

M.C.O.C. SPECIAL CASE NO. OF 21/06**DATE: 18TH APRIL, 2011****EXT. NO. 916****DEPOSITION OF WITNESS NO.93 FOR THE PROSECUTION**

I do hereby on solemn affirmation state that:

My Name : Dnyaneshwar Mansingrao Phadtare
Age : 55 years
Occupation : Service (DCP, Zone-I, Pune)
Res. Address : A/4, Gulmohor, Queens Garden, Pune-1

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

1. I was posted as DCP, Zone-V, Mumbai in October 2006. DCP rank is equivalent to Superintendent of Police. I received a letter from the Jt. Commissioner of Police, K. P. Raghuvanshi on 03/10/06 directing me to record confessional statement of accused Muzzammil Ataur Rehman Shaikh in CR No. 156/06 of Borivali Railway Police Station. I have the original letter with me and I am ready to produce it. It bears the signature of K. P. Raghuvanshi and my signature of receipt by the side. (It is marked as **Ext.917**). The letter was received late in the evening on 03/10/06. Therefore, I directed the investigating officer ACP S. L. Patil of ATS to remain present in my office on 04/10/06 at 10.00 a.m. He remained present and I directed him to produce the accused before me at 1500 hours on the same day. I

gave him a letter for that purpose. I have brought the office copy of that letter and I am ready to produce it. It bears my signature and its contents are correct. It bears the acknowledgment of ACP Patil. (It is marked as **Ext.918**). Accordingly PI R. R. Joshi of ATS produced the accused Muzzammil Ataur Rehman Shaikh before me at 15.00 hours alongwith a letter of the IO ACP Patil requesting me to take the accused in my custody. I am producing that letter. It bears his signature and my remark of having received it and my signature. (It is marked as **Ext.919**). I took the accused in my custody and gave a letter to PI R. R. Joshi addressed to the IO about having taken the accused in my custody. I am producing its office copy. It bears my signature and its contents are correct. It bears the acknowledgment of PI R. R. Joshi. (It is marked as **Ext.920**). Before the accused was produced before me, I had directed the Sr. PI of Police Station Mahim by telephone to send an officer and party to me to take the custody of the accused after recording the statement.

2. When PI Joshi produced the accused before me, I ascertained that the offences were committed on 11/07/06 in the State of Maharashtra. I took the accused in my personal custody and asked

PI Joshi and his staff to go out of my chamber. I ensured that nobody could see or hear the proceedings of the recording of the confessional statement. I informed the accused that he is not in the custody of the IO or the ATS team that is investigating the offences. I made him comfortable and told him that I would ask him certain questions in Hindi. Then I asked him questions and wrote down the questions and the answers that he gave. The accused answered in Hindi. I asked him questions to ascertain whether he was giving his confessional statement voluntarily and the language that he understood. I told him that he should give the confessional statement voluntarily and for that purpose there will be no pressure on him and I will give him time of 24 hours to think it over. During these questions I told him my name and my designation as DCP and that I am not connected with the investigation of the case in which he was arrested. He expressed his willingness to give the confessional statement voluntarily. I told him that I would record his confessional statement on the next day at 5.30 p.m. and till that time he should think over it. I was satisfied that he was ready to give the confessional statement voluntarily. I wrote all the questions and the

answers in my handwriting and after it was over, I gave it to him to read. After he read it, he stated that it was correctly written and then he signed on it. Part-I of the confessional statement now shown to me is the same, it is in my handwriting, it bears the signatures of the accused and my signatures on all pages and its contents are correct. (It is marked as **Ext.921**).

3. Then I informed the accused that I am giving him 24 hours for reflection and he would be produced before me tomorrow at 5.30 p.m and till that time he will be in my custody and will be kept in the lockup of Mahim Police Station. I put part-I of the statement in an envelope, closed the envelope and put my stamp and signatures on the stamps. The envelope now shown to me is the same. It bears my signatures on the stamps. (It is marked as **Ext.922**). I called PSI Powar of Police Station Mahim, who had come there, inside my chamber and gave the custody of the accused to him. I told him that the accused should be kept in a separate cell in the lockup of Police Station Mahim and no one including police officers, policemen, public, relatives or friends should be allowed to talk with him or meet him and to produce him at 5.30 p.m. on the next day. I gave a letter containing

these directions to the Sr. PI Mahim. I am producing its office copy. It bears my signature and the acknowledgment of PSI Powar and its contents are correct. (It is marked as **Ext.923**).

4. PSI Powar produced the accused before me under proper escort at 17.45 hours on the next day as per my directions. I asked PSI Powar and his staff to go outside my chamber after I took the accused in my custody. I ensured that nobody outside could see or hear the proceedings of the recording of the confessional statement. I again told the accused that he is not in the custody of the investigating officer or the ATS team investigating the offence and that he is in my custody. I made him comfortable and asked him some questions to ascertain whether he is in fear of someone or that he is threatened by anyone or whether he is promised to be released or to be made witness in the case. I told him that it is not binding on him to give the confessional statement and I will record it only if he is giving it voluntarily. I told him that his statement that I would record, can be used against him as evidence in the court. After all these questions he expressed his willingness to give his confessional statement and I also was satisfied that he was giving his confessional

statement voluntarily. I wrote all the questions and the answers given by him in my handwriting. Then I started recording his statement and I wrote it down in my handwriting as narrated by him. Part-II of the confessional statement now shown to me is in my handwriting. After it was completed I read over the statement to the accused and gave it to him for reading. When he said that it was correctly written as narrated by him, I asked him to put his signature on all the pages and I also put my signatures. The Part-II of the confessional statement bears his signatures on all the pages and my signatures by the side. Its contents are correct. (It is marked as **Ext.924**). I wrote a certificate as per Section 18 of the MCOC Act. The certificate now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.925**). I put the Part-II of the confessional statement alongwith the certificate in an envelope, which I sealed with my stamp and put my signatures on it. The envelope now shown to me is the same. It bears my signatures on the stamps. (It is marked as **Ext.926**). The recording of the confessional statement was over at 11.45 p.m.

5. Thereafter I drafted a letter addressed to the Chief Metropolitan

Magistrate requesting him for the confirmation of the recorded statement as per the provisions. I am producing the office copy of the letter, it bears my signature and its contents are correct. (It is marked as **Ext.927**). I put the letter in an envelope addressed to the CMM. I called PSI Powar and his staff and gave the accused in their custody alongwith the three envelopes and directed him to produce the accused before the CMM on the next day, i.e., on 06/10/06 and till that time to keep the accused in a separate cell in the lockup of Police Station Mahim and to take care of his safety and not to allow anyone to meet him. I also wrote a letter containing these directions to the Sr. PI of Mahim Police Station. I am producing its office copy, it bears my signature and its contents are correct. (It is marked as **Ext.928**). It bears the acknowledgment of PSI Powar. I directed PSI Powar to act as per the directions of the CMM about handing over the custody of the accused after the formalities before him are over.

6. The accused was produced before me on 06/10/06 at about 1500 hours. I had called the IO there. He had sent PI R. R. Joshi. I handed over the custody of the accused to him and I gave a letter to the IO. I am producing its office copy, it bears my signature and its

contents are correct. (It is marked as **Ext.929**). It bears the acknowledgment of PI R. R. Joshi.

7. During the period the accused was kept in the lockup of Police Station Mahim, I satisfied myself that my directions are being followed by checking the station diary entries and as the night round officers had also informed me about it. I will be able to identify the accused. I now again say that I am not in a position to identify the accused.
8. I received a letter from the Jt. Commissioner of Police, K. P. Raghuvanshi on 23/10/06 directing me to record the confessional statement of accused Mohd. Majid Mohd. Shafi Ansari in CR No. 05/06 of ATS Police Station. I have the original letter with me and I am ready to produce it. It bears the signature of K. P. Raghuvanshi and my acknowledgment and signature by the side. (It is marked as **Ext.930**). API Alaknure had brought that later. Therefore, I directed the investigating officer ACP S. L. Patil of ATS to produce the accused before me on 24/10/06 at 10.00 am. I gave him a letter for that purpose. I have brought the office copy of that letter and I am ready to produce it. It bears my signature and its contents are correct. It bears the acknowledgment of API Alaknure. (It is marked as

Ext.931). Accordingly on 24/10/06 API Alaknure produced the accused Mohd. Majid Mohd. Shafi Ansari before me alongwith the letter from the IO at 10.30 hours, requesting me to take the custody of the accused. I am producing that letter. It bears his signature and my remark of having received it and my signature. (It is marked as **Ext.932**). When API Alaknure produced the accused before me, I ascertained that the offences were committed on 11/07/06 in the State of Maharashtra. Then I took the accused in my custody and gave a letter to API Alaknure addressed to the IO about having taken the accused in my custody. I am producing its office copy. It bears my signature and its contents are correct. It bears the acknowledgment of API Alaknure (It is marked as **Ext.933**). Before the accused was produced before me, I had directed the Sr. PI of Police Station Mahim to depute an officer and staff to take the custody of the accused after recording his statement.

9. I took the accused in my personal custody and asked API Alaknure and his staff to go out of my chamber. I ensured that nobody present could see or hear the proceedings of the recording of the confessional statement. I informed the accused that he is no longer in

the custody of the IO or the ATS team that is investigating the offences. I made him comfortable and put some questions to him in Hindi to ask his name, qualifications, languages that he knows, etc. Then I asked him whether he was threatened to give the statement or given any inducement of release or of being made a witness. I wrote the questions and the answers that he gave in my own handwriting. The accused answered in Hindi. I told him that it is not binding on him to give the confessional statement and if he is ready to give it voluntarily then only I will record it. I told him that any confessional statement that he makes can be used against him as evidence in the court. He expressed his desire to give his confessional statement voluntarily. I told him that I will give him time of 24 hours to think it over and that I will record it thereafter only if he gives it voluntarily. He said yes. During these questions I told him my name and my designation as DCP and that I am not connected with the investigation of the case in which he was arrested. He expressed his willingness to give the confessional statement voluntarily. I was satisfied that he was ready to give the confessional statement voluntarily. I told him that he would be kept in the lockup of Mahim

Police Station and would be produced before me on 25/10/06 at 11.00 a.m. I wrote all the questions and the answers in my handwriting and after it was over, I gave it to him to read. After he read it, he stated that it was correctly written and then he signed on it. Part-I of the confessional statement now shown to me is the same, it is in my handwriting, it bears the signatures of the accused and my signatures on all pages and its contents are correct. (It is marked as **Ext.934**). I put it in an envelope, sealed the envelope with my stamp and put my signatures on the stamps. The envelope now shown to me is the same. It bears the stamps of my office and my signatures. (It is marked as **Ext.935**). Then I called PSI Powar and his staff of Police Station Mahim to take the custody of the accused. I directed him to keep him in a separate cell in the lockup of the Mahim Police Station and to take care that no police officer or policeman or any other person meets him or talks with him. I directed him to produce the accused before me on the next day at 11.00 a.m. Accordingly I gave a letter containing these directions to the Sr. PI of PS Mahim. I am producing its office copy. It bears my signature and its contents are correct. It also bears the acknowledgment of PSI Powar. (It is

marked as **Ext.936**).

10. PSI Powar produced the accused before me at 12.10 hours on 25/10/06. I took the accused in my custody and asked PSI Powar and his staff to go out of my chamber. I ensured that nobody could see or hear the proceedings of the recording of the confessional statement. I again told the accused that he is in my custody and not in the custody of the ATS or the IO. Again I asked him certain questions to which he replied in Hindi. I made him comfortable. I asked him whether the time given to him was sufficient for reflection. He said yes. I asked him whether anybody had threatened him or tortured him during this period. He said no. I asked him whether anybody had given him promise of release or of making him a witness in the case if he gives the confessional statement. He said no. I again asked him whether he is giving his statement voluntarily. He said yes. I asked him whether he has any problems or difficulties. He said no. I told him that if he gives the statement it can be used against him as evidence. He said that he knows it and has understood it. I told him that I would not force him to give the statement and I will write whatever he states of his own free will.

From his answers and his body language, I was satisfied that he is ready to give the confessional statement voluntarily. Then he started giving the statement in Hindi. I wrote it down in my own handwriting. Part-II of the confessional statement now shown to me is the same. It is in my handwriting. After it was completed I read over the statement to the accused and gave it to him for reading. When he said that it was correctly written as narrated by him, I asked him to put his signature on all the pages and I also put my signatures. The Part-II of the confessional statement bears his signatures on all the pages and my signatures by the side. Its contents are correct. (It is marked as **Ext.937**). I wrote a certificate as per Section 18 of the MCOC Act. The certificate now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.938**). I put Part-II of the confessional statement alongwith the certificate in an envelope, which I sealed with my stamp and put my signatures on it. The envelope now shown to me is the same. It bears my signatures on the stamps. (It is marked as **Ext.939**). The recording of the confessional statement was over at 14.15 p.m. I will not be able to identify the accused.

(Adjourned for recess. Learned advocates Rasal and Shetty for A5 and A9 submit that they are not available in the second session and they request that the remaining chief-examination be completed in the afternoon session and they be permitted to cross-examine the witness tomorrow. They also request that the prosecution be directed to give them copies of the documents produced by the witness today. Learned SPP has no objection).

Date : 18/04/11

SPECIAL JUDGE

Resumed on SA after recess

11. Thereafter I drafted a letter addressed to the Chief Metropolitan Magistrate requesting him for the confirmation of the recorded statement as per the provisions. I am producing the office copy of the letter, it bears my signature and its contents are correct. (It is marked as **Ext.940**). I put the letter in an envelope addressed to the CMM. I called PSI Powar and his staff and gave the accused in their custody alongwith the three envelopes and directed him to produce the accused before the CMM on the same day. I told him to act as per the further directions by the CMM. Accordingly he produced the accused before the CMM and as per his directions he

was produced before me again to be handed over to the IO. I asked the IO to come for taking the custody of the accused or to send someone. API Alaknure came and I gave the accused in his custody alongwith a letter addressed to the IO ACP Patil. The office copy of the letter now shown to me is the same, it bears my signature and its contents are correct. (It is marked as **Ext.941**). It also bears the endorsement of API Alaknure and his signature of having received the accused and the letter in his custody.

12. I have recorded confessional statements of accused in other cases before and after this case. In this case also I had taken precautions as per the Act and Rules so as to satisfy myself that the accused are giving their confessional statements voluntarily. I had told them that even if they do not give their confessional statements voluntarily, I will not hand them over in the custody of the ATS. I had asked them whether they wanted legal assistance or they wanted anyone to remain present on their behalf. They said no.

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

(At 3.30 p.m. adjourned to tomorrow as per the request by advs Rasal and Shetty made before recess). **(Y.D. SHINDE)**

Date:-18/04/2011**SPECIAL JUDGE****Date : 19/04/11****Resumed on SA**

13. I came to know about the bomb blasts on 11/07/06 itself. It was a very serious incident that had taken place in Mumbai. It is true that when such incident occurs the Commissioner of Police discusses the matter with all high ranking police officers. Meetings of this type used to be taken periodically for taking measures. It is true that decisions used to be taken in such meetings about the precautions to be taken as it was directly connected with the law and order situation. It is true that I was aware of the incident right from the day on which the incident occurred. I was aware that the incident had taken place within the jurisdiction of Mumbai. I came to know that many people were arrested in connection with the bomb blasts. I do not know whether teams comprising of competent officers were formed for investigating the case. I did not know who were the officers who were conducting the investigation, but I knew that the ATS was doing it. I do not know at what stage the ATS took over the investigation. I did not know who were the officers attached to the

ATS. I did not try to find out from time to time at what stages the investigation was. I knew in that period that PI Vijay Salaskar was well known as an encounter specialist. I did not try to find out to which office he was attached at that time. I knew that there was an anti dacoity cell in existence. I do not know where its office was. I did not try to find out who were the officers attached to that cell.

14. I was not aware from 11/07/06 upto 03/10/06 about the names of the persons who were arrested in this case. When I received the letter Ext.930 on 23/10/06, I had inquired as to when the concerned accused was in custody and when he was arrested. I came to know that he was in the custody of the police. I cannot say whether after recording the confessional statement of the said accused, the police custody of the concerned accused was to continue. I did not try to find out the stage of the investigation when he was produced before me. It is true that in order to record a confessional statement in a free manner, the concerned accused should be away from the persons who are investigating the case. I do not know whether it was necessary to know what investigation and interrogation the concerned accused had undergone in order to

determine his free will and voluntariness. I did not have any occasion to discuss the matter with K. P. Raguvanshi or ACP Patil before 03/10/06 or 23/10/06. I was not aware about the circumstances under which ACP Patil moved the Jt. C.P. about the willingness of the accused concerned to give a confessional statement. I did not inquire with the concerned accused as to under what circumstances he became ready to give the confessional statement and expressed so to ACP Patil. I did not know about the participation of API Alaknure in the investigation of the said case. One Joe Gaikwad was the Sr. PI of Police Station Mahim. I did not know what concern he had with PI Salaskar and the officers attached to the ATS. I had given to the concerned officers the copies of the documents that I produced yesterday. I had verified about the custody period of the accused till the time I started to record his confessional statement. I do not know his remand date prior to his production and after his production. I did not inquire with the accused whether he had requested the court to make inquiry in connection with the investigation. I did not inquire with the accused about how many times he was produced before the court and upto what period his police custody was. It is true that the

letter Ext.930 from the Jt. C. P. was an order. I complied with that order. The correspondence that I made is in connection with the compliance.

15. I have recorded about nine or ten confessional statements upto now. I did not receive any special training for this purpose, but we got guidelines in different conferences. Questionnaires were not given in the conferences. Senior officers of my rank and above and legal advisers used to remain present in the conferences. We were apprised in the conferences as to what questions we should ask while recording the confessional statements. There were discussions about the provisions in the statute relating to the recording of confessional statements. According to these discussions and as per the statutory provisions I recorded the confessional statements. I knew that a certificate is to be written immediately at the end of the confessional statement. I had given the certificate in this case accordingly. There is a format of the certificate in the statute. I have complied with it fully. Certificate is required to be given as mentioned in Rule 6 of the MCOC Rules 1999. It is true that the certificate Ext.938 is on a separate page. It is true that the

contents of the certificate do not contain the words "It has been made before me and in my hearing and has been recorded by me in the language in which it is made and as, narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession/statement made by him".

16. I had asked the accused who was produced before me on 24/10/06 whether he knows Hindi. He was a resident of Kolkata. His language was Hindi. It is not true that when he was produced before me he did not know how to speak in Hindi, but he knew only to speak in Urdu. On that day he was before me from 10.30 a.m. to 12.15 or 12.30 p.m. It is true that whatever writing I did, was after 10.30 a.m. The writing was over at 11.55 a.m. I put the stamps / seals on the envelopes. I did not use carbon paper while writing on 24/10/06 and 25/10/06. I was aware when I was writing the confessional statements on both dates, that I was to take the signatures of the accused below it. It is not true that keeping this in mind I was writing the statement. It is true that there are no directions about writing the contents that I wrote below the signature of accused

in both parts on pages 7 and 18 respectively. It is true that there are no signatures of the accused on the front side of every page in both parts. I gave the accused in the custody of the police officers after sealing the envelopes on both dates. I did not feel it necessary to take the signatures of the accused on the portions below his signatures on pages 7 and 18 respectively. There is no reason for not obtaining the signatures of the accused on the front side of every page. I had not taken the questions that I asked the accused, from the confessional statements that I had earlier recorded. I had told the concerned accused that the statement that he would give before me could be used against the co-accused. It is true that it is not written in the statements Exts.924 and 937. It is true that it is not written in these statements that I had asked the accused whether he wanted legal assistance or he wanted anyone to remain present on his behalf and he said no. This was an important fact. There is electricity, computer and printer in my office. I could have made arrangements for using tape recorder. It is true that most of the times statements recorded by us are retracted by the accused during the trial. It is true that alternate provision of recording the confessional statement on

any mechanical devices like cassettes, tape or sound tracks is made in the statute. I did not make any effort to record the confessional statement in the present case on any mechanical device as mentioned in the statute as it could have taken a long time to complete the procedure during that period. The procedure for recording the confessional statement on mechanical device would have required me to get sanction from the higher authorities for purchasing the devices, verifying the reliability of the person who would handle the device and the presence of that person would have been a hurdle in the recording of the statement. I have never recorded a confessional statement on any mechanical device like tape recorder, etc. I do not know the procedure of recording a confessional statement on tape recorder.

17. I have learnt Hindi upto matriculation about 20 years before. I am aware in Hindi that one's father is called as 'walid' and not 'pitaji', police are not called as 'police', but 'pulice', person is not called as 'vyakti', but is called as 'admi', marriage is not called as 'vivah', but is called as 'shaadi', atrocity is not called as 'atyachar', but is called as 'zulm'. It is not true that I had written such Marathi words

that the accused had not stated before me. I was not given any specific time for recording the confessional statement. I could have recorded it at any time as per my wish.

18. My office was at Worli above the Worli Police Station. I had one reader, four constables and two ministerial staff. The police stations under my zone were Dadar, Shivaji Park, Mahim, Dharavi and Kurla. When the accused was brought before me, he was made aware that I am a police officer. It is true that other than my words there is nothing written in the statements to show that the accused was made comfortable. I gave the copy of the confessional statement to ACP Patil as per his request on 27/10/06, after the formalities in the court were over. I had sent Part-I and Part-II of the confessional statements in original and the letter to the CMM with the police officer who took the accused before the court. I started writing Part-II of the confessional statement at 12.10 p.m. and completed it at 14.15 p.m. I required about 2 hours and 5 minutes to record the statement. I do not agree that I had not given even 24 hours to the accused to reflect upon giving his statement.

19. It is not true that the concerned accused did not make a

voluntary statement on 24/10/06 and 25/10/06, that the statements were recorded as per the desire of my superiors, that I merely obtained his signatures and that the accused was not knowing Hindi and he did not give any statement in Hindi.

Cross-examination by adv P. L. Shetty for A3, 8, 9, 11 and 12

20. I was posted as DCP, Zone-V, Mumbai from 15/06/06 to 15/06/08. I was DCP in Thane Commissionerate before that. I was in Thane for one and a half years. I was transferred from Mumbai to Solapur as Superintendent of Police. I am recruited as a direct Dy. SP through MPSC and I have been inducted in the IPS cadre later on. I joined service on 30/05/85 at Nasik. I do not know the name of the public information officer of the D.G. office, Maharashtra. I do not know whether he is one P. K. Ghuge, who is the Senior Deputy Assistant Inspector General of Police.

21. I had occasions to record about 2-3 confessional statements under section 18 of the MCOC Act before 03/10/06. I had no occasion to record such statements under POTA or TADA. I had recorded the statement of an accused at Ulhas Nagar, but I cannot tell his name or the date on which I recorded it. I do not remember

the sections of IPC of that case. It was a case of Thane Crime Branch. It was concerning a murder, but I do not remember the victim's name. The accused had refused to give the statement. I do not remember now the three cases in which I recorded the confessional statements, the police stations, the names of the accused and dates of the confessions. I cannot tell the details of those confessions.

22. I recorded about 7-8 confessions after 03/10/06 under the MCOC Act. I had recorded the confessional statement in the case of murder of one Kamlakar Jamsandekar in which Arun Gavali is involved. I do not remember the name of that accused and the date of recording his confession. I gave evidence about it in court, but I do not remember the exact date on which I gave it. I may have given evidence within two months before today. I cannot tell the name of the accused, the dates on which I recorded their confessions and the other details of the remaining confessions that I have recorded. I cannot tell the name of the accused and the date on which I recorded his confession and other details of the first confessional statement that I recorded. I read the provisions of the MCOC Act before

recording the confessions. I studied the guidelines and the format of the certificate. I have studied the provisions of the section 164 of the Code of Criminal Procedure. Those provisions are more or less similar to the provisions in the MCOC Act about recording of confessional statements. They are more or less procedurally the same. I have not gone through the provisions in the High Court Criminal Manual about recording of confessions. I am aware that there are such guidelines. I cannot exactly tell since when I came to know about them. I did not refer to those provisions before recording any confessions.

(Adjourned for recess).

Date : 19/04/11

SPECIAL JUDGE

Resumed on SA after recess

23. I received the letter from the Jt. CP on 03/10/06 at about 6.00 p.m. Arup Patnaik was my Jt. CP (Law and Order) at that time. The first question that I asked the accused who was produced before me on 04/10/06, was as to what was his name. I recorded this question and its answer in Part-I. Part-I and Part-II is a faithful record of what transpired between me and the accused on 04/10/06 and

05/10/06. I faithfully recorded all my questions and the answers given by the accused. Witness volunteers-all the questions that were asked are not recorded. My question to him as to whether he wanted legal assistance or wanted any person to remain present during the recording of his confession is not written. My question to him as to whether he was medically examined, is also not written. I do not remember any more questions that I asked and that I did not write. The answers to these questions are also not written. I do not remember now whether anything else stated by the accused is not written. I cannot say whether the above questions were important or not. There is no specific reason why I did not write those questions and answers. It is not true that I had not asked those questions, therefore I did not write them. It is true that other than the confessional statements and the correspondence documents produced by me, there is no other contemporaneous record about my recording the confessional statements. There is no other record about the questions and answers other than in Part-I and Part-II of the confessional statements. I had the letters Exts. 917 to 919 with me before starting the procedure of recording the confessional statement.

About 15-20 minutes went by from the time the accused was produced before me and I started writing Part-I. I was making the preparations during this period for recording the statement. I did not take the services of any of my staff members or for recording the Part-I and Part-II of the confessional statements. The first question in Ext.921 is that I am a DCP and whether he knows it and he answered in the affirmative. It is not true that this was the first interaction between me and the accused. My first interaction was of asking his name, whether he wants any legal assistance, about his education, that he is not in the custody of the IO, etc. This was in the period of 15-20 minutes before I started writing Part-I. I did not write these questions and their answers before the first question, as it was a part of my dialogue with the accused. There is no specific reason why serial numbers are not given to the questions in both parts. The questions and the answers that I have written in both the parts are in the sequence in which I had asked them. I cannot tell the exact time during which I recorded the first four paragraphs in Part-I. The first paragraph in Part-I is on the basis of the letters Exts. 917 and 918. the contents of the second paragraph are on the basis of my

perception. Paragraphs three and four are about the actions that were done by me. Rest of the things till the end of Part-I are about the things that took place between me and the accused. I was not in a confused mind or absent minded when I recorded the statements of the accused on both days. The name of the accused in the first paragraph is written as Muzzammil Aatur Rehman Shaikh @ Abu Shahid. I came to know his alias name as Abu Shahid during the interaction with him. His alias name is written by me below his signature at the end, in the remaining portion of Part-I. It is true that this alias name is not written in the answer to the second question. It is true that this is the only question concerning his name to which he has given the answer as Muzzammil Aatur Rehman Shaikh and he did not mention the alias name Abu Shahid. It is true that Ext. 917 and 918 do not mention this alias name. It is true that the alias name is not written in the second line of the paragraph, after the signature of the accused below the question and answer portion. I cannot assign any reason for this.

24. The questions that were asked in Part-I and Part-II were on the basis of the sections and the rules of the MCOC Act. I

am not aware whether the questions that are required to be put are prescribed in the Criminal Manual. I did not come to know on 04/10/06 as to the number of accused arrested in the case, but I was aware that the offence was committed on 11/07/06. I came to know on 04/10/06 that the said accused was arrested on 27/07/06 in that case. I came to know this during the interaction with the IO and also from the accused. I do not know for how long he was in police custody. I do not know whether he was in police custody or judicial custody before he was produced before me on 04/10/06. I had no occasion to supervise any investigation for the offences under MCOC Act. I am aware that the accused cannot be remanded to police custody for more than 30 days in MCOC case. It is true that date of arrest and custody period is not mentioned in Exts.917 and 918. It is true that the date of his arrest and the nature of his custody is not mentioned in Part-I, but it is mentioned in Part-II. It is not in the questions and the answers in the Part-II. It is true that in the question and answer portions in both parts there is no mention that I had asked him questions about the places of his detention, the names of the officers who had interrogated him and the places where he had

been taken during the course of investigation. As it was not concerned with me, I did not ask him whether he was detained before arrest or kept under surveillance.

25. During the recording of his statement, I told the accused that I wish to examine his body and whether he consents for that. He said no, saying that nothing has happened to him. There is no reason why it is not mentioned in both parts. I am well conversant with Hindi. I cannot tell the Hindi word for 'inducement'. Allurement means 'lalach' or 'amish'. I cannot say whether 'lalach' means 'inducement'. It is true that 'lalach' is a Marathi word. As far as my knowledge is concerned same word is used in Hindi also.

26. I do not agree that recording of confession is a solemn duty on my part. It is true that in both parts of the confessional statements, it is not mentioned that I informed the accused that he will not be sent to police custody if he does not give the confessional statement. It is not true that as I did not inform it I did not write it. It is not true that it is not mentioned in the confessional statement that I informed the accused that it is not compulsory for him to give the confessional statement.

27. I did not ask the accused as to when and to whom he expressed his desire to make the confessional statement. I did not ask this to ACP Patil as well as to the officer who produced him before me. It is true that it is not written in both parts that I asked the accused as to why he was making the confession. I have seen circular issued by the Home Department in connection with recording of confessions. I cannot tell of which year it was. The guidelines about the procedure to be followed were in that circular. I had not seen the circular dated 16/03/63 in this connection. The question as to whether any policeman has threatened him or given him any 'lalach' is the question that I asked about 'allurement'. According to me 'allurement' means 'lalach'. It is true that I have not used the word 'induced' in any question that I asked the accused.

28. I had visited Mahim Police Station before 04/10/06 many times. I cannot tell the dates. I do not know who was the night PI there on 04/10/06. The lockup of Mahim Police Station is behind the office of the PI after a space of about 20 feet. I cannot tell the length and width of the lockup, but there are about five cells, two out of which are for women. The lockup is on the ground floor and the

first floor in the premises of the police station, but not in the building of the police station. Sr. PI's office is in the main building of the police station. There are three cells of the lockup on the first floor and probably three on the ground floor. The male section is on the first floor. The cells may be about 15' x 15' or 15' x 20'. It is a general lockup and not restricted to the Mahim Police Station. The accused in police custody in the cases of zone-V are kept there. One full guard, i.e., one ASI/ hawaldar and three constables are generally posted to guard the lockup. It again depends upon the number of the accused and the nature and importance of the accused. The lockup is an independent building. It is not true that other than the said building there is a separate room in those premises that is used exclusively as the lockup of Police Station Mahim and it is just adjacent to the room of the office incharge of the police station.

(Adjourned at 4.30 p.m. at the request of the learned advocate).

Date : 19/04/11

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

Date : 27/04/11
Resumed on SA

29. The office of DCP, Zone-V, Mumbai is about 3 ½ kms from Police Station Mahim. One normally requires about 15 minutes to cover that distance by vehicle. (Witness is shown the envelopes Exts. 922 and 926). It is true that I had sent the confessions in Part-I and Part-II of the accused Muzzammil to the CMM in these two white envelopes. It is true that the words 'confessional statement of accused Muzzammil' are not written on these envelopes. It is true that the senders name as DCP, Zone-V is not mentioned on the front side of the envelopes.

30. I do not remember the name of the night round officer of Police Station Mahim on 04/10/06. I did not obtain a written report from the night round officer about the night of 04/10/06. I did not have any discussion with the night round officer of 4th and 05/10/06 of Police Station Mahim. I do not remember the names of the ACP and DCP who were on night round duty on 4th and 05/10/06 of that police

station. There are night round ACPs and DCPs for particular police stations and their names are displayed on the notice board in the police stations. PSI Powar had produced the copies of station diary entries as per my instructions to the Sr. PI after the completion of all formalities. They were produced one or two days after the completion of formalities, but I do not remember the dates. That was the first time when I saw the station diary entries. I did not have any meeting with any officers of Police Station Mahim in this connection other than my interaction with PSI Powar and the station diary entries. The accused was handed over to the ATS at 15.00 hours on 06/10/06. I did not take any written report from PSI Powar at any time. I took true copies of the relevant station diary entries. I kept them with me.

31. It is not true that the station diary entries do not show that my directions have been complied by the officers of the Police Station Mahim. It is true that the true copies of the station diary entries dated 04, 05 and 06/10/06 in Ext. 943 are the only station diary entries that I perused. It is not true that I had not perused any other document other than the station diary entries.

32. I correctly recorded Part-II of the confessional

statement of the accused Muzzammil as per his narration. It is true that nothing has been added other than what he stated to me, but it is not that I recorded everything that he stated. These things are as to whether his medical checkup was done, whether he wanted any lawyer to be present, etc. Nothing remained to be written in the main statement that the accused narrated to me after the questions and answers were over. The accused Muzzammil was well conversant with English and Hindi. He had studied in those mediums. I cannot tell the exact time that I required for writing paragraphs 1 to 4 in Part-II. I started recording from paragraph 5 onwards, as soon as I completed paragraph 4. I cannot tell the exact time that I required for writing the portion of the Part-II from paragraph 5 upto the end of the statement. The paragraphs were at my discretion and the accused did not instruct me to change the paragraph. After writing paragraph 4, I asked the accused to narrate whatever he wants to say concerning the case. I had occasion to ask questions to him in between, if some thing was not clear. I cannot tell the stages and the questions that I asked him. I cannot say on how many occasions I asked questions to him. I can say on what points I asked him to

clarify. There is no other contemporaneous record other than Part-II to show as to what happened between me and the accused on 05/10/06. It did not happen that I prepared rough notes and thereafter made it fair. The fifth line in the fifth paragraph that 'mera chota bhai Rahil software engineer hai' is correctly recorded. The words written in the second line of paragraph seven after 'oracle corporation' is 'OTP Tower'. The first word in the last line of page 2 is 'Khuim'. The first two sentences in paragraph 9 are 'us waqt mera bhai Faisal aur Rahil sab Mecca masjid, Mominpura, Puna yaha namaj padhneko jate the. Us jagah hum teeno bhai simi ke upar bataye karyakartao ke saath darse kuran aur jihad ke bareme jankari lete the'. I do not know the meaning of 'darse'. I did not ask the accused to tell its meaning. I do not know whether it is a Hindi word or an Urdu word. I did not feel it necessary to ask the accused about its meaning. I do not remember now whether after recording these sentences I did not ask the accused to clarify it and whether I sought any further information. It is true that in paragraphs 5 to 8 there is no mention about the names of 'simi karyakarta'. I have put the bracket for certain words in the eighth line in paragraph 19. The corrections, overwriting and additions of

words are made at the time of writing and not later on when I read over the statement to the accused. It is true that from 5.45 p.m. to 11.45 p.m. nobody else entered my chamber and none of us went out of my chamber. The writing of the confession went on continuously from the time I took the accused in my custody till its end.

33. I do not remember whether news items and interviews of superior officers were being published in the print and electronic media after the blasts and upto the time I recorded the confession. I used to read Sakal, Times of India and Mumbai Mirror. At that time the DG of Police was B. S. Pasricha. I have not gone through the news items published on 01/10/06 in Mumbai Mirror in connection with the interviews of A. N. Roy and B.S. Pasricha in connection with the blasts. It is not true that I am deposing falsely that I have not gone through the said news item.

34. I did not think on 04/10/06 that I would require a long time for recording the confessional statement of the accused on 05/10/06. It is not necessary that the time for reflection should be only of 24 hours, it can be more than that also. I could have called the accused in the morning on 06/10/06 instead of at 1730 hours on

05/10/06. The reason for calling the accused at that time was that 24 hours would be completed. I do not remember the clothes that the accused wore when he was produced before me on 04, 05 and 06/10/06 and whether he was wearing the same clothes on the 5th and 6th that he had worn on 04/10/06. I instructed the investigating officer during the period the accused was sent to the CMM, to send someone to take the custody of the accused. I had not asked him to send any officer particularly at 3.00 p.m. I did not give any written instructions to ACP Patil or PI Joshi. It is true that it is not written in Part-II that I asked the question to the accused as to why he is giving the confessional statement. It is true that in Part-II there is no mention about the accused having stated any reason of giving the confessional statement. It is true that 'bayan' means 'statement' and 'kabuli bayan' means 'confessional statement'.

35. DCPs Brijesh Singh, Sanjay Mohite, Vinayak Choube and Datta Karale were working in Mumbai during that period. It is not true that during that period or prior to that I did not have occasion to discuss the procedure of recording the statements with these officers. I had discussion about the questions that are required to be asked

and about issuance of certificates. I do not exactly remember with whom I had such discussions and on what date. The certificate Ext. 925 that I issued in this case is on the basis of the discussions and my knowledge about the provisions of recording the confessions in the Act. The department has not issued any proforma or format of the certificate to be issued in such cases. There is no specific reason why I did not start writing the certificate below the writing on page 8 of Ext.924.

36. It is not true that accused Muzzammil has not made any voluntary statement before me as stated by me, that he was tortured and compelled to give the statement before the investigating officers and that statement was copied down by me, that he was tortured and there were marks of bodily injuries on his person, therefore, I did not send him for medical examination, that when he was produced before me he was not in a position to walk properly and there was swelling on his hands, that therefore I did not examine his body and this is the reason why I did not send him for medical examination on 04, 05 and 06/10/06.

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

(At 1.40 p.m. Id Adv Shetty submits that Adv Wahab Khan is busy in the High Court. Hence, adjourned for after recess).

Date : 27/04/11

SPECIAL JUDGE

Resumed on SA after recess

(Adjourned as per order on adjournment application Ext.949 by adv Salunkhe h/f Wahab Khan).

Date : 27/04/11

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

Date : 28/04/11
Resumed on SA

37. It is true that before entering the witness box I have gone through Part-I and Part-II of the confessional statements. It is not true that the police officer assisting the prosecution provided me with their copies. I did not feel it necessary to ask the permission of the court for going through them. I read them so as to refresh my memory.

38. I told the accused that I am empowered to record his confession under the MCOC Act. It is true that it is not so written in the confessional statements. I had asked the accused in what case he was in custody. He had answered this question. I did not record this question and answer.

Q. You have to record all the important questions?

A. All questions are important.

It is true that I did not record many important questions. It is true that except my words there is no written evidence about it. I have written

that the confession is going to be recorded as per the MCOC Act and it is to be used in an MCOC case. It is written at the beginning of the Part-I of the confessional statement and in paragraph 1 in Part-I and Part-II also. I had not given this information to the accused when PI Joshi was present. The sequence of the paragraphs in both parts is correct. It was written simultaneously. I had given this information to the accused after PI Joshi was asked to go out and I started writing Part-I. It is true that the confessional statement is complete after the signature of the accused is taken, the certificate is appended and the confessional statement is put in the envelope and sealed. Thereafter letter is written to the CMM. There is no lac seal in my office. The directions are given to the escort party after the letter is handed over. The confessional statement cannot be sealed before giving the certificate. It did not happen that before I sealed the confessional statement I had written the letter to the CMM. It did not happen that before giving the certificate I sealed the confessional statement, called the escort party, gave them directions and wrote the letter to the CMM. The contents on page 7 and 8 of Ext. 924 and the contents of page 18 of Ext.937 are correct. It is not true that from these

contents it is seen that I wrote the letter to the CMM, then I sealed the confessional statement, thereafter I called the escort party and asked them to take the accused in their custody and thereafter I gave the certificate. I had given a letter to the Sr. PI on 06/10/06. Ext.928 is the same. I was in uniform on both the days when the accused were produced before me. I introduced myself as DCP. There was a board outside my office containing my name and designation.

39. K. P. Raghuvanshi was my superior officer. I did not have any meeting with him and other superior officers concerning handling of terrorist related matters and preventive measures, etc. I have to assist the police department in detection of crime being a superior police officer. I used to exchange information concerning detection and prevention of crime with different intelligence agencies and the police department. It is my duty as a police officer that an offender should not go Scot free. It is my duty to give guidance and advice to my subordinates for securing evidence. It is my duty to visit the scene of serious offence in my jurisdiction and if directed by my superiors to visit such scenes in adjoining jurisdiction. I had reached the site of the blast in the area of Mahim Railway Police Station after

about half an hour after the blast. I do not now remember the number of injured that I saw at the place of incident. The process of removing the injured from the site was going on. I saw some superior officers also present at the site. I had seen the Addl. C. P. Central Region visiting the site. There may be about 5-6 senior officers of the rank of DCP and above who had visited that site. On seeing the condition there I thought that it was a serious incident. I was there for about one and a half hours. I saw my subordinates present there. I tried to find out from the citizens as to what had happened. They informed me that there was a big blast. I gave instructions to my subordinates to follow the lead of blast. I did not have any discussion at the spot with my superior officers. There were some bodies lying scattered there. The forensic experts were called there, but I do not remember whether they came in my presence. I did not take the names and addresses of any injured. My first work was to conduct the rescue operation. I felt that the persons who had committed the blasts should be caught and they should be punished as much as possible.

40. I knew that confession can be taken under Section 164 of the Cr. P. C by the court. As I was directed to take the confessional

statements and as I was empowered to record it, I did not feel it necessary to send the accused to the court for giving his confession under Section 164 of the Cr. P. C. I do not have powers to send an accused to judicial custody. I cannot take an accused from the custody of an investigating officer. I cannot send an accused to judicial custody if he refuses to give confessional statement.

41. I did not offer tea to the accused when they were before me, but I gave them water from my chamber when they asked for it. It was Ramzan period of fasting at the time of the confessional statement of the second accused. I do not remember whether I have recorded a confessional statement of accused Firoz Deshmukh in the Aurangabad Arms Haul case investigated by the ATS, whether I had handed over custody of the accused to PSI Powar, whether K. P. Raguvanshi had directed me by letter to take the confession. I had given directions to keep the accused in this case in a separate cell and not to allow any person to meet or talk with the accused as there could have been a threat to him and so as not to have any good or bad effect on his voluntariness. It is true that it is not written in both parts that the confessional statement can be used against his co-

MCOC SPL.21/06

PW 93/47

Ext.916

accused.

42. Office of the Commissioner of Police gives directions about VIP visits. DCP and superior officers have to personally take care about such visits. VIP bandobast starts before the VIP arrives and it ends after he leaves. The role of DCP is very important in case of VIP visits. The orders that are issued about the VIP visits is the record in the office of the DCP. If one copies certain matter, the alphabets used are written as they are. It is not true that I copied the confessions that were provided by K. P. Raghuvanshi. It is not true that in Part-I of both the confessions I have not mentioned that I was satisfied that the accused wanted to make the confession voluntarily. On going through the Part-I of both the confessional statements I say that it is not so written. I do not remember whether there was no VIP bandobast on 4th, 5th and 06/10/06. I examined the person of the accused Mohd. Majid. It is not correct that there was swelling on his right foot with tenderness in both thighs. It is not true that both the accused were not produced before me, therefore, I did not identify them, that I copied the confessional statements prepared by the ATS,

that I did so on the say of K. P. Raghuvanshi, that the accused did not give any confessions before me and that I gave false evidence.

No re-examination
R.O.

Special Judge

Date:-28/04/2011

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