to me are as per the originals. The originals bear my signatures and signatures of those persons. (The zerox true copies of the statements of Abdul Rehman Dawre is marked as **Ext. 586(1&2)** and the statement of Mrs. Khaleeda is marked as **Ext.587**). (At the request of the Id

advs, the original statements are kept in the record upto the cross-examination and will be returned thereafter to the ED as per their application Ext.578).

9. I can identify the accused Faisal. (Witness points to the accused no.3 who is sitting in the dock. He is made to stand up and tell his name, which he states as Faisal Aatur Rehman Shaikh). ATS officers recorded my statement in this connection.

Cross-examination by Advs Rasal for A/1 and 4 to 6 and P. L. Shetty for A/3, 8, 9, 11,12

10. (At the request of both advocates for time to cross examine the witness, the cross-examination by them is deferred till next date).

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

11. I have gone through the complaint Ext.583. I don't think that I had any talk with my successor I. Vikraman about the complaint. I had prepared the draft complaint before I was transferred. I was transferred to another department, i.e., Customs Department on 02/06/2009. I have the case file with me. The draft of the complaint is in the file. (Ld adv has asked the witness whether he can give the draft for inspection. Ld SPP objects on the ground that the witness should be asked to produced the document on

record and then the document can be read. To my mind, the document can be asked to be handed over for inspection and if contents therein are referred, further action will follow. Witness hands over the draft of the complaint to the Id adv.). This draft complaint was prepared as per my record. I am ready to produce it. (Witness is directed to produce a zerox copy signed by him as true copy. The true copy is marked as **Ext.588**). I have not gone through the provisions of the Code of Criminal Procedure. Police custody as per my interpretation means under the control of police. A person is in jail custody when he is in judicial custody. I have visited the jail in this case on two occasions. I do not remember whether I met the accused Faisal in jail. I do not remember whether I inquired with him on the two occasions that I had gone to jail. I did not examine him and record his statements on two dates, i.e., 21/08/06 and 24/08/06 in the jail. It is so written in the draft complaint Ext.588 and in the true copy of the complaint Ext.583. It is true that if the officer who has prepared the draft complaint is transferred, the officer who files the complaint subsequently goes through the papers of investigation and verifies.

(Adjourned for recess)

(Y.D. SHINDE)

Date:- 09/09/10

SPECIAL JUDGE

After recess resumed on SA

12. The authority to whom the complaint was filed is a judicial authority under the law. Process was issued on the basis of complaint.

13. As per the permission granted by the court, I visited the jail and interrogated the accused. The court had granted the permission to interrogate the accused wherever he was.

Q- Did you visit any jail?

A-I visited the place where the accused was in the custody.

I only know about Arthur Road Jail.

(Ld Adv asked the witness to go through his file and state as to on what date he went to the Arthur Road jail). I had visited Arthur Road Jail in connection with this case but in respect of other accused. I did not personally go to the Kalyan District Prison or Thane Central Prison in connection with this case but my colleagues might have gone. It is not true that there is no record as to what transpired during the inquiry by my colleagues. I cannot say which accused I interrogated in Arthur Road Jail on the basis of the file that is with me now and I want some time to tell about it. I may have visited once or

twice for may be different accused. I cannot give their names today and I cannot identify them. I went there to interrogate them and to record their statements. I do not remember whether I prepared any writing about apprising the accused of his rights and the preliminary warnings. No such document is in the file that is with me today but I remember that I had given a notice to the jailer, that the accused had been called before me and he refused to give statement. The documents about it might be in the office of the E.D. At Thane and Kalyan jail also, the accused had refused to give any statement. The documents pertaining to it are not in the file that is with me now. Before my transfer, no show cause notice was given to these accused for their refusal to give statement. It is not usual to issue show cause notice or prosecute the person who refuses to give statement. I did not inform the accused Faisal that if he refuses to give statement he will not be issued show cause notice or that he will not be prosecuted. I do not know whether it is a right of a person to whom notice is given for interrogation and statement, to keep mum. I was not aware whether the Saudi Riyals were recovered from the personal possession of accused Faisal or at his instance. I was not aware whether he was in police custody when the recovery was made. I was not aware whether the Saudi Riyals were recovered from the personal

possession of Abdul Rehman Dawre or Mrs. Khaleeda or at their instance. I am aware that ATS police maintain record in the form of station diary, movement register and muddemal register about seizure of properties. I visited the ATS office twice in connection with this case. I do not remember whether the ATS officers showed me the seized foreign currency. I do not remember whether ACP Patil was present there on both the occasions. I had met 3-4 officers and I presumed that one of them might be the investigating officer. I do not remember whether I asked the ATS officers to show me the foreign currency. I saw the foreign currency for the first time at the time of drawing panchnama and taking it in my possession.

14. I do not remember whether any ATS officers showed me the station diary or the muddemal registers on 21st and 24/08/2006. I on my own did not ask for inspection of such registers. ATS is the common name given to the unit. I do not remember whether any ATS officer claimed that he has seized the foreign currency. I did not make inquiry as to which particular officer had seized it. It is not necessary that the person who seized the foreign currency is an important witness for the the FEMA case. No officer of the ATS who effected the seizure was an important witness. No officer volunteered to give statement. I did not summon any officer to give

statement. I did not record the statement of the panch witnesses that I used. I did not record the statement of any panch witness in my case.

15. As per the investigation, the location of Rizwan Dawre was in UAE. UAE is the collective name for small countries in the gulf region. As per the papers of investigation, Rizwan Dawre was in Jeddah. I do not know what is the prevailing currency in Jeddah. Riyal is the currency of UAE. I do not know whether all the member countries are using Riyal as their currency. If a person comes from a foreign country with foreign currency, he has to declare it at the customs.

16. I had read my statement recorded by the police. I do not remember the name of the ATS officer who recorded my statement. On 21/08/06 I met the ATS officer and I informed them that I had recorded the statement of the accused. I did not give copy of the statement of the accused to them. They did not ask for the copy. I did not state to the ATS officer on 21/08/2006 all that I had done. I do not remember whether they did not make any inquiry in that regard. I do not remember whether police recorded my statement on 21/08/06. After completing the statement on 24/08/06, I met the ATS officers. I do not remember whether my statement was recorded on that day. I did not give copy of statement given by the accused

to them on that day. I do not remember whether I had gone to the ATS officer on 24/09/06 and obtained the custody of accused Faisal and after apprising him of my visit I record his statement.

17. ATS police recorded my statement only once but I do not remember the date. After a month or so it was recorded. I will have to check the record to say whether it was recorded on 11/10/06. On going through the record I say that it was recorded on 11/10/06. I read my statement dated 11/10/06 today before giving evidence. A copy of the statement is in my record. No one give it to me today. I do not remember whether it was given to me on 11/10/06. I required 10-15 minutes to go through the statement. I read it to refresh my memory with respect to dates. Till today I did not find that the ATS had recorded my statement wrongly and there is a big mistake. It did not happen that for the first time our office received letter dated 07/11/06 from ATS requesting to take action against accused Mohd. Faisal under FERA and the FEMA for possessing Saudi Riyals. I did not tell the ATS police when I gave my statement about this. If it is so written in my statement then it is wrong. (Witness is confronted with the relevant portion from his statement. Hence, it is marked as 'A'). The reason why it is so written is that it is a typing mistake because the letter was dated 07/08/06. I

realised that it is a typing mistake today when it is pointed out to me. When I read it at the office of the ATS, I did not realise it. In the morning today when I read it, I realised it. I did not feel it necessary to tell about this mistake to the court. I did not realise any other mistake or incorrect statement till now. It did not happen that I had gone on 24/09/06 in the morning to the ATS office, taken the custody of the accused Mohd. Faisal and recorded his statement. I have not stated so when I gave my statement. If it is so written in my statement then it is wrong. (Witness is confronted with the relevant portion from his statement. Hence, it is marked as '**B**'). The reason is that it is a typographical error. I came to know of it just now.

18. I do not remember whether I was carrying my official round seal. I do not remember whether I used my official seal at the ATS office. It is true that when the accused was produced before me, he was not carrying any pen, paper, rubber, etc. It did not happen that the statement was recorded on one date and signatures were obtained on some other dates. The first two paragraphs in the statements are not in my handwriting. Then the paper and pen were handed over to the accused. The very same pen was used for concluding the statement and signing by me and the accused. Paging was done with the same pen. (Witness is shown the original of the statement

Ext.585(1 & 2)). It is true that the contents, the paging and the signatures are in three different coloured inks and pens.

19. We consult our Deputy Legal Advisor at Delhi and local departmental counsel if there is any difficulty about understanding any legal aspects. It is true that it is necessary to write about apprising the person of his rights before recording the statement under the FEMA or FERA. Before making the statement to us the person has a right to consult his lawyer. I did not apprise the accused Mohd. Faisal about this right. I was having this knowledge.

(Cross-examination is deferred till 13/09/2010)

Date:- 09/09/10

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

Date: 13/09/2010

RESUMED ON SA

20. It is not true that it was for the first time that I had recorded a statement under Section 37 of the the FEMA. I may have recorded about ten

statements before the statement in this case. I was appointed as Assistant Director in the Enforcement Directorate in June, 2005. I was on deputation from June, 2005 to October, 2006. As far as I understand, while recording the statement under Section 37, I have the powers of a Civil Court. I do not know whether I can file complaint against a person for refusal to give statement or for giving false statement. I do not know whether if a person is summoned for giving statement, he cannot be excused from giving it. I do not know that a person is bound to answer questions whether the answers may be incriminating or not. I have not gone through the provisions of Section 132 of the Indian Evidence Act or the guidelines given by the High Court in the Criminal Manual or Section 164 of the Code of Criminal Procedure. The statement recorded under Section 37 of the the FEMA, as per my understanding, can be used in proceedings other than under the FEMA and for perjury. I do not know the legal provision about it but as per the common practice I say so. I do not remember in how many cases such practice had been followed.

21. In case of any legal difficulty, I take time from my superiors or I take time to reach any decision. It is true that the accused does not have this right. I did not inform the accused that he can take some time to

consider whether he wants to give his statement before me or not. The offences under the FEMA are compoundable. The punishment under Section 13 of the FEMA is imposition of maximum penalty of three times the seized amount and its forfeiture. No punitive punishment is provided. I do not remember whether I was not aware of the rights of the accused.

22. The letter that was given by my office to the ATS O.W. No T-1/103-B/2006 is not yet shown to me from the court record. I have brought a copy of that letter. My predecessor Sanjay Tripathi had filed the application before the Addl. C.M.M. As far as I remember, it was filed on 18/08/2006. I do not remember whether the order was passed even before the application was filed. I now again say on going through the papers in the file, that the application was filed on 14/08/06. I do not remember whether any advance notice was given to the accused or his advocate. I do not remember whether the court gave notice to the accused or his advocate. I do not remember whether copy of the application was served on the accused or his advocate. It is true that there was no prayer in the application for exclusive custody of the accused. It is true that the court also did not pass such an order. It is true that we did not apply to the court for specific permission to record the statement of the accused nor the court gave such specific permission. It was

not our prayer that we wanted to interrogate the accused in police custody. It is true that the entire statement of the accused does not show that it was recorded in police custody and the place where it was recorded. It is true that on page 2 of paragraph 4 of the draft complaint and the final complaint, it is mentioned that we had applied for permission to interrogate the accused in the jail and permission was granted. The permission was not granted on 21/01/08. It is so stated in para 5 of the draft and final complaint. The contents of the draft copy and the final copy are correct. I have not retained any part of the statement with me. The original bio-data is not filed with the statements. I took up the investigation of this case from 17/08/06. When I recorded the statement of the accused, I had with me his statement recorded by the ATS officer. I do not remember how many pages it was. Copy of the statement is with me now. It is of seven pages prepared on computer in Marathi, which I do not understand. I did not get it translated. A copy of the statement was given to us as per the court's order Ext.580. I do not remember whether we were having two copies of the statement. I do not remember whether pursuant to the court's order, the ATS officers gave the copy of the statement. The statement recorded by ATS is dated 29/07/06.

23. It did happen that I asked the accused to give statement in

compliance to the order passed by the Magistrate. The memo dated 18/08/06, as far as I understand, is the order of the court permitting me to interrogate the accused. The court had not directed the accused to give statement to me. The letter from the ATS dated 07/08/06 was received in my office on 09/08/06. I cannot give any reason for not filing the application in the court upto 14/08/06. I cannot assign any reason why I did not take the memo of the order from the 14/08/06 to 18/08/06. I do not remember why I did not give the memo to the ATS from 18th to 21/08/06.

24. It is true that when I went to the office of ATS on 21/08/06, the order of the court and my file was with me. ATS office is about 45 minutes by vehicle from my office. I did not give a letter to the ATS officers about providing separate room for exclusive custody of the accused. I did not give any letter to handover exclusive custody of the accused. Before 21/08/06 I had not met the accused. I do not remember whether I had met the ATS officers before 21/08/06. I do not remember what documents I showed the accused before recording his statement. I had not shown the statement recorded by the police to the accused. I asked about seven-eight questions to the accused. They were important. I do not remember how many questions were introductory. I did not write the questions in the

statement. (At the request of the witness, he is permitted to go through the statement). The most important question on 21/08/06 that I asked the accused was regarding his foreign visits and the source of foreign exchange. ATS officers and we also were in plain clothes. For a common man there is no difference between an ATS officer and me. I informed the accused that I am not an ATS officer and I have no concern with the ATS. It is not written in the statement. I informed him that I am not concerned with the investigation by the ATS. I did not write it in the statement.

25. (Witness is asked about the name of the newspaper in which he had read the news about the seizure of foreign currency. On his request he is permitted to go through his record). The news item had appeared on 01/08/06 in the Free Press Journal, Mumbai Edition. It was with regard to the train blast and the investigation done by the ATS. I reached the ATS office sometime before 1.00 p.m on 21/08/06. I cannot tell the exact time. I had no talk with the ATS officers before the accused was brought. I may have gone to the office about half an hour before I started recording the statement. ATS officer produced the accused before us. It did not happen that the accused appeared before me. Two people brought him inside and there were two armed guards outside moving around. I did not ask for the

photograph of the accused nor it was given by the ATS. We took the photograph of the accused. One of my officers by name Bandekar, the Chief Enforcement Officer took the photograph by his mobile on 21/08/06 or 24/08/06 and it was printed. I do not remember having taken any permission from the ATS about taking photograph or having informed them. It is not true that only on the basis of the photograph I identified the accused in the court.

26. I started interrogation of the accused at 1.00 p.m. We started writing the statement after 15 minutes. It is true that the time of commencement and conclusion of the statement on both days is not written in the statements. There were four chairs and a table. There was a door of grills and one window. The two armed guards were in the gallery. Accused was brought inside the room by two ATS officers after we had gone in that room. This is not mentioned in the statement. It is not necessary to give a certificate below the statement about it being recorded voluntarily and without fear. I had informed the ATS officers that I want to take statement of the accused. It is true that on 21st and 24/08/06 the accused was in the custody of the ATS. I did not think it necessary and advisable to take the accused to my office. I did not think that the accused would be under some

pressure of the officers of the ATS. It is not true that we did not forward the copy of the statement to the ATS. It was forwarded on 02/10/06. It is true that it was my first occasion to record the statement of an accused in the custody of ATS. I do not remember exactly whether I had recorded the statements of any accused in jail custody. I had asked the ATS officers whether the accused is in police custody or in judicial custody. I did not feel it proper to wait for taking the statement of the accused till he was sent to judicial custody.

27. It is not true that after 24/08/06 I was not called by the ATS.

Witness volunteers - I had gone to collect the currency. It is true that ATS did not themselves call me to the office after 24/08/06. I did not go to the ATS office thereafter except 25/09/06. Police did not give me notice under Section 160 of Cr. P. C. They took my statement in my office. I did not visit any spot for the purpose of investigation of the case under the FEMA. When the accused was produced before me, he was a person who had violated the provisions of the FEMA. The number of the file or the case is not written in the statement. It is true that there is no endorsement on the statement about my superior officers having seen it. We did not ask the accused when he was arrested and since when he was in police custody. I did not ask the accused

as to whether he knows as to why he was brought before me but I told him myself.

28. It is true that the place where I recorded the statement of the accused is not mentioned in my statement. It is not true that before the Addl. C. M. M. permission was sought for interrogating the accused in custody, but in the draft compliant and in the final complaint the word 'jail' is used. It is not true that the accused did not give his statement voluntarily, that two officers of my department were not with me but they were ATS officers, that the ATS officers dictated the accused to write what they said, that the accused did not give any statement before me, did not sign before me and I signed on the statement in my office.

Cross-examination by Adv Shetty for A/3, 8, 9, 11 and 12

29. Chief Enforcement Officer A. P. Bandekar and an Asistant Enforcement Officer Sanjay Chaddha were with me when I went to the ATS office on 21/08/06. It is true that the official communication that was received from the ATS for the first time, was by the letter dated 07/08/06 received on 09/08/06 by my special director. It is not true that before 09/08/06 we did not take any action or cognizance about the incident of seizure of foreign currency. The action that we took is that on 01/08/06, we

opened a file No. T-1/103-B/2006 and recorded the information regarding seizure of foreign currency. On 02/08/06 my predecessor officer Sanjay Tripathi went to the ATS office to discuss about the seizure. On 04/08/06 we officially wrote a letter to the Joint Commissioner of ATS to handover all the documents, statements and foreign currency. One K. Nageshwar Rao was our Special Director at that time. The letter dated 04/08/06 is the first communication by us to the ATS. In that letter we had asked the ATS to furnish copies of seizure memos, the statements of the accused recorded during investigation and other documents. Before that day seizure of foreign currency from Dawre's house was already made. I did not ask the ATS officers to provide copies of remand applications of the accused and the orders of the court thereon.

30. I do not remember the names of the ATS officers with whom I conversed on 21/08/06. I do not remember whether I collected the facts of the case from that officer. Officer Bandekar is a Maharashtrian. He was originally Supdt of Central Excise and was on deputation in the E. D. Officer Sanjay Chaddha was of the E. D. Department. Bandekar is a Marathi person but I do not know whether his mother tongue is Marathi. I do not know whether he could read and right in Marathi. Officer Chadha does not know

Marathi, he is a Punjabi. Officer Bandekar might have known Marathi. We did not receive any other reply other than the letter dated 07/08/06 from the ATS. (Witness requests permission to refer to his file. Permission granted). along with the letter dated 07/08/06, we received copies of arrest panchnama of the accused Mohd. Faisal, statement of the accused, house search panchnama of the accused, statement of Khaleeda Iqbal Shaikh, statement of Abdul Rehman Dawre, recovery panchnama of Abdul Rehman Dawre and remand application of the accused. Before 21/08/06 I did not have occasion to go through all these documents. I did not go through the documents accompanying the letter. The file was marked to me on 17/08/06 and I got all the documents of the file on that day itself. After receiving the documents on 09/08/06, there was no special action of taking cognizance by my office.

(Adjourned for recess)

(Y.D. SHINDE)
SPECIAL JUDGE

Date:- 13/09/10

After recess resumed on SA

31. After 17/08/06 upto 21/08/06 I did not go through the documents accompanying the letter of the ATS. Officer Bandekar was not a member of the investigation team. He was taken as an extra hand for the

purpose of interrogation. He was with us on 21st and 24/08/06. If we go out of the office for search or interrogation, we are normally provided with an officer from some other team and he is called as an extra assisting officer. He was not with me when I recorded the statements of Abdul Rehman Dawre and Khaleeda Iqbal Ahmed Khan. Sanjay Chadha was with me on these occasions. On 17/08/06 when the case was marked to me, I and Sanjay Chadha were the only two officers assigned to this case. There is an order to this effect dated 17/08/06 by the order of the Special Director. I and Sanjay Chadha were assigned the task of investigating this case. Till 21/08/06 I did not feel it necessary to go through the record sent by the ATS. I do not think that Sanjay Chadha went through the record. Before 17/08/06 the file was handled by my predecessor Sanjay Tripathi, Sanjay Chadha and the Special Director Nageshwar Rao. Upto 21/08/06 I may have had a discussion with the Special Director. Upto that day I was well aware of the basic facts of the case. Upto 25/09/06 I had no occasion to see the seized foreign currency. I did not ask the police and they did not produce the Saudi Riyals before me on 21/08/06 and 24/08/06. Same is the case when I recorded the statements of Abdul Rehman Dawre and Khaleeda.

32. I and Sanjay Chadha completed the investigation of this case.

Other than the statements of the accused and the two persons, I did not record the statement of any other person. I do not know the name of the officer who effected the seizure of the Saudi Riyals from the accused and from Abdul Rehman Dawre and Khaleeda. I do not know the names of the panchas on the panchnama of seizures. I did not make any efforts to find out whether the house from which the seizure was made was belonging to the accused Faisal or not. I did not feel it necessary to call the panch witnesses of both searches for interrogation and recording their statements. I did not feel it necessary to record the statement of the owner of the house from which the search was effected on 28/07/06. I totally relied on the police papers and the statements given by the accused, Abdul Rehman Dawre and Khaleeda.

33. For the violations of the provisions of the FEMA, we do not take custody of the person and do not produce him before the court. The adjudication proceeding is pending before the Deputy Director, Enforcement, Mumbai Zonal office, Nariman Point. I am not sure whether show cause notices are served against the persons against whom the allegations are made. I will have to check that from the E.D. office. Apart from Smt. Khaleeda, no other family member of the accused was called for

interrogation and statement in the FEMA case. His father was called in money laundering case. I had called him and I had recorded his statement more than once. The investigation is still pending. Even after going through my files, I cannot say when I had called him for the first time and when he was called last. I had retained his passport on 07/03/07. There were two passports, one's period had expired and the other was a current passport. I had retained both. The case against the father of the accused is pending. His passport was not returned upto June, 08 when I was in that department. One Shanmugham is present officer who is incharge of that case. I had no discussion with him about that case after I was transferred.

34. The office of the ATS where I had gone was in the area of Bhoiwada. The building may be two storied, because I went to the first floor. There were about four-five rooms on the first floor. All of them were having iron grill door, i.e, straight parallel iron rods. I do not remember about windows. The room where I had gone was 200 or 300 sq. fts. The room in which I met the ATS officers was one of the rooms on the first floor. I do not remember the exact number of the officers and constables who were in that room. There were about two or three rooms in between both the rooms. All the rooms were connected to a common gallery like the gallery

outside this court hall. On 21/08/06 I left the ATS office at about 7.00 p.m. In between 10.30 and 7.00 p.m. we had meals, snacks and tea. I did not have meals, snacks and tea with the police officers. I had snacks and tea with the accused. I do not remember exactly but snacks and tea were taken two or three times.

35. I could very easily see the armed policemen pacing the gallery of that room. There were rooms on one side of our room only. The ATS policemen were also passing by the door every now and then. I do not know whether there was passage on the other side of the room. The toilet was in one corner of the floor. I cannot say whether it was by the side of the room where I had met the officer. I had gone to the toilet once or twice but I do not remember about the accused.

36. It is true that the statement of a person under Section 37 of the FEMA is to be recorded without the person being under the influence of the police. Therefore, I am required to issue summons to the said person. I served the summons on the accused in this case at 1.00 p.m. and immediately I started recording the statement. Summons were sent by post to Abdul Rehman Dawre and Khaleeda. (Witness seeks permission to go through his file. Permission granted). I cannot tell the dates on which

summons were served on them. It is true that I did not hand over the copies of the three summons in this case to the ATS officers. Till today they have not taken them from us.

37. I did not get an opportunity to see what was on the ground floor. As per the order of the court I was given the exclusive custody of the accused. According to me accused was in my exclusive custody. I am not aware whether there were two separate court buildings within walking distance from the ATS office and that Bhoiwada Police Station is about 25 feet from the ATS office. I do not know whether Bhoiwada Police Station building is just adjacent to the entrance gate of the ATS building. I did not see the ATS office. I had gone to the building where the accused was. Till today I am not aware where the ATS office is and I had never visited it. I served the memo of the court's order on the officers of the ATS on 21/08/06. I went to serve the summons and to record the statement in the ATS custody in Bhoiwada. That place was under the control of ATS. I do not know where the ATS office is actually situated. I did not personally give any prior intimation to the ATS officers that I am coming on 21/08/06 before 1.00 p.m. There were other accused in other rooms but I cannot tell their numbers. They were in rooms somewhere in the backyard, however, I did not go there.

The accused was brought within half an hour after I met the officers in the room where we were sitting, then I served the summons on him and started recording his statement. I cannot tell the name of the officer who recorded my statement, perhaps he may be Patil. He was amongst the officers whom I met on 21st and 24/08/06 but I do not exactly remember. By face I do not remember any officer. I do not remember whether I met the officer who recorded my statement, once or twice before that day. I did not tell the ATS officers to provide an independent place for interrogating the accused. On their own also they did not provide any independent place. I did not suggest the police to make arrangements to take the accused to my office for interrogation.

38. I cannot tell the name of the officer who typed my statement and took out the printout of my statement. It was not the officer who took my statement. It is true that I read it while it has being typed on the computer and also when the printout was taken out. On 11/10/06 I did not find any mistake in the statement, therefore, I confirmed it. Apart from the mistakes in the dates at two places in the statement, I have not found any other mistake. The mention in my statement that I visited ATS office on 21st and 24/08/06 is correct. This portion as well as my evidence that I did not

go to the ATS office, both are correct.

(At the request of the ld adv at 4.30 p.m., cross-examination is deferred till tomorrow.)

Date:- 13/09/10

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

Date: 14/09/2010
RESUMED ON SA

39. On 09/08/06 when the communication was received from the ATS by my office, the accused was in police custody. On that day I did not have any knowledge as to on what date and for what period he was remanded to police custody. I had inquired on 21/08/06 and had come to know that the accused was remanded to police custody upto 22/08/06. I do not remember till what date the accused was to be in police custody when I went to record his further statement on 24/08/06. on 21st and 24/08/06 I had the knowledge that the accused was under investigation in some case of anti-

national activities. I do not know for what offence and under what law the investigation was going on.

40. Before taking a statement under the FEMA, the serving of summons and administering of oath are mandatory under the Act. In this case the issuance of summons was not necessary because there was court order. The court did not prohibit us from serving the summons. The court did not direct us for taking the statement without serving the summons. There is no notification or government order saying that it is not necessary to serve the summons if there is court order. No provision of any law or of the FEMA says that if there is court order, there is no necessity of serving summons. Whenever the court grants custody for making investigation and taking statement, the procedure and the rules are to be strictly followed. While recording the statement in this case, I have followed the provisions of Section 37 of the FEMA. Other than these provisions I had no other provisions of any other law in my mind while recording the statement. The contravention of the provisions of the FEMA are compoundable under Section 15 of the Act on the application of the person. I do not know whether once an application is made by a person for compounding, the adjudication authority has no choice but to compound it.

41. The first two paragraphs in Ext.585(1) in Hindi and English are in the handwriting of officer Sanjay Chadha. The next paragraph upto page 2 is in the handwriting of the accused. The contents of the paragraph are written by the accused on his own. The contents of the subsequent statement consists of answers given by the accused to seven or eight questions and also his voluntary statement. I did not feel it necessary to record the questions that I asked the accused. After going through the statement I can say at what stage and what questions I had asked. At page 3 of the statement before the last line I had asked the question as to what his brother and father do. At page 4 before the eighth line I asked him as to what he did when he left Proline showroom. I could point out the stage at which I asked the questions because a particular sentence starts with the words 'on being asked'. Apart from this, there is no record to show what questions I asked. It is true that from page 2 to page 11, the entire statement is in one paragraph. Similar is the case in the second statement. The words 'oath taken', 'oath administered' and the name of the accused and my name below on page 2 of part I and on page 1 of part II are written by Sanjay Chadha and I only signed it. That was the stage when I administered the oath to the accused and he started writing his statement below it. Section 37

of the FEMA provides that statement should be recorded after administering oath. After the accused started writing the statement, there was no occasion for me to give any guidance or explain the provisions of law to the accused. It is not true that the words on the first page in the last three lines starting with the words 'I shall be punished-upto-correct statement here blow' are as per my dictation. Same thing is with respect to the matter in part II of the statement.

42. It is true that there is no statement and no record to show that photograph of the accused was taken by the mobile of the officer Bandekar. It was taken after a discussion and on my direction. (I am now shown the statement of Abdul Rehman Dawre Ext.586(1&2). The first paragraph in Ext.586(1) was written by Sanjay Chadha. I do not remember who wrote the first paragraph in Ext.586(2). The second paragraphs in both parts were written as per my direction. After completion of the second paragraphs in both parts, the oath was administered. The words 'before me' are in my handwriting and the words 'oath taken' are in the handwriting of Abdul Rehman Dawre. I do not remember who administered the oath on these occasions but it might have been on my behalf by some officer. At the time of the part- I, it was Sanjay Chadha who administered the oath. I do not

remember who did it at the time of part-II. It is true that it is not mentioned that Sanjay Chadha or anyone else administered the oath. I am saying that Sanjay Chadha administered the oath, out of my memory. It is true that in the second paragraphs of both the parts, it is not mentioned that the statement is being made after taking oath and swearing in the name of god. It is true that it is not mentioned that oath was administered. Apart from the photograph of the accused that my colleague took, I did not have any other photograph. I do not remember on what date and from which laboratory the photograph was printed. At present I have no record to show that the printout of the photograph was taken. I may have to ask the concerned officer Bandekar. The entire file that I have with me now does not have it. I do not remember how many printout copies of the photograph were taken. It was a coloured photo. The photograph that was taken from the mobile of Bandekar was shown to Abdul Rehman Dawre and Khaleeda. To my knowledge only that photograph was shown. It depends on the camera whether the date and time of taking the photograph is displayed on the photograph. I did not see the date and time on the photograph of the accused taken by officer Bandekar. (Witness is shown the original printout of the photograph attached with the statement Ext.586(2). There are some figures on the

photograph and they may be timings. I cannot say whether they denote date and time. A copy of the photograph is not part of the statement of Khaleeda Ext.587. Out of the words 'identified as Mohd. Faisal Ata-ur-rahman Shaikh' at two places below and by the side of the photograph in Ext.586(2), the words in blue ink are written by Khaleeda and the words in black ink are written by Abdul Rehman Dawre. These writings are not endorsed by me. (Ld Adv calls upon the prosecution to produce the original photograph of the zerox copy that is at page 219 of Volume-III (F). Ld SPP submits that to the original statement of Khaleeda, copy of the photograph is not attached, but it is attached to the original statement of Abdul Rehman Dawre).

43. (Witness is shown the statement of Khaleeda Ext.587 and its original). It is true that with the original statement, the zerox copy of the photograph of the accused is not attached. It is attached with the court copy. It is true that the zerox copy of the photograph attached with Ext.587 does not bear the endorsement of any of the officers of our department. It is true that along with the original statement of Abdul Rehman Dawre, there is a coloured print out photograph and there is one black and white zerox of the photograph. It is not true that the black and white zerox of photograph does not bear the endorsement of Abdul Rehman Dawre. However, it does not

bear the endorsement of Khaleeda. I do not remember which officer took the endorsement of Dawre. It was at my instance. It was obtained in my presence. My signature is below the endorsement. Below my signature is the date 15/09/06. There are two signatures of Dawre. One is dated 15/09/06 and the other is dated 08/03/07. (Witness requests permission for going through his file. Permission granted). I understand that the signature dated 08/03/07 was made by him when he may have come to the office again on that day and was again confronted with the photograph. I cannot say which officer obtained his signature. It does not show in whose presence it was obtained. It is true that the copy of the photograph along with Ext.586 (2) does not bear the second signature of Dawre dated 08/03/07, which is on the copy of the photograph with the original statement. It is true that the photograph along with Ext.586(2) bears the date 08/03. It is true that the document containing the coloured photograph and the document containing its zerox are different documents. It is true that the second part of original statement of Dawre consists of pages 224, 223 and 222, whereas the coloured photograph page is bearing page no. 140. On 08/03/07 Abdul Rehman Dawre had come for statement. (Witness requests permission for going through his file. Permission granted). I cannot say whether the statement was

recorded by me.

44. The original statements of the three persons were not sent to the ATS. The authenticated zerox copies were sent. It is true that the black ink endorsement below the coloured photograph and the two signatures below it appear to be in one ink. It is true that the dates below my four signatures on Ext. 586(2) are overwritten. Earlier I had written the date 14th and then I corrected it to 15th. It is not true that there is overwriting in the figures denoting the month '09'. It may be that the figure '10' was made '09'.

45. I think Abdul Rehman Dawre is a computer engineer and Khaleeda was a teacher. It is true that in the particulars of Dawre and Khaleeda at the beginning of their statements, their occupation and qualifications are not mentioned. Khaleeda was headmistress in Cummo Jafar Suleman Girls High school. I do not know whether it was English medium school or Urdu medium school. She was SSC, D.Ed as per the bio-data which I am referring. The bio-data is not part of the statement. ATS did not ask for the bio-data of all the three persons.

(Adjourned for recess)

Date:- 14/09/10

(Y.D. SHINDE)
SPECIAL JUDGE

After recess resumed on SA

46. The documents were supplied to the ATS on 03/10/06. I do not know when they received it. The Special Director Nageshwar Rao sent the forwarding letter. My predecessor Sanjay Tripathi had given the application on 14/08/06 to the Addl. C.M.M. I do not know whether copy of the order passed by the Addl. C.M.M. was obtained. The application by Sanjay Tripathi was not as per my direction. (Witness is shown Ext.580). The third prayer was made in the application. Some of the documents as per that prayer were already received along with the letter dated 07/08/06 by the ATS. (Witness requests permission for going through his file. Permission granted). One more statement of the accused along with 'Chaukasi form' was received from the ATS afterwards. I cannot tell the date when it was received. The statement was dated 29/07/06. I cannot tell the name of the police officer who recorded it because I cannot read Marathi. The statement was prior to the letter dated 07/08/06. I cannot say whether this was the only document that was received after the order of the court. I do not have any record now to show what documents were received after the order of the court. I told about the statement dated 29/07/06 because it is available in the record. We had received copy of statement of the accused recorded by the

ATS along with their letter dated 07/08/06.

47. I did not give any instructions to the three persons as to how to write their statements and had not given spellings of words. I do not remember whether neither Bandekar nor Chadha told the spellings of words to the persons. We all did not give instructions about the construction of sentences. Some of the corrections were made by them on their own and some were pointed out by us. It is not possible to tell which corrections were done by the three persons and which were pointed out by us. The words 'or any other law' in the third line on page 2 of Ext. 585(1) and similar words appearing in the remaining statements are used as a matter of practice. I cannot substantiate the use of these words by quoting the provisions of any other law. I did not record the statement of Sanjay Tripathi. I took the Riyals in my custody for the first time on 25/09/06.

48. It is not true that I had not recorded the voluntary statement of the accused Faisal or of Abdul Rehman Dawre and Khaleeda. The adjudication proceedings are initiated against all three. All the proceedings are pending. It is not true that the statements recorded by the police are reproduced as the statements of these three persons.

Cross-examination by Adv Rasal for A/1 and 4 to 6

49. (At the request of Ld adv before the recess, cross-examination is deferred to 17/09/10)

Date:- 14/09/10

(Y.D. SHINDE)
SPECIAL JUDGE

Date: 17/09/2010
RESUMED ON SA

50. On getting information about the violations of provisions of the FEMA, the officers of the Enforcement Directorate are supposed to take action *suo motu*, if no other agency is involved. So far as violations of the provisions of the FEMA is concerned, the Enforcement Directorate has got the exclusive jurisdiction. Therefore, we are supposed to take action immediately even if the other agency is involved. The letter dated 07/08/06 from the ATS was the first communication in writing between us. It was regarding CR No. 77/06. I can produce that letter. Apart from the information that we gathered from the news items, the letter dated 07/08/06 was the information about it. We did not reply to the letter but pursuant to it we filed an application in the court. Before recording the statements of the three persons, we had some information about the violations of the FEMA. Summons were issued only to these three and statements of more persons were not recorded. On the basis of the contents of the letter I could gather that the money was received by courier by Abdul Rehman Dawre and not for

others. I cannot say whether the letter was received by post or hand delivery. I had not received it personally. It is true that the letter is signed by the P. I. on 08/08/06. On going through the letter I gathered that the police custody remand of the accused was upto 09/08/06. I am not aware whether number of crimes were being investigated by different officers. I did not try to find out in which CR the accused was in custody and who was the investigating officer. I am not in a position to contradict you if you say that the accused was in custody in CR 41/06. It is true that there was no order of the court concerning CR No. 41/06. I do not know whether the accused was in custody in CR 86/06 on 24/08/06 and there was no order of the court about that CR.

51. It is not true that on 21st and 24/08/06 accused was not in custody in CR 77/06 and I had no authority of the court to record his statement. The copy of the letter in the court record now shown to me is as per the original. (It is marked as **Ext.593** as consented to by the learned advocates for the accused). I am producing a zerox copy of the letter that we had received. (It is marked as **Ext.594** as consented to by the learned advocates for the accused). Before recording the statement of the accused I was aware about the involvement of Abdul Rehman Dawre and Khaleeda

Iqbal. Certain further information was received on recording the statement of the accused no. 3 about the involvement of these two persons. We got more information other than that mentioned in paragraph 3 of the letter Ext. 593. The said information was sufficient for issuing summons to those two persons. Even then we had the discretion about issuing summons to them. I thought it proper to issue summons to them only after recording the statement of the main accused Faisal, on whose behalf the transactions had taken place. Till recording his statement, I did not satisfy myself by seeing the investigating officer and the relevant papers in that regard. The draft was correctly prepared as per the documents.

No re-examination

R.O.

Spl. Judge
Date:- 17/09/10

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