INDEX

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
1	Title clause and Case details	→	11
2	Factual Matrix	i) Prosecution case.	118
		ii) Discharge order	132
		iii) Charge (Exh.5036)	134
		iv) Prosecution witnesses	134
		v) Statement u/s 313	134
		vi) Defense witnesses	135
		vii) Arguments of prosecution and defense	136
3	Points for Determination	→	160
4	Conspiracy	→	173
5	Spot of Incident & Explosion.	→	205
6	Planting, assembling & fitting of Bomb	i) Place of assembling and fitting of bomb.	213
		ii) Bomb fitted beneath the seat of motorcycle.	224
		iii) Use of RDX and Ammonium Nitrate.	206 &232
7	Casualties	Death of six persons.	233
8	Injuries to 101 persons	→	258
9	Report, FIR, Station Diary	→	321
		i) Delay in FIR.	343
		ii)Omission of material facts.	346
		iii) Invoking section 120B.	348
		iv) Eye-witnesses.	349

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
		v) Corresponding entries about death of deceased.	350
		vi) Carbon copy of FIR.	352
		vii) Rough Noting.	354
		viii)Hearsay and unseen events.	355
		ix)Presence of informant on the spot.	355
		x) Station diary entries.	356
		xi) Replacement of report.	358
10	Source, procuring and transportation of RDX	→	376
11	Storage of RDX	→	384
12	Assembling & Fitting of RDX	→	387
13	Recci / Rekki (Reconnaissance) of Spot	→	392
14	Parking of vehicle on spot of incident	→	392
15	Occurrence of Incidents and scenario after post incident	→	394
16	Rough Sketch Map	→	396
17	Spot Panchanama & Seizure of Articles	→	401
18	Visit of Expert team to the Spot of incident	→	408
19	Inspection of Vehicles & it's numbers	→	410
20	Non collection of Finger	→	413

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
	prints, dump-data and DNA samples		
21	Barricading the Spot	→	414
22	Contamination	→	415
23	Spot Map	→	422
24	Visit of Land Surveyor	→	423
25	Visit of Photographer	→	426
26	Visit of Videographer	→	427
27	Visit of BDDS	→	428
28	Visit of Tahasildar to Spot and Inspection Report showing damages caused to Immovable properties	→	432
29	Forwarding Articles for Analysis	→	435
30	Sale Purchase Transaction of Vehicle	→	437
31	Restoration of Chassis Number and Engine Number	→	441
32	Importance of Engine and Chassis Number to trace out vehicle	→	454
33	Identification of Vehicle bearing no. GJ-05-BR-1920	→	457
34	Visit to Surat and Investigation	→	462
35	Supply of Documents pertaining to GJ-05-BR-1920	→	465

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
36	Series and Serial Number	→	467
37	Possession of Vehicle	→	468
38	Effect of Multiple Charge-sheets	→	472
39	Section 6 of NIA	→	478
40	Validity of Charge framed	→	480
41	Police Station ATS, Kalachowki, Mumbai	→	484
42	Arrest of Accused	i) A-1 Arrest, detention, search and seizure of articles.	486
		ii) Muddemal Custody & Forwarding.	494
		iii) A-4 Arrest, Search and Seizure.	496
		iv) Laptop Seizure related to A-4.	500
		v) Stay of A-4 in Hotel Ship.	501
		vi) House Search of A-4.	502
		vii) A-5 Arrest, Search and Seizure of Articles.	504
		viii) Arrest of A-6, Personal search and seizure of mobiles.	509
		ix) Arrest of A-9, Search and Seizure of Articles.	509
		x) Laptop seizure related to A-9.	514
		xi) Arrest of A-10 and his personal search and	518 & 540

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
		seizure of articles.	
		xii) Arrest of A-11 and his house search and seizure of articles.	519
43	Scientific Tests of accused (Narco Analysis)	→	519
44	Secondary evidence and 164 of Cr.P.C.	→	519
45	Faridabad Meeting	→	528
46	Source / Purchase / Ownership of Laptop.	→	538
47	Arrest of A-10, Search, Seizure and Sealing of Laptop.	→	540
48	Seizure of II Laptop of A-10.	→	554
49	Custody of Articles and Forwarding to FSL.	→	558
50	Forensic Images of Hard Disk.	→	571
51	Mirror Images	→	576
52	Voice Sample Collection.	→	582
		i) Voice Sample of A-9 Dtd. 05/12/2008.	583
		ii) Voice Sample of A-9 Dtd.23/06/2009.	586
		iii) Voice Sample of A-10 on 26/11/2008.	588
		iv) Voice Sample of A-10 dtd. 23/06/2009.	591

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
		v) Voice Sample of A-4 dtd. 10/11/2008.	591
		vi) Voice Sample of A-4 on 23/06/2009.	593
		vii)Voice Sample of A-6 dtd. 20/12/2008.	594
53	Interception of Mobile.	→	596
	Audio Cassettes.	→	607
	Transcripts and Voice Samples.	→	614
	Audio-metric Analysis Report / Voice Analysis Report.	→	615
	Calcutta Meeting.	→	624
	Bhopal meeting.	→	629
		i) Booking of Ram-Mandir Hall.	630
		ii) Evidence on the Point of Stay at Tulsi Hotel Bhopal.	636
		iii) Recording and Telecast of Meeting on India TV.	638
		iv)Presence, Discussion, Role of each accused in close-door meeting.	643
	Meeting at Circuit House Indore	→	653
	Ujjain Meeting	→	655
		i) Stay at Hotel Sayaji	656
	Nashik Meetings (Raikar's	→	668

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
	House & Bhonsala Military School)		
	Meeting at Farm House, Nashik	→	676
	Panchmarhi Meeting (Woodland Adventure Camp)	→	680
	Jabalpur Meeting	→	690
	Pune Meeting	→	693
	Abhinav Bharat Trust / Abhinav Bharat Organization	→	696
		i) Raigad Fort Meeting.	696
		ii) Camp At Bhagur, Nashik and S.P. College, Pune.	701
		iii) Section 3 of UAPA.	703
		iv) Arrest of A-6, Personal Search and Seizure of Mobiles.	704
		v) House Search of A-6.	706
		vi)Branches, Donation, Funds Collection & Transfer.	712
		vii)Transfer of cash through Courier service / Angadiya Service.	722
		viii)Transfer of Fund for House Construction.	728
		ix)Transfer of Funds for Purchasing Insurance Policies.	730
		x) Account Extract /Account Statement of Abhinav	732

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
		Bharat.	
		xi) Faridabad to Pune transfer of amount in the Account of A-9.	734
		xii) Account Details showing amount credited to the account of A-5.	737
		xiii) Arms and Ammunition purchase.	739
		xiv) Section 27 Memorandum.	742
		xv) Handwriting Specimen of A-6.	745
		xvi) Handwriting Expert.	751
	Custodial violence (A-9)	→	761
	Sanction u/s 197 of Cr.P.C.	→	763
	Arrest of A-11	→	810
		i) House Search and traces of RDX.	811
		ii) Detonator.	835
	Section 3, 4, 5, 6 & 7 of Explosive Substances Act (ESA).	→	840
	Sanction under Explosive Substances Act.	→	848
	CDR, SDR and Nodal Officers	→	859
	Electronic Devices Examiner (PW-296)	→	883
	Sanction under UAPA	→	893

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
		i) Two Sanction Orders.	925
		ii) Proposal and Receipt of documents.	948
		iii) Time Limit.	951
		iv) Effect of rules/nature of rules.	953
		v) Section 45 of UAPA as per Amendment of 2004.	956
		vi) Section 45 of UAPA as per Amendment of 2008.	956
		vii)Independent Review Authority / Recommending Authority.	960
		viii)Sanction Orders as per Amendment of 2004.	971
		ix) Application of Mind.	974
		x)Then Hon'ble Home Ministers Approval.	981
		xi) Second Sanction Order.	982
		xii) Cognizance & Jurisdiction	994
	Sections 10 & 106 of Evidence Act	→	998
	Section 15, 16, 17, 18 of UAPA	→	1008
	Directions to Arrest RSS Chief	→	1018
	Hostile Witnesses and	→	1021

Sr. No.	Particulars		Page No.
	Topics	Sub-topics	
	their statement u/s 161 of Cr.P.C.		
	Non-examination of Material Witnesses	→	1030
	Concluding para	→	1031
	Operative order	→	1033

ABHAY KAMALNAYAN LAHOTI

Digitally signed by ABHAY KAMALNAYAN LAHOTI
Date: 2025.08.01 17:39:55 +0530

(A.K.LAHOTI)
Special Judge (C.R. 26)
(MCOCA/NIA/TADA/POTA),
City Civil and Sessions Court,
Gr. Mumbai.

MHCC020002412009	MCOC Case Received on	:	20.01.2009		
	MCOC Case Registered on	:	20.01.2009		
	Re-registered as NIA Case on		25.05.2016		
	Decided on	:	31.07.2025		
	Duration	:	Y. 16	M. 06	Ds 11

Exh.No.10841

FORM NO.XXXII
Part 'A'
[Para 44(i) of Chapter VI of Criminal Manual]
IN THE HONOURABLE SPECIAL COURT FOR GR. BOMBAY
CONSTITUTED UNDER NIA ACT, 2008 AT MUMBAI

(Presided over by Shri. A. K. Lahoti, Special and Additional Sessions Judge, Mumbai)

[Delivered on 31st July, 2025]

NIA SPECIAL CASE NO.1 OF 2016

ARISING FROM

[MCOC SPECIAL CASE NO.1 OF 2009

Order dated 22.06.2018-The case is removed from MCOC caption i.e.1 of 2009 and separate number already given under Caption NIA Special Case No.1 of 2016, it be continued.

MCOC SPECIAL CASE NO.08 OF 2011 (DISPOSED OFF)]

(Crime No.130 of 2008 of Azad Nagar Police Station, Crime No.18 of 2008 of Anti terrorism Squad (A.T.S.), Mumbai and National Investigating Agency (N.I.A) Crime No. RC – 05 /2011/ NIA/DLI)

Prosecution	The State of Maharashtra through ATS & NIA
Represented by	Learned SPP Shri Avinash Rasal, SPP Ms. Anushree Rasal for prosecution.
Intervener	Nisar Ahmed Sayyed Bilal
Represented by	Ld. Adv. Shariff Shaikh a/w Adv. Shahid Nadeem.
Accused	1. Pragyasingh Chandrapalsingh Thakur @ Swami Purna Chentnanad Giri Age : 53 years, Occupation : Sadhwi, Address : 7, Ganga Sagar Apartment, Katodara road, Surat, Gujarat State. Native place : At Lahar, Mandi Road, District – Bhind, Madhya Pradesh. (As per ATS charge-sheet) Present Address : At Bhopal, Madhya Pradesh State (As per Plea Exh.5037) 2. Shivnarayan Gopalsingh Kalsangra (Discharged vide common order dated 27.12.2017) Age : 36 years, Occu.: Electrician & LIC Agent. Address : 21st Shanti Vihar Colony, Bangali Chauraha, Kanadia road, Indore, Madhya Pradesh. Native place : At post - Gopipur, Tehsil & District - Shahjahpur, Madhya Pradesh. (As per ATS charge-sheet) 3. Shyam Bhavarlal Sahu (Discharged vide common order dated 27.12.2017) Age : 42 years, Occupation : Mobile Shop & Estate Agent, Address : 502, Varsha Apartment, South Tukoganj, Indor, Madhya Pradesh. Native Place : Param Chowk, Taluka & District - Rajgadh, Madhya Pradesh. (As per ATS charge-sheet) 4. Ramesh Shivji Upadhyaya Age : 72 years, Occupation : Retired Army

	Officer. Address : C/17, Rail Residency, Bijalinagar, Chinchwad, Pune-33. Native Place : At Post – Ramngar, Taluka - Bairiya, Thana – Dokati, District - Baliya, Uttar Pradesh. (As per ATS charge-sheet) Present Address : Gurugram (Gurgaon), State - Haryana (As per Plea Exh.5038) 5. Sameer Sharad Kulkarni @ Chanakya Sameer Age : 53 years, Occupation : Private Business. Address : 1. Runa Nets, near Giriraj Ganapati Temple, Bijalinagar, Chinchwad, Pune. 2. House No.28, Swaraj Mangalwara, near Mangalwara Police Chowky, Madhya Pradesh. Native Place : 56, Khadad galli, Baliram peth, Jalgaon, Maharashtra. (As per ATS charge-sheet) Present Address : Flat No.4, Runa Nets, near Giriraj Ganpati Temple, Bijalinagar, Chinchwad, Pune (As per Plea Exh.5039) 6. Ajay @ Raja Eknath Rahirkar Age : 55 years, Occupation : Business. Address : 1. 16/04, Yarandvane, Karve road, Pune-4. Address: 2. 722, Shukrawar Peth, Pune. (As per ATS charge-sheet) Present Address : 16/04, Yarandvane, Karve Road, Pune-4. (As per Plea Exh.5040) 7. Rakesh Dattatray Dhawade (Discharged vide common order dated 27.12.2017) Age : 42 years, Occupation : Research of ancient arms. Address : Manini Apartment, Flat no.3, Dhayarigaon, last bus stop, Wadgaon Dhayari, Pune. Native Place : At post-Kondwe Dhawde, Taluka - Haveli, District - Pune. (As per ATS charge-sheet)

	8. Jagdish Chintaman Mhatre (Discharged vide common order dated 27.12.2017) Age : 40 years. Occupation : Estate Agent. Address : Sai Sparsh building, Mahatma Phule road, Opposite Bhoirwadi play ground, Dombivali (west), Thane. Native place : At post Dombivali, Mota gaon, Dombivali, Thane. (As per ATS charge-sheet) 9. Prasad Shrikant Purohit Age : 52 years, Occupation : Lieutenant Colonel in Indian Army. Address : 76/21, Shanti Sheela Colony, Yarandwane, Pune -4. Present Address : 52/2, Kiran Colony, Army Education Corp., Panchmarhi, Madhya Pradesh. (As per ATS charge-sheet) Present Address : 76/21, Shanti Sheela Colony, Yarandwane, Pune-4. (As per Plea Exh.5041) 10. Sudhakar Dhar Dwivedi @ Dayanand Pandey @ Swami Amrutanand Devtirth. Age : 55 years, Occupation : Religious Guru (Shankarachary) Address : House No.248, Sector No.1-A, Trikutanagar, Jammutawi, Jammu & Kashmir. Native place : At Deoghat, Post Patherdeva, Taluka & District Devariya, Uttar Pradesh. (As per ATS charge-sheet) Present Address : Haridwar, Uttarakhand State (As per Plea Exh.5042). 11. Sudhakar Onkarnath Chaturvedi @ Chanakya Sudhakar Age : 52 years, Address : C/o A.B. Mahajan, Vanat Chawl, Bhagur road, Deolali Camp, Taluka & District –

	Nashik. Native place: At Hargadh, Bahurupur, Post Gogaon, Taluka & District Mirzapur, Thana Jigana, Uttar Pradesh. (As per ATS charge-sheet) Present Address : At-Hargadh, Bahurupur, Post-Gogaon, Tal & Dist. - Mirzapur, Thana- Jigana, U.P. (As per Plea Exh.5043). 12. Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik. (Discharged vide common order dated 27.12.2017) Age : 47 years, Address : CTS No.1100, 1101, Aacharya Galli, Killa Gokak, Tal.-Gokak, Dist. Belgaon, Karnatak State (As per ATS Supplementary charge-sheet) 13. Ramji @ Ramchandra Gopalsingh Kalsangra (Absconding / Wanted Accused no.1) 14. Sandeep Vishwas Dange (Absconding / Wanted Accused no.2)
Represented by	Learned Adv. J. P. Mishra a/w Adv. Prashant P. Maggu a/w Adv. Sujender Yadav a/w Adv. Sanket Kolapte for accused no.1. Learned Adv. Sudeep Pasbola a/w Adv. Divya Singh for accused no.4. Shri.Sameer Kulkarni (accused No.5) in person. Learned Adv. J. P. Mishra a/w Adv. Nitin Apte a/w Adv. Veena Rahirkar a/w Adv. Sanket Kolapte for accused no.6. Learned Adv. Viral Babar a/w Adv. Sadanand Phadke a/w Adv.Yasir Khan a/w Adv. Amit Ghag a/w Adv. Dhavan Shah a/w (Late) Adv. Shrikant Shivade for accused no.9. Learned Adv. Ranjeet Sangle a/w Adv. Chaitnya Kulkarni a/w Adv. Akhilesh Jaiswal a/w Adv. Nehal Dhruv a/w Adv. Parag Sutar a/w Adv. Jay Gaikwad for accused no.10. Learned Adv. Sanjeev Punalekar a/w Adv. Prakash Salsingikar a/w Adv. Sachin Kanse a/w

	Adv. Virendra Ichalkaranjikar a/w Adv. Vasant Bansode a/w Adv. Ashish Kanojia a/w Adv. Ranjeet Nair a/w Adv. Suvarna Aavhad Vast a/w Adv. Dharma Raj Chandel a/w Adv. Ameya Kadkade a/w Adv. Revathi Nair a/w Adv. Isha Punalekar a/w Adv. Seema Kulkarni for accused no.11.

Part 'B'
[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	29.09.2008
Date of FIR	30.09.2008
Date of Charge-sheet filed by ATS	20.01.2009
Date of Supplementary Charge-sheet filed by ATS	21.04.2011
Date of Supplementary charge-sheet filed by NIA.	13.05.2016
Date of framing of charges	30.10.2018
Date of commencement of Evidence	03.12.2018
Date on which judgment is reserved	20.04.2025
Date of the Judgment	31.07.2025
Date of the Sentencing Order, if any	---Nil---

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention Undergone during Trial for purpose of Sec.428 of

							Cr.P.C.
1	**Pragyasingh Chandrapalsingh Thakur @ Swami Purna Chentnanad Giri**	23.10.2008	25.04.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---
2	**Shivnarayan Gopalsingh Kalsangra**	23.10.2008	03.08.2011		Discharged vide common order dated 27.12.2017		
3	**Shyam Bhavarlal Sahu**	23.10.2008	03.08.2011		Discharged vide common order dated 27.12.2017		
4	**Ramesh Shivji Upadhyaya**	28.10.2008	26.09.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the	Acquitted	Nil	---

				Explosive Substances Act, 1908			
5	**Sameer Sharad Kulkarni @ Chanakya Sameer**	28.10.2008	11.10.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---
6	**Ajay @ Raja Eknath Rahirkar**	02.11.2008	09.11.2011	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---
7	**Rakesh Dattatray Dhawde**	02.11.2008	----	3, 5, 25 of Arms Act-1959	Discharged from all other offences except Arms Act.		

					And Hence, matter transferred to Pune vide order dated 27.12.2017		
8	**Jagdish Chintaman Mhatre**	03.11.2008	15.02.2013	3, 5, 25 of Arms Act-1959	Discharged from all other offences except Arms Act. And Hence, matter transferred to Thane vide order dated 27.12.2017		
9	**Prasad Shrikant Purohit**	05.11.2008	21.08.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---

10	**Sudhakar Dhar Dwivedi @ Dayanand Pandey @ Swami Amrutanand Devtirth**	12.11.2008	19.09.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---
11	**Sudhakar Onkarnath Chaturvedi @ Chanakya Sudhakar**	20.11.2008	19.09.2017	120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substances Act, 1908	Acquitted	Nil	---
12	**Praveen Venkatesh Takkalki @ Pravin Mutalik**	01.02.2011	01.09.2016		Discharged vide common order dtd. 27.12.2017		
Absconding (wa	**Ramji @ Ramchandra Gopalsingh Kalsangra**	Absconding Accused		120-B, 153-A, 302, 307, 326, 324,			

nted) accu sed (AA -1)				427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substanc es Act, 1908			
Abs con ding (wa nted) accu sed (AA -2)	**Sandeep Vishwas Dange**	Abscon ding Accuse d		120-B, 153-A, 302, 307, 326, 324, 427 of IPC r/w Sec.16, 18 of UAP Act, 1967 r/w Sec. 3, 4, 5, 6 of the Explosive Substanc es Act, 1908			

Part 'C'
[Para 44(iii) of Chapter VI of Criminal Manual]
LIST OF PROSECUTION /DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
PW-1/ Exh.5099	Dr. Ajit Raghunath Patil	Private Medical Practitioner (Post-mortem reports)
PW-2/	Dr. Jatin Vasant Kapadnis	Private Medical Practitioner

Exh.5105		(Injury Certificate)
PW-3/ Exh.5118	Dr. Laxman Narayan Chavan	Chief Medical Officer (Injury Certificate)
PW-4/ Exh.5125	Dr. Farani Saeed Mohammad Siddhiqui	Private Medical Practitioner (Injury Certificate)
PW-5/ Exh.5187	Dr. Mahesh Ramdas Telrandhe	Private Medical Practitioner (Injury Certificate)
PW-6 Exh.5201	Dr. Venkatesh Subhash Zawar	Private Medical Practitioner (Injury Certificate)
PW-7/ Exh.5212	Dr. Rajesh Laxman Sonawane.	Private Medical Practitioner (Injury Certificate)
PW-8/ Exh.5222	Dr Bhalchandra Gopinath Chikhalkar	Professor and Head Forensic Medicine, J.J. Hospital (Post Mortem)
PW-9/ Exh.5249	Dr Saeed Ahmed Ansari	Private Medical Practitioner (Injury Certificate)
PW-10/ Exh.5265	Dr. Saeed Ahmed Faizee	Private Medical Practitioner (Injury Certificate)
PW-11/ Exh.5301	Dr. Vikram Panjabrao Vaidya	Private Medical Practitioner (Injury Certificate)
PW-12/ Exh.5322	Sajid Ahmad Mohammad Mustafa	Injured, Witness to incident
PW-13/ Exh.5334	Shaikh Mohammad Mobin Gulam Gaus	Injured
PW-14/ Exh.5356	Abdul Hafiz Abdul Hamid	Injured
PW-15/ Exh.5357	Haris Anjum Anis	Injured
PW-16/ Exh.5366	Akbar Ali Murad Ali	Injured
PW-17/ Exh.5372	Abdul Hamid Ahmadulla	Injured

PW-18/ Exh.5383	Mujjamir Ahamd Nisar Ahmad	Injured
PW-19/ Exh.5384	Shahid Iqbal Faruq Ali	Injured
PW-20/ Exh.5394	Sayyed Hussain Sayyed Latif	Injured
PW-21/ Exh.5396	Imran Ahmad Mustaq Ahamad	Injured
PW-22/ Exh.5397	Rashid Akhtar Abdul Rahim	Injured
PW-23/ Exh.5409	Mohmmad Aabid Abdul Khalif	Injured
PW-24/ Exh.5410	Mushtaq Ahmad Shahbuddin	Injured
PW-25/ Exh.5411	Siraj Ahmad Mukhtar Ahmad	Injured
PW-26/ Exh.5438	Shahazad Ahmad Shabbir Ahmad	Injured
PW-27/ Exh.5463	Shaikh Israil Shaikh Shakil	Injured
PW-28/ Exh.5464	Fayaz Khan Majid Khan	Injured
PW-29/ Exh.5465	Abu Osama Khalil Ahmed	Injured
PW-30/ Exh.5471	Javed Ahmed Abdul Kayyum	Injured
PW-31/ Exh.5472	Mohammd Yaseen Mohammd Aamin	Injured
PW-32/ Exh.5473	Abdul Rehaman Raees Ahmed	Injured
PW-33/ Exh.5474	Rashid Ahmed Mohammad Aamin	Injured

PW-34/ Exh.5475	Abdul Wahid Nisar Mukadam	Injured
PW-35/ Exh.5481	Fajal Rehman Lukman Khan	Injured
PW-36/ Exh.5482	Javed Akhtar Mohammad Istrail	Injured
PW-37/ Exh.5483	Tariq Abdul Aziz	Injured
PW-38/ Exh.5484	Ijaz Ahmed Riyaj Ahmed	Injured
PW-39/ Exh.5485	Mohammad Hanif Shaikh Chand	Injured
PW-40/ Exh.5498	Anis Ahmed Abdul Majid	Injured
PW-41/ Exh.5499	Rashid Akhtar Atiq Ahmed	Injured
PW-42/ Exh.5500	Abdul Hamid Mohammed Amin	Injured
PW-43/ Exh.5501	Nadeem Anjum Salim Ahmed	Injured
PW-44/ Exh.5502	Riyaz Ahmed Abdul Gafur Tamboli	Injured
PW-45/ Exh.5508	Shaikh Isaq Shaikh Yusuf	Injured
PW-46/ Exh.5509	Sayyed Faiz Sayyed Majid	Injured
PW-47/ Exh.5510	Mushtaque Ahmed Mohd. Hanif	Injured
PW-48/ Exh.5516	Najmul Hassain Nurul Hassain	Injured
PW-49/ Exh.5517	Atiq Ahmed Badruddin	Injured
PW-50/	Mohammad Issac	Injured

Exh.5518	Mohammad Istrail	
PW-51/ Exh.5519	Shaikh Sultan Shaikh Kalu	Injured
PW-52/ Exh.5525	Shaikh Ismail Shaikh Ibrahim	Injured
PW-53/ Exh.5526	Shoaib Ahmad Atiq Ahmad	Injured
PW-54/ Exh.5537	Shaikh Sharif Shaikh Yunus	Injured
PW-55/ Exh.5538	Shaikh Usman Shaikh Lukman	Injured
PW-56/ Exh.5539	Shaikh Jamil Shaikh Rafiq	Injured
PW-57/ Exh.5540	Yunus Khan Yusuf Khan	Injured
PW-58/ Exh.5541	Shaikh Shakil Shaikh Samad	Injured
PW-59/ Exh.5542	Sajid Khan Aijub Khan	Injured
PW-60/ Exh.5547	Mohammad Hanif Khan Mohammad	Injured
PW-61 Exh.5548	Israr Ahmed Abdul Khalik	Injured
PW-62/ Exh.5554	Abdul Khalik Mohammad Hanif	Injured
PW-63/ Exh.5555	Ziaoor Rehman Khalil Ahmed	Injured
PW-64/ Exh.5556	Shaqib Ahmed Rais Ahmed	Injured
PW-65/ Exh.5567	Mujamil Hussain Mohammad Kamil	Injured
PW-66/ Exh.5568	Mohammad Muddasir Abdul Samad	Injured

PW-67/ Exh.5580	Nawaj Ahmed Mohammad Salim	Injured
PW-68/ Exh.5581	Iftekhar Ahmed Manjur Hasan	Injured
PW-69/ Exh.5594	Shaikh Mudabbir Iqbal Mohammad Hanif	Father and two children of witness were injured
PW-70/ Exh.5596	Firoz Ahmed Mohammad Ahmed	Injured
PW-71/ Exh.5602	Mohammad Salim Mohammad Sabir	Injured
PW-72/ Exh.5603	Jafar Aabid Muqtar Ahmed	Injured
PW-73/ Exh.5609	Tausif Ahmed Salim Ahmed	Injured
PW-74/ Exh.5625	Aatiq Ahmed Abdul Jabbar	Injured
PW-75/ Exh.5626	Irfan Khan Mehamud Khan	Injured
PW-76/ Exh.5627	Shahid Ahmed Abdul Sattar	Injured
PW-77/ Exh.5639	Haji Abdul Hakim Aangan	Injured
PW-78/ Exh.5640	Moieddin Jamiluddin	Injured
PW-79/ Exh.5647	Aatiqur Rehaman Jalil Ahmed	Injured
PW-80/ Exh.5648	Nafiz Ahmed Jalil Ahmed	Injured
PW-81/ Exh.5649	Shaikh Shakil Shaikh Yunus	Injured
PW-82/ Exh.5650	Mohammad Sohel Mohammad Harun	Injured
PW-83/	Israr Ahmed Mohammad	Injured

Exh.5651	Farukh	
PW-84/ Exh.5657	Imtiyaz Ahmed Mohammad Abbas Qureshi	Injured
PW85/ Exh.5658	Mohammad Juber Ahmed Mohammad Faruq	Injured
PW-86/ Exh.5659	Mohammad Sadik Mohammad Yunus	Injured
PW-87/ Exh.5660	Navid Ahmed Jamil Ahmed Ansari	Injured
PW-88/ Exh.5661	Shaheen Usman Gani	Injured
PW-89/ Exh.5667	Tuba Aafareen Hajiju Rehaman	Injured
PW-90/ Exh.5668	Ariba Sidhika Maifujur Rehaman	Injured
PW-91/ Exh.5669	Tayabba Sohail Anwar (Ansari)	Injured
PW-92/ Exh.5670	Jubedabi Sardar Khan	Injured
PW-93/ Exh.5671	Nafisabanoo Noor Mohammad Ansari	Eye witness
PW-94/ Exh.5678	Noor Jaha Shaikh Rafiq	Wife of deceased
PW-95/ Exh.5679	Liyakat Moiddin Shaikh	Father of deceased
PW-96/ Exh.5680	Ziyaulla Khan Ainulla Khan	Father of deceased
PW-97/ Exh.5681	Usman Khan Ainulla Khan	Uncle of deceased
PW-98/ Exh.5682	Sayyed Aasif Haji Sayeed Ahmed	Cousin brother of deceased

PW-99/ Exh.5695	Rizwan Mohammad Salim	Injured
PW-100/ Exh.5696	Ekbalshaw Hrun Shah	Son of deceased
PW-101/ Exh.5697	Mustaq Shah Harun Shah	Son of deceased
PW-102/ Exh.5703	Vijay Manohar Bilaghe	Police on duty at spot of incident / Injured
PW-103/ Exh.5730	Ramjan Nisar Shah	Injured
PW-104/ Exh.5731	Ashfaq Musa Shaikh	Panch
PW-105/ Exh.5740	Rizwan Khan Amanulla Khan	Panch
PW-106/ Exh.5750	Salim Ahmad Khurshid Ahmad	Panch
PW-107/ Exh.5772	Abdul Latif Abdul Khudus	Panch
PW-108/ Exh.5780	Sharad Chintaman Hatge	Panch
PW-109/ Exh.5783	Ansari Mohammad Aslam Khalil Ahmad	Panch
PW-110/ Exh.5785	Ansari Shakil Ahmed Sohail Ahmed	Panch
PW-111/ Exh.5787	Salim Ahmed Abdul Latif	Panch
PW-112/ Exh.5795	Ankush Prakash Walve	Panch
PW-113/ Exh.5824	Ramesh Ukha Nikam	Panch
PW-114/ Exh.5845	Ismail Khan Sagir Khan	Witness related to deceased Shaikh Mushtaq

PW-115/ Exh.5846	Abdul Hakim Adbul Karim Khan	Injured
PW-116/ Exh.5856	Pandharinath Kalu Chaudhary	Dy. Supdt. of Land Record (Prepared Map)
PW-117/ Exh.5876	Kisanrao Sukaji Mhasane	Tahsildar (drawn inquest panchanamas)
PW-118/ Exh.5882	Raju Balu Gosavi	Havaldar who wrote FIR & complaint
PW-119/ Exh.5886	Sunil Maganrao More	Photographer/ Videographer
PW-120/ Exh.5893	Ambadas Devidas Jagtap	Photographer
PW-121/ Exh.5902	Uttam Namdeo Gaikwad	P.S.I. (member of BDDS, Nashik)
PW-122/ Exh.5909	Tukaram Khandu Dhaygude	Motor Vehicle Inspector, R.T.O. Nashik
PW-123/ Exh.5943	Sudhir Bhimrao Patil	P.S.I. who lodged complaint
PW-124/ Exh.5961	Shakeel Ahmad Mohd. Amin Khalifa	Panch
PW-125/ Exh.6044	Pravin Ramchandra More	Police Naik (Carrier of pellets/splinters)
PW-126/ Exh.6050	Sanjay Karbhari Khairnar	Police Naik (Carrier of pellets/splinters)
PW-127/ Exh.6057	Sanjay Bhaurao Aher	Police Havaldar (carrier of 33 sealed packets)
PW-128/ Exh.6076	Rajendra Pundalik Chaudhari	Police Head Constable, (carrier of Viscera and clothes)
PW-129/ Exh.6237	Mohd. Ali Siraj Ahmed	Prepared radium number plate of vehicle no.MH-15-P-4572
PW-130/ Exh.6251	Eknath Shankar Pingale	Previous owner of vehicle bearing no.MH-15-P-4572

PW-131/ Exh.6252	Devidas @ Dipak Narayan Gosavi	Agent who purchased and sold vehicle bearing no.MH-15-P-4572
PW-132/ Exh.6277	Rahul Krushnarao Deshmukh	Agent who sold vehicle bearing no.MH-15-P-4572
PW-133/ Exh.6284	Imran Sayyad Shaukat Ali	Purchased Hero Honda SS 100 vehicle No.MH-15-P-4572
PW-134/ Exh.6297	Shakeel Ahmed Mohd. Akbar	Prepared radium number plate of vehicle no.MH-15-P-4572
PW-135/ Exh.6298	Shoaib Akhtar Siraj Ahmed	Purchased Hero Honda SS vehicle No.MH-15-P-4572
PW-136/ Exh.6311	Abdul Mannan Abdul Khalik (Master)	Witness (owner of shop at the spot)
PW-137/ Exh.6356	Kishor Madhukar Shirapure	Purchased Hero Honda SS vehicle No.MH-15-P-4572
PW-138/ Exh.6386	Dilip Bhaskar Ghag	Assistant Police Inspector (carrier of 28 sealed packets)
PW-139/ Exh.6400	Sanjay Keshav Patil	Retired P.S.I. (collected report & articles from FSL)
PW-140/ Exh.6409	Krushnaji Yashwant Sawant	Havaldar (carrier of 9 sealed packets)
PW-141/ Exh.6573	Ashish Dattaram Palkar	Panch
PW-142/ Exh.6578	Vilas Vasudeo Achrekar	Panch
PW-143/ Exh.6584	Vilas Babanrao Chinchavade	Handed over laptop of Accused no.4
PW-144/ Exh.6589	Ajay Surendra Nisal	Panch
PW-145/ Exh.6592	Rajesh Kumar	Chief Manager, SBI, Pune (regarding original slip of SBI of Sameer Kulkarni)
PW-146/	Mohd. Irfan Sharif Meer	Panch

Exh.6595		
PW-147/ Exh.6597	Pritam Pradip Mhatre	Panch
PW-148/ Exh.6599	Vijay Parshuram Manjrekar	Senior Executive, IRCTC (regarding booking and cancellation of railway ticket dated 11.08.2008)
PW-149/ Exh.6601	Pragyanshu S. Akotia	Regarding insurance policy of accused Prasad Purohit
PW-150/ Exh.6607	Vinayak Anant Gandhi	Voice sample panch
PW-151/ Exh.6609	Kishan Ramesh Mansinghani	Bajaj Finance Employee (Finance to Rajkumar Sharma for purchasing Laptop)
PW-152/ Exh.6610	Rajendra Shriniwas Bhangui	Employee of L.M.L. Limited
PW-153/ Exh.6612	Ajit Malhari Kavade	Panch
PW-154/ Exh.6614	Sudheer Dnyandeo Sarvade	Panch
PW-155/ Exh.6616	Ajay Gendalal Jain	Panch
PW-156/ Exh.6618	Vinamra Shrikant Mokashi	Panch
PW-157/ Exh.6622	Sandip Kaluram Kalekar	Panch
PW-158/ Exh.6624	Vikas Vasant Shinde	Panch
PW-159/ Exh.6629	Raghunath Vitthal Vayangankar	Panch
PW-160/ Exh.6634	Chandrashekhar Bhalchandra Sawant	SBI Employee (Account of Abhinav Bharat)
PW-161/ Exh.6660	Vijay Kedar Jha	Receptionist in hotel

PW-162/ Exh.6663	Sandeep Laxman Palve	Panch
PW-163/ Exh.6671	Mangesh Namdeo Panjri	Panch
PW-164/ Exh.6675	Rajesh Ajit Waghmare	Panch
PW-165/ Exh.6680	Prashant Bhagwan Kharadkar	Panch
PW-166/ Exh.6695	Prachi Shashikant Kshirsagar	Handed over laptop given by Accused no.10 to ATS
PW-167/ Exh.6696	Sujit Suresh Khandale	Panch
PW-168/ Exh.6699	Tajuddin Wahab Ali Shaikh	Panch
PW-169/ Exh.6704	Navnath Nivrutti Gherde	Panch
PW-170/ Exh.6706	Harshal Dinesh Pol	Panch
PW-171/ Exh.6717	Dnyaneshwar Bhima Jachak	Accused no.6 handed over cash to PW-171
PW-172/ Exh.6719	Daulat Ramdas Chumble	Panch
PW-173/ Exh.6722	Mahadeo Ramanna Talkeri	Constructed bunglow of Accused no.9
PW-174/ Exh.6724	Nitin Govind Kale	Sold laptop of HP company to R. K. Sharma
PW-175/ Exh.6730	Sanjay Tukaram Palkar	Panch
PW-176/ Exh.6734	Viren Kishorilal Yadav	Panch
PW-177/ Exh.6738	Shobhana Shivkumar Vaidya	Worked at Sarvajanik Vachnalay, Nashik (Accused Sudhakar Chaturvedi booked “Parshuram Sahikedkar

		Natyagruh")
PW-178/ Exh.6740	Datta Savaliram Gawade	P.S.I. (intercepted phone calls)
PW-179/ Exh.6742	Uttam Trambak Pawar	P.S.I. (Drawn inquest Panchanama)
PW-180/ Exh.6745	Mrs. Lila Ashok Palave	Panch
PW-181/ Exh.6747	Dinesh Mussadilal Agrawal	Retired Sr. PI (inquired about LML bike)
PW-182/ Exh.6756	Nivruti Tukaram Kadam	Sr. P.I. Cyber and Technical Unit
PW-183/ Exh.6760	Mr. Vijay Sanchalal Chajed	Panch
PW-184/ Exh.6766	Dr. Bhausaheb Parshuram More	Deputy Director, FSL, Nashik
PW-185/ Exh.6771	Narendra Ramchandra Gosavi	Assistant Director, FSL, Nashik
PW-186/ Exh.6774	Mr. Amasiddha Tippanna Pandhare	Assistant Director, FSL
PW-187/ Exh.6776	Mr. Rajendra Dnyaneshwar Bendbhar	Assistant Director, FSL
PW-188/ Exh.6780	Sanjit Kishor Pendharkar	Met with Accused Prasad Purohit for guidance
PW-189/ Exh.6781	Bapu Kishor Sonawane	Purchased motorcycle no.MH-15-P-4572 of Hero Honda SS
PW-190/ Exh.6785	Santosh Kunjumanprasad Mishra	Receptionist at Hotel Tulsi
PW-191/ Exh.6789	Sunil Shantaram Varde	Receptionist at Mahakaleshwar Dharmashala, Ujjain
PW-192/ Exh.6791	Eklavya Singh Goud	Provided SIM to Accused no.1
PW-193/	Sachin Jagdishchandra	Regarding SIM (Accused no.1)

Exh.6792	Soni	
PW-194/ Exh.6793	Natthilal Shrijalsingh Azad	Manager at Shri Ram Mandir (Accused no.5 booked hall)
PW-195/ Exh.6797	Paresh Champaklal Gandhi	Dealer of LML Freedom Motorcycles (Siddhi Agency)
PW-196/ Exh.6803	Vallabhbhai Keshavbhai Goyani	Owner of showroom of vehicles namely Shreenathji Auto Electronics
PW-197/ Exh.6804	Suresh Kumar Gunwantrai Parekh	Sale & Purchase of two wheelers (Khushbu Auto & finance (Parekh Finance)
PW-198/ Exh.6807	Shailesh Maganbhai Patel	Delivery boy at Angadia
PW-199/ Exh.6809	Chetankumar Rambhai Patel	Manager at courier service Bhavani Express
PW-200/ Exh.6813	Varsha Rakesh Dhawade	Wife of Rakesh Dhawde
PW-201/ Exh.6815	Dr. Arun Chintamani Datar	Member of Abhinav Bharat
PW-202/ Exh.6817	Sunil Dattaram Jadhav	P.I. (Voice sample panchanama)
PW-203/ Exh.6818	Shobhraj Nihalchand Sukhwani	Panch (Seizure panchanama)
PW-204/ Exh.6822	Javed Wahid Shaikh	Panch
PW-205/ Exh.6825	Jayant Kashiram Aher	Handwriting expert
PW-206/ Exh.6854	Amod Shriram Damale	Secretary, Abhinav Bharat Trust
PW-207/	Sunita Sudhir Jadhav	Trustee, Abhinav Bharat Trust

Exh.6856		
PW-208/ Exh.6862	Shailesh Shankar Raikar	Serving as Commandant in Bhonsala Military School
PW-209/ Exh.6868	Tejas Prakash Potdar	Driver of Accused no.9
PW-210/ Exh.6871	Ajay Harikishan Thapar	Gave farmhouse to Shankaracharyaji
PW-211/ Exh.6872	Jagdish Prasad Jatav	Made arrangements for camp
PW-212/ Exh.6876	Arvind Pateria @ Banti Pateria	Taxi driver at Pachmarhi
PW-213/ Exh.6879	Mohd. Mustakim Shaikh Mohd. Kasam Shaikh	Panch
PW-214/ Exh.6884	Shashank Mohanlal Sahu	Made entries in register
PW-215/ Exh.6889	Dilip Niranjannath Kaul	Manager of SBI
PW-216/ Exh.6897	Ananda Bhika Mahajan	Gave house on rent to Accused no.11
PW-217/ Exh.6899	Babanrao Muktaji Joshi	Dy. S.P. (Recorded statements of injured)
PW-218/ Exh.6903	Somnath Tukaram Gunjal	Other witness (Regarding Accused no.9 & 10)
PW-219/ Exh.6905	Ramesh Narayan Surve	Other witness (Regarding to Accused no.9 & 10)
PW-220/ Exh.6907	Milind Avinash Joshirao	Trustee, Abhinav Bharat Trust
PW-221/ Exh.6913	Mohit Shivsingh Thakur	Booked rooms at Mahakal Temple, Ujjain

PW-222/ Exh.6914	Kailash Kishor Solanki	Working in mobile shop
PW-223/ Exh.6918	Mahesh Kaushik Harprasad Kaushik	Travel agent
PW-224/ Exh.6925	Amol Shripathi Thorat	Driver
PW-225/ Exh.6932	Rajkumar Vishwambhardayal Sharma	Purchased laptop
PW-226/ Exh.6936	Raju Vasant Devkar	Appointed for organising Kumbh Mela
PW-227/ Exh.6940	Sachin Mahadev Shinde	Nodal officer, Idea Cellular Company
PW-228/ Exh.6950	Mohd. Sageer Qureshi	Sold Pulsar motorcycle
PW-229/ Exh.6953	Amit Raghunath Karkera	Nodal officer, Bharti Airtel Limited, Pune
PW-230/ Exh.6960	Vilas Aatmaram Sonawane	Police Officer (Recorded statements of injured)
PW-231/ Exh.6964	Ramkrishna Lakhmaji Kute	Principal, Bhonsala Military School, Nashik
PW-232/ Exh.6970	Chanakya Harbans Bakshi	Owner of hotel Misty Meadows, Panchmarhi
PW-233/ Exh.6971	Jayant Anandrao Pradhan	Business of tourist vehicles
PW-234/ Exh.6976	Rohit Avinashchandra Bansal	Chief Operating Officer (India TV)
PW-235/ Exh.6981	Ramchandra Subhashchandra Bose	Booked rooms at Sayaji hotel, Indore
PW-236/ Exh.6986	Ejaj Ahmed Mohd. Yusuf	Motor cycle mechanic

PW-237/ Exh.6988	Chandu Mukesh Rao	Nodal officer, Hutchison Essar Cellular Company
PW-238/ Exh.6992	Samadhan Karbhari Yayiz	Witness who purchase & sold motorcycle MH-15-P-4572
PW-239/ Exh.6993	Tej Bahadur Singh	Dy. S.P. (arrest of Accused no.10)
PW-240/ Exh.7000	Vinod Bhagwan Kadam	P.S.I. (Interception of calls)
PW-241/ Exh.7005	Zia Ul Hasan	Nodal officer, B.S.N.L. Bhopal
PW-242/ Exh.7011	Sanjay Kumar	Panch
PW-243/ Exh.7020	Bapaditya Dhar	Sr. Officer at AEC College at Pachmadi
PW-244/ Exh.7023	Ashok Kumar Bhuyan	Colonel, sent information regarding accused no.9
PW-245/ Exh.7027	Dattatray Aatmaram Pawar	Lance Naik Sweeper, Devlali Camp, Nashik
PW-246/ Exh.7036	Prakashchand Dipchand Jain	Nodal officer, Reliance
PW-247/ Exh.7048	Colonel Dinesh Kumar s/o Mastaram Sharma	Service in Army (panch for handing over documents)
PW-248/ Exh.7058	Anurag Shrishyam Upadhayay	Press reporter
PW-249/ Exh.7110	Champakbhai Narayanbhai Rana	Head clerk at R.T.O., Surat
PW-250/ Exh.7124	Amol Sadashiv Bitkar	Service in HDFC Bank
PW-251/ Exh.7149	Harish Sudhir Devasthali	Manager at Reliance Money Company, Pune

PW-252/ Exh.7165	Manish Mahesh Goswami	Business of arms & ammunition
PW-253/ Exh.7183	Shashank Ganpatrao Shelke	A.P.I. (recorded statements)
PW-254/ Exh.7200	Hemant B.L. Rathave	Nodal officer, B.S.N.L. Pune
PW-255/ Exh.7215	Gaurav Surendranath Mishra	Donation demanded by Prasad Purohit
PW-256/ Exh.7228	Jitendrasinh Narubhai Vaghela	Serving as R.T.O. at Surat
PW-257/ Exh.7242	Satish Vilasrao Gurav	A.P.I. (Assisting Investigating Officer)
PW-258/ Exh.7256	Vasant Vithalrao Jadhav	Nodal Officer, B.S.N.L. Maharashtra & Goa state
PW-259/ Exh.7266	Shirish Yashwant Date	Real Estate Agent
PW-260/ Exh.7268	Borunkumar Subolchandra Banerjee	P.I. in Technical branch, ATS, Mumbai
PW-261/ Exh.7279	Dr. Subhash Madhukar Bakare [Suhas Madhukar Bakre (Name corrected as per order Exh.7312)]	Assistant Chemical Analyser at F.S.L.
PW-262/ Exh.7353	Colonel Praveen Madhav Khanzode	Service in Army
PW-263/ Exh.7382	C. A. J. Prakash	Chief Nodal officer, Idea Cellular Limited, Mumbai
PW-264/ Exh.7413	Varun Devendra Goswami	Sudhakar Chaturvedi stayed in the house of PW-264
PW-265/ Exh.7429	Prasad Sudhir Deosthali	Student Officer at AEC training college, Pachmarhi

PW-266/ Exh.7436	Gajanan Laxman Kabdule	Officer of A.T.S.
PW-267/ Exh.7444	Shaikh Akhtar Shaikh Bashir	Panch
PW-268/ Exh.7471	Pradeepkumar Tapaskumar Mukherjee	Manager at Hotel Sayaji, Indore
PW-269/ Exh.7483	Vivekananda Tukaram Wakhare	P.I., A.T.S. Mumbai
PW-270/ Exh.7515	Shaikh Imran Shaikh Wahab	Injured
PW-271/ Exh.7531	Manoj Satyanarayan Jaiswal	Assistant Jail Superintendent
PW-272/ Exh.7549	Pravir Ramanuj Hazra	Panch
PW-273/ Exh.7580	Ganesh Chandra Mohanta	Witness related to Mirror image/cloning of laptop & Leave record (Handing/ taking) of accused no.9.
PW-274/ Exh.7598	Arvind Bapu Sawant	P.I., A.T.S., Mumbai.
PW-275/ Exh.7638	Amrnath Zagaru Yadav	Security guard of temple
PW-276/ Exh.7639	Kashinath Kanhaiyalal Banarjee	Priest at temple
PW-277/ Exh.7659	Saidatta Muralilal Bohare	Circle Nodal officer in Bharati Airtel Limited, Indore Office
PW-278/ Exh.7718	Rayomand Amalsad	Manager of Kingfisher Airlines
PW-279/ Exh.7744	Prakash D. S/o Dev Sahay	Senior Superintendent of Police.
PW-280/	Gagan Devendra Gehalot	Chief Manager of ICICI Bank,

Exh.7750		Pune
PW-281/ Exh.7767	Mahendra Bhagwanprasad Bhatnagar	Manager of temple
PW-282/	Shaik Khaja Nayab Rasool	Service in military
PW-283/ Exh.7777	Gautam Deb	Deputy Director General Military Intelligence
PW-284/ Exh.7788	Sunil Dadabhai Koli	Assistant Chemical Analyzer
PW-285/ Exh.7811	Ambarish Keshavprasad Tiwari	Nodal officer, Idea Cellular Limited, Indore
PW-286/ Exh.7819	Ram Chandra Ramkrishna Sharma	Working in Military Intelligence
PW-287/ Exh.7838	Vijendra Mangeram Singh	Retired NIA officer
PW-288/ Exh.7847	Colonel G. Kannan	Staff, A.E.C. training college
PW-289/ Exh.7897	Mahendra Damodar Ahire	Retired A.P.I. (statements of injured)
PW-290/ Exh.7931	Dhananjay Janba Dhumal	Retired Sr. P.I. (recorded statements)
PW-291/ Exh.7972	Peter Salvador Lobo	Retired A.C.P. (recorded statements)
PW-292/ Exh.7981	Santosh Dattatraya Girigosavi	P.I. (seizure of laptop)
PW-293/ Exh.7987	Rajendra Damodar Kute	P.I. (recorded statements & prepared panchanama)
PW-294/ Exh.8000	Purushottam Ramrao Chaudhari	P.I. (recorded statements)
PW-295/ Exh.8030	Liladhar Narayan Kanade	Assistant Investigating Officer
PW-296/ Exh.8060	Kiran Gangadhar Deokate	Assistant Chemical Analyzer at Directorate F.S.L.

PW-297/ Exh.8132	S. Chockalinoam	District Collector and District Magistrate, Nashik
PW-298/ Exh.8188	Lhari Dorjee Lhatoo	Superintendent of Police, NIA, New Delhi
PW-299/ Exh.8262	Ravi Gambhir S/o Late R.L. Gambhir	D.S.P., NIA at Delhi
PW-300/ Exh.8269	Atul Achyut Sabnis	A.P.I., ATS, Pune Unit
PW-301/ Exh.8318	Anil Chandrakant Akade	P.I. at L.C.B., Nashik Gramin.
PW-302/ Exh.8360	Rajendra @ Rajan Sopanrao Ghule	P.I at ATS, Mumbai
PW-303/ Exh.8365	Chetan Matumal Dhakan	Estate Agent
PW-304/ Exh.8378	Chitkala Zutshi	Additional Chief Secretary Home Department, Maharashtra (Accord sanction in Malegaon-Bomb-Blast-case-2008 **(Sanctioning Authority)**
PW-305/ Exh.8393	Dilip Rameshchandra Nahar	Business of repairing Air-conditioner.
PW-306/ Exh.8405	Gaurav Kaushal Sharma	Reservation Manager at Sayaji Hotel, Indore
PW-307/ Exh.8410	Keshav Karbhari Pawar	'Subhedar' at Dewalali Camp, Nashik
PW-308/ Exh.8417	Yashpal Sarupa Bhadana	Other witness
PW-309/ Exh.8423	Captain Nitin Dattatray Joshi	Chief Admin and Training officer at Bhosala Military School, Nashik
PW-310/		Additional Chief Secretary,

Exh.8493	Umesh Chandra Sarangi	Home Department, Maharashtra **(Sanctioning Authority)**
PW-311/ Exh.8504	Ashok Kumar Chawla	Treasurer of 'Sindhu Shakti Parishad, Jabalpur'
PW-312/ Exh.8513	Ram Pratap Singh @ R.P. Singh	Doctor at Apolo Hospital, Delhi.
PW-313/ Exh.8521	Pradip Shahaji Bhale	P.I. at NIA, Mumbai
PW-314/ Exh.8547	Shashikant Anandrao Bhandare	Investigating Officer
PW-315/ Exh.8552	Popat Nivrutti Avhad	P.S.I., at ATS, Kalachowki, Mumbai
PW-316/ Exh.8561	Dharmendra Subhashdas Bairagi	Attended 'Sinhastha Kumbhamela'
PW-317/ Exh.8568	Subhash Ramesh Dudhgaonkar	A.P.I. at Kalachowki, ATS, Mumbai (I.O.)
PW-318/ Exh.8615	Vijay Maruti Kadam	P.I. ATS, Mumbai.
PW-319/ Exh.8635	Shekhar Ramdas Bagade	A.P.I. at ATS, Nashik Unit
PW-320/ Exh.8663	Mohan Madhav Kulkarni	Retired A.C.P.
PW-321/ Exh.8915	Anil Kumar Dubey	Retired Dy. S.P., NIA
PW-322/ Exh.8966	Sadashiv Raghunath Shelar	Retired Police Inspector (Wadala P. Stn)
PW-323/ Exh.8985	Bhimraj Rohidas Ghadge	Sr. PI, Vigilance Cell, TRTI, Thane (W)

B. Defence Witnesses :

RANK	NAME	NATURE OF EVIDENCE
DW-1/ Exh.9827	Sr. P.I. Dipak Rajaram Chavhan.	Other witness
DW-2/ Exh.9834	Retired Brigadier Surendra Sing Chahal	Sent reply letter (Exh.9835) to Prasad Purohit
DW-3/ Exh.9842	Colonel Skand Nayal.	Service in Army
DW-4/ Exh.9876	Colonel Patil Shree Vikas	Service in Army
DW-5/ Exh.9892	Colonel Sanjeev Sharma	Commanding Officer of Prasad Purohit
DW-6/ Exh.9944	Ram Briksh Prasad	Service in Army
DW-7/ Exh.9960	Lieutenant Colonel Nitin Sudhakar Shetty	Service in Army
DW-8/ Exh.9968	Subedar Sutar Srindvas Vasudev.	Subedar in M.G. and G Area, Provost Unit, Colaba, Mumbai

C. Court Witnesses : Nil.

LIST OF PROSECUTION /DEFENCE/COURT EXHIBITS

A. Prosecution :

LIST OF DOCUMENTS

Sr. No.	Exhibit	Description
1	**Exh.5100 /PW-1**	Post mortem report of Shaikh Mustaq Shaikh Yusuf.
2	**Exh.5101**	Post-mortem report of Farheen @ Shagufta

Sr. No.	Exhibit	Description
	/PW-1	Shaikh Liyakat.
3	Exh.5102 /PW-1	Post-mortem report of Shaikh Rafique Shaikh Mustafa.
4	Exh.5103 /PW-1	Post-mortem report of Sayyed Ajhar Sayyed Nisar.
5	Exh.5106 /PW-2	Medico-Legal Certificate of Abdul Abibul Rehman.
6	Exh.5119 /PW-3	Certificate of post-mortem report of Harun Shaha Mohammad Shaha.
7	Exh.5126 /PW-4	Medical certificate of Rasheed Mohammad Aameen.
8	Exh.5127 /PW-4	Medical certificate of Qummruddin Mohammad Sami.
9	Exh.5128 /PW-4	Medical certificate of Jameel Ahmed Noorul Hooda(Huda).
10	Exh.5129 /PW-4	Medical certificate of Iftekar Ahmed Manzoor Hasan.
11	Exh.5130 /PW-4	Medical certificate of Ateeque Ahmed Baddrudin.
12	Exh.5131 /PW-4	Medical certificate of Amanullah Mohammad Ismail.
13	Exh.5132 /PW-4	Medical certificate of Javed Ahmed Abdul Qayyum.
14	Exh.5133 /PW-4	Medical certificate of Abdul Hamid Ahmedullah.
15	Exh.5134 /PW-4	Medical certificate of Sajid Khan Ayub Khan.
16	Exh.5135 /PW-4	Medical certificate of Abdul Hamid Mohammad Ameen.
17	Exh.5136 /PW-4	Medical certificate of Sayeed Faiz Sayeed Majeed.
18	Exh.5137	Medical certificate of Fazlurehman Luqman

Sr. No.	Exhibit	Description
	/PW-4	Khan.
19	Exh.5138 /PW-4	Medical certificate of Sk. Shafeeque Shaikh Yunus.
20	Exh.5139 /PW-4	Medical certificate of Sk. Sharif Shaikh Yunus.
21	Exh.5140 /PW-4	Medical certificate of Rasheed Akhtar Ateeque Ahmed.
22	Exh.5141 /PW-4	Medical certificate of Abu Osama Khalil Ahmed.
23	Exh.5142 /PW-4	Medical certificate of Muzummil Hussain Mohammad Kamal.
24	Exh.5143 /PW-4	Medical certificate of Abdul Khalique Shafique Ahmed.
25	Exh.5144 /PW-4	Medical certificate of Ateequrrhman Jaleel Ahmed.
26	Exh.5145 /PW-4	Medical certificate of Siraz Ahmed Mukhtar Ahmed.
27	Exh.5146 /PW-4	Medical certificate of Shaikh Ishaque Shaikh Yusuf.
28	Exh.5147 /PW-4	Medical certificate of Abdul Khaliq Mohammad Hanif.
29	Exh.5148 /PW-4	Medical certificate of Mohammad Rizwan Mohammad Salim.
30	Exh.5149 /PW-4	Medical certificate of Mushtaque Ahmed Shahabuddin.
31	Exh.5150 /PW-4	Medical certificate of Zuber Mohammad Farooque Qureshi.
32	Exh.5151 /PW-4	Medical certificate of Abdul Wahid Nishar Mukadam.
33	Exh.5152 /PW-4	Medical certificate of Yunus Khan Yusuf Khan.
34	Exh.5153	Medical certificate of Shaikh Shakeel

Sr. No.	Exhibit	Description
	/PW-4	Shaikh Samad.
35	Exh.5154 /PW-4	Medical certificate of Akbar Ali Murad Ali.
36	Exh.5155 /PW-4	Medical certificate of Fayyaz (Fayaz) Khan Majeed Khan.
37	Exh.5156 /PW-4	Medical certificate of Shahzad Ahmed Shabbir Ahmed.
38	Exh.5157 /PW-4	Medical certificate of Aabid Ahmed Abdul Khalique.
39	Exh.5158 /PW-4	Medical certificate of Shahid Iqbal Farooque Ali.
40	Exh.5159 /PW-4	Medical certificate of Abdul Hafeez Abdul Hameed.
41	Exh.5160 /PW-4	Medical certificate of Rashid Akhtar Abdul Rahim.
42	Exh.5161 /PW-4	Medical certificate of Abdullah Jamlauddin.
43	Exh.5162 /PW-4	Medical certificate of Sajid Ahmed Mohammad Mustafa.
44	Exh.5163 /PW-4	Medical certificate of Imran Ahmed Mushtaque Ahmed.
45	Exh.5164 /PW-4	Medical certificate of Ateeque Ahmed Abdul Jabbar Kusaru.
46	Exh.5165 /PW-4	Medical certificate of Anees Ahmed Abdul Majid.
47	Exh.5166 /PW-4	Medical certificate of Shaikh Isarail Shaikh Shakeel.
48	Exh.5167 /PW-4	Medical certificate of Harish Anjum Anees Ahmed.
49	Exh.5168 /PW-4	Medical certificate of Mohammad Sohail Mohammad Harun.
50	Exh.5169	Medical certificate of Sayyed Hussain

Sr. No.	Exhibit	Description
	/PW-4	Sayyed Latif.
51	Exh.5170 /PW-4	Medical certificate of Shaikh Mobin Shaikh Gulam.
52	Exh.5171 /PW-4	Medical certificate of Nawaz Ahmed Mohammad Salim.
53	Exh.5172 /PW-4	Medical certificate of Mohammad Hanif Mohammad Shafi.
54	Exh.5173 /PW-4	Medical certificate of Azmi Farzan Mudabbir Iqbal.
55	Exh.5174 /PW-4	Medical certificate of Zubaida Sardar Khan.
56	Exh.5175 /PW-4	Medical certificate of Tayyeba Wife of Sohail Anwar.
57	Exh.5176 /PW-4	Medical certificate of Mohammad Sadique Mohammad Yunus.
58	Exh.5177 /PW-4	Medical certificate of Abdul Hakeem Karim Khan.
59	Exh.5178 /PW-4	Medical certificate of Shahid Ahmed Abdul Sattar.
60	Exh.5179 /PW-4	Medical certificate of Muzammil Nishar Ahmed.
61	Exh.5180 /PW-4	Medical certificate of Israr Ahmed Abdul Khalique.
62	Exh.5181 /PW-4	Medical certificate of Ashfaque Shaikh Ishaque.
63	Exh.5188 /PW-5	Medical certificate of Imran Ahmed Mustak Ahmed.
64	Exh.5189 /PW-5	Medical certificate of Sayyad Husaine Sayyad Latif.
65	Exh.5190 /PW-5	Medical certificate of Abdul Hafiz Abdul Hanif.
66	Exh.5191	Medical certificate of Mohammad Sohel

Sr. No.	Exhibit	Description
	/PW-5	Mohammad Haroon.
67	Exh.5192 /PW-5	Medical certificate of Sajid Ahmed Shabbir Ahmed.
68	Exh.5193 /PW-5	Medical certificate of Abdul Khalik Mohammad Hanif.
69	Exh.5194 /PW-5	Medical certificate of Vijay Manohar Bilaghe.
70	Exh.5195 /PW-5	Medical certificate of Anis Ahmed Abdul Mujid.
71	Exh.5202 /PW-6	Medical injury certificate of Imran Shaikh Wahab.
72	Exh.5203 /PW-6	Medical injury certificate of Mohammad Yaseen Mohammad Aamin.
73	Exh.5204 /PW-6	Medical injury certificate of Ahmed Haji Mohammad Hanif.
74	Exh.5205 /PW-6	Medical injury certificate of Tausif Ahmed Saleem Ahmed.
75	Exh.5206 /PW-6	Medical injury certificate of Abdul Rahman Raees Ahmed.
76	Exh.5207 /PW-6	Medical injury certificate of Haji Abdul Hakeem Anjan.
77	Exh.5208 /PW-6	Medical injury certificate of Ziyaurraheman Khalil Ahmed Bakshi.
78	Exh.5209 /PW-6	Medical injury certificate of Miss. Tuba Aafreen Azizurrahma.
79	Exh.5210 /PW-6	Medical injury certificate of Miss. Ariba Siddiqua Mahefuzzurahaman
80	Exh.5213 /PW-7	Medical injury certificate of Shaikh Jamil Shaikh Rafique.
81	Exh.5214 /PW-7	Medical injury certificate of Shaikh Usman Shaikh Luhman Qureshi.
82	Exh.5215	Medical injury certificate of Irfan Khan

Sr. No.	Exhibit	Description
	/PW-7	Mehbub Khan.
83	Exh.5223 /PW-8	Post-mortem report of Irfan Jiyaullah Khan.
84	Exh.5250 /PW-9	Medical Certificate of Riyaz Ahmed Abdul Gaffur Tamboli.
85	Exh.5251 /PW-9	Medical Certificate of Shaikh Haroon Shaikh Kalu.
86	Exh.5252 /PW-9	Medical Certificate of Zafar Aabid Mukhtar Ah.
87	Exh.5253 /PW-9	Medical Certificate of Shaikh Sultan Shaikh Kalu.
88	Exh.5254 /PW-9	Medical Certificate of Mohmmad Ahemad Noor Md.
89	Exh.5255 /PW-9	Medical Certificate of Tayyaba Sadaf Noor Md.
90	Exh.5256 /PW-9	Medical Certificate of Shakib Ahemad Raees Ah.
91	Exh.5257 /PW-9	Medical Certificate of Atique Ahmad Badruddin.
92	Exh.5258 /PW-9	Medical Certificate of Mushtaque Ahemad Shaikh Hanif.
93	Exh.5266 /PW-10	Medical certificate of Mohd. Mudassir Abdul Samad.
94	Exh.5267 /PW-10	Medical certificate of Naveed Ahemed Zamil Ahmed.
95	Exh.5268 /PW-10	Medical certificate of Shoaib Ahmed Atik Ahmed Khateeb.
96	Exh.5269 /PW-10	Medical certificate of Ejaj Ahmed Riyaz Ahmed.
97	Exh.5270 /PW-10	Medical certificate of Tariq Abul Aziz.
98	Exh.5271	Medical certificate of Imtiyaz Mohd. Abbas.

Sr. No.	Exhibit	Description
	/PW-10	
99	Exh.5272 /PW-10	Medical certificate of Mohd. Haneef Khan Mohd.
100	Exh.5273 /PW-10	Medical certificate of Mohijuddin Zameeruddin.
101	Exh.5274 /PW-10	Medical certificate of Nafeesurraheman Zaleel Ahmed.
102	Exh.5275 /PW-10	Medical certificate of Israr Ahmed Mohd. Farooque.
103	Exh.5276 /PW-10	Medical certificate of Shaikh Shabbir Shaikh Nooruddin.
104	Exh.5277 /PW-10	Medical certificate of Firoz Ahmed Mehmud Ahmed.
105	Exh.5278 /PW-10	Medical certificate of Shaikh Hanif Shaikh Chand.
106	Exh.5279 /PW-10	Medical certificate of Shaikh Ismail Shaikh Ibrahim.
107	Exh.5280 /PW-10	Medical certificate of Saleem Ahmed Mohd. Sabir.
108	Exh.5281 /PW-10	Medical certificate of Mohd. Ishaque Mohd. Isrial.
109	Exh.5282 /PW-10	Medical certificate of Abdulla Habeerburr Raheman.
110	Exh.5283 /PW-10	Medical certificate of Javed Akhtar Mohd. Israil.
111	Exh.5284 /PW-10	Medical certificate of Nadeem Anjum Salim Ahmed.
112	Exh.5302 /PW-11	Medical certificate of Nurul Hudda Nurul Hasan.
113	Exh.5303 /PW-11	Medical certificate of Nadeem Ahemad Mohammad Lukman.
114	Exh.5304	Medical certificate of Shahin Usman Gani.

Sr. No.	Exhibit	Description
	/PW-11	
115	Exh.5305 /PW-11	Medical certificate of Ramzan Shah Nissar Shah.
116	Exh.5306 /PW-11	Medical certificate of Mujamil Huseen Mohammad Kamil.
117	Exh.5307 /PW-11	Medical certificate of Nadeem Anjum Salim Ahmad.
118	Exh.5595 /PW-69	Xerox copy of death certificate of father of PW-69 (injured)
119	Exh.5732 /PW-104	Inquest panchnama of dead body of Irfan.
120	Exh.5741 /PW-105	Inquest panchnama of dead body of Harun Shah.
121	Exh.5751 /PW-106	Inquest panchnama of dead body of Farheen @ Shagufta.
122	Exh.5752 /PW-106	Inquest panchnama of dead body of Ajhar.
123	Exh.5753 /PW-106	Inquest panchnama of dead body of Shaikh Mushtaq.
124	Exh.5754 /PW-106	Inquest panchnama of dead body of Shaikh Raffique.
125	Exh.5773 colly./PW107	Panchnamas of seizure of splinters from body of 13 injured (1 to 13)
126	Exh.5781 /PW-108	Splinters seizure panchnama.
127	Exh.5782 /PW-108	Splinters seizure panchnama.
128	Exh.5784 /PW-109	Clothes seizure panchnama.
129	Exh.5786 colly./PW110	Six seizure panchnamas of splinters.
130	Exh.5788	Five seizure panchnamas of splinters.

Sr. No.	Exhibit	Description
	colly./PW111	
131	Exh.5796 /PW-112	Seizure panchnama of splinters of injured Nadim Lukman.
132	Exh.5825 /PW-113	Seizure panchanama of clothes of dead body of Farheen @ Shagufta.
133	Exh.5826 /PW-113	Seizure panchanama of clothes of dead body of Sayyed Ajhar Sayyed Nisar.
134	Exh.5827 /PW-113	Seizure panchanama of clothes of dead body of Shaikh Raffiq Shaikh Mustafa.
135	Exh.5828 /PW-113	Seizure panchanama of clothes of dead body of Shaikh Mushtaq Shaikh Yusuf.
136	Exh.5857 colly./PW116	Two maps.
137	Exh.5877 /PW-117	Report dated 15.12.2008 in respect of damage caused to the shops.
138	Exh.5883 /PW-118	F.I.R. dated 30.09.2008 bearing crime no.130/2008.
139	Exh.5884 /PW-118	Copy of station diary entry.
140	Exh.5885 /PW-118	Document to the extent of entry regarding Station diary entry no.7/08 taken by PW-118 on the left side of complaint (Exh.5944).
141	Exh.5903 /PW-121	Report dated 30.09.2008 prepared by PW-121 [PSI, Nasik Bomb Detection and Disposal Squad (BDDS)]
142	Exh.5910 /PW-122	Inspection Report of LML Freedom Motor Vehicle by Motor Vehicle Inspector.
143	Exh.5915 /PW-122	Letter dated 08.10.2008 forwarded by R.T.O. Nasik to Senior P.I., L.C.B. Nashik(Rural).
144	Exh.5944 /PW-123	Complaint dated 30.09.2008 lodged by Complainant PW-123.

Sr. No.	Exhibit	Description
145	**Exh.5962 /PW-124**	Spot panchanama dated 30.09.2008.
146	**Exh.6051 /PW-126**	Letter dated 07.10.2008 (O.W. No.2942/ 2008)
147	**Exh.6058 /PW-127**	Letter dated 30.09.2008 (O.W. No.2874/ 2008)
148	**Exh.6059 /PW-127**	Letter dated 06.10.2008 (O.W. No.2930/ 2008) sent to FSL, Nashik regarding sending of viscera and clothes of deceased.
149	**Exh.6060 /PW-127**	Letter dated 07.10.2008 (O.W. No.2941/ 2008)
150	**Exh.6077 /PW-128**	Office copy of letter dated 03.10.2008 (O.W. No.2901/2008)
151	**Exh.6357 /PW-137**	"Taaba Pawati" dated 12.10.2008.
152	**Exh.6387 /PW-138**	Letter dated 19.11.2008 of ATS, Mumbai bearing O.W. No.1168/ACP/ATS/08.
153	**Exh.6388 /PW-138**	Letter dated 19.11.2008 of ATS, Mumbai bearing O.W. No.1174/ACP/ATS/08.
154	**Exh.6401 /PW-139**	Letter dated 28.11.2008 issued by ATS, Mumbai.
155	**Exh.6402 /PW-139**	Examination report M.(T) No.22597/08; dated 02.12.2008.
156	**Exh.6410 /PW-140**	Letter O.W. No.1214/ACP/ATS/08; dated 28.11.2008.
157	**Exh.6574 /PW-141**	Arrest panchnama dated 02.11.2008 of accused No.6.
158	**Exh.6579 /PW-142**	Panchanama dated 13.11.2008 regarding articles recovered from accused no.10.
159	**Exh.6585 /PW-143**	Signature of PW-143 on panchnama for handing over laptop to Officer Gurav alongwith the endorsement.

Sr. No.	Exhibit	Description
160	**Exh.6590 /PW-144**	House search Panchnama dated 09.11.2008 of accused Upadhyay.
161	**Exh.6593 /PW-145**	Letter dated 30.12.2008 sent by SBI to ATS.
162	**Exh.6594 /PW-145**	Original slip of SBI of Sameer Kulkarni.
163	**Exh.6596 /PW-146**	Arrest panchnama dated 28.10.2008 of accused no.5 Sameer Kulkarni.
164	**Exh.6598 /PW-147**	Arrest panchnama dated 28.10.2008 of Accused no.4 Ramesh Shivji Upadhyaya.
165	**Exh.6600 /PW-148**	Letter dated 09.12.2008, bearing जा.क्र. १००/सपोआ/दविप/०८ issued to CSMT Railway station by ATS, Mumbai.
166	**Exh.6602 /PW-149**	Letter dated 24.12.2008 of Reliance Life Insurance Co. Ltd.
167	**Exh.6669 /PW-149**	Certificate u/s.65-B of Indian Evidence Act issued by Senior Regional Manager, Reliance Nippon Life Insurance Company Ltd.
168	**Exh.6608 /PW-150**	Voice recording Panchnama dated 20.12.2008 of accused no.6 Rahirkar.
169	**Exh.6611 /PW-152**	Letter dated 06.11.2008 issued by LML Limited to ATS, Mumbai.
170	**Exh.6613 /PW-153**	Panchnama dated 25.11.2008 regarding five mirror image of hard-disk.
171	**Exh.6615 /PW-154**	Panchnama dated 18.11.2008 regarding seizure of laptop of accused no.10.
172	**Exh.6617 /PW-155**	Panchnama dated 13.11.2008 regarding seizure of laptop of accused no.4.
173	**Exh.6619 /PW-156**	Panchnama dated 30.12.2008 regarding seizure of chit (Exh.6811 & Exh.6812).
174	**Exh.6620 /PW-156**	Signature of PW-156 on Chit Art.87 i.e. Exh.6811.

Sr. No.	Exhibit	Description
175	**Exh.6621 /PW-156**	Signature of PW-156 on Chit Art.88 i.e. Exh.6812.
176	**Exh.6623 /PW-157**	Panchnama dated 12.11.2008 regarding seizure of paper/chit (Art.89)
177	**Exh.6625 /PW-158**	Panchnama dated 16.12.2008 regarding Specimen handwriting of accused Ajay Rahirkar.
178	**Exh.6626 /PW-158**	Signature of PW158 on Art.91 i.e. Exh.6836.
179	**Exh.6627 /PW-158**	Signature of PW158 on Art.92 i.e. Exh.6837.
180	**Exh.6628 /PW-158**	Signature of PW158 on Art.93 i.e. Exh.6838.
181	**Exh.6630 /PW-159**	Voice recording Panchnama dated 23.06.2009 of accused no.9.
182	**Exh.6631 /PW-159**	Signature of PW-159 on page no.2 of Art.94.
183	**Exh.6632 /PW-159**	Signature of PW-159 on page no.4 of Art.94.
184	**Exh.6633 /PW-159**	Signature of PW-159 on page no.5 of Art.94.
185	**Exh.6635 /PW-160**	Letter dated 03.01.2009, sent by PW160 to the A.G.M., Liability Central Processing Cell, Mumbai.
186	**Exh.6636 /PW-160**	Original cheque bearing No.197878.
187	**Exh.6637 /PW-160**	Original cheque bearing No.197879.
188	**Exh.6638 /PW-160**	Original cheque bearing No.197881.
189	**Exh.6639 /PW-160**	Original cheque bearing No.197882.

Sr. No.	Exhibit	Description
190	**Exh.6640 /PW-160**	Original cheque bearing No.197880.
191	**Exh.6641 /PW-160**	Original cheque bearing No.197876.
192	**Exh.6642 /PW-160**	Original pay slip dated 16.11.2007 of Rs.4,000/-.
193	**Exh.6643 /PW-160**	Original pay slip of date 26.11.2007 of Rs.2,000/-.
194	**Exh.6644 /PW-160**	Original pay slip of date 28.12.2007 of Rs.10,000/-.
195	**Exh.6645 /PW-160**	Original pay slip of date 14.01.2008 of Rs.15,000/-.
196	**Exh.6646 /PW-160**	Original pay slip of date 30.01.2008 of Rs.10,000/-.
197	**Exh.6647 /PW-160**	Original pay slip of date 04.02.2008 of Rs.5,000/-.
198	**Exh.6648 /PW-160**	Original pay slip of date 03.03.2008 of Rs.10,000/-.
199	**Exh.6649 /PW-160**	Original pay slip of date 08.03.2008 of Rs.8,000/-.
200	**Exh.6650 /PW-160**	Original pay slip of date 12.03.2008 of Rs.10,000/-.
201	**Exh.6651 /PW-160**	Original pay slip of date 17.03.2008 of Rs.15,000/-.
202	**Exh.6652 /PW-160**	Original pay slip of date 26.03.2008 of Rs.20,000/-.
203	**Exh.6653 /PW-160**	Original pay slip of date 28.04.2008 of Rs.10,000/-.
204	**Exh.6654 /PW-160**	Original pay slip of date 03.06.2008 of Rs.10,000/-.
205	**Exh.6655 /PW-160**	Original pay slip of date 30.06.2008 of Rs.15,000/-.

Sr. No.	Exhibit	Description
206	**Exh.6656 /PW-160**	Original pay slip of date 05.08.2008 of Rs.5,000/-.
207	**Exh.6657 /PW-160**	Original pay slip of date 03.10.2008 of Rs.5,000/-.
208	**Exh.6658 /PW-160**	Original pay slip of date 11.06.2007 of Rs.11,000/-.
209	**Exh.6659 /PW-160**	The signature on computer generated bank statement of Abhinav Bharat.
210	**Exh.6664 /PW-162**	Voice recording Panchnama dated 26.11.2008 of accused no.10 Sudhakar Dhar Dwivedi.
211	**Exh.6665 /PW-162**	Panchnama dated 19.12.2008 regarding Specimen handwriting of accused Ajay Rahirkar.
212	**Exh.6666 /PW-162**	Signature of PW162 at serial no.1 on Specimen handwriting of accused Ajay Rahirkar.
213	**Exh.6667 /PW-162**	Signature of PW162 at serial no.1 on Specimen handwriting of accused Ajay Rahirkar.
214	**Exh.6668 /PW-162**	Signature of PW162 at serial no.1 on Specimen handwriting of accused Ajay Rahirkar.
215	**Exh.6672 /PW-163**	Arrest panchnama dated 20.11.2008 of Accused no.11 Sudhakar Chaturvedi.
216	**Exh.6676 /PW-164**	Panchnama dated 20.12.2008 regarding Specimen handwriting of accused Ajay Rahirkar.
217	**Exh.6677 /PW-164**	Signature of PW-164 at serial no.1 on Specimen handwriting of accused Ajay Rahirkar.
218	**Exh.6678 /PW-164**	Signature of PW-164 at serial no.1 on Specimen handwriting of accused Ajay

Sr. No.	Exhibit	Description
		Rahirkar.
219	**Exh.6679 /PW-164**	Signature of PW-164 at serial no.1 on Specimen handwriting of accused Ajay Rahirkar.
220	**Exh.6681 /PW-165**	Signature of PW-165 at serial number 2 on the second page of panchanama dated 04.11.2008.
221	**Exh.6682 /PW-165**	Signature of PW-165 at serial number 2 on the forth page of panchanama dated 04.11.2008.
222	**Exh.6683 /PW-165**	Signature of PW-165 at serial number 2 of panchanama dated 04.11.2008 on which "प्रदर्शित म" is written.
223	**Exh.6684 /PW-165**	Signature of PW-165 at serial number 2 on the label on backside of Trust Deed.
224	**Exh.6685 /PW-165**	Signature of PW-165 at serial no.2 on label on backside of registration certificate.
225	**Exh.6686 /PW-165**	Signature of PW-165 at serial no.2 on label on backside of brown colour envelope of PAN card of Abhinav Bharat.
226	**Exh.6687 colly./PW-165**	Signatures of PW-165 at serial no.2 on first and last page of Bank passbook of State Bank of India, Saving Account No.30177565738 of Abhinav Bharat.
227	**Exh.6688 colly./PW-165**	Signatures of PW-165 at serial no.2 on first and last page of cheque book of SBI, Account No.30177565738 of Abhinav Bharat.
228	**Exh.6689 colly./PW-165**	Signatures of PW-165 at serial no.2 on first and last page of diary.
229	**Exh.6690 /PW-165**	Signature of PW-165 at serial no.2 on first page of booklet of Abhinav Bharat.
230	**Exh.6691**	Signature of PW-165 at serial no.2 on first

Sr. No.	Exhibit	Description
	/PW-165	letterhead of Abhinav Bharat.
231	Exh.6692 /PW-165	Signature of PW-165 at serial no.2 on letter of Institute of Research and Development in Oriental Studies-Arms and Armours, dated 14.02.2008.
232	Exh.6693 /PW-165	Signature of PW-165 at serial no.2 on the label affixed with the box (Art.370).
233	Exh.6697 /PW-167	House search Panchnama dated 12.11.2008 of Accused no.9 Prasad Purohit.
234	Exh.6700 /PW-168	Panchnama dated 17.12.2008 regarding Specimen Handwriting of accused no.6 Ajay Rahirkar.
235	Exh.6701 /PW-168	Signature of PW-168 at serial number 2 on Handwriting specimen paper (S-4) of accused Ajay Rahirkar.
236	Exh.6702 /PW-168	Signature of PW-168 at serial number 2 on Handwriting specimen paper (S-5) of accused Ajay Rahirkar.
237	Exh.6703 /PW-168	Signature of PW-168 at serial number 2 on Handwriting specimen paper (S-6) of accused Ajay Rahirkar.
238	Exh.6705 /PW-169	Panchnama dated 05.12.2008 regarding seizure of cassette (Art.114).
239	Exh.6707 /PW-170	Panchnama dated 18.11.2008 regarding seizure of register (Art.115).
240	Exh.6708 /PW-170	Signature of PW-170 at serial no.1, page no.1 of Register (Art.115).
241	Exh.6709 /PW-170	Signature of PW-170 at serial no.1, page no.170 of Register (Art.115).
242	Exh.6710 /PW-170	Signature of PW-170 at serial no.1, page no.60 of Register (Art.115).
243	Exh.6711	Signature of PW-170 at serial no.1, page

Sr. No.	Exhibit	Description
	/PW-170	no.77, near the red encircled of Register (Art.115).
244	Exh.6712 /PW-170	Signature of PW-170 at serial no.1, page no.76 of Register (Art.115).
245	Exh.6713 /PW-170	Signature of PW-170 at serial no.1, page no.77 of Register (Art.115).
246	Exh.6714 /PW-170	Signature of PW-170 at serial no.1, page no.36 of Register (Art.115).
247	Exh.6715 /PW-170	Signature of PW-170 at serial no.1, page no.49 of Register (Art.115).
248	Exh.6720 /PW-172	Voice sample Panchanama dated 10.11.2008 of accused no.4 Ramesh Upadhyay.
249	Exh.6723 /PW-173	Receipt of Rs.1,35,000/- issued by PW-173 to accused Prasad Purohit.
250	Exh.6725 /PW-174	Carbon copy of Delivery challan of Intralink, Nashik.
251	Exh.6731 /PW-175	Memorandum panchnama dated 08.11.2008 (Accused no.6 Ajay Rahirkar)
252	Exh.6732 /PW-175	Seizure panchnama dated 08.11.2008 (Accused no.6 Ajay Rahirkar)
253	Exh.6735 /PW-176	Panchnama dated 05.11.2008.regarding articles seized from accused Prasad Purohit.
254	Exh.6754 /PW-180	Panchanama dated 23.10.2008 regarding articles seized from accused no.1.
255	Exh.6748 /PW-181	Letter dated 03.10.2008, sent by P.I., ATS, Mumbai to Divisional Manager, LML Ltd. Raheja Chamber, Nariman Point, Mumbai.
256	Exh.6749 /PW-181	Letter dated 31.10.2008, sent by P.I., ATS, Mumbai to Divisional Manager, LML ltd. Raheja Chamber, Nariman Point, Mumbai.
257	Exh.6757 /PW-182	Letter dated 25.11.2008 bearing outward no.१९६७/दविप/२००८.

Sr. No.	Exhibit	Description
258	Exh.6761/PW-183	Panchanama dated 25.11.2008 regarding articles seized from accused no.11 Chaturvedi.
259	Exh.6767 /PW-184	CA report bearing No.NK(T)/14720 of 08, M.L. Case no.Mnk-431/08, dated-08.12.2008.
260	Exh.6768 /PW-184	CA report bearing no.NK(T)/14721-22 of 08, M.L. Case no.Mnk-432/08, dated-08.12.2008 (description of viscera and other articles)
261	Exh.6769 /PW-184	CA report bearing no.NK(T)/14723-24 of 08, M.L. Case no.Mnk-433/08, dated-08.12.2008. (description of viscera and other articles)
262	Exh.6770 /PW-184	CA report bearing no.NK(T)/14725-26 of 08, M.L. Case No.Mnk-434/08, dated-08.12.2008.
263	Exh.6772 /PW-185	CA reports bearing no. NK(T)/1031 of 09, M.L. Case No.Bnk-2231/08, dated 17.01.2009.
264	Exh.6773 /PW-185	CA reports bearing no.NK(T)/1032 of 09, M.L. Case No.Bnk-2085/08, dated 17.01.2009.
265	Exh.6775 /PW-186	CA report bearing No.NK(T)/14127-28 of 08, M.L. Case No.Ank-1569/08, dated 24.11.2008.
266	Exh.6777 /PW-187	CA report bearing no.NK(T)/6002-03/09, M.L. Case No.Bnk-1795/08; dated 04.06.2009.
267	Exh.6778 /PW-187	CA report bearing No.P(T)/12462/08, M.L. Case No.Bnk-1774/08; dated 16.10.08.
268	Exh.6786 /PW-190	Photostat copy showing the page of the entry register of Tulsi Hotel, having serial

Sr. No.	Exhibit	Description
		number 76.
269	**Exh.6787 /PW-190**	Photostat copy showing the page of the entry register of Tulsi Hotel, having serial number 82.
270	**Exh.6794 /PW-194**	Xerox copy of first page of Entry register on which "Shaadi Hall Booking Register" is written.
271	**Exh.6795 /PW-194**	Xerox copy of Entry register page on which the date 11.04.2008 and 12.04.2008 is written.
272	**Exh.6796 colly/PW-194**	Signatures of PW-194 on the Japti patrak (Panchanama).
273	**Exh.6805 /PW-197**	Photostat copy of the page of register maintained by PW-197 in which loan account and other details of accused Pragya Singh Thakur is mentioned.
274	**Exh.6810 /PW-199**	Art.89 i.e. Chit.
275	**Exh.6811 /PW-199**	Art.87 i.e. Chit.
276	**Exh.6812 /PW-199**	Art.88 i.e. Chit.
277	**Exh.6819 /PW-203**	Panchnama (जप्ती पत्रक) regarding seizure of Abhinav Bharat letter (Art.166)
278	**Exh.6823 /PW-204**	Panchanama dated 02.12.2008 regarding detonator.
279	**Exh.6826 Colly./PW-205**	Four deposit slips for cash of ICICI bank for the account no.624001505303.
280	**Exh.6827 /PW-205**	One deposit slip for cash of Punjab National Bank for the account no.1561009100010027 for the amount Rs.20,000/-.
281	**Exh.6828/**	One deposit slip for cash of Punjab

Sr. No.	Exhibit	Description
	PW-205	National Bank for the account no.1561009400010027 for the amount of Rs.10,000/-
282	**Exh.6829 /PW-205**	One cash deposit slip of Axis Bank Limited for the account no.062010100074892 for the amount of Rs.15,000/-.
283	**Exh.6830 Colly./PW-205**	Four deposit slips for cash of ICICI bank for the account no.624001505303.
284	**Exh.6831 /PW-205**	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-.
285	**Exh.6832 /PW-205**	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.3,000/-.
286	**Exh.6833 Colly./PW-205**	Five deposit slips for cash of Axis bank for the account no.062010100074892.
287	**Exh.6834 /PW-205**	Specimen signature card A-5 of The Vishweshwar Sahkari Bank Limited, Pune.
288	**Exh.6835 /PW-205**	Account opening form of The Vishweshwar Sahkari Bank Limited, Pune.
289	**Exh.6836 /PW-205**	Art.91 i.e. Specimen handwriting paper (S-1) of accused Ajay Rahirkar.
290	**Exh.6837 /PW-205**	Art.92 i.e. Specimen handwriting paper (S-2) of accused Ajay Rahirkar.
291	**Exh.6838 /PW-205**	Art.93 i.e. Specimen handwriting paper (S-3) of accused Ajay Rahirkar.
292	**Exh.6839 /PW-205**	Art.110 i.e. Specimen handwriting paper (S-4) of accused Ajay Rahirkar.
293	**Exh.6840 /PW-205**	Art.111 i.e. Specimen handwriting paper (S-5) of accused Ajay Rahirkar.
294	**Exh.6841 /PW-205**	Art.112 i.e. Specimen handwriting paper (S-6) of accused Ajay Rahirkar.
295	**Exh.6842**	Art.102 i.e. Specimen handwriting paper

Sr. No.	Exhibit	Description
	/PW-205	(S-7) of accused Ajay Rahirkar.
296	Exh.6843 /PW-205	Art.103 i.e. Specimen handwriting paper (S-8) of accused Ajay Rahirkar.
297	Exh.6844 /PW-205	Art.104 i.e. Specimen handwriting paper (S-9) of accused Ajay Rahirkar.
298	Exh.6845 /PW-205	Art.105 i.e. Specimen handwriting paper (S-10) of accused Ajay Rahirkar.
299	Exh.6846 /PW-205	Art.106 i.e. Specimen handwriting paper (S-11) of accused Ajay Rahirkar.
300	Exh.6847 /PW-205	Art.107 i.e. Specimen handwriting paper (S-12) of accused Ajay Rahirkar.
301	Exh.6848 Colly./PW-205	Writing and figures in English at page no.132 to 135 on diary. (Police Art.161 of Exh.443)
302	Exh.6849 /PW-205	Reasons prepared by PW-205 bearing no.BB-16/2009.
303	Exh.6850 /PW-205	Opinion of PW-205 bearing no.BB-16/2009.
304	Exh.6873 /PW-211	Signature of PW-211 on one paper (Art.168) on which one photostat copy of photograph is affixed.
305	Exh.6874/ PW211	Signature of PW-211 on one paper (Art.169) i.e. photostat copy of one photograph.
306	Exh.6875 /PW-211	Signature of PW-211 on page (Art.170) i.e. photostat copy of one photograph.
307	Exh.6880 /PW-213	Signature of PW-213 at serial no.1 on the register Payal Cottage vide entry at serial no.172.
308	Exh.6881 /PW-213	Signature of PW-213 at serial no.1 on the register Payal Cottage vide entry at serial no.220.
309	Exh.6882	Signature of PW-213 at serial no.1 on the

Sr. No.	Exhibit	Description
	/PW-213	register Payal Cottage vide entry at serial no.252.
310	Exh.6883 /PW-213	Signature of PW-213 at serial no.1 on the panchnama dated 08.02.2011.
311	Exh.6885/ PW214	Signature of PW-214 on the register of Payal Cottage vide entry is at serial no.172.
312	Exh.6886/ PW214	Signature of PW-214 on the register Payal Cottage vide entry is at serial no.220.
313	Exh.6887/ PW214	Signature of PW-214 on the register Payal Cottage vide entry is at serial no.252.
314	Exh.6888 /PW-214	Signature of PW-214 on the panchnama dated 08.02.2011.
315	Exh.6890 /PW-215	Letter dated 30.12.2008 sent by ATS, Mumbai to The General Manager, SBI, Bhopal (M.P.).
316	Exh.6891 /PW-215	Letter dated 03.01.2009 sent by Chief Manager, SBI, Bhopal (M.P.) to ATS, Mumbai.
317	Exh.6892 /PW-215	Copy of New Accounts Opened & Accounts Maintenance Log dated 13.11.2007.
318	Exh.6893 /PW-215	Pay-in-slip dated 13.11.2007 of SBI, Bhopal.
319	Exh.6894 Colly./PW215	Statement of accounts of Sameer Sharad Kulkarni bearing account no.20005136743.
320	Exh.6895 /PW-215	Certificate under the Banker's Book of Evidence Act, 1891 and/or The Information Technology Act, 2000.
321	Exh.6898/ PW216	Photocopy of Leave and License Agreement between Ananda Bhika Mahajan and Chanakya Sudhakar Chaturvedi.
322	Exh.6915/ PW222	The page no.70 in which entries regarding selling of SIM and recharge of mobile were made at the shop of Shyam Shahu.

Sr. No.	Exhibit	Description
323	**Exh.7094 colly./PW-208**	Documents (Information collected through Abhinav Bharat) filed along with charge-sheet at serial number 175 to 192 (earlier page nos.221 to 255)
324	**Exh.7207 /PW-225**	Portion marked in Saving Bank Passbook entries of SBI, Deolali, Nashik in the name of Rajkumar Sharma (Art.174 colly).
325	**Exh.7208 colly./PW-225**	Art.174 colly. i.e. Saving Bank Passbook entries of SBI, Deolali, Nashik in the name of Rajkumar Sharma (PW-225).
326	**Exh.6941 /PW-227**	Letter dated 11.11.2008 bearing O.W. No.1864/Addl.CP/ATS/TECH/2008 issued by Addl. Commissioner of Police, ATS, Mumbai.
327	**Exh.6942/ PW227**	Covering letter dated 24.11.2008, issued by PW-227 to Addl. C.P., ATS, Mumbai.
328	**Exh.6943/ PW227**	Letter of Addl. C.P., ATS, Mumbai bearing O.W. No.1953/Addl.C.P./ATS/TECH/2008; dated 22.11.2008.
329	**Exh.6944/ PW227**	Covering letter dated 04.12.2008 issued by PW 227 to Addl.C.P., ATS, Mumbai.
330	**Exh.6945 /PW-227**	Letter dated 24.11.2008, bearing O.W. No.1960/Addl.C.P./ATS/TECH/2008.
331	**Exh.6946 /PW-227**	Covering letter dated 04.12.2008 issued by PW-227 to Addl.C.P., ATS, Mumbai.
332	**Exh.6947 /PW-227**	Letter dated 11.11.2008, bearing O.W. No.1870/Addl.C.P./ATS/TECH/2008.
333	**Exh.6948 /PW-227**	Covering letter dated 21.11.2008 issued to Addl. Dy. C.P., ATS, Mumbai.
334	**Exh.6954/ PW229**	Covering letter of Bharti Airtel Limited issued to Addl. C.P., ATS, Mumbai.
335	**Exh.6955 colly. for**	70 pages Call Detail Records for mobile no.9766631435 provided with Exh.6954

Sr. No.	Exhibit	Description
	identification / PW-229	(page no.156 to 225).
336	**Exh.6956 /PW-229**	Covering letter dated 09.01.2009 of Bharti Airtel Limited issued to Addl. C.P., ATS, Mumbai.
337	**Exh.6957 colly. for identification / PW-229**	Call Detail Records for mobile no.9960111907 provided with Exh.6956 (page no.1129 to 1176).
338	**Exh.6958 /PW-229**	Covering letter dated 12.02.2009 issued by Bharti Airtel Limited to Addl. C.P., ATS, Mumbai.
339	**Exh.6959 colly. for identification / PW-229**	Call Detail Records of mobile no.9766677736 provided with Exh.6958 (page no.113 to 165)
340	**Exh.6965 /PW-231**	Letter dated 12.09.2008 issued by the Bhonsala Military School subject as "**Guest room booking for Abhinav Bharat".**
341	**Exh.6977 /PW-234**	Letter dated 12.12.2008 issued by Rohit Bansal on behalf of Independent News Services Pvt. Ltd. to ACP, ATS, Mumbai.
342	**Exh.6978 /PW-234**	Letter dated 16.01.2009 issued by Rohit Bansal on behalf of Independent News Services Pvt. Ltd. to ACP, ATS, Mumbai.
343	**Exh.6979 /PW-234**	Art.192 i.e. Letter/statement by Anurag Upadhyay to ACP, ATS, Mumbai.
344	**Exh.6989 /PW-237**	Covering letter dated 05.01.2009 of Vodafone Essar Cellular Limited to Addl.C.P., ATS, Mumbai.
345	**Exh.6990 /PW-237**	Covering letter dated 05.01.2009 of Vodafone Essar Cellular Limited to Addl.C.P., ATS, Mumbai.
346	**Exh.6991 colly.**	CDR of mobile no.9923354185 (page

Sr. No.	Exhibit	Description
	identification / PW-237	nos.525 to 566).
347	Exh.6994 /PW-239	Letter dated 10.11.2008 of Chief Judicial Magistrate, Nashik to A.T.S. Lucknow, U.P. bearing Outward No.206 of 2008.
348	Exh.6995 colly./PW-239	Original document titled as "फर्द गिरफ्तारी" along with copy of the articles titled as "फर्द बरामदगी"
349	Exh.6996 /PW-239	Document titled as "गिरफ्तारी का प्रमाण पत्र"
350	Exh.7006 /PW-241	Letter dated 11.04.2009 issued by Nodal Officer, BSNL to Addl.C.P., ATS, Mumbai.
351	Exh.7007 /PW-241	Letter dated 20.12.2008 issued by General Manager (OP) & Nodal Officer, BSNL to Addl.C.P., ATS, Mumbai.
352	Exh.7008 /PW-241	Letter dated 19.12.2008 issued by General Manager (OP) & Nodal Officer, BSNL to Addl.C.P., ATS, Mumbai.
353	Exh.7012 /PW-242	Panchanama dated 14.11.2008 regarding accused no.9.
354	Exh.7024 /PW-244	Confidential letter dated 15.01.2009 regarding Malegaon Bomb-Blast sent by PW-244 to A.T.S. Sub-unit, Nashik.
355	Exh.7025 /PW-244	Confidential letter dated 15.01.2009 regarding Malegaon Bomb Blast sent by PW-244 to Dte Gen of Mil Int/MI-9, General Staff Branch, IHQ of MoD (Army), DHQ PO New Delhi, PIN – 11.
356	Exh.7037 /PW-246	Letter [A-1-(b)] dated 24.11.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
357	Exh.7038 /PW-246	Letter [B-1-(b)] dated 24.11.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.

Sr. No.	Exhibit	Description
358	**Exh.7039 /PW-246**	Letter [G-1-(b)] dated 25.12.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
359	**Exh.7040 /PW-246**	Letter [G-2-(b)] dated 25.12.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
360	**Exh.7041 /PW-246**	Letter [H-2-(b)-1] dated 08.01.2009 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
361	**Exh.7042 /PW-246**	Letter [H-2-(b)-(2)] dated 24.11.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
362	**Exh.7043 /PW-246**	Letter [H-3-(b)] dated 25.12.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
363	**Exh.7044 /PW-246**	Letter dated 07.01.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
364	**Exh.7045 /PW-246**	Letter dated 05.01.2008 issued by Reliance Communications to Addl, C.P., ATS, Mumbai.
365	**Exh.7046 /PW-246**	Letter dated 07.01.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
366	**Exh.7047 /PW-246**	Letter dated 06.01.2008 issued by Reliance Communications to Addl. C.P., ATS, Mumbai.
367	**Exh.7049 /PW-247**	Panchanama dated 21.12.2008 regarding Main Gate register (AEC, Trg. College & Centre)
368	**Exh.7050 /PW-247**	Handing/taking over certificate.
369	**Exh.7051 colly./PW-247**	Signature of PW-247 at serial no.1 on back side of the cover page and second last page

Sr. No.	Exhibit	Description
		of the note book/register (Art.263).
370	**Exh.7111 /PW-249**	Letter bearing O.W.No.1008/ATS/Sr PI/2008 of dated 17.10.2008.
371	**Exh.7112 colly/PW-249**	Form No.20, Form No.19, Form No.22, Form No.21, insurance certificate and data entry bearing particulars of vehicle. (Page nos.177 to 185)
372	**Exh.7184 /PW-253**	Portion marked 'A' in the statement of Sachin Jagdish Soni (PW-193).
373	**Exh.7243 /PW-257**	Portion marked 'A' in the statement of Shailesh Patel (PW198).
374	**Exh.7244 /PW-257**	Portion marked 'A' in the statement of Varsha Dhawade (PW-200).
375	**Exh.7245 /PW-257**	Portion marked 'B' in the statement of Varsha Dhawade (PW 200).
376	**Exh.7246 /PW-257**	Portion marked 'A' in the statement of Raju Vasant Devkar (PW-226).
377	**Exh.7247 /PW-257**	House search panchanama dated 09.11.2008 regarding accused no.4. [Exhibited at the time of cross-examination by Accused no.4].
378	**Exh.7248 /PW-257**	House search panchanama dated 09.11.2008 regarding accused no.4. [Exhibited at the time of cross-examination by Accused no.4].
379	**Exh.7257** /PW-258	Reply letter dated 12.12.2008 to Addl. CP, ATS, Mumbai bearing outward no.DGM Mob/NSS/Security/Nil/08-09.
380	**Exh.7258** /PW-258	Reply letter dated 05.01.2009 to Addl. CP, ATS, Mumbai, bearing outward no.DGM Mob/ NSS/Security/976/08-09.
381	**Exh.7259 colly.**/PW-258	CDR details documents [(K-1-(C)], page nos.1480 to 1534), total 1 to 55 pages.

Sr. No.	Exhibit	Description
382	**Exh.7260 colly./PW-258**	CDR details documents [(E-3-(b)], page nos.671 to 736), total 1 to 66 pages.
383	**Exh.7280 /PW-261**	Covering letter addressed to Senior Police Inspector, LCB, Nashik Rural by PW-261.
384	**Exh.7281 /PW-261**	Crime Scene Report of Explosion dated 30.09.2008 issued by PW-261.
385	**Exh.7282 /PW-261**	Report of analysis dated 03.10.2008 bearing no.NK (T)/11623 of 08.
386	**Exh.7296 /PW-261**	Covering letter dated 07.10.2008 issued by PW-261 to The Senior Police Inspector, Local Crime Branch, Nasik Rural.
387	**Exh.7297 /PW-261**	Report/results of Analysis of motorcycle issued by PW-261.
388	**Exh.7298 /PW-261**	Letter bearing outward no.NK(T)/15017-18/08 dated 18.12.2008.
389	**Exh.7299 /PW-261**	Report of analysis bearing No.NK(T)/ 15044-45 of 08, dated 19.12.08.
390	**Exh.7300 /PW-261**	Report of analysis bearing No.NK(T)/ 15019-21 of 08, dated 18.12.08.
391	**Exh.7301 /PW-261**	Report of analysis bearing no. NK(T)/ 15022-24 of 08, dated 18.12.08
392	**Exh.7302 /PW-261**	Report of analysis bearing no.NK(T)/ 15025-26/08, dated 18.12.08.
393	**Exh.7303 /PW-261**	Report of Analysis bearing no.NK(T)/ 15027-28/08, dated 18.12.08.
394	**Exh.7309 /PW-261**	Report of Analysis bearing outward no.M-474/08, dated 12.12.2008.
395	**Exh.7310 /PW-261**	Letter of opinion bearing outward no.M(T)23085/08, dated 12.12.2008.
396	**Exh.7383 /PW-263**	Only signature of PW-263 on Art.283 i.e. letter O.W. No.1850/Addl.C.P./ ATS/ Tech./2008.

Sr. No.	Exhibit	Description
397	Exh.7414 /PW-264	Signature of PW-264 on identification memo.
398	Exh.7437 /PW-266	Portion marked 'A' in the statement of Shailesh Raikar (PW-208)
399	Exh.7438 /PW-266	'Handing/Taking over' certificate.
400	Exh.7445/1 to 7445/8 /PW-267	8 Panchanamas regarding splinters (Metal pieces, page nos.369 to 384).
401	Exh.7446 /PW-267	Label affixed on cardboard box.
402	Exh.7472 /PW-268	Letter dated 13.12.2008 issued by Sr. PI, ATS, Nagpur to Hotel Sayaji, Indore.
403	Exh.7473 /PW-268	Letter dated 13.12.2008 issued by Pradip Mukherjee of Sayaji Hotels Limited to Sr. P.I., ATS, Nagpur unit.
404	Exh.7474 colly./PW-268	Signatures of PW-268 on page nos.102, 107, 108 and 109 attached with Exh.7473.
405	Exh.7475 colly./PW-268	Signatures of PW-268, Gaurav Sharma and Pravin Hazra on the seizure panchnama.
406	Exh.7484 /PW-269	Letter dated 13.11.2008 issued by ATS, Kalachowki, Mumbai to ACP, ATS, Mumbai.
407	Exh.7485 /PW-269	Contents of Art.197 i.e. Document titled as "गिरफ्तारी सूचना पत्र एव जिला विधिक सेवा प्राधिकरण को दी जाने वाली सुचना.
408	Exh.7486 /PW-269	Contents of Art.198 i.e. Document titled as "प्रारूप—३, गिरफ्तार व्यक्ति के शरीर के निरीक्षण का प्रपत्र".
409	Exh.7487 /PW-269	Office order dated 11.11.2008 bearing outward no.ACP/ATS/1128/2008.
410	Exh.7516 /PW-270	Thumb impression of PW-270 on the statement. [Exhibited at the time of cross-

Sr. No.	Exhibit	Description
		examination by accused no.10].
411	**Exh.7532 /PW-271**	Reply letter dated 17.04.2012 sent by Assistant Jail Superintendent, Jail Mhow, Dist. Indore.
412	**Exh.7533 colly./PW-271**	Attested photocopies of Mulakat registers (from page no.35 to 53).
413	**Exh.7475-A/ PW-272**	जप्तीपत्रक (Seizure memo).
414	**Exh.7550 /PW-272**	Page no.50 of register (Art.319) produced by PW-272.
415	**Exh.7581 /PW-273**	Handing/taking over certificate dated 14.11.2008.
416	**Exh.7050-A & B/PW-273**	The list of personnel detailed on duty at AEC Training College & Centre, Pachmarhi, MP.
417	**Exh.7582 /PW-273**	Signature of PW-273 on letter dated 30.12.2008 bearing O.W. No.101/ACP/ATS /08.
418	**Exh.7583 /PW-273**	Covering letter dated 02.01.2009 forwarded by Lt. Col. G. C. Mohanta to ACP, ATS, Mumbai.
419	**Exh.7583-A colly./PW-273**	Signatures of PW-273 on photocopies of arrival report, educational qualification and leave details (3 pages)
420	**Exh.7600 /PW-274**	Only label of Art.131 colly. (Art.131 colly include white cloth and label)
421	**Exh.7601 /PW-274**	Only label of Art.134 colly. (Art.134 colly include Mobile handset of Sony Ericsson, two SIM cards and label)
422	**Exh.7602 /PW-274**	Only label of Art.135 colly. (Art.135 colly include Mobile handset of Nokia company and the label)

Sr. No.	Exhibit	Description
423	**Exh.7603 /PW-274**	Only label of Art.136 colly. (Art.136 colly include 100 currency notes of Rs.100/- denomination and the label)
424	**Exh.7604 /PW-274**	Only label of Art.137 colly. (Art.137 colly include 2 CDs and the label)
425	**Exh.7605 /PW-274**	Only label of Art.138 colly. (Art.138 colly include telephone diary and the label)
426	**Exh.7606 /PW-274**	Only label of Art.139 colly. (Art.139 colly include 3 Notebooks, 6 pamphlets and the label)
427	**Exh.7607 /PW-274**	Art.141 i.e. label on the yellow metal finger ring and yellow metal chain with sun shape pendant wrapped in khaki colour paper.
428	**Exh.7608 /PW-274**	Label of Art.66 colly. (Art.66 colly include brown colour envelope and mobile handset of Reliance L.G. company).
429	**Exh.7609 /PW-274**	Label of Art.67 colly. (Art.67 colly include brown colour envelope and mobile handset of Nokia company).
430	**Exh.7610 /PW-274**	Label of Art.68 colly. (Art.68 colly include brown colour envelope and mobile handset Reliance L.G. company).
431	**Exh.7611 /PW-274**	Label of Art.69 colly. (Art.69 colly include brown colour envelope and pen-drive).
432	**Exh.7612 /PW-274**	Label of Art.70 colly. (Art.70 colly include brown colour envelope and pen-drive).
433	**Exh.7613 colly./PW-274**	2 Signatures of PW-274 on diary Art.71 colly. [Art.71 colly includes Brown colour paper, blue colour rexine pouch and red colour diary]
434	**Exh.7629 /PW-274**	Report/letter dated 11.11.2008 issued by P.I., ATS, Mumbai to ACP, ATS, Mumbai.
435	**Exh.7630**	Station diary entries from 11.10.2008 to

Sr. No.	Exhibit	Description
	colly./PW-274	22.10.2008 (True copies).
436	Exh.7660 /PW-277	Reply covering letter dated 08.01.09 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
437	Exh.7661 colly./PW-277	CDR documents pages 1 to 93 regarding mobile no.9893860524 (page no.771 to 863)
438	Exh.7662 colly./PW-277	CDR documents pages 1 to 37 regarding mobile no.9893860524 (page no.864 to 900)
439	Exh.7663 /PW-277	Reply covering letter dated 08.01.09 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
440	Exh.7664 colly./PW-277	CDR documents pages 1 to 48 regarding mobile no.9755003058 (page nos.1182 to 1229)
441	Exh.7665 colly./PW-277	CDR documents pages 1 to 53 regarding mobile no.9755003058 (page nos.1230 to 1282)
442	Exh.7666 /PW-277	Reply covering letter dated 22.11.08 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
443	Exh.7667 colly./PW-277	CDR documents pages 1 to 31 regarding mobile no.9893544113 (page nos.1541 to 1571)
444	Exh.7668 colly./PW-277	CDR documents pages 1 to 40 regarding mobile no.9893544113 (page nos.1572 to 1611)
445	Exh.7669 /PW-277	Reply covering letter dtd.22.11.2008 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
446	Exh.7670 colly./PW-277	CDR documents pages 1 to 36 regarding mobile no.9893544112 (page no.1617 to 1652)

Sr. No.	Exhibit	Description
447	Exh.7671 colly./PW-277	CDR documents pages 1 to 76 regarding mobile no.9893544112 (page no.1653 to 1728)
448	Exh.7672 /PW-277	Reply covering letter dated 08.01.09 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
449	Exh.7673 colly./PW-277	CDR documents in 2 pages regarding mobile no.9755458713 (page no.1891 to 1892)
450	Exh.7674 /PW-277	Reply covering letter dated 08.01.09 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
451	Exh.7675 colly. /PW-277	CDR documents pages 1 to 25 regarding mobile no. 9755555785 (page no.1898 to 1922).
452	Exh.7676 colly./PW-277	CDR documents pages 1 to 16 regarding mobile no.9755555785 (page no.1923 to 1938).
453	Exh.7677 /PW-277	Reply covering letter dated 08.01.09 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to ACP, ATS, Mumbai.
454	Exh.7678 /PW-277	CDR document running in single page (page no.1944)
455	Exh.7679 colly./PW-277	CDR documents pages 1 to 5 regarding mobile no. 9893877644 (page no.1945 to 1949)
456	Exh.7680 /PW-277	Reply covering letter dated 20.11.08 issued by Nodal Officer, Bharti Airtel Ltd. (MP & CG) to Addl C.P., ATS, Mumbai.
457	Exh.7681 colly./PW-277	CDR documents pages 1 to 4 regarding mobile no.9755555785 (page no.51 to 54).
458	Exh.7682 /PW-277	Reply covering letter dated 14.01.09 issued by Nodal Officer (MP & CG) to ACP, ATS, Mumbai.

Sr. No.	Exhibit	Description
459	**Exh.7683 colly./PW-277**	CDR documents pages 1 to 3 regarding mobile no.9755003058 (page no.73 to 75).
460	**Exh.7684 colly./PW-277**	CDR documents pages 1 to 4 regarding mobile no.9893860524 (page no.78 to 81)
461	**Exh.7719 /PW-278**	Letter dated 15.12.2008 issued by Kingfisher Airlines, Pune Airport to P.I., ATS, Pune.
462	**Exh.7720 colly./PW-278**	Travel tickets of Kingfisher Airlines.
463	**Exh.7745 /PW-279**	Reply letter dated 09.11.2008 sent by Senior Superintendent of Police, District Badaun (U.P.) to ACP, ATS, Mumbai.
464	**Exh.7751 /PW-280**	Reply letter dated 30.12.2008 sent by ICICI Bank Ltd., Bhandarkar Road branch, Pune to ACP, ATS, Mumbai.
465	**Exh.7752 colly./PW-280**	Account opening form showing photographs of account holder, photocopy of cheque, address proof, photocopy of PAN (page nos.19, 20 and 22 to 26)
466	**Exh.7753 /PW-280**	Letter dated 21.05.2009 sent by ICICI Bank Ltd., with stamp of Bhandarkar Road branch, Pune to ACP, ATS, Mumbai.
467	**Exh.7754 colly./PW-280**	Letter dated 26.05.2009 sent by ICICI Bank Ltd., Bhandarkar Road branch with stamp of said branch to ACP, ATS, Pune along with Quick Cash Deposit Voucher.
468	**Exh.7755 colly./PW-280**	Letter dated 03.06.2009 issued by ICICI Bank Ltd., Bhandarkar Road branch, Pune to ACP, ATS, Pune along with Quick Cash Deposit voucher.
469	**Exh.7778 /PW-283**	Reply letter dated 29.03.2011 regarding averment made by LT COL PS PUROHIT IN CRIMINAL BAIL APPLICATION NO.333/ 2011 IN HON'BLE HIGH COURT.

Sr. No.	Exhibit	Description
470	**Exh.7888/ PW-284**	Examination report bearing M(T) No.16239/11.
471	**Exh.7889/ PW-284**	Examination report bearing M (T) No.3155/09.
472	**Exh.7812/ PW-285**	Reply letter dated 05.01.2009 sent by Idea Cellular Ltd to ACP, ATS, Mumbai.
473	Exh.7839/ PW-287	Portion marked B in statement of Jagdish Jatav (PW-211)
474	Exh.7840 colly./PW-287	Portions marked 'E' to 'G' in statement of Chanakya Bakshi (PW-232).
475	**Exh.7841**/ PW-287	Portion marked 'A' in the statement of Arvind Pateria @ Banti Pateria (PW-212).
476	**Exh.7932 /PW-290**	Portion marked 'B' in statement of Sanjit Pendharkar (PW-188).
477	**Exh.7973 /PW-291**	Portion marked 'A' in statement of Sanjit Pendharkar (PW-188)
478	**Exh.7976-A & B/PW-291**	Two Labels (Police Art.182 of Exh.443).
479	**Exh.7988 colly./PW-293**	Portions marked A to I in statement of Prasad Deosthali (PW-265)
480	**Exh.7989 /PW-293**	Portion marked 'A' in the statement of Chanakya Bakshi (PW-232).
481	**Exh.7051-A colly./PW-293**	Two signatures of PW-293 on first and last page of register Art.263.
482	**Exh.8001 colly./PW-294**	Portions marked 'A' to 'F' in statement of Mahendra Bhatnagar (PW-281)
483	**Exh.8031 /PW-295**	Report dated 06.01.2009 issued by Assistant Inspector of Police, ATS to ACP, ATS, Mumbai.
484	**Exh.A-1** /PW-295	The encircled entry no.220 in entry register Art.321.
485	**Exh.B-1**	The encircled entry no.172 in entry register

Sr. No.	Exhibit	Description
	/PW-295	Art.321.
486	**Exh.C-1** /PW-295	The encircled entry no.252 in entry register Art.321.
487	**Exh.8032 /PW-295**	Panchnama dated 08.02.2011 regarding seizure of entry register (Art.321) of Payal Cottage, Pachmarhi (M.P.).
488	**Exh.8033 /PW-295**	Portion marked 'A' in the statement of Shashank Sahu (PW-214).
489	**Exh.8034 colly./PW-295**	Art.77 i.e. Proposal details & Art.78 i.e. Customer statement.
490	**Exh.8061 colly/PW-296**	Analysis report of DFSL (Page nos.23 to 95) bearing M.L. case no.Cy-155/08, dated 17.01.2009.
491	**Exh.8151** /PW-296	Examination report dated 17.01.2009 bearing M.L.Case No.Cy-156/08.
492	**Exh.8152** /PW-296	Examination report dated 26.02.2009 bearing M.L.Case No.Cy-155/08.
493	**Exh.8159** /PW-296	Letter dated 24.11.2008 bearing No. M(S)974/08.
494	**Exh.8160** /PW-296	Examination report of dated 17.01.2009 bearing M.L. Case no.Cy-159/08.
495	**Exh.8161** /PW-296	Letter of Assistant Chemical Analyser of F.S.L. Mumbai, bearing no.M(S)984/08; dated 28.11.2008.
496	**Exh.8162** /PW-296	Letter dated 30.03.2009, bearing outward no.M(S)245/2009.
497	**Exh.8151A**/ PW-296	Examination report dated 17.01.2009, bearing M.L. Case no.Cy-156/08.
498	**Exh.8133 /PW-297**	Sanction/Consent order under Section 7 of Explosive Substances Act of dated 30.12.2008 issued by PW-297.

Sr. No.	Exhibit	Description
499	**Exh.8189 /PW-298**	Order dated 01.04.2011 issued by Joint Secretary, Government of India.
500	**Exh.8190 /PW-298**	FIR bearing Crime No.05/2011 of NIA, Mumbai.
501	**Exh.7839-A/ PW-299**	The portion mark 'A' in the statement of Jagdish Jatav (PW-211).
502	**Exh.8263 colly/PW-299**	Portion marked 'B', 'C' and 'D' in the statement of Chanakya Bakshi (PW-232).
503	**Exh.8270** /PW-300	Label captioned as "प्रदर्शित.अ" on the last page of Art.360.
504	**Exh.8271** /PW-300	Label captioned as "प्रदर्शित.ब" on registration certificate.
505	**Exh.8272** /PW-300	Label affixed on envelope of Art.362.
506	**Exh-6687-A (colly)**/PW-300	Signatures of PW-300 and panch no.1 on Passbook (Art.363)
507	**Exh.6688-A(Colly)** /PW-300	Signatures of PW-300 and panchas on Cheque book (Art.364).
508	**Exh.6689-A (Colly)**/ PW-300	Signatures of PW-300 and panch no.1 on first page and last page of diary (Art.365).
509	**Exh.6690-A (Colly)** /PW-300	Signatures of PW-300 and panch no.1 on application booklet (Art.366).
510	**Exh.6691-A**/ PW-300	Signatures of PW-300 and panch no.1 on first page of Art.367.
511	**Exh-6692-A**/ PW-300	Signatures of PW-300 and panch no.1 on the back page of Art.368.
512	**Exh.8273 /PW-300**	The label on card box (Art.370).

Sr. No.	Exhibit	Description
513	**Exh.6683-A** (colly)/PW-300	Signatures of I.O. and panch No.1 on Art.371.
514	**Exh.8274 /PW-300**	Seizure panchnama dated 04.11.2008.
515	**Exh.8282 colly /PW-300**	All signatures of I.O. and pancha no.2 on Register (Art-115).
516	**Exh.8283 /PW-300**	House search Panchanama dated 26.11.2008.
517	**Exh.8284 (colly)/PW-300**	Portion marked 'A to O' in statement of Shirish Date (PW-259).
518	**Exh.8285 /PW-300**	Portion marked 'A' in statement of Milind Joshirao (PW-220).
519	**Exh.8286 (colly)/PW-300**	Portion marked 'A and B' in the statement of Arun Datar (PW-201).
520	**Exh.8287 /PW-300**	Portion marked 'A' in statement of Sunita Jadhav (PW-207).
521	**Exh.8288 /PW-300**	Letter dated 28.11.2008 bearing outward no.द.वि.प.पुणे/४०७/२००८ दहशतवाद विरोधी पथक, सब युनिट पुणे, दि. २८/११/२००८.
522	**Exh.8294 /PW-300**	True copy of arrest panchanma of Accused no.7 Rakesh Dhawade dated 02.11.2008.
523	**Exh.8295 /PW-300**	Portion marked 'A' appearing in the statement of Ryomand Amalsad (PW278).
524	**Exh.8319 /PW-301**	Letter dated 01.10.2008 issued by PW-301 to PWD department for drawing the spot map of crime no.130/08.
525	**Exh.8320 /PW-301**	Letter dated 01.10.2008 issued by PW-301 to Nagar Bhumapan Adhikari (Town Surveyor), Malegaon.
526	**Exh.8326 /PW-301**	Letter dated 09.10.2008, O.W. No.2951/2008.

Sr. No.	Exhibit	Description
527	**Exh.5884-A/ PW-301**	Station diary entry dated 30.09.2008 bearing no.10.
528	**Exh.8379 /PW-304**	UAPA Sanction order dated 17.01.2009 issued by Home Department (Special), Mantralaya, Mumbai.
529	**Exh.8380 /PW-304**	Art.238 i.e. Order dated 23.10.2008 passed by Addl. Chief Secretary, (Home) and the Secretary in-charge of the Home Dept., Government of Maharashtra, Mantralaya, Mumbai.
530	**Exh.8381 /PW-304**	Art.272 i.e. Order dated 15.11.2008, passed by Addl. Chief Secretary, (Home) And the Secretary in-charge of the Home Department, Govt. of Maharashtra.
531	**Exh.8997 /PW-304**	Art.237 i.e. Letter dated 17.10.2008 issued by Addl. C.P., ATS, Mumbai. (Referred in cross hence Art.237 marked as Exh.8997)
532	**Exh.8411 /PW-307**	Statement of Keshav Karbhari Pawar (PW-307) recorded u/s 164 of Cr.P.C.
533	**Exh.8418 /PW-308**	Statement of Yashpal Sarupa Bhadana (PW-308) recorded u/s 164 of Cr.P.C.
534	**Exh.8494 /PW-310**	UAPA Sanction order dated 20.04.2011 issued by PW310 against accused Pravin Takalki.
535	**Exh.8514 /PW-312**	Statement dated 06.04.2016 of Dr.Ram Pratap Singh (PW312) recorded u/s 164 of Cr.P.C.
536	**Exh.8553 /PW-315**	Panchanama dated 19.11.2008 regarding seizure of laptop of accused no.9.
537	**Exh.8554** /PW-315	Voice recording Panchanama dated 04.01.2009.
538	**Exh.8555** /PW-315	Covering letter dated 02.12.2008 issued by PSI, ATS, Mumbai to ACP, ATS, Mumbai.

Sr. No.	Exhibit	Description
539	**Exh.8569 /PW-317**	Portion marked 'A' in the statement of Ramesh Surve (PW-219).
540	**Exh.8570 /PW-317**	Portion marked 'A' in the statement of Somnath Gunjal (PW-218).
541	**Exh.8571 /PW-317**	Panchanama dated 23.06.2009 regarding recording voice sample of Accused no.10.
542	**Exh.8571-A/ PW-317**	Signature of PW-317 on transcript (Art.382).
543	**Exh.8572 /PW-317**	Panchanama dated 23.06.2009 regarding accused no.4.
544	**Exh.8572-A/ PW-317**	Signature of PW-317 on transcript (Art.384).
545	**Exh.8573 (colly)/PW-317**	Portion marked 'A' and 'B' in the statement of Gaurav Mishra (PW-255).
546	**Exh.8616 /PW-318**	Carbon copy of letter dated 01.11.2008 given to police station Khajrana, for getting help of local police.
547	**Exh. 8617 /PW-318**	Memorandum panchnama dated 01.11.2008.
548	**Exh.8618 /PW-318**	Report of investigation of P.I. ATS, Mumbai dated 03.11.2008.
549	**Exh.8619 /PW-318**	Letter dated 04.11.2008 issued by PW-318 to Khajrana Police Station, Indore.
550	**Exh.8620 /PW-318**	Intimation of arrest to accused no.9 dated 05.11.2008.
551	**Exh.8621 /PW-318**	The report dated 05.11.2008 given by PW-318 to ACP (I.O.), ATS, Mumbai.
552	**Exh.8622/ PW-318**	The report dated 28.12.2008 given by PW318 to ACP, ATS, Mumbai.

Sr. No.	Exhibit	Description
553	**Exh.8623 (colly)/PW-318**	Portion marked 'A to O' in the statement of Dr.R.P. Singh (PW-312).
554	**Exh.8624 (colly)/PW-318**	Portion marked 'A to D' in the statement of Kashinath Banarjee (PW-276).
555	**Exh.8636 /PW-319**	Panchanama of Well dated 17.12.2008.
556	**Exh.8637 (colly)/PW-319**	Portion marked "A to O" in the statement of Dharmendra Bhairagi (PW-316).
557	**Exh.8638 (colly)/PW-319**	Portion marked "A to E" in the statement of Dilip Nahar (PW-305).
558	**Exh.8639 (colly)/PW-319**	Portion marked "A and B" in the statement of Manish Goswami (PW-252).
559	**Exh.8640 (colly)/PW-319**	Portion marked "A and B" in the statement of Dattatray Pawar (PW245).
560	**Exh.8639-A/ PW-319**	Portion mark "C" in the statement of Manish Goswami (PW-252). (marked in the cross-examination of Advocate J. P. Mishra for accused nos.1 and 6).
561	**Exh.8672 /PW-320**	The letter/order dated 25.10.2008 issued by Addl. C.P., ATS, Mumbai.
562	**Exh.8673 (colly)/PW-320**	Police Custody Remand report dated 24.10.2008.
563	**Exh.8674 (colly)/PW-320**	Police Custody Remand report dated 29.10.2008.
564	**Exh.8675 (colly)/PW-320**	Police Custody Remand report dated 03.11.2008.
565	**Exh.8676 (colly)/PW-320**	Police Custody Remand report dated 05.11.2008.
566	**Exh.8677 (colly)/PW-320**	Police Custody Remand report dated 10.11.2008.
567	**Exh.8683**	Document/transcript which was read out

Sr. No.	Exhibit	Description
	/PW-320	by Ramesh Shivji Upadhyay while recording his voice sample.
568	Exh.8684 (colly)/PW-320	Police Custody Remand report alongwith order of I/c. C.J.M., Nashik, dated 14.11.2008.
569	Exh.8685 /PW-320	Compliance report (Letter to Assistant Superintendent of Police, ATS, Mumbai) dated 15.11.2008.
570	Exh.8686 (colly)/PW-320	Police Custody Remand report of dated 21.11.2008 along with the order of I/c C.J.M., Nashik.
571	Exh.8687 (colly)/PW-320	Portion marked 'A' to 'P' of statement of Nitin Joshi (PW-309).
572	Exh.8688 (colly)/PW-320	Letter dated 15.11.2008 forwarded to C.J.M., Nashik alongwith the order dated 15.11.2008 (Outward no.2094 of 2008) of the I/c C.J.M., Nashik.
573	Exh.6387-A/ PW-320	Letter of advice dated 19.11.2008.
574	Exh.6664-A/ PW-320	Transcript which was read out by Sudhakar Dhar Dwivedi while recording his voice sample.
575	Exh.8693 /PW-320	Letter dated 25.11.2008 (जा.क्र.१२०५/ सपोआ/दविप/०८) issued by PW-320 in the name of Shri Bakre of DFSL, Nashik.
576	Exh.6401-A/ PW-320	Questionery attached to forwarding letter Exh.6401.
577	Exh.8694 /PW-320	Art.351 i.e. the letter dated 24.11.2008 issued by ACP, ATS, Mumbai to FSL, Mumbai.
578	Exh.8695 /PW-320	Letter dated 29.11.2008 issued by PW-320 to P.I. Bhimraj Ghadge, ATS, Mumbai for preparing transcript.

Sr. No.	Exhibit	Description
579	**Exh.8696 /PW-320**	Art.142 i.e. Letter dated 25.11.2008 bearing outward no.1203/दविप/२००८.
580	**Exh.8697 /PW-320**	Letter dated 01.12.2008 issued by PW-320 for diffusing detonator.
581	**Exh.8698 (colly)/PW-320**	Portion marked 'A' to 'K' in the statement of Yashpal Bhadana (PW-308).
582	**Exh.8703 /PW-320**	Art.307 i.e. Letter dated 31.10.2008 bearing O.W. No.1058/ACP/ATS/08.
583	**Exh.8704 /PW-320**	Art.190 i.e. letter dated 04.12.2008 of ACP, ATS, Mumbai to Chief Executive Officer, India TV bearing O.W. No.13/ACP/ATS/08
584	**Exh.8705 /PW-320**	Letter dated 03.12.2008 sent by PW-320 i.e. ACP, ATS, Mumbai to The Chemical Analyser to Government, Mumbai.
585	**Exh.8706 /PW-320**	Art.113 i.e. Transcript of accused Prasad Purohit with heading "PARAGRAPH".
586	**Exh.8707 /PW-320**	Letter dated 05.12.2008 sent by PW-320 to DFSL, Kalina.
587	**Exh.8708 /PW-320**	Portion marked 'A' of statement of fAmod Damale (PW-206).
588	**Exh.8739 /PW-320**	Portion marked 'A' in the statement of Lt. Col. Bapaditya Dhar (PW-243).
589	**Exh.8740 /PW-320**	Letter dated 02.01.2009 of ACP, ATS, Mumbai bearing O.W. No.06/ACP/ATS/09 forwarded to DFSL, Kalina, Mumbai.
590	**Exh.8741 /PW-320**	Art.308 i.e. Letter dated 30.12.2008 bearing outward no.87/ATS/ACP/2008 sent by ACP, ATS, Mumbai.
591	**Exh.8742 /PW-320**	Letter dated 10.12.2008 bearing O.W. No.36/ATS/ACP/2008 of ACP, ATS, Mumbai to the Manager, ICICI Bank Limited, Bandra, Mumbai.

Sr. No.	Exhibit	Description
592	**Exh.8743 /PW-320**	Letter dated 18.12.2008 bearing O.W. No.74/ATS/ACP/2008 of ACP, ATS, Mumbai issued to the Manager, ICICI Bank Limited, Erandwane Branch, Pune.
593	**Exh.8744 /PW-320**	Letter dated 18.12.2008 bearing O.W. No.75/ATS/ACP/2008 of ACP, ATS, Mumbai issued to the Manager ICICI Bank, Kondhwa Branch, Pune.
594	**Exh.8745 /PW-320**	Art.97 i.e. Letter dated 30.12.2008 bearing O.W. No.89/ATS/ACP/2008.
595	**Exh.8746 /PW-320**	Art.98 i.e. Letter dated 30.12.2008 bearing O.W. No.90/ATS/ACP/2008.
596	**Exh.8747 /PW-320**	Art.61 i.e. Letter outward No.91/ATS/ ACP/2008 dated 30.12.2008 issued to Manager Deccan Gymkhana Branch, SBI, Pune.
597	**Exh.8748 /PW-320**	Letter dated 30.12.2008 bearing O.W. No.96/ATS/ACP/2008 issued to Asst. General Manager, SBI, Panchmari Branch (01046), Bhopal (M.P.).
598	**Exh.8749 /PW-320**	Letter dated 30.12.2008 bearing O.W. No.98/ATS/ACP/2008 of ACP, ATS, Mumbai to Manager Axis Bank Ltd., Sonimur Apartments, S.V. Road, Malad Branch, Mumbai.
599	**Exh.8750 /PW-320**	Letter dated 18.12.2008, bearing O.W. No.71/ATS/ACP/2008 of ACP, ATS, Mumbai to Manager Axis Bank Ltd., Kothrud, Pune.
600	**Exh.8751 /PW-320**	Art.375 i.e. Letter dated 30.12.2008 issued by PW-320 to Manager Punjab National Bank, Deccan Gymkhana Branch, Pune.
601	**Exh.8752 colly/PW-320**	Advisory letter dated 14.01.2009 bearing जा.क्र.२२/सपोआ/दविप/०९.

Sr. No.	Exhibit	Description
602	**Exh.8753 colly/PW-320**	Advisory letter dated 17.01.2009 bearing जा.क्र.३१/सपोआ/दविप/०९.
603	**Exh.8758** /PW-320	Letter dated 20.01.2009 bearing O.W. No.39/ACP/ATS/09 issued by ACP, ATS, Mumbai to DFSL, Kalina Mumbai.
604	**Exh.8763 /PW-320**	Examination Report dated 13.03.2009 received from DFSL bearing M.L. Case No.AV-02/09.
605	**Exh.8764 /PW-320**	Art.359 i.e. Covering letter dtd. 30.03.2009, bearing O.W.No.101/सपोआ /दविप/०९.
606	**Exh.8765 /PW-320**	Art.314 i.e. Advisory letter dated 25.06.2009 bearing O.W. No.177/ACP/ ATS/09.
607	**Exh.8770 (colly)/PW-320**	The portion marked 'A to D' of the statement of Ramchandra Sharma (PW286).
608	**Exh.8771 (colly)/PW-320**	The portion marked 'A to E' of the statement of Shaikh Khaja Nayab Rasool (PW282).
609	**Exh.8782 /PW-320**	Letter dated 20.10.2008 forwarded by Dy.SP, मुख्यालय Nashik Rural.
610	**Exh.8783 /PW-320**	The letter dated 26.10.2008 addressed to PW-320 by Kiran Dhote (Deputy Superintendent of Police) regarding transfer of investigation.
611	**Exh.8784 /PW-320**	Art.386 i.e. Letter dated 30.09.2008 issued by Dy. Inspector General (का. व सु.) Rashmi Shukla.
612	**Exh.8916 (colly)/PW-321**	Portion marked 'A to G' of the statement of Dr. Ram Pratap Singh (PW-312).
613	**Exh.8917 /PW-321**	Signature of Vipin Kumar on the Art.287.

Sr. No.	Exhibit	Description
614	**Exh.8967 /PW-322**	The label of the cassette (Art-390).
615	**Exh.8968 /PW-322**	The label of the cassette (Art-391).
616	**Exh.8969 /PW-322**	The transcript dated 19.10.2008.
617	**Exh.8970 /PW-322**	The label on the cover of cassette (Art-392).
618	**Exh.8971 /PW-322**	The label on the cover of cassette (Art-393).
619	**Exh.8972 /PW-322**	The label on the cover of cassette (Art-394).
620	**Exh.8973 (colly)/PW-322**	The transcripts dated 23.10.2008.
621	**Exh.8974-A Exh.8974-B Exh.8974-C /PW-322**	Art.398 colly i.e. Three transcripts annexed with the supplementary statement of PW-322.
622	**Exh.8975-A, Exh.8975-B, Exh.8975-C, Exh.8975-D /PW-322**	Art.400 colly. i.e. Four transcripts.
623	**Exh.8986 /PW-323**	Art.397 i.e. The transcript having file name 'Sanatanbharat'.
624	**Exh.8987-A, Exh.8987-B, Exh.8987-C /PW-323**	Art.401 colly. i.e. Three transcripts.

LIST OF ARTICLES

Sr. No.	Exhibit	Description
1	Art.A.colly/PW-11	5 Xerox copies of medical certificates produced by PW-11.
2	Art.2 colly. /PW-107	Small 11 bottles and 3 middle size bottles.
3	Art.3 colly. /PW-108	Two bottles marked as B1 and B2 having one splinter each.
4	Art.4/PW-109	White colour full sleeve shirt.
5	Art.5/PW-109	Cream colour pant.
6	Art.6 colly. /PW-110	Six small bottles.
7	Art.7 colly. /PW-111	Five glass bottle.
8	Art.8 colly. /PW-112	One small glass bottle containing splinters.
9	Art.9/PW-113	Clothes of deceased (10 years old girl).
10	Art.10/PW-113	Clothe (Underpant) of deceased (18 year old male).
11	Art.11 colly. /PW-113	Clothes of deceased. (Pant, shirt and underwear).
12	Art.12 colly. /PW-113	Clothes of deceased. (Pant, shirt and underwear).
13	Art.13 colly. /PW-119	Three CDs.
14	Art.14 colly. /PW-120	Album and CD.
15	Art.15/PW-124	Pieces of cotton swabs collected from spot (MNK-420/08/Exh.1)
16	Art.16/PW-124	Pieces of cotton swabs collected from spot (MNK-420/08/Exh.2)
17	Art.17/PW-124	Pieces of cotton swabs collected from

		spot (MNK-420/08/Exh.3)
18	Art.18/PW-124	Soil and plastic pieces collected from spot site (MNK-420/08/Exh.5)
19	Art.19/PW-124	Splinters with cotton swabs collected from spot site (MNK-420/08/Exh.6)
20	Art.20/PW-124	Soil, iron pieces, ball bearings collected from spot site (MNK-420/08/Exh.9)
21	Art.21/PW-124	Fibre pieces @ brake part pieces collected from spot site (MNK-420/08/ Exh.13)
22	Art.22/PW-124	The piece of cloth and glass collected from spot site (MNK-420/08/Exh.20)
23	Art.23/PW-124	Phillips company choke cover collected from spot site (MNK-420/08/Exh.21)
24	Art.24/PW-124	Soil and some burnt material collected from spot site (MNK-420/08/Exh.22)
25	Art.25/PW-124	Cotton swabs pieces (MNK-420/08/Exh.23)
26	Art.26/PW-124	Soil collected from spot (MNK-420/08/Exh.24)
27	Art.27/PW-124	Piece of cotton and a piece of plastic panni (MNK-420/08/Exh.25)
28	Art.28/PW-124	One plastic paper piece having broken cup of tea (MNK-420/08/Exh.26)
29	Art.29/PW-124	Right foot chappal (MNK-420/08 /Exh.27)
30	Art.30/PW-124	Right foot chappal (MNK-420/08 /Exh.28)
31	Art.31/PW-124	Left foot chappal (MNK-420 /08/Exh.29)
32	Art.32/PW-124	Plastic small pieces, small pieces of glass and small pieces of iron (MNK-420/08/Exh.30)

33	Art.33/PW-124	Burnt fibre pieces (MNK-420/08 /Exh.31)
34	Art.34/PW-124	One police cap (MNK-420/08/Exh.32)
35	Art.35/PW-124	One broken seat cover (MNK-420 /08/Exh.33)
36	Art.36(1)/PW-124	Green colour envelope 17945 - Exh.4 @ brown colour paper, khaki colour paper with label with plastic paper containing muddemal.
37	Art.36(2)/PW-124	Green colour envelope 17945 - Exh.4(a) @ one plastic paper and pouch @ small pieces of iron rods and splinters.
38	Art.36(3)/PW-124	Green colour envelope 17945 - Exh.4(b) @ one plastic paper and pouch @ small pieces of ball bearings and splinters.
39	Art.36(4) colly/PW-124	Green colour envelope 17945 - Exh.4(c) @ one plastic and two plastic pouch containing some materials and wire @ one green colour envelope.
40	Art.36(5)/PW-124	Green colour envelope 17945 - Exh.4(d) @ one plastic pouch containing vehicle chain.
41	Art.37/PW-124	One sealed envelope (17945 in circle Exh.11) and the seal stamp of CFSL, Hyderabad @ brown colour envelope, khaki colour wrapper @ lable @ one plastic pouch containing parts of seat cover.
42	Art.38/PW-124	One sealed envelope (17945 in circle Exh.12) and the seal stamp of CFSL, Hyderabad @ brown colour paper, Khaki colour wrapper @ label @ one plastic pouch containing some material.
43	Art.39/PW-124	One sealed envelope (17945 in circle Exh.14) and the seal stamp of CFSL,

		Hyderabad @ brown colour wrapper, khaki colour wrapper @ label @ one plastic pouch containing number plate of vehicle as MH-15 P-4572.
44	Art.40 colly /PW-124	5 Bicycles (MNK 420/2008; Exh.15 to 19). (Kept at Kalachowki Police Station)
45	Art.41/PW-124	Freedom motorcycle. (Kept at Kalachowki Police Station)
46	Art.42/PW-124	Honda Unicorn motorcycle. (Kept at Kalachowki Police Station)
47	Art.43/PW-133	Photocopy of receipt (Kararnama) dated 14.02.2007 for purchase of Hero Honda SS bearing No.MH-15-P-4572.
48	Art.44 colly. /PW-137	Xerox copies of Sauda – Pawati (Kararnama) dtd.05.05.2008 and 12.06.2008.
49	Art.45 colly. /PW-141	Mobile handset and wrapper with label seized from accused Rahirkar.
50	Art.46 colly. /PW-141	Mobile handset and wrapper with label seized from accused Rahirkar.
51	Art.47/PW-142	2 labels.
52	Art.48/PW-142	Black colour H.P. Pavilion company laptop (Accused no.10).
53	Art.49 colly. /PW-142	Mobile handset along with label.
54	Art.50 colly./PW-142	Mobile handset along with label.
55	Art.51/PW-142	Label (affixed on Exh.27, CY155/08).
56	Art.52/PW-142	Yellow colour SIM card of Idea company.
57	Art.53/PW-142	White colour SIM card of Cellone company.
58	Art.54 colly. /PW-142	Pen-drive along with label.

59	Art.55/PW-142	Reliance Net Connect.
60	Art.56	Letter (truncated) vide inward no.4419/20 Confidential.
61	Art.57/PW-144	Label on brown colour envelope.
62	Art.58/PW-144	Mercury CD.
63	Art.59 colly. /PW-144	Two CDs.
64	Art.60/PW-144	Notepad.
65	Art.62 colly. /PW-146	Railway ticket, platform ticket, one slip of Madhur Courier, Siddhant Enterprises, Sainath Offset Printer, receipt of hotel Ashoka, Indore, Pamphlet Abhinav Bharat and one letter on which heading Abhinav Bharat Pradeshik Baithak.
66	Art.63 colly. /PW-146	SBI debit card, driving license, certificate of registration and Rs.750/-.
67	Art.64 colly. /PW-146	Nokia Mobile handset, Reliance SIM card, battery & brown colour envelope.
68	Art.65/PW-146	Plastic carry bag of white colour.
69	Art.66 colly. /PW-147	Brown colour envelope and mobile handset of Reliance L.G. company.
70	Art.67 colly. /PW-147	Brown colour envelope and mobile handset of Nokia company.
71	Art.68 colly. /PW-147	Brown colour envelope and mobile handset Reliance L.G. company.
72	Art.69 colly. /PW-147	Brown colour envelope and pen-drive.
73	Art.70 colly. /PW-147	Brown colour envelope and pen-drive.
74	Art.71 colly. /PW-147	Brown colour paper, blue colour rexine pouch and red colour diary.
75	Art.72/PW-148	Particulars regarding Personal

		information.
76	Art.73/PW-148	Photocopy of ticket details bearing PNR No.8322876599.
77	Art.74/PW-149	Details of insurance policy of accused Ajay Rahirkar and Prasad Purohit.
78	Art.75 colly. /PW-150	Cassette and the label with envelope.
79	Art.76 colly. /PW-150	Cassette and the label with envelope.
80	Art.79 colly. /PW-153	Three screen shots.
81	Art.80 colly. /PW-153	Five documents related to CD.
82	Art.81 colly. /PW-153	Text paper (heading press release on Sadhwi) running into 2 pages.
83	Art.82/PW-153	Label on white colour envelope.
84	Art.83/PW-153	CD.
85	Art.84/PW-154	Label.
86	Art.85/PW-155	Laptop of HP company (Accused no.4)
87	Art.86 colly. /PW-155	Laptop bag and label.
88	Art.90 colly. /PW-157	Brown colour envelope @ label.
89	Art.94 colly. /PW-159	Documents (5 pages) filed along with panchanama (Exh.6630) regarding accused no.9.
90	Art.95 colly. /PW-159	Label @ wrapper.
91	Art.96/PW-159	Cassette.
92	Art.99/PW-160	Abhinav Bharat Account Statement of SBI.
93	Art.100 colly. /PW-161	Photocopies of 3 pages of register maintained at Ship Hotel.

94	Art.101 colly. /PW-162	Audio cassette @ label.
95	Art.108 colly. /PW-167	CD @ label.
96	Art.109 colly. /PW-167	CD @ label.
97	Art.114 colly. /PW-169	Cassette, cassette cover, label.
98	Art.115/PW-170	Register maintained for giving vehicles on rent, produced by one Jayant Pradhan.
99	Art.116 colly. /PW-172	Cassette and label.
100	Art.117/PW-174	Bill of Savex Computer, Nashik.
101	Art.118/PW-174	Photocopy of bill of Laptop issued in the name of Sharma R. K. by Intralink, Nashik.
102	Art.119/PW-174	Photocopy of bill of Laptop issued in the name of Intra Link, Nashik by Sabadra Infotech.
103	Art.120 colly. /PW-175	Photocopies of currency notes seized from the house of accused Ajay Rahirkar.
104	Art.121/PW-175	Envelope.
105	Art.122/PW-175	Electricity bill seized from the house of accused Ajay Rahirkar.
106	Art.123 colly. /PW-176	Nokia Mobile phone, battery, SIM card and label.
107	Art.124 colly. /PW-176	Motorola Mobile phone, battery, two SIM cards and label.
108	Art.125 colly. /PW-176	Photocopy of the Income Tax, PAN card, two ICICI bank cards and canteen card.

109	Art.126 colly. /PW-176	Wallet and label.
110	Art.127/PW-177	Application (प.सा.नाटयमंदिराकरिता करावयाचा अर्ज) filled-up by accused no.11 Sudhakar Chaturvedi.
111	Art.128/PW-177	Form (प. सा. नाटयमंरिराच्या वापराविषयीचे करारपत्र)
112	Art.129 colly. /PW-178	Cassette and label.
113	Art.130/PW-179	Cause of death certificate.
114	Art.131 colly. /PW-180	White cloth and label.
115	Art.132 colly. /PW-180	Laptop bag, black colour laptop of Acer company (Accused no.1) and charger.
116	Art.133/PW-181	Copy of Letter dated 06.11.2008 issued by LML Limited to ATS, Mumbai.
117	Art.134 colly. /PW-180	Mobile handset of Sony Ericsson, two SIM cards and the label.
118	Art.135 colly. /PW-180	Mobile handset of Nokia company and the label.
119	Art.136 colly. /PW-180	100 currency notes of Rs.100/- denomination and the label.
120	Art.137 colly. /PW-180	2 CDs and the label.
121	Art.138 colly. /PW-180	Telephone diary and the label.
122	Art.139 colly. /PW-180	3 Notebooks, 6 pamphlets @ the label.
123	Art.140/PW-180	Book of Savarkar.
124	Art.143 colly. /PW-183	Mobile handset @ the label.
125	Art.144 colly.	Mobile handset, SIM card and the label.

	/PW-183	
126	Art.145 colly. /PW-183	Mobile handset, Two SIM cards of Vodafone and Idea company, memory card and the label.
127	Art.146 colly. /PW-183	Pendrive of Transcend company and the label.
128	Art.147 colly. /PW-183	14 railway tickets and the label.
129	Art.148 colly. /PW-183	Brown colour file of Bhonsala Military School, Nasik containing some papers and the label.
130	Art.149 colly. /PW-183	Laptop of DELL company (Accused no.11) and the label.
131	Art.150 colly. /PW-183	Pendrive of D-Link and the label.
132	Art.151 colly. /PW-183	Handy stamp of Shiny company and the label.
133	Art.152 colly. /PW-183	Plastic rubber stamp in the name of Sudhakar Chaturvedi and the label.
134	Art.153 colly. /PW-183	Election card, passbook of Bank of Baroda, Bank of Baroda ATM card, Ration card, all issued in the name of Sudharkar Chaturvedi and the label.
135	Art.154 colly. /PW-183	Temp Pass card in the name of Sudhakar Chaturvedi and the label.
136	Art.155 colly. /PW-183	Light bill and the label.
137	Art.156 colly. /PW-183	Receipt book of Abhinav Bharat and the label.
138	Art.157 colly. /PW-183	CD album of 11 CDs and the label.
139	Art.158 colly. /PW-183	Monthly Monitor 2008 diary and the label.
140	Art.159 colly.	Goni and the label.

	/PW-183	
141	Art.160 colly. /PW-183	Goni with white spots and the label.
142	Art.161 colly. /PW-183	Plastic box, wire and the label.
143	Art.162 colly. /PW-183	Cotton swabs in 9 plastic pouches and the label.
144	Art.22-A/PW-187	Label attached to Art.22.
145	Art.23-A/PW-187	Label attached to Art.23
146	Art.24-A/PW-187	Label attached to Art.24.
147	Art.25-A/PW-187	Label attached to Art.25.
148	Art.26-A/PW-187	Label attached to Art.26.
149	Art.27-A/PW-187	Label attached to Art.27.
150	Art.28-A/PW-187	Label attached to Art.28.
151	Art.29-A/PW-187	Label attached to Art.29.
152	Art.30-A/PW-187	Label attached to Art.30.
153	Art.31-A/PW-187	Label attached to Art.31.
154	Art.32-A/PW-187	Label attached to Art.32.
155	Art.33-A/PW-187	Label attached to Art.33.
156	Art.34-A/PW-187	Label attached to Art.34.
157	Art.163/PW-194	Signature of Mr. Mehta on letter head of Abhinav Bharat.
158	Art.164/PW-196	Photostat copy of the page of register maintained at Shree Nathji Auto in which entry of vehicle i.e. L.M.L. Freedom Motorcycle is mentioned at serial no.1320.
159	Art.165 Colly./PW-200	Photocopies of documents such as नोंदणी प्रमाणपत्र, Passport issued in the name of Rakesh D. Dhawade, Account opening form of SBI in the name of Varsha Rakesh Dhawade, Rakesh Dhawade and

		Ravi Waikar, etc. (Total pages 13)
160	Art.166/PW-203	Letter dated 25.02.2008 of Abhinav Bharat.
161	Art.167/PW-204	Label.
162	Art.168/PW-211	Paper signed by PW-211 referred in cross examination by advocate for accused no.1 and 6.
163	Art.169/PW-211	Paper signed by PW-6211 referred in cross examination by advocate for accused no.1 and 6.
164	Art.170/PW-211	Paper signed by PW-211 referred in cross examination by advocate for accused no.1 and 6.
165	Art.171 colly. /PW-222	Page nos.71 to 133 of the register in which entries regarding selling of SIM were made at the shop of Shyam Shahu.
166	Art.172 colly. /PW-223	3 pages of passenger list dated 11.08.2008 of Volvo 26SLP+128 from Poona to Indore.
167	Art.175/PW-225	Letter dated 17.10.2007 issued to Rajkumar Sharma (PW-225) by Bajaj Finance.
168	Art.176 colly. /PW-227	Call details of mobile no.9850825042, total 40 pages (page nos.228 to 267)
169	Art.177 colly. /PW-227	Customer Application Form with call details of mobile no.9881310684 (page no.310 to 320)
170	Art.178 colly. /PW-227	Call details of mobile no.9881310684 (page no.321 to 326)
171	Art.179 colly. /PW-227	Customer Application Form with call details of mobile no.9604372982 (page nos.757-A, 758 to 762)
172	Art.180 colly.	Photocopies of customer enrollment

	/PW-229	form, ration card, PAN card, new corporate plan, letter head of Academy of Investment Management, employee ID card.
173	Art.181/PW-229	Letter dated 11.11.2008, bearing O.W. No.1865/Addl.C.P./ATS/TECH/2008; issued by Addl.C.P.,Mumbai to PW-229.
174	Art.182 colly. /PW-229	Photocopy of Airtel Prepaid Enrollment Form and photocopy of passport (page no.1127 & 1128).
175	Art.183/PW-229	Letter dated 11.11.2008 bearing O.W. No.1939/Addl.C.P./ATS/TECH/2008; issued by Addl C.P.,Mumbai to PW-229.
176	Art.184 colly. /PW-229	Photocopy of subscriber enrollment form, photocopy of plan details, photocopy of local reference certificate, photocopy of employment card, photocopy of election Identity card, photocopy of company ID card (front and back), Total 7 pages (page no.105 to 111).
177	Art.185/PW-229	Letter dated 17.01.2009 issued by ATS to Amit Karekera, Manager of Bharti Airtel Ltd.
178	Art.186/PW-231	Letter dated 10.09.2008 of Abhinav Bharat to Bhonsala Military School.
179	Art.187/PW-232	Receipt issued by The Misty Meadows Resort.
180	Art.188 colly. /PW-232	HDFC Bank account statements of account nos.00621000074498 & 07722020000525.
181	Art.189/PW-232	One photocopy having photograph.
182	Art.191/PW-233	Letter dated 15.01.2009, O.W. No.27/ACP/ATS/09 ACP, ATS, Mumbai to Shri. Rohit Bansal, India TV, News.

183	Art.193/PW-234	CD.
184	Art.194/PW-237	Letter of 22.11.2008 bearing O.W. No.1954/Addl.C.P./ATS/TECH/2008, issued by Addl.C.P., ATS, Mumbai to Nodal Officer, Hutchison Essar Cellular Ltd.
185	Art.195/PW-237	Letter of 24.11.2008 bearing O.W. No.1957/Addl.C.P./ATS/TECH/2008, issued by Addl.C.P., ATS, Mumbai to Nodal Officer, Hutchison Essar Cellular Ltd.
186	Art.196 colly. /PW-237	Photocopies of prepaid application form and passbook of Bank of Baroda issued in the name of Sudhakar Omkarnath Chaturvedi.
187	Art.197/PW-239	Document titled as "गिरफ्तारी सूचना पत्र एवं जिला विधिक सेवा प्राधिकरण को दी जाने वाली सुचना".
188	Art.198/PW-239	Document titled as "प्रारूप—३, गिरफ्तार व्यक्ती के शरीर के निरीक्षण का प्रपत्र".
189	Art.199 colly. /PW-239	Black colour rexine pouch, one debit card of Punjab National Bank, one ATM card of Bank of Punjab, Visa Electron Card of ICICI Bank, two photographs and one cheque of Punjab National Bank.
190	Art.200 colly. /PW-239	2 currency notes of Rs.100/- denomination.
191	Art.201 colly. /PW-239	Sharda Sandesh Patrika-five in number (5), booklet of Aarya Khalsa Hinduo Se Anyay Desh Ki Hatya, Sanathan Prabhat newspaper–five in number (5), Aaryavart Sarkar Ka Ghosanapatra and other documents i.e. miscellaneous papers which are in the white plastic

		bag and other miscellaneous documents.
192	Art.202 colly. /PW-239	64 Visiting cards.
193	Art.203 colly. /PW-239	Cassettes.
194	Art.204 colly. /PW-240	Cassette and label.
195	Art.205 colly. /PW-240	Cassette and label.
196	Art.206 colly. /PW-240	Transcript of 5 pages between Accused Upadhyay and Purohit, mobile no.9406545514.
197	Art.207 colly. /PW-240	Transcript of conversation (3 pages) dated 23.10.2008.
198	Art.208/PW-241	Letter Outward No.1854/Addl.C.P./ATS /TECH/2008 dated 11.11.2008 requesting details of mobile no.9406600004.
199	Art.209/PW-241	Letter Outward No.1867/Addl.C.P./ATS /TECH/2008 dated 11.11.2008 requesting details of mobile no.9406524594.
200	Art.210/PW-241	Letter Outward No.1966/Addl.C.P./ATS /TECH/2008 dated 11.11.2008 requesting details of mobile no.9406545514.
201	Art.211/PW-241	Letter Outward No.1871/Addl.C.P./ATS /TECH/2008 dated 11.11.2008 requesting details of mobile no.9406545514.
202	Art.212/PW-241	Letter Outward No.1869/Addl.C.P./ATS /TECH/2008 dated 11.11.2008

		requesting details of mobile no.9424465041.
203	Art.213/PW-241	Letter Outward No.1996/Addl.C.P./ATS /TECH/2008 dated 24.11.2008 requesting details of mobile no.9425352670.
204	Art.214/PW-241	Letter Outward No.1941/Addl.C.P./ATS /TECH/2008 dated 21.11.2008 requesting details of mobile no.9425352670.
205	Art.215/PW-241	Letter Outward No.1994/Addl.C.P./ATS /TECH/2008 dated 24.11.2008 requesting details of mobile no.9425911745.
206	Art.216/PW-241	Letter Outward No.1940/Addl.C.P./ATS /TECH/2008 dated 21.11.2008 requesting details of mobile no.9425911745.
207	Art.217/PW-241	Letter Outward No.48/Addl.C.P./ ATS/TECH/2009 dated 12.01.2009 requesting details of mobile no.9425911724.
208	Art.218/PW-241	Letter Outward No.1999/Addl.C.P./ATS /TECH/2008 dated 24.11.2008 requesting details of mobile no.9425911724.
209	Art.219/PW-241	Letter Outward No.1993/Addl.C.P./ATS /TECH/2008 dated 24.11.2008 requesting details of mobile no.9425322821.
210	Art.220/PW-241	Letter Outward No.1943/Addl.C.P./ATS /TECH/2008 dated 21.11.2008

		requesting details of mobile no.9425322821.
211	Art.221/PW-241	Letter Outward No.1942/Addl.C.P./ATS /TECH/2008 dated 21.11.2008 requesting details of mobile no.9425706625.
212	Art.222/PW-241	Letter Outward No.2137/Addl.C.P. /ATS/TECH/2008 dated 22.12.2008 requesting details of mobile no.9406524594, 9406600004 and 9406545514.
213	Art.223/PW-241	Letter Outward No.2151/Addl.C.P./ATS /TECH/2008 dated 22.12.2008 requesting details of mobile no.9424465041, 9425151003 and 9406600004.
214	Art.224/PW-241	Letter Outward No.2154/Addl.C.P./ATS /TECH/2008 dated 22.12.2008 requesting details of mobile no.9406600004.
215	Art.225/PW-241	Letter Outward No.1851/Addl.C.P./ATS /TECH/2008 dated 08.11.2008 requesting details of mobile no.9425352670.
216	Art.226/PW-241	Letter Outward No.2155/Addl.C.P./ATS /TECH/2008 dated 22.12.2008 requesting details of mobile nos.9425322821, 9425911724, 9406524594 and 9406545514.
217	Art.227/PW-241	Letter Outward No.2129/Addl.C.P./ATS /TECH/2008 dated 22.12.2008 requesting details of mobile nos. 9406524594, 9406600004,

		9425352670 and 9425322821.
218	Art.228/PW-241	Letter Outward No.2160/Addl.C.P./ATS /TECH/2008 dated 23.12.2008 requesting details of mobile nos.9424465041, 9406524594, 9425911745 and 9425352670.
219	Art.229/PW-241	Letter Outward No.638/Addl.C.P./ ATS/TECH/2008 dated 01.04.2009 requesting details of mobile no.9406932965.
220	Art.230 colly. /PW-241	Documents of information (page nos. 168 to 179, total 12 pages)
221	Art.231/PW-242	Photocopy of handing/taking over certificate.
222	Art.232 colly. /PW-242	White cloth along with label.
223	Art.233/PW-244	Photocopy of letter dated 09.09.2008 regarding allotment of guest room to Prasad Purohit along with his family.
224	Art.234/PW-244	Photocopy of receipt of Mess.
225	Art.235/PW-244	Receipt of School of Artillery, Sarvtra Officer's Mess dated 11.09.2008.
226	Art.236/PW-244	Photocopy of one page of Mess register.
227	Art.239/PW-246	Letter bearing O.W. No.1855/Addl. C.P./ATS/TECH/2008, dtd. 11.11.2008.
228	Art.240 colly. /PW-246	Documents i.e. application form, address proof, call details record (page nos.6 to 14).
229	Art.241/PW-246	Letter bearing Outward No.1860/Addl. C.P./ATS/TECH/2008, dtd 11.11.2008.
230	Art.242 colly. /PW-246	Documents i.e. application form, call details record (Page nos.58 to 140).

231	Art.243/PW-246	Letter bearing outward No.1937/Addl. C.P./ATS/TECH/2008, dtd. 21.11.2008
232	Art.244 colly. /PW-246	Documents i.e. application form, address proof, Ration card, call details record (Page nos.906 to 1094).
233	Art.245/PW-246	Letter outward No.1938/Addl.C.P./ ATS/TECH/2008, dtd. 21.11.2008.
234	Art.246 colly. /PW-246	Documents i.e. application form, Ration card, address proof, call details record. (Page nos.1100 to 1124)
235	Art.247/PW-246	Letter dated 24.11.2008 bearing O.W. No.2003/Addl.C.P./ATS/TECH/2008.
236	Art.248 colly. /PW-246	Documents i.e. call details record (Page nos.1285 to 1325).
237	Art.249/PW-246	Letter dated 11.11.2008 bearing O.W. No.1862/Addl.C.P./ATS/TECH/2008.
238	Art.250 colly. /PW-246	Documents i.e. application form, Driving license, Electric Bill (Address proof), call details record (Page nos.1332 to 1462).
239	Art.251/PW-246	Letter dated 11.11.2008 bearing O.W. No.1863/Addl.C.P./ATS/TECH/2008.
240	Art.252 colly. /PW-246	Documents i.e. application form, Identity card, call details record (Page nos 1469 to 1477).
241	Art.253/PW-246	Letter dated 22.12.2008 bearing O.W. No.2139/Addl.C.P./ATS/TECH/2008.
242	Art.254 colly. /PW-246	Documents i.e. subscriber details and call details record (Page nos 7 to 10 & 14 to 17).
243	Art.255/PW-246	Letter dated 22.12.2008 bearing O.W. No.2152/Addl.C.P./ATS/TECH/2008.
244	Art.256/PW-246	Letter dated 22.12.2008 bearing O.W. No.2152/Addl.C.P./ATS/TECH/2008.

245	Art.257/PW-246	Call details record (1 page).
246	Art.258/PW-246	Letter dated 22.12.2008 bearing O.W. No.2132/Addl.C.P./ATS/TECH/2008.
247	Art.259 colly. /PW-246	Document i.e. subscriber details and call details record (Page nos 71 & 88).
248	Art.260/PW-246	Letter dated 23.12.2008 bearing O.W. No.2163/Addl.C.P./ATS/TECH/2008.
249	Art.261 colly. /PW-246	Documents i.e. call details record(Page nos 97 to 101).
250	Art.262 colly. /PW-247	Brown envelope and label.
251	Art.263/PW-247	Register.
252	Art.264/PW-250	Account extract issued by HDFC bank.
253	Art.265/PW-252	Photostat copy of invoice of Nishant Arms, dealer in Arms and Ammunition.
254	Art.266/PW-252	Photostat copy of register maintained by PW-252.
255	Art.267/PW-254	Letter dated 11.11.2008 bearing outward no.1868/Addl.CP/ATS/TECH/ 2008.
256	Art.268/PW-254	Letter dated 11.11.2008 bearing outward no.1866/Addl.CP/ATS/TECH/ 2008.
257	Art.269/PW-258	Letter bearing outward no.1962/Addl. C.P./ATS/TECH/2008. dated 24.11.2008.
258	Art.270 colly. /PW-258	Xerox copies of Customer Application form, photo ID, SBI bank passbook and bill copy of landline number (Page nos.2225 to 2229)
259	Art.271 colly. /PW-258	Xerox copies of Customer Application form, form no.60, bill copy of landline number and photocopy of driving

		license (Page nos.2230,2231,2233 & 2234).
260	Art.273 colly. /PW-261	5 Photographs.
261	Art.274 colly. /PW-261	4 Photographs (regarding chassis and engine number).
262	Art.275 colly. /PW-261	Parts of motor cycle, two plastic parts of LML freedom, shock absorber of bike along with label.
263	Art.276 colly. /PW-261	One bottle (Mnk$\frac{435/08}{1}$) and metallic piece along with label.
264	Art.277 colly. /PW-261	One bottle and burnt blackish colour piece of shirt with yellowish stripes of Sayyad Azahar Sayyad Nisar on which office no.Mnk $\frac{435/08}{2}$ was written along with label.
265	Art.278 colly. /PW-261	One bottle and metal pieces on which office no.Mnk $\frac{440/08}{\text{Exh}}$.1) was written along with label.
266	Art.279 colly. /PW-261	8 small glass bottles (E1 to E8) and small metallic pieces dipped in liquid media.
267	Art.280/PW-263	Letter dated 22.11.2008 bearing O.W. No.1951/Addl.C.P./ATS/TECH/2008.
268	Art.281/PW-263	Letter dated 22.11.2008 bearing O.W. No.1952/Addl.C.P./ATS/TECH/2008.
269	Art.282/PW-263	Letter dated 21.11.2008 bearing O.W. No.1947/Addl.C.P./ATS/TECH/2008.
270	Art.283/PW-263	Letter dated 08.11.2008 bearing O.W. No.1850/Addl.C.P./ATS/TECH/2008.
271	Art.284/PW-264	Photo of one suspect.
272	Art.285/PW-266	Medical Fitness Certificate dated

		04.11.2008 issued in the name of Prasad Purohit.
273	Art.286 colly. /PW-268	The documents of Sayaji Hotels Ltd., Indore (page nos.101 to 109) attached with Exh.7473.
274	Art.287/PW-271	The letter dated 29.03.2012, sent by P.I., NIA, New Delhi to The Jail Superintendent Mhow Jail, Mhow (MP).
275	Art.288 colly. /PW-275	Photostat copies of entries on page nos. 1, 2 and 10 of register maintained at Chakreshwar Hariparvat Mata Mandir.
276	Art.289/PW-277	Letter bearing O.W.No.1872/Addl. C.P./ATS/TECH/2008, dtd.11.11.2008.
277	Art.290 colly. /PW-277	Xerox copy of APEF (Airtel Prepaid Enrollment Form) in 6 pages (page nos.765 to 770)
278	Art.291/PW-277	Letter dated 11.11.2008 bearing O.W. No.1861/Addl.C.P./ATS/TECH/2008.
279	Art.292 colly. /PW-277	Xerox copy of APEF (Airtel Prepaid Enrollment Form) in 2 pages.
280	Art.293/PW-277	Letter dated 11.11.2008 bearing O.W.No.1856/Addl.C.P./ATS/TECH/ 2008
281	Art.294 colly. /PW-277	Xerox copy of APEF (Airtel Prepaid Enrollment Form) in 2 pages (page nos.1538 and 1539)
282	Art.295/PW-277	Letter dtd 11.11.2008 bearing O.W.No. 1857/Addl.C.P./ATS/TECH/2008.
283	Art.296 colly. /PW-277	Xerox copy of Airtel Prepaid Enrollment Form in 3 pages (page nos.1614 to 1616)
284	Art.297/PW-277	Letter dtd.21.11.2008 bearing O.W.No. 1945/Addl.C.P./ATS/TECH/2008

285	Art.298 colly. /PW-277	Xerox copy of Airtel Prepaid Enrollment Form in 3 pages (page nos.1888 to 1890)
286	Art.299/PW-277	Letter dtd.21.11.2008 bearing O.W.No. 1946/Addl.C.P./ATS/TECH/2008.
287	Art.300 colly. /PW-277	Xerox copy of Airtel Prepaid Enrollment Form in 3 pages (page nos.1895 to 1897)
288	Art.301/PW-277	Letter dtd.21.11.2008 bearing O.W. No.1944/Addl.C.P./ATS/TECH/2008.
289	Art.302 colly. /PW-277	Xerox copy of Airtel Prepaid Enrollment Form in 3 pages (bearing page nos.1941 to 1943)
290	Art.303/PW-277	Letter dated 08.11.2008 bearing O.W.No.1853/Addl.C.P./ATS/TECH/2008
290	Art.304 colly. /PW-277	Xerox copy of Airtel Prepaid Enrollment Form in 3 pages (bearing page nos.35 to 37).
291	Art.305/PW-277	Letter dated 22.12.2008 bearing O.W. No.2130/Addl.C.P./ATS/TECH/2008.
292	Art.306/PW-278	Letter dated 15.12.2008 bearing जा.क्र द. वि.प./४३५/२००८ sent by ATS, Pune to Kingfisher Airlines, Pune.
293	Art.309/PW-280	Photocopy of cheque of Bank of India (page no.21).
294	Art.310 colly. /PW-281	Photostat copy of documents (page nos.71 to 74)
295	Art.311 colly. /PW-285	Xerox copies of customer application form (page no.270) and driving license (page no.271), receipt showing details of mobile number (page no.1952), customer application form (page nos.1953 to 1961).
296	Art.312 colly.	Call detail record dated 01.04.2008 to

	/PW-285	05.01.2009 (total 29 pages from page no.1962 to page no.1990)
297	Art.313 colly. /PW-285	Call detail record dated 01.04.2008 to 05.01.2009 (total 31 pages from page no.275 to page no.305)
298	Art.315/PW-284	Letter dated 15.01.2009 from ACP, ATS, Mumbai to The Chemical Analyser, Mumbai.
299	Art.316/PW-291	Laptop of HP Compaq company (accused no.10).
300	Art.317 colly./ PW-292	Laptop of Toshiba company, black colour bag and adapter of accused no.9.
301	Art.318 colly. /PW-293	Photocopies of sale letter, certificate of registration, repayment receipt of Jai Ambe Auto Agency & Service Station and vehicle purchase receipt.
302	Art.319/PW-294	Register (ATS Art.226 of Exh.443)
303	Art.320/PW-295	Xerox copy of voucher of S.B.I.
304	Art.321/PW-295	Entry Register of Payal Cottage.
305	Art.322/PW-296	Mobile Battery of Soni Ericsson mobile phone.
306	Art.323/PW-296	Battery of Nokia Mobile (Cy-155/08 Ex-2)
307	Art.324/PW-296	SIM card of Reliance mobile. (Cy-155/08 Ex-2/1)
308	Art.325/PW-296	Hard disk (Cy-155/08 Ex.3) of HITACHI company.
309	Art.326/PW-296	Micro SD adapter of MOTOROLA (Cy-155/08 Ex3/1).
310	Art.327/PW-296	The CD i.e. marked/labeled as “Annexure-Mobile Phone”
311	Art.328/PW-296	The CD “Annexure-Documents”.
312	Art.329/PW-296	SIM card marked as Exh.7/1.

313	Art.330/PW-296	Toshiba hard disk bearing Sr. No. Y7MQTRKPT.
314	Art.331/PW-296	Battery of Nokia Mobile. (Cy-155/08 Ex.14).
315	Art.332/PW-296	SIM card of Airtel company. (Cy-155/08 Ex.14/1).
316	Art.333/PW-296	Battery of Nokia Mobile. (Cy-155/08 Ex.15).
317	Art.334/PW-296	SIM card of Idea power company. (Cy-155/08 Ex.15/1).
318	Art.335/PW-296	Hard disk of FUZIKSU company. (Cy-155/08 Ex.23).
319	Art.336/PW-296	CD “Annexure-Video files-I”.
320	Art.337/PW-296	DVD “Annexure-Video files-II”.
321	Art.338/PW-296	DVD “Annexure-Audio files”.
322	Art.339/PW-296	CD “Annexure-Picture Image”.
323	Art.340/PW-296	HP Data card.
324	Art.341/PW-296	Battery of Nokia - BL-5C 3.7 V.
325	Art.342/PW-296	Red coloured SIM card. (Ex.25/1).
326	Art.343/PW-296	Nokia company battery - BL-6C 3.7 V (Cy-155/08 Ex.26).
327	Art.344/PW-296	SIM card of Reliance company. (Cy-155/08 Ex.26/1).
328	Art.345/PW-296	Hard disk of FUJITSU company. (Cy-155/08 Ex.28).
329	Art.346/PW-296	Hard disk of HITACHI TRAVELSTAR. (Cy-155/08 Ex.1).
330	Art.347 colly /PW-297	The letter dated 16.12.2008 (page no.56 to 60 including Index) issued by ACP, ATS, Mumbai.
331	Art.348/PW-296	Letter dated 24.11.2008 issued by ACP, ATS, Mumbai.

332	Art.349/PW-296	Label of DFSL (Police Article-238 of Exhibit-443).
333	Art.350 colly /PW-296	USB hard disk of make Maxtor, along with USB cable. (Annexure-HD)
334	Art.352/PW-296	Battery of Nokia make BLC-2/3310. (Cy-159/08 Ex.1)
335	Art.353/PW-296	Battery of Classic make Mobile.
336	Art.354/PW-296	CD labeled as “Annexure-Mobile Phone Cy-159/08”. (Police Article-243 of Exhibit-443)
337	Art.355/PW-296	Battery of ZTC Mobile (Cy-159/08 Ex-3).
338	Art.356/PW-296	Maxtor make Hard disk having capacity 160 GB.
339	Art.357/PW-296	Letter dated 05.12.2008, bearing outward no.22/ACP/ATS/08.
340	Art.358/PW-296	Letter dated 17.01.2009, bearing outward no.३०/सपोआ/दविप/०९.
341	Art.360/PW-300	100 rupees stamp paper showing the name of “Abhinav Bharat Trust” and 9 pages were attached to it.
342	Art.361/PW-300	Registration Certificate of Abhinav Bharat.
343	Art.362/PW-300	PAN card bearing no.AABTA9831C showing the name of Abhinav Bharat.
344	Art.363/PW-300	Passbook in the name of “Abhinav Bharat”, issued by State Bank of India, Karve Road, Pune.
345	Art.364/PW-300	Cheque book, which is having 18 blank cheques (no.197883 to 197900) of State Bank of India.
346	Art.365/PW-300	One old diary of 1987 having blue coloured rexin cover.
347	Art.366/PW-300	One application booklet of “Abhinav

		Bharat.
348	Art.367 colly /PW-300	10 letterheads of “Abhinav Bharat”.
349	Art.368/PW-300	Receipt of donation given to Institute of Research and Development in Oriental Studies-Arms and Armours, having date 14.02.2008.
350	Art.369/PW-300	8 rubber stamps (Police Article-165 of Exhibit-443) from one card box.
351	Art.370/PW-300	Card box.
352	Art.371/PW-300	“प्रदर्शित-म” i.e. rubber stamp embossed on one blank paper.
353	Art.372 colly /PW-300	Black coloured Laptop bag and the adapter.
354	Art.373/PW-300	Forensic expert report dated 29.11.2008 regarding examination of house of accused Prasad Purohit.
355	Art.374 colly /PW-300	Three documents (page no.114, 116 to 120) produced by witness Minhajuddin Ahamad Shaikh.
356	Art.376 colly /PW-300	One slip in original form (page no.145) and two slips (page no.146) in photostat/xerox copy.
357	Art.377/PW-301	Letter dated 17.10.2008 sent by Nagar Bhumapan Adhikari, Malegaon
358	Art.378/PW-302	Photostat copy of letter dated 11.11.2008.
359	Art.379/PW-309	Photostat copy of complaint lodged by PW-309 before State Human Right Commission.
360	Art.380/PW-315	Label appearing on khaki colour paper in which the laptop was wrapped.
361	Art.381 colly /PW-315	Cassette of Sony Company and label.

362	Art.382/PW-317	Transcript attached to Exh.8571 regarding Accused no.10.
363	Art.383 colly /PW-317	Cassette which is wrapped in khaki colour paper along with label.
364	Art.384/PW-317	Transcript attached to Exh.8572 regarding accused no.4.
365	Art.385 (colly)/PW-317	Cassette which is wrapped in khaki colour paper along with label.
366	Art.387/PW-320	Letter dated 14.11.2008 issued in the name of Commandant AEC, Training College and Centre, Panchmadi, M.P. by Additional C.P. ATS, Mumbai.
367	Art.388/PW-320	Letter dated 21.11.2008 sent by PW-320 to Esha News Monitoring Service Pvt. Ltd.
368	Art.389/PW-320	Office order dated 18.10.2008 issued by Addl. C. P. Sukhavindar Singh.
369	Art.390/PW-320	Audio Cassette on which DFSL marked it as Ex.A1.
370	Art.391/PW-320	Audio Cassette on which DFSL marked it as Ex.A2.
371	Art.392/PW-320	Audio Cassette on which DFSL marked it as Ex.A3.
372	Art.393/PW-320	Audio Cassette on which DFSL marked it as Ex.A5.
373	Art.394/PW-320	Audio Cassette on which DFSL marked it as Ex.A7.
374	Art.395/PW-320	Sanction order dated 15.01.2009 granted u/s 23(2) of MCOC Act by Addl. Director General of Police, Railways, Mumbai.
375	Art.396/PW-320	Letter dated 17.01.2009 issued by Home Department (Special), Mantralaya, Mumbai to The Addl.

		Commissioner of Police, ATS, Mumbai regarding sanction for prosecution.
376	Art.399/PW-320	The photostat copy of advisory letter dated 22.01.2009 issued by ACP, ATS, Mumbai to DFSL, Kalina, Mumbai.
377	Art.402	Letter (truncated) vide inward no.4231/23 Confidential.

B. Defence :

LIST OF DOCUMENTS

Sr. No.	Exhibit	Description
1.	Exh.9835/DW-2	Reply letter sent by DW2 to Colonel Prasad Purohit.
2	Exh.9963 colly/DW-7	CTC copies of Parade State Register [Page no.1 (title page) and 32 to 45]
3	Exh.9964/DW-7	Letter dated 14.11.2008 bearing no.3001/LU/A.
4	Exh.9969 colly/DW-8	CTC copy of Parade State Register.
5	Exh.9970/DW-8	Movement order passed by Lieutenant Colonel G. C. Mohanta.

LIST OF ARTICLES

Sr. No.	Exhibit	Description
1	Art.403 colly./DW-4	Photostat copies of Parade State Register marked as Annexure-V (from page nos.23 to 48)
2	Art.404 colly./DW-4	Photostat copies of letter issued by Captain S. V. Patil to Southern Command Liaison unit and movement order issued by Lt. Col. G. C. Mohanta.
3	Art.405 /DW-4	Photostat copy of movement order issued by Lt. Col. G. C. Mohanta.

C. Court Exhibits :

Sr. No.	Exhibit	Description
1	Exh.5036	Charge.
2	Exh.5037	Plea of accused no.1.
3	Exh.5038	Plea of accused no.4.
4	Exh.5039	Plea of accused no.5.
5	Exh.5040	Plea of accused no.6.
6	Exh.5041	Plea of accused no.9.
7	Exh.5042	Plea of accused no.10.
8	Exh.5043	Plea of accused no.11.
9	Exh.9034	Evidence closed pursis by prosecution.
10	Exh.9850	Evidence closed pursis by accused no.11.
11	Exh.9997	Evidence closed pursis by accused no.9.
12	Exh.9079	Statement of accused no.1 u/s. 313 of Cr.P.C.
13	Exh.9080	Statement of accused no.4 u/s. 313 of Cr.P.C.
14	Exh.9081	Statement of accused no.5 u/s. 313 of Cr.P.C.
15	Exh.9082	Statement of accused no.6 u/s. 313 of Cr.P.C.
16	Exh.9083	Statement of accused no.9 u/s. 313 of Cr.P.C.
17	Exh.9084	Statement of accused no.10 u/s. 313 of Cr.P.C.
18	Exh.9085	Statement of accused no.11 u/s. 313 of Cr.P.C.

D. Material Objects : Nil.

JUDGMENT

(Delivered on this 31st day of July 2025)

1) The accused Pragyasingh Chandrapalsingh Thakur @ Swami Purna Chentnanad Giri (In-short 'A-1'), Major Ramesh Shivji Upadhyaya (In-short 'A-4'), Sameer Sharad Kulkarni @ Chanakya Sameer (In-

short A-5), Ajay @ Raja Eknath Rahirkar (In-short A-6), Lieutenant Colonel Prasad Shrikant Purohit (In-short A-9), Sudhakar Dhar Dwivedi @ Dayanand Pandey @ Swami Amrutanand Devtirth (In-short A-10), Sudhakar Onkarnath Chaturvedi @ Chanakya Sudhakar (In-short A-11) are facing the trial for the offences punishable under Sections 120-B, 153-A, 302, 307, 326, 324, 427 of Indian Penal Code (Hereinafter referred as 'IPC'), read with Sections 16, 18 of the Unlawful Activities (Prevention) Act, 1967 (Amended) 2004 (Hereinafter referred as 'UAPA') and read with Sections 3, 4, 5 and 6 of Explosive Substances Act, 1908 (Hereinafter referred as 'ESA').

Prosecution Case:

2) The prosecution came with the case that, in the present matter, there are three Investigating Agencies are involved and those are -

(i) Local Crime Branch (LCB), Nashik Gramin, alongwith Azad Nagar Police Station, Malegaon, District Nashik.

(ii) Anti Terrorist Squad (ATS), Mumbai.

(iii) National Investigating Agency (NIA), New Delhi.

3) On 29.09.2008, during Holy Ramzan, at around 9.35 p.m., there was a bomb explosion in the crowded and public place, opposite to Shakeel Goods Transport Company between Anjuman Chowk and Bhiku Chowk, Malegaon. The said blast was caused by explosive device fitted in LML Freedom motorcycle bearing fake number plate having number MH-15-P-4572. As a result of it, six persons

were killed and 101 persons were injured with various degrees of injuries and also caused damage to the properties.

4) On 30.09.2008, PSI Sudhir Patil (PW-123) had lodged report (फिर्याद) against unknown accused in Azad Nagar Police Station, Malegaon, district Nashik. The informant (PSI Sudhir Patil) had narrated therein that, after the blast, he had been to the spot. The said blast had been caused by using explosives kept in LML Freedom motorcycle bearing no.MH-15-P-4572. As a result of said explosion, six persons were killed and 101 persons sustained injuries and it also caused damage to the properties. Since, it was the month of Holy Ramzan and on 30.09.2008, the Holy festival "Navratrotsav" was to commence, therefore firstly it was apparent that, conspirators caused bomb blast with an intent to terrorize the people, to cause loss to life and property, disruption of supplies and services essential to the community, to create communal rift and to endanger internal security of the State.

5) On the basis of said report (फिर्याद), offence came to be registered at Azad Nagar Police Station, Malegaon, district Nashik, against unknown accused bearing crime no.130/2008, under Sections 302, 307, 326, 324, 427, 153-A and 120-B of IPC read with Sections 4, 5 of the ESA.

6) On 29.09.2008, i.e. prior to registration of FIR and immediately after the said explosion, around 9.35 p.m., Head Constable Bapu Pandit Thorat, from his Cell phone had informed Police Inspector

Shriniwas Patil's (Azad Nagar, Malegaon) Cell phone about the bomb blast incident. At that time, Shriniwas Patil was the incharge of Azad Nagar Police Station, Malegaon. Immediately, P.I. Shriniwas Patil had informed all the Police Officers and Official present in the Police Station about said bomb blast incident. Thereafter, occurrence of incident was also informed to various superior officers by the concerned Police Station and control room.

7) Thereafter, immediately around 9.40 p.m., Shriniwas Patil, PSI Sudhir Patil, various police officers and officials went on the spot of incident as per the entry taken in the station diary bearing entry no.34/08 dated 29.09.2008. After reaching on the spot, they had noticed that, near the spot of incident, huge mob comprises 15,000 people had been gathered. Mob was furious and not in a mood to listen anybody. Police tried to pacify the anger of furious mob. But, the mob was not in mood to listen them and hence, did not pay attention towards them. In this process, furious mob had jostled, assaulted and pelted stones. They also set on fire the police vehicles and other articles/things. As a result of it, the number of police officers and officials sustained multiple injuries. Assistant Superintendent of Police Shri Viresh Prabhu, who was also present there, received the stroke of stone. He was pushed in the gutter (drainage/Nala) in injured condition by the furious mob.

8) Therefore, on 30.09.2008, a separate FIR bearing crime no.131/2008 had been registered against the mob in Azad Nagar

Police Station, Malegaon, district Nashik. The station diary entry was also taken to that effect bearing entry no.10/2008.

9) During said bomb-blast incident, number of persons had sustained multiple injuries on the various parts of body. The injured persons were lifted from the spot and they were hospitalized by the police, their relatives and persons present there. The injured were duly examined by the doctors. The medical treatment had been provided to them. The pallets/splinters noticed in the body of injured were removed by the doctors. Six persons namely Sayyed Ajhar Sayyed Nisaar, Shaikh Mushtaq Shaikh Yusuf, Shaikh Rafique Shaikh Mustafa, Farheen @ Shagufta Shaikh Liyakat, Harun Shaha Moh. Shaha and Irfan Jiyaullah Khan succumbed to injuries and passed away. Accordingly, the inquest panchanamas were prepared. The post-mortem of dead bodies were carried out. The injury certificates and post-mortem reports were issued by the concerned doctors. Those were collected and annexed with the charge-sheet.

10) In the meanwhile, when mob became furious, various teams namely, SRPF, BDDS, Finger Prints Experts, Chemical Analyzer Experts, etc were called on the spot for help. The BDDS team arrived on the spot with sniffer dog. The sniffer dog after sniffing gave signal of explosive substance. The expert team of DFSL visited the spot and samples were collected from the spot. Photographer and Videographer were called on the spot. The Photographer had taken various photographs. The album of said photographs is

annexed with the charge-sheet. The Videographer had videographed the spot and the CDs of the said videography are also annexed with the charge-sheet.

11) Police Inspector Shri Akade, incharge of LCB, Nashik Gramin, took-over the charge of the case on 29.09.2008, as per oral order of Superintendent of Police (S.P.), Nashik Gramin. Around 2.00 a.m., he had been to the spot. He called the panch witnesses on the spot of incident around 6.00 a.m. The spot panchanama was prepared in the presence of panch witnesses. Total 33 articles were collected and seized from the spot. FSL team visited the spot. As per directions of Shri. Bakre (FSL expert), the police had taken Acetone swab and water swab from the place of incident. All the articles collected and seized from the spot were sent to Forensic Science Laboratory, Nashik for analysis. The analysis report/examination report of dated 03.10.2008 had been duly received by the Investigating Officer and the examination report of FSL shows that, samples found to be containing Cyclonite (RDX), Ammonium Nitrate and nitrite radicals.

12) After registration of FIR bearing crime no.130/2008, on 30.09.2008, at 3.00 a.m. at Azad Nagar, Police Station, Malegaon, the investigation had been commenced.

13) On 18.10.2008, the provisions of sections 15, 16, 17, 18, 20 and 23 of UAPA, 1967 (Amended), 2004, were invoked. The case was entrusted to Kiran Dhote, Deputy Superintendent of Police (HQ),

Nashik Rural. Thereafter, the investigation was carried out by Dy.S.P. Kiran Dhote.

14) Although, the investigation was transferred to ATS on 30.09.2008, as per the order the then DGP Maharashtra signed by then I.G. Rashmi Shukla, but even after that, the investigation was continued and carried out till 25.10.2008 by Dy.S.P. Kiran Dhote and Police Inspector Shri Akade of LCB, Nashik Gramin, as per the oral instructions and under the supervision and guidance of ATS senior officers, Additional C.P. Shri Sukhvinder Singh, Additional C.P. Shri Pram Bir Singh and Joint C.P. late Shri Karkare.

15) The crime number had been subsequently re-registered by ATS, Kalachowki, Mumbai bearing crime no.18/08 on dated 21.10.2008. Thereafter, on 26.10.2008, ACP Shri Mohan Kulkarni, officer of ATS, Mumbai, took-over the charge of investigation as per the orders of his senior officer of ATS Shri Sukhvinder Singh.

16) On 20.11.2008, the provisions of MCOCA were added. During the course of investigation, the Investigating Officers of ATS have recorded the statement of number of witnesses including injured witnesses under Section 161 of CrPC. The statement of witnesses also came to be recorded under Section 164 of Cr.PC. Number of panchanamas were prepared. The name of suspects were revealed during investigation. The inquiry had been carried out with accused and after due inquiry, the accused came to be arrested on different dates. Mobile numbers of accused were kept under

surveillance and from the recorded conversation, the transcripts were prepared. Number of documents, cash, and other articles in the form of electronic gadgets had been seized. Those seized electronic gadgets were sent for analysis. The examination report/analysis report was duly obtained pertaining the data lying in those electronic gadgets pointing out towards the involvement of accused in the said offence.

17) During the course of the investigation, the FSL has opined that, the exhibits collected from the place of offence contains Cyclonite (RDX) as high explosive and Ammonium Nitrate as explosive. It was also transpired that, registration number of LML Freedom motorcycle used in the crime was bogus/fake. The Chassis and engine numbers of the said motorcycle was also found to be erased/tampered/scored. The three probable engine numbers were successfully restored by the DFSL, Nashik. It was also revealed that, the aforesaid motorcycle belongs to A-1 (Pragyasingh Chandrapalsingh Thakur) bearing original registration no.GJ-05-BR-1920 and she is the registered owner of the said motorcycle. The absconding accused Ramji @ Ramchandra Gopalsingh Kalsangra (hereinafter referred as AA-1) and Sandeep Dange (hereinafter referred as AA-2) are the reliable persons of A-1 and they acted at her instance. A-1 was having full knowledge that she had provided her motorcycle for the commission of the said bomb-blast.

18) The proposals for obtaining sanction orders were sent to the concerned authorities. Sanction under ESA, MCOCA, UAPA had been duly obtained from the competent authorities and those were placed on record along-with charge-sheet.

19) During investigation, it was transpired that Abhinav Bharat is the organized crime syndicate and its members were active since 2003. All the accused persons along-with absconding accused entered into criminal conspiracy between January 2008 to 23rd October 2008 with the common object and with the common intention to strike terror in the minds of people by exploding bomb at Malegaon, and to overawe the Government.

20) The A-9 was serving as an Army Officer and he was associated with Military Intelligence and Interior Terrorism (Insurgency Activities). A-9 floated the organization Abhinav Bharat in the year 2007 despite of being serving as a Commissioned Officer in Armed forces, against the service rules.

21) The A-9 had floated an organisation in the name of 'Abhinav Bharat' with an intention to propagate a separate Hindu Rashtra with their own constitution. As they were dissatisfied with the constitution of India and had wanted to prepare their own constitution. The aim behind it was Bharat Swarajya, Surajya, Suraksha and Shanti with an object of constructing Sashastra Bharat, Samruddha Bharat, Saksham Bharat, Shistabaddh Bharat.

22) The co-accused A-4, A-10, A-5, A-6, A-11 and other co-accused as well as some witnesses were members of Abhinav Bharat Organisation. The object of the accused persons was to turn India into Hindu Rashtra called 'Aryawart'. They wanted to form Government in exile. They were uniting the people from all over the India and making preparation for achieving their object. They had planned to train the persons in Gorilla war. They had also decided to kill the persons opposing their object of formation of Hindu Rashtra which is against the secular policy of the Government. The accused Prasad Purohit, proposed the separate constitution for Hindu Rashtra with separate flag and entire setup of administration. Accordingly, all the accused of organized syndicate were agreed and ready to adopt a national flag i.e. Solo Team Saffron Flag having golden border. The length of flag is twice of its breadth with ancient golden torch (Bhagwa Dhwaj).

23) It was also transpired during investigation that, A-9 had brought around 60 kgs RDX with him from Kashmir, after completing his posting. He had kept the RDX in the cupboard of his house.

24) During the course of investigation, it was transpired that, the accused persons, time to time, held meetings to discuss various aspects for achieving their aforesaid goals. The number of new members joined their unlawful activities. The accused have procured, acquired and transported huge amount of money, arms and ammunition for continuing their unlawful activities and promoting their fundamentalist ideology with an intent to threaten

unity of India to strike terror in the mind of people or section of people. To explode the bomb by using IED (Improvised Explosive Devise) in Muslim dominating area and thereby to create an impression that they are taking the revenge of bomb-blast committed by the alleged culprits belonging to Muslim community. The conspiracy was cooked in their secret meetings held at various places like Bhopal, Anangpur (Faridabad), Nashik, Jabalpur, Indore, Kolkata, etc to carry out the bomb explosion in Muslim dominating area of Malegaon. Accordingly, they have implemented their secrete plan by exploding the bomb at Malegaon.

25) During the house search of A-11, traces of RDX were found in the house situated at Deolali Camp, Nashik. The bomb was assembled in the house of A-11. The detonator was also found in the house. Absconding accused AA-1 (Ramji @ Ramchandra Kalsangra) and AA-2 (Sandeep Dange) had assembled the bomb in the house of A-11 and the same was exploded at Malegaon on 29.09.2008.

26) During the course of investigation, they have arrested absconding accused Praveen Takkalki @ Pravin Mutalik (hereinafter referred as DA-12). It is disclosed that, he was the closed associate with other accused. He stayed in the hotel at Panchmarhi by different names and took the training imparted by Rakesh Dhawade (hereinafter referred as A-7) for assembling the bomb at the house of A-9 at Panchmarhi, M.P.

27) Against A-7, there were some cases under MCOCA at Jalna and Parbhani in which he was charge-sheeted. The DA-12 (Praveen Takkalki @ Pravin Mutalik) and AA-1(Ramji @ Ramchandra Kalsangra) and AA-2 (Sandeep Dange) in pursuance of conspiracy hatched by all accused persons planted and exploded the explosive devices fitted in LML Freedom Motorcycle.

28) During the course of investigation, DA-2 (Shivnarayan Kalsangra) and DA-3 (Shyam Sahu) were also arrested, as they were found involved in the present case. The DA-2 is the brother of absconding accused Ramji @ Ramchandra Kalsangra. The DA-3 is the friend of AA-1 (Ramji @ Ramchandra Kalsangra). At the instance of DA-2, the two electronic timer circuits which were given by the AA-1 (Ramchandra Kalsangra) were recovered from the house of Kalsangra at Indore. The DA-3 provided SIM card to the wanted accused AA-1 (Ramji @ Ramchandra Kalsangra) which had been used for the commission of conspiracy. From A-8 (Jagdish Mhatre), ATS has recovered two fire-arms and 15 live cartridges. A-7 (Rakesh Dhawade) is the friend of A-8 (Jagdish Mhatre). A-8 purchased those fire-arms from A-7.

29) The Investigating Officer of ATS, Mumbai have filed the charge-sheet including supplementary charge-sheet against the accused. The charge-sheet filed by ATS, Mumbai comprises of electronic data. The data retrieved from mobile phones, computers, pen-drive of the accused persons were scrutinized from the angle of larger conspiracy.

30) The charge-sheet of ATS, Mumbai was filed on dated 20.01.2009 against fourteen accused including three absconding accused namely AA-1 (Ramji @ Ramchandra Kalsangra), AA-2 (Sandeep Dange), Praveen Takkalki @ Pravin Mutalik under Sections 302, 307, 326, 324, 427 153-A and 120-B of IPC read with sections 3, 4, 5, 6 of ESA read with sections 3, 5 and 25 of Arms Act, read with sections 15, 16, 17, 18, 20 and 23 of UAPA, read with sections 3(1)(i), 3(1)(ii), 3(2), 3(4) and 3(5) of MCOCA. Thereafter, ATS has filed supplementary charge-sheet of dated 21.04.2011 after arrest of absconding accused Praveen Takkalki @ Pravin Mutalik.

31) On 01.04.2011, the investigation of the case had been transferred to National Investigating Agency (NIA), New Delhi as per the order of Ministry of Home Affairs, Government of India dated 01.04.2011. Accordingly, on 13.04.2011, NIA re-registered FIR bearing crime no.05/11.

32) During the course of investigation of NIA, with the permission of the court, Investigating Officer, NIA re-examined/interrogated the A-4, A-5 and A-10 in jail. During their re-examination/ interrogation, NIA team came to know that Yashpal Bhadana, whose statement had been recorded under Sections 161 and 164 of Cr.PC pertaining to Bhopal meeting of Abhinav Bharat held in April 2008 had never attended by him. NIA, also inquired with the other witnesses and they came to the notice that various witnesses have resiled / retracted from their earlier statement taken by ATS.

They also noticed that many witnesses while recording their statements narrated that their statements were obtained forcefully by the ATS officers. Their statements were not voluntary. By way of browbeating, coercing, threatening, torturing, mentally and physically to the various witnesses, their statements had been obtained/recorded by the ATS officers. Hence, they had re-recorded the statements of some witnesses under Section 161 of Cr.P.C and also under Section 164 of CrP.C. to ascertain the factual aspects/position.

33) After completion of further investigation by NIA, the supplementary charge-sheet came to be filed on dated 13.05.2016. NIA filed their supplementary report u/s 173(8) of Cr.P.C., against 8 arrested persons and two absconding accused that during the course of further investigation, it was transpired that A-1, A-2, A-3, DA-12, A-15, A-16 have no concerned with the said offence. And hence, the Investigating Officer of NIA has exonerated them as no case was made out against them. The Investigating Officer of NIA also dropped the charges of MCOCA, as they came to the conclusion that MCOCA provisions are not attracted / applicable to the present scenario of the case. In their charge-sheet, they had given the reasons for doing so. Thus, NIA have filed their reasoned charge-sheet.

34) During the course of investigation, the investigation officer of NIA had arrested one A-15 (Lokesh Sharma) as well as A-16 (Dhan Singh), but investigating officer did not transpire their involvement

in the present offence. They have filed report under Section 169 of Cr.P.C. informing that no sufficient evidence noticed against them. Accordingly, on 13.05.2016, two above named accused i.e. A-15 and A-16 were released due to insufficient evidence noticed against them by the investigating officer.

35) Investigating officer of NIA also found involvement of absconding / wanted accused Ramji @ Ramchandra Kalsangra and Sandeep Dange in the present crime. But, investigating officer of NIA also could not trace out the whereabouts of those absconding accused. They are also shown absconding accused in the supplementary charge-sheet filed by NIA.

36) The investigating officer of NIA also found that the A-8 is not involved in the commission of terrorist act. Investigating officer of NIA has also filed the report against him only under Section 3, 5 read with 25 of Arms Act.

37) Thus, investigation is carried out by the investigating agencies / teams i.e. Local Crime Branch, LCB, Nashik Gramin, Azad Nagar Police Station, Malegaon, prime agencies like ATS and NIA. After completion of investigation, the charge-sheets including supplementary charge-sheet are filed on record as stated above.

Discharge order:

38) Firstly, A-9 had moved bail application bearing no.42/08 and thereby urged that no case is made out against him as alleged by

the prosecution. The predecessor of this Court, on hearing them and perusal of the charge-sheets, passed the order below Exh.1 on dated 31.07.2009 and thereby discharged all the accused from MCOCA charges and also directed to transfer the case to the regular court of Nashik having jurisdiction. The State being aggrieved by the said order filed an appeal bearing no.866/09 before Hon'ble Bombay High Court. Appeal was allowed on dated 19.07.2010 by setting aside the order passed by the learned predecessor of this Court. The matter was restored to the file of this Court under MCOCA for the decision on merits. The order of Hon'ble Bombay High Court was also challenged before the Hon'ble Apex Court and on 15.04.2015 Hon'ble Apex Court confirmed the order of Hon'ble Bombay High Court, but raised the doubt by observing that except A-7, there is no material to show that remaining accused persons had nexus with accused or crime pertaining to Parbhani and Jalna cases.

39) In the year 2016, NIA has filed their supplementary charge-sheet and dropped the provisions of MCOCA against all accused.

40) Thereafter, discharge applications were filed by the accused on different dates were clubbed together and my learned predecessor has passed the common order on the said discharge applications on dated 27.12.2017 and thereby partly allowed the said application. As per this order, A-2, A-3, DA-12 were discharged from all charges of offences leveled against them under Sections of IPC, ESA, Arms Act, UAPA and MCOCA. The A-7 and A-8 were also

discharged from all offences lying under the IPC, ESA, UAPA and MCOCA, but A-7 and A-8 were not discharged under the arms Act. Hence, their matters falling under Arms Act were sent to concerned court having jurisdiction. A-1, A-4, A-5, A-6, A-9, A-10 and A-11 were discharged from the all offences punishable under Sections MCOCA and they were also discharged from the offence falling under sections 17, 20, 23 of UAPA as well as sections 3, 5 and 25 of Arms Act.

Charge (Exh.5036):

41) My learned predecessor had framed the charge against the A-1, A-4, A-5, A-6, A-9, A-10 and A-11 under Sections 120-B, 153-A, 302, 307, 326, 324, 427 of IPC read with Sections 16, 18 of UAPA, 1967 read with Sections 3, 4, 5, 6 of the ESA to which they pleaded not guilty and claimed to be tried.

Prosecution witnesses:

42) Prosecution has examined total 323 witnesses in order to prove the guilt of accused and to substantiate their case. The list of witnesses examined by the prosecution are mentioned as above. After completion of evidence of prosecution witnesses, the prosecution had closed their side /evidence by filing pursis vide Exh.9034.

Statement us 313 of Cr.P.C.:

43) After closure of prosecution evidence, entire incriminating evidence appearing against accused were put to them in their examination under Section 313 of Cr.P.C. Some accused have filed

their written statement to the questions formulated under Section 313 of Cr.P.C. The said statements were also taken on record and re-verified by the court. A-1 had also filed her additional written statement vide Exh.9726-A. It was duly taken on record and annexed with her statement recorded under Section 313 of Cr.P.C. Thus, the statement of all accused came to be recorded under Section 313 of Cr.P.C. and their defence is that they are innocent, they are ill-treated, tortured by ATS during investigation. They are falsely roped in this case only to appease the then Government prevailing at that time.

Defence witnesses:

44) The accused A-1, A-4, A-5, A-6, A-10 have not examined any witness in support of their defence. They have relied upon the cross-examination and documents filed on record. In addition to it, the accused A-1, A-4, A-5, A-6 and A-10 have filed their pursis to that effect vide Exh.9742, 9454, 10109, 9743, 9749 respectively and thereby informed that they do not want to examine any witness as a defence witness in support of their contentions.

45) The A-9 has examined 7 witnesses in order to substantiate his defence. The list of those 7 witnesses are mentioned in tabular format as Supra. After completion of examination of those witnesses, he has filed the pursis vide Exh.9997 and thereby closed his evidence.

46) The accused A-11 has examined a single witness in support of his defence. The list of said defence witness is also mentioned in tabular format in initial para. After completion of examination of said defence witness, learned advocate for A-11 has filed a pursis vide Exh.9850 and thereby closed his evidence.

Arguments on behalf of prosecution and defence:

47) Firstly, it is necessary to mention that as per the directions of Hon'ble Apex Court and Hon'ble High Court, the matter was kept on day to day basis for hearing. The final hearing was continued for more than 10 months. Heard at length the rival submissions of learned advocates and A-5 in person. Admittedly, there are thousands of documents filed on record along-with charge-sheets filed by ATS and NIA.

48) The sum and substance of contentions advanced by learned SPP Anushree Rasal and Avinash Rasal for NIA and learned advocate Shahid Nadeem for intervener are that in order to prove the guilt of accused, prosecution has examined total 323 witnesses. The testimony of those witnesses are cogent, reliable and trustworthy. The evidence on record is self-explanatory which clearly shows that all accused have hatched the criminal conspiracy by conducting various secret meetings on various places. Accordingly, they have executed their plan by exploding the bomb fitted in LML Freedom motorcycle between Anjuman Chowk to Bhiku Chowk in front of Shakeel Goods Transport Company, Malegaon, district Nashik. The prosecution has been able to prove beyond reasonable

doubt that, the accused in criminal conspiracy with each other to indulge in terrorist activities in support of criminal conspiracy, specifically A-5, A-9, A-6 and A-10 had collected / raised the huge funds for the said unlawful activities and their unlawful organization. They have collected the huge funds in connivance of each other and conspired with each other to commit terrorist acts. The accused persons and the members of terrorist organization involved in terrorist activities. A-9 had utilized the amount for construction of is own house, purchasing of insurance policies and purchase of arms and ammunition. A-6 is the treasurer of Abhinav Bharat and he disbursed the collected funds to the accused according to their demands and decision taken in their secret meetings. The prosecution has obtained consent under the ESA from District Collector / District Magistrate, Nashik. The sanction orders issued under UAPA from the respective Competent Authority are already placed on record. All the sanctions and consent order are legal and valid. Nothing survives in the defence taken by the accused in the light of evidence on record. The prosecution has led cogent, convincing evidence worthy of credence. Hence, all the accused are liable to be punished for the charges framed against them according to the provisions of law.

49) Besides the oral argument, learned SPP has also filed their written notes of argument and also relied upon the following citations / case laws / rulings :

On the point of Tape-recording:

I. Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Ors. [AIR 1975 SC 1788].

On the point of Audio Cassettes : Admissibility:

II. Boman P. Irani Vs. Manilal P. Gala [AIR 2004 Bom 123].

On the point of best evidence rule:

III. Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and Ors [AIR 2011 SC 760].

On the point of Police Dogs : Evidence of Dog tracking:

IV. Gade Lakshmi Mangraju Vs. State of Andhra Pradesh [AIR 2001 SC 2677].

On the point of appreciation of Evidence:

V. Sahabuddin and Ors Vs. State of Assam [2013 Cri.L.J 1252].

On the point of Test of Admissibility [Section 5 of Indian Evidence Act] :

VI. Bharti Tamang Vs. Union of India (UOI) and Ors. [2014 Cri.LJ 156].

On the point of Section 6 of Indian Evidence Act [Relevancy of facts forming part of same transaction]:

(a) Res Gestae : Constituent Incidents of a Transaction :

VII. Rijo Vs. State of Kerala [2010 Cri.LJ 1315].

(b) First Information Report may be Admissible as a Part of the Transaction :

VIII. Mahadeo Vs. Ram Kubar and Ors. [AIR 1943 Oudh 451].

(c) Spontaneous Explanation of the Accused:

IX. C. N. Peters Vs. State [1959 Cri.LJ 924].
X. Dalip Singh and Ors. Vs. State of Punjab [MANU/SC/0031/1953 : AIR 1953 SC 364].

On the point of Section 27 of Indian Evidence Act:

XI. State of Karnataka Vs. David Rozario and Ors. [AIR 2002 SC 3272].
XII. State of Maharashtra Vs. Suresh [2000 (1) SCC 471].
XIII. Rafiqueuddin Ahmad and Ors. Vs. Emperor, [AIR 1935 Cal 184].
XIV. State of Rajasthan Vs. Teja Ram and Ors., [AIR 1999 SC 1776 : MANU/SC/0189/1999].

On the point of Section 106 of the Indian Evidence Act [Reverse burden of proof]:

XV. Shambu Nath Mehra Vs. The State of Ajmer [AIR 1956 SC 404 : MANU/SC/0023/1956].
XVI. State of West Bengal Vs. Mir Mohammad Omar and Ors. [MANU/SC/0535/2000].

On the point of last seen together and failure to tender explanation by accused will comlete the chain of circumstance:

XVII. State of Rajasthan Vs. Kashi Ram [MANU/SC/8632/2006] ; Naina Mohamed [MANU/TN/0359/1959].
XVIII. Arabindra Mukherjee Vs. State of West Bengal [MANU/SC/0772/2011].
XIX. Pattu Rajan Vs. The State of Tamil Nadu [MANU/SC/0439/2019].

On the point of reliable, trustworthy testimony of Police Officers:

XX. Govindaraju Vs. State and Ors. [MANU/SC/0211/2012].
XXI. Aher Raja Khima Vs. The State of Saurashtra [MANU/SC/0040/1955].
XXII. Tahir Vs. State (Delhi) [MANU/SC/0089/1996].

On the point of circumstantial evidence:

XXIII. State of West Bengal Vs. Dipak Halder and Ors. [MANU/SC/0862/2009].

XXIV. Trimukh Maroti Kirkan Vs. State of Maharashtra [MANU/SC/8543/2006] ; State of U.P. Vs. Ravindra Prakash Mittal [MANU/SC/0402/1992] ; State of Maharashtra Vs. Suresh [MANU/SC/0765/1999] ; Ganesh Lal Vs. State of Rajasthan [MANU/SC/0694/2001] ; Gulab Chand Vs. State of Madhya Pradesh [MANU/SC/0304/1995].

On the point of Cumulative effect of all the circumstances proved:

XXV. State of Tamil Nadu Vs. Rajendran [MANU/SC/0606/1999] ; Ram Avtar Vs. State (Delhi Administration) [MANU/SC/0095/1985] ; Prem Thakur Vs. State of Punjab [MANU/SC/0097/1982].

On the point of Sanction for prosecution under UAPA:

XXVI. Jaswant Singh Vs. The State of Punjab [MANU/SC/0050/1957].

XXVII. Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [MANU/SC/1303/1997] ; State of Bihar and Ors. Vs. P. P. Sharma and Ors. [MANU/SC/0542/1992].

XXVIII. Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi) [MANU/SC/1635/2019] ; State of Maharashtra Through C.B.I. Vs. Mahesh G. Jain [MANU/SC/0561/2013].

XXIX. The Chairman, Board of Mining Examination and Chief Inspector of Mines and Ors. Vs. Ramjee [MANU/SC/0061/1977].

XXX. State of West Bengal Vs. Union of India (UOI) [MANU/SC/0086/1962].

XXXI. Lalit Kumar Jain Vs. Union of India and Ors. [MANU/SC/0352/2021] ; Directorate of Enforcement Vs.

Deepak Mahajan and Ors. [MANU/SC/0422/1994] ; Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors. [MANU/SC/1123/2018].

XXXII. The Edward Mills Co. Ltd., Beawar and Ors. Vs. The State of Ajmer and Ors. [MANU/SC/0106/1954].

XXXIII. State of Madhya Pradesh Vs. Bhooraji and Ors. [MANU/SC/0481/2001].

XXXIV. State of Himachal Pradesh Vs. Gita Ram [MANU/SC/0562/2000].

On the point of Court in appreciation of entire evidence:

XXXV. Wazir Khan Vs. State of Uttarakhand [MANU/SC/0835/2023].

XXXVI. Trimukh Maroti Kirkan Vs. State of Maharashtra [MANU/SC/8543/2006] ; Stirland Vs. Director of Public Prosecution 1944 AC 315 ; State of Punjab Vs. Karnail Singh [MANU/SC/0585/2003].

XXXVII. Veerendra Vs. State of Madhya Pradesh [MANU/SC/0641/2022].

On the point of Section 8 of the Indian Evidence Act, 1872 [Conduct] :

XXXVIII. Rotash Vs. State of Rajasthan [MANU/SC/8747/2006].

On the point of Post Mortem report : Cause of death to be ascertained by Court:

XXXIX. State of West Bengal Vs. Mir Mohammad Omar and Ors. [MANU/SC/0535/2000].

On the point of Evidence of injured eye witness – not a ground to reject their testimony:

XL. State of Madhya Pradesh Vs. Mansingh and Ors. [MANU/SC/0596/2003].

XLI. Chittar Lal Vs. State of Rajasthan [MANU/SC/0471/2003] ; Bhagwan Vs. State of Rajasthan [MANU/SC/0296/2001].

On the point of Alleged deficiencies in investigation – FIR:

XLII. State of Madhya Pradesh Vs. Mansingh and Ors. [MANU/SC/0596/2003].

On the point of right of individual victims:

XLIII. Girish Kumar Suneja Vs. C.B.I. [MANU/SC/0829/2017].

On the point of audio files / recorded conversation in laptop:

XLIV. Tukaram S. Dighole Vs. Manikrao Shivaji Kokate [MANU/SC/0086/2010].

XLV. Yusufalli Esmail Nagree Vs. The State of Maharashtra [MANU/SC/0092/1967].

XLVI. Regina Vs. Maqsud Ali and Ashiq Hussain [MANU/UKCR/0026/1965].

XLVII. Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Ors. [MANU/SC/0277/1975]

On the point of Law on presumptions:

XLVIII. State (N.C.T. of Delhi) Vs. Navjot Sandhu and Ors. [MANU/SC/0465/2005].

On the point of presumption of possession of property (LML Freedom Motorcycle)

XLIX. Limbaji and Ors. Vs. State of Maharashtra [MANU/SC/0792/2001].

On the point of Section 114-Terrorists (Prevention) Act, 1987:

L. Suresh Budharmal Kalani Vs. State of Maharashtra [MANU/SC/0608/1998].

On the point of Presumption of the regular performance of Judicial

and Official Acts:

LI. Ananga Mohan Roy Chowdhury Vs. Kalidas Roy and Ors. [MANU/WB/0066/1946].

LII. Narayan Anandram Marwadi Vs. Gowbai Dhondibu Jagtap [MANU/MH/0204/1912] ; Paran Chandra Sen and Ors. Vs. Blackwood and Blackwood & Co., [MANU/WB/0322/1931] ; Munshi Liaghubir Singh and Ors. Vs. Rani Rajeshwari Devi [MANU/OU/0109/1933] ; Ram Lal and Ors. Vs. Ram Narain and Ors. [MANU/UP/0220/1953].

LIII. Jyoti Sarup and Ors. Vs. Board of Revenue, Uttar Pradesh [MANU/SC/0047/1960] ;

LIV. Bhagat Ram and Ors. Vs. Suresh and Ors. [MANU/SC/0972/2003].

LV. Raghunath Singh Vs. Dhondhe Singh and Ors. [MANU/OU/0388/1925].

LVI. Laxmipathaya Vs. Ramachendra [MANU/TN/0131/1916].

LVII. Municipal Council, Rajamundry Vs. Simhadri Ranganayakalu and Ors. [MANU/AP/0088/1955] ; The State Vs. Azizkhan Subedarkhan [MANU/MH/0329/1956].

On the point of Presumption applies only to mandatory provisions of procedure :

LVIII. Mukund and Ors. Vs. State of Madhya Pradesh [MANU/SC/0689/1997] ; Ronny and Ors. Vs. State of Maharashtra [MANU/SC/0199/1998] ; Mohan Lal and Ors. Vs. Ajit Singh and Ors. [MANU/SC/0127/1978] ; M.T.W. Tenzing Namgyal and Ors. Vs. Motilal Lakhotia and Ors. [AIR 2003 SC 1448].

On the point of Presumption of presence of accused at Meetings:

LIX. Emperor Vs. Sheo Janak Pande [MANU/UP/0460/1933].

LX. Emperor Vs. Muktar Ali [MANU/WB/0108/1943] ; Habeeb Mohammad Vs. The State of Hyderabad [AIR 1954 SC 51].

LXI. Allauddin Mian and Ors. Vs. State of Bihar [MANU/SC/0648/1988].

LXII. Bhuban Bijay Singh Vs. Emperor [AIR 1933 CAL 600].

LXIII. Girish Chandra and Ors. Vs. Emperor [MANU/WB/0360/1929].

LXIV. Ramjit Ahir Vs. King Emperor [Cri. Appeal No.166 of 1922; decided on 16.09.1922] ; Emperor Vs. Balaram Das [AIR 1922 CALCUTTA 382 (2)] ;

LXV. Bhuban Bijay Singh Vs. Emperor [AIR 1933 CALCUTTA 600] ; Atma Singh Hazara Singh and Ors. Vs. The State [MANU/PH/0145/1953].

LXVI. Mohammad Shafi Vs. State and Ors. [MANU/UP/0327/1953].

LXVII. The Bombay Agarwal Co. Vs. Ramchand Diwanchand and Ors. [MANU/NA/0106/1952].

On the point of withholding evidence by defence (A-9):

LXVIII. Ghanshamdas Pursumal Vs. Emperor [MANU/SN/0068/1933].

LXIX. Emperor Vs. Sheo Janak Pande [MANU/UP/0460/1933].

LXX. H. S. Rahimathulla Sahib Vs. T.V.K. Kamaraja Pandiya Avargal [MANU/TN/0325/1930].

On the point of Presumption of guilt in absence of evidence of Alibi :

LXXI. Kumar Kalika Nand Singh and Ors. Vs. Kumar Shiva Nandan Singh and Ors. [MANU/BH/0098/1921] ; Pecheti Swamigadu and Ors. Vs. Yerrapragada Ayapparasu and Ors. [MANU/TN/0612/1912].

On the point of Section 313 of Cr.PC (Section 342 of Cr.PC):

LXXII. Sher Jang Vs. Emperor [MANU/LA/0393/1930].

LXXIII. Mohinder Singh Vs. The State [MANU/SC/0017/1950] ; Gurminej Singh and Ors. Vs. State of Punjab

[MANU/SC/0049/1992].

On the point of hostile witnesses:

LXXIV. Rameshbhai Mohanbahi Koli and Ors Vs State of Gujarat [2011 AIR SCW 378 ; AIR 2011 SC (SUPP) 577] ; Anil Rai Vs State of Bihar [MANU/SC/1586/2001] ; Meena Gopalkrishna Mudiliyar Vs State of Maharashtra [MANU/MH/0150/1993] ; Bhagwan Singh Vs. The State of Haryana [MANU/SC/0093/1975] ; G. Parshwanath Vs. State of Karnataka [MANU/SC/0614/2010] ; Lella Srinivasa Rao Vs. State of Andhra Pradesh [MANU/SC/0172/2004] ; Gagan Kanojia and Ors. Vs. State of Punjab [MANU/SC/8726/2006] ; The State Vs. V. Sejappa [MANU/KA/0139/2008] ; Dada S/o Appasaheb Khose Vs. The State of Maharashtra [Criminal Appeal No.210 of 1997; decided on 9th April 2009] ; Bindu Vs. The State (NCT) of Delhi [MANU/DE/1191/2009] ; Mallappa Siddappa Alakanur and Ors. Vs. State of Karnataka [MANU/SC/1120/2009] ; Parimal Gowala and Ors. Vs State of Tripura [MANU/GH/0059/2007] ; Veer Singh and Ors. Vs. State of U.P. [MANU/SC/1281/2013] ; Paulmeli and Ors. Vs. State of Tamil Nadu [MANU/SC/0505/2014] ; Paramjeet Singh Vs. State of Uttarakhand [MANU/SC 0762/2010].

On the point of FIR:

LXXV. Apren Joseph and Ors. Vs The State of Kerala [MANU/SC/0078/1972] ; Hallu and Ors. Vs. State of Madhya Pradesh [MANU/SC/0136/1974] ; Nanhku Singh and Ors. Vs State of Bihar [MANU/SC/0185/1972] ; State of Maharashtra and Ors. Vs. Mohd. Sajid Husain and Ors. [MANU/SC/8008/2007] ; Dasu and Ors. Vs. State of Maharashtra [MANU/MH/0536/1985] ; State of A.P. Vs. V.V. Panduranga Rao [MANU/SC/0717/2009] ; Mundrika

Mahto and Ors. Vs. State of Bihar [MANU/SC/0388/2002] ; Dhananjoy Chatterjee Vs. State of West Bengal [MANU/SC/0626/1994] ; Thaman Kumar Vs. State of Union Territory of Chandigarh [MANU/SC/0386/2003] ; Animireddy Venkata Ramana and Ors. Vs. Public Prosecutor H. C. of A.P. [MANU/SC/7294/2008] ; State of Gujarat Vs. Anirudhsing and Ors. [MANU/SC/0749/1997] ; Soma Bhai Vs. State of Gujarat [MANU/SC/0215/1975] ; The State of Bombay Vs. Rusy Mistry and Ors. [MANU/SC/0200/1959] ; Ravi Kumar Vs. State of Punjab [MANU/SC/0178/2005] ; Surjit Singh Vs. State of Punjab [MANU/SC/0256/1992] ; State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. [MANU/SC/0115/1992] ; Ravishwar Manjhi and Ors. Vs. State of Jharkhand [MANU/SC/8459/2008] ; Pattad Amarappa and Ors. Vs State of Karnataka [MANU/SC/0408/1989] ; Bheru Singh Vs State of Rajasthan [MANU/SC/0647/1994] ; Mannu and Ors. Vs. State of Chhattisgarh [MANU/CG/0054/2001] ; Damodarprasad Chandrikaprasad and Ors. Vs. State of Maharashtra [MANU/SC/0087/1971] ; Hasib Vs. The State of Bihar [MANU/SC/0180/1971]; Dharma Rama Bhagare Vs. The State of Maharashtra [MANU/SC/0110/1972] ; George and Ors. Vs. State of Kerala and Ors. [MANU/SC/0227/1998].

LXXVI. Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu [MANU/SC/0017/2005].

LXXVII. Baburao Bajirao Patil and Ors. Vs. State of Maharashtra [MANU/SC/0088/1970].

LXXVIII. State of Kerala Vs. P. Sugathan and Ors. [MANU/SC/0601/2000].

LXXIX. State of Tamil Nadu Vs. J. Jayalalitha [MANU/SC/0354/2000].

LXXX. Ammine and Ors. Vs. State of Kerala [MANU/SC/0923/1998].

LXXXI. Firozuddin Basheeruddin and Ors. Vs. State of Kerala

[MANU/SC/0471/2001]

LXXXII. Saju Vs. State of Kerala [MANU/SC/0688/2000 ; State of Karnataka and Ors. Vs. Selvi J. Jayalalitha and Ors. [MANU/SC/0157/2017].

LXXXIII. Mohd. Husain Umar Kochra and Ors. Vs. K.S. Dalipsinghji and Ors. [MANU/SC/0123/1969].

LXXXIV. Mir Nagvi Askari Vs. C.B.I. [MANU/SC/1412/2009].

LXXXV. Sardul Singh Caveeshar Vs. The State of Bombay [MANU/SC/0041/1957].

LXXXVI. State through Superintendent of Police, CBI/SIT Vs. Nalini and Ors. [MANU/SC/0945/1999].

LXXXVII. Mohd. Khalid Vs. State of West Bengal [MANU/SC/0722/2002].

LXXXVIII. State of Maharashtra and Ors. Vs. Som Nath Thapa and Ors. [MANU/SC/0451/1996].

LXXXIX. Yash Pal Mittal Vs. State of Punjab [MANU/SC/0169/1977].

Following citations relied by learned SPP in written notes of arguments :-

XC. State of Himachal Pradesh Vs. Gian Chand [MANU/SC/0312/2001]

XCI. Hariprasad Vs. State of Chhattisgarh [MANU/SC/1215/2023]

XCII. Lalita Kumari Vs. Govt. of U.P. and Ors [MANU/SC/1166/2013]

XCIII. Shyamal Ghosh Vs. State of West Bengal [MANU/SC/0544/2012]

XCIV. Lallu Manjhi and Ors. Vs. State of Jharkhand [MANU/SC/0004/2003]

XCV. Anvar P.V. Vs. P.K. Basheer [MANU/SC/0834/2014]

XCVI. Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors [MANU/SC/0521/2020]

XCVII. Dayal Singh and Ors. Vs. State of Uttaranchal

[MANU/SC/0622/2012]

XCVIII. Kishan Chand Vs. Sita Ram and Ors [MANU/PH/0809/2004]

XCIX. Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Ors [MANU/SC/0002/1954]

C. Sarjudas and Ors. Vs. State of Gujarat [MANU/SC/0649/1999]

CI. State of Himachal Pradesh Vs. Jai Lal and Ors [MANU/SC/0557/1999]

CII. Alamgir Vs. State (NCT, Delhi) [MANU/SC/0987/2002]

CIII. Transmission Corporation of A.P. Vs. Prabhakar and Ors [MANU/SC/0514/2004]

CIV. Parkash Singh Badal and Ors. Vs. State of Punjab and Ors [MANU/SC/5415/2006]

CV. Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat [MANU/SC/0090/1983]

CVI. Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Ors [MANU/SC/1168/1999].

CVII. Tahsildar Singh and Ors. Vs. The State of Uttar Pradesh [MANU/SC/0053/1959].

CVIII. Raja Vs. State of Haryana [MANU/SC/0412/2015].

CIX. Kundula Bala Subrahmanyam and Ors. Vs. State of Andhra Pradesh [MANU/SC/0508/1993].

CX. Balu Sudam Khalde and Ors. Vs. The State of Maharashtra [MANU/SC/0328/2023].

CXI. Musheer Khan and Ors. Vs. State of Madhya Pradesh [MANU/SC/0065/2010].

CXII. State of Sikkim Vs. Rakesh Rai and Ors [MANU/SI/0006/2012].

CXIII. Guruvindapalli Anna Rao and Ors. Vs. State of Andhra Pradesh [MANU/AP/0090/2003].

50) The learned advocate Shri. Shahid Nadeem for intervener has also placed his reliance in following citations / case laws / rulings :

I. State Vs. Nalini.

II. Anwar P.K. Vs. P. K. Bashir (2014).

III. Neeraj Dutta Vs State [Criminal Appeal No.1669/2009].

IV. Hari Vs. State of U.P. [SC 685-202].

V. Baldev Singh Vs. State of Haryana.

51) The sum and substance of contentions of learned advocates for accused and A-5 in person are that, prosecution miserably failed to prove the guilt of the accused beyond the shadow of reasonable doubt. The accused are falsely implicated in this case only to appease some people, community and then Government. The prosecution has failed to lead cogent and reliable evidence worthy of credence to show that the accused have hatched any criminal conspiracy and meetings of mind of the accused as alleged. Only on the basis of stray allegations all the accused are falsely roped in this case. They were easy prey at the hands of ATS. They were picked-up from their residence under the pretext of inquiry, kept in illegal custody by the ATS officers and deliberately shown their arrest after the lapse of number of days by taking false entries in station diary. On the basis of statements recorded under Section 161 of Cr.PC of some star witnesses of prosecution, the accused were arrested, molested, thrashed, harassed and assaulted at the hands of ATS officers. Later on, all those prime witnesses / star witnesses of prosecution turned hostile and did not support to the

case of prosecution, on the major count that ATS officers have also tortured, maltreated, assaulted to them by thrusting words in their mouth to extract the favorable statements from them. All the witnesses have categorically stated / deposed about the ill-treatment, torture and assault at the hands of ATS before this Court. The consent accorded by the Consenting Authority under Explosive Substances Act and sanction order issued by the concerned Sanctioning Authority under UAPA are invalid and defective. The consent order as well as sanction orders are issued by the authorities are without application of mind. In the present case the sanction order issued only after getting the approval of then Home Minister. Sanction never requires approval of then State Home Minister. The sanction order issued under UAPA are in gross violation of section 45(2) of UAPA and it is amended rules on 2008. At the relevant time, A-9 was serving in Army (M.I.). Prosecution failed to obtain the sanction under Section 197 of Cr.P.C. Thus, the whole case of prosecution is faulty, defective and without compliance of valid and legal provisions of law. Lastly, they have also submitted that nothing survives in the case of prosecution. There is no clinching evidence on record. Only on the basis of assumptions, presumptions, surmises and conjectures the accused cannot be convicted. Hence, in the absence of reliable evidence all they are entitled to be acquitted from the charges leveled against them. In support of their submissions, the learned advocate for accused have placed their reliance of various case laws / citations / rulings. Those are as follows:

Learned Advocate Shri. Mishra and Maggu for A-1 & A-6 have placed their reliance on the following citations :-

I. State (NCT of Delhi) Vs. Navjot Sandhu Alias Afsan Guru [2005 Supreme Court Cases (Cri) 1715].

II. State Through Superintendent of Police, CBI/SIT Vs. Nalini and Others [1999 Supreme Court Cases (Cri) 691].

III. State of Maharashtra and Others Vs. Som Nath Thapa and Others [1996 Supreme Court Cases (Cri) 820].

IV. Mohd. Hussain Umar Kochra Vs. K. S. Dalipsinghji and Another [AIR 1970 Supreme Court 45].

V. Shoma Kanti Sen Vs. State of Maharashtra and Another [2024 All MR (Cri.) 2182 (SC).

VI. Ashrafkhan Alias Babu Munnekhan Pathan and Another Vs. State of Gujarat [(2013) 1 Supreme Court Cases (Cri.) 1095; (2012) 11 Supreme Court Cases 606].

VII. Rambhai Nathabhai Gadhvi and others Vs. State of Gujarat [1997 Supreme Court Cases (Cri.)1169].

VIII. State of Punjab and Another Vs. Mohammed Iqbal Bhatti [(2011) 1 Supreme Court Cases (Cri.) 949; (2009) 17 Supreme Court Cases 92].

IX. Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [1997 Supreme Court Cases (Cri.) 1120].

X. Fuleshwar Gope Vs. Union of India and others [Criminal Appeal No.003923 of 2024 (Arising out of SLP (Crl.) No.004866 of 2023, decided on 23.09.2024)].

XI. Jamuna Chaudhary and others Vs. State of Bihar [1974

Supreme Court Cases (Cri) 250].

XII. Vinubhai Haribhai Malaviya and Others Vs. The State of Gujarat and another [(2019) 4 Crimes 267].

XIII. Mohan Lal Vs. State of Punjab [AIR 2018 Supreme Court 3853].

XIV. Sri Rabindra Kumar Dey Vs. State of Orissa [1976 Supreme Court Cases (Cri) 566].

XV. State of Himachal Pradesh Vs. Jai Lal and others [(1999) ALL MR (Cri)
1790].

XVI. Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. and others [(2010) AIR(SC) 806].

XVII. Anvar P. V. Vs. P. K. Basheer [(2014) 6 ALL MR 951].

XVIII. Kamal Patel Vs. Ram Kishore Dogne [(2016) 162 AIC 350].

XIX. Dr. Sublendu Prakash Diwakar Vs. State of Maharashtra. [2024 ALL MR
(Cri) 402].

XX. State of Gujarat Vs. Mohammed Atik and others [1998 Supreme Court Cases (Cri) 936].

XXI. Mohd. Khalid Vs. State of W. B. [2002 Supreme Court Cases (Cri) 1734].

XXII. The State of Maharashtra Vs. Rakesh Dattatraya Dhawade [Criminal Revision Application No.256 of 2009; decided on 28th January 2013].

XXIII. Pragya Singh Chandrapalsingh Thakur alias Sadhvi alias

Swami Purnchetanand Giri, D/o. Shri. Chandrapal Singh Thakur Vs. State of Maharashtra [Criminal Appeal No.545 of 2016; decided on 25.04.2017].

XXIV. Nitin Tukaram Chavan Vs. State of Maharashtra [(2019) 1 AIR BomR(Cri) 358].

XXV. Mahesh Kariman Tirki & Others Vs. State of Maharashtra [Criminal Appeal Nos.136 & 137 of 2017; decided on 05.03.2024].

Learned Advocate for accused no.4 has placed his reliance on the following citations:-

I. People's Union for Civil Liberties (PUCL) Vs. Union of India and another [(1997) 1 Supreme Court Cases 301].

II. Nilesh Dinkar Paradkar Vs. State of Maharashtra [(2011) 4 Supreme Court Cases 143].

III. Sachin Mahipati Nimbalkar Vs. The State of Maharashtra [Writ Petition (Stamp) No.17029 of 2024; decided on 23rd October 2024].

IV. Mohd. Arif Alias Ashfaq Vs. State (NCT of Delhi) [(2023) 2 Supreme Court Cases (Cri) 131].

V. Anvar P.V. Vs. P.K. Basheer and others [(2014) 10 Supreme Court Cases 473].

VI. Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others [(2020) 7 Supreme Court Cases 1].

VII. Sundar @ Sundarrajan Vs. State by Inspector of Police [2023 SCC OnLine SC 310].

A-5 in person has placed his reliance on the case of Fuleshwar Gope Vs. Union of India and others [Criminal Appeal No.003923 of 2024 (Arising out of SLP (Crl.) No.004866 of 2023, decided on 23.09.2024)].

Ld. Advocate for A-9 has placed his reliance on the following citations:

I. S. Nambi Narayanan Vs. Siby Mathews & Others Etc. [Civil Appeal Nos.6637-6638 of 2018, decided on 14th September, 2018].
II. Prabir Purkayastha Vs. State (NCT of Delhi) [(2024) 8 Supreme Court Cases 254].
III. Pankaj Bansal Vs. Union of India and others [(2024) 7 Supreme Court Cases 576].
IV. Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 Supreme Court Cases 116].
V. Hanumant Vs. State of Madhya Pradesh [(1952) 2 Supreme Court Cases 71].
VI. Rakesh Bisht Vs. Central Bureau of Investigation [ILR (2007) I Delhi 223].
VII. Central Bureau of Investigation, New Delhi Vs. Abdul Karim Ladsab Telgi and others [2005 Cri LJ 2868].
VIII. Ritesh Sinha Vs. State of Uttar Pradesh and another [(2019) 8 Supreme Court Cases 1].
IX. Sudhir Chaudhary and others Vs State (NCT of Delhi) [(2016) 8 Supreme Court Cases 307].

X. Justice K. S. Puttaswamy (Retd.) and another Vs. Union of India and others.

XI. Pravinsinh Nrupatsinh Chauhan Vs. State of Gujarat [Special Leave to Appeal (Crl.) No(s).4693/2023; decided on 15.05.2023].

XII. Subhashree Das @ Mill Panda & others Vs. State of Orissa [2011 SCC OnLine Ori 61].

XIII. Ravi Sharma @ Arjun @ Mahesh @ Ashok Vs. State of Jharkhand and others [2012 SCC OnLine Jhar 2080].

XIV. Mohd. Mahboob Ali @ Sheru @ Sheikh Alam Vs. State of U.P. [2018 SCC OnLine All 108].

XV. Rakesh Kumar Mishra Vs. State of Bihar and Others [(2006) 1 Supreme Court Cases 557].

XVI. Anjani Kumar Vs. State of Bihar and Another [(2008) 5 Supreme Court Cases 248].

XVII. Nanjappa Vs. State of Karnataka [(2015) 14 Supreme Court Cases 186].

XVIII. P. K. Pradhan Vs. State of Sikkim represented by the Central Bureau of Investigation [(2001) 6 Supreme Court Cases 704].

XIX. Devender Pal Singh Bhullar Vs. State (NCT of Delhi) [(2013) 6 Supreme Court Cases 195].

XX. Shashikant Mishra Vs. Union of India through Central Bureau of Investigation (ACB) [2024 SCC OnLine MP 704].

XXI. Sagar Ramchandra Vatkar Vs. The State of Maharashtra

[Criminal Appeal No.638 of 2012, decided on 09th April, 2021].

XXII. Fuleshwar Gope Vs. Union of India and Others [2024 SCC OnLine SC 2610].

XXIII. Sambhaji Achyutrao Patil Vs. State of Maharashtra and Others [2024 SCC OnLine Bom 3636].

XXIV. Devinder Singh and Others Vs. State of Punjab through CBI [(2016) 12 Supreme Court Cases 87].

XXV. D. Devaraja Vs. Owais Sabeer Hussain [(2020) 7 Supreme Court Cases 695].

XXVI. State of Maharashtra Vs. Dr. Budhikota Subbarao [(1993) 3 Supreme Court Cases 339].

XXVII. Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others [(1998) 1 Supreme Court Cases 205].

XXVIII. Rakesh Kumar Mishra Vs. State of Bihar and Others [(2006) 1 Supreme Court Cases 557].

XXIX. Om Prakash Yadav Vs. Niranjan Kumar Upadhyay and Others [2024 SCC OnLine SC 3726].

XXX. Prakash Nishad alias Kewat Zinak Nishad Vs. State of Maharashtra [2023 SCC OnLine SC 666].

XXXI. Ashit Biswas Vs. State of West Bengal [2019 SCC OnLine Cal 9459].

XXXII. Mustak Alias Kanio Ahmed Shaikh Vs. State of Gujarat [(2020) 7 Supreme Court Cases 237].

XXXIII. Shatrughna Baban Meshram Vs. State of Maharashtra [(2021) 1 Supreme Court Cases 596].

XXXIV. Murari Lal Vs. State of Madhya Pradesh [(1980) 1 Supreme Court Cases 704].

XXXV. State of H. P. Vs. Jai Lal and Others [(1999) 7 Supreme Court Cases 280].

XXXVI. Ramesh Chandra Agrawal Vs. Regency Hospital Limited and Others. [(2009) 9 Supreme Court Cases 709].

XXXVII. Ajay Aggarwal Vs. Union of India and Others [(1993) 3 Supreme Court Cases 609].

XXXVIII. State of Madhya Pradesh Vs. Sheetla Sahai and Others [(2009) 8 Supreme Court Cases 617].

XXXIX. R. Venkatkrishnan Vs. Central Bureau of Investigation [(2009) 11 Supreme Court Cases 737].

XL. (Smt.) Kaushalya Devi w/o Vijendrasingh Rathi (Jat) Vs. State of M. P. through Police Station, Neemuch [2003 SCC OnLine MP 672].

XLI. Adina & Another Vs. State of Maharashtra [2024 SCC OnLine Bom 2474].

XLII. Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir [Supreme Court Reports (2002) SUPP. 2 S.C.R.].

XLIII. Anwar Ali and Another Vs. State of Himachal Pradesh [(2020) 10 Supreme Court Cases 166].

XLIV. Shailendra Rajdev Pasvan and others Vs. State of Gujarat and Others [(2020) 14 Supreme Court Cases 750].

XLV. Laxman Prasad Alias Laxman Vs. State of Madhya Pradesh [(2023) 6 Supreme Court Cases 399].

XLVI. State Through Superintendent of Police, CBI/SIT Vs Nalini

And Others [(1999) 5 SCC 253].

XLVII. Kehar Singh & Others Vs. State (Delhi Administration) [(1998) 3 SCC 609].

XLVIII. Navjot Sandhu Vs. State (NCT of Delhi) [(2005) 11 SCC 600].

XLIX. Sharad Birdhichand Sarda Vs. State of Maharashtra [(1984) 4 SCC 116].

L. Hanumant Vs State of Madhya Pradesh [(1952) 2 SCC 71].

LI. Tabassum Khan Kayyum Khan Vs. State of Maharashtra. [2005 ALL MR (Cri) 2003].

LII. Vaijinath Vs. State of Maharashtra [2019 SCC OnLine Bom 1357].

LIII. Nazir Ahmed Vs. Kink Emperor [Privy Counsel; decided on 16.06.1936].

LIV. Mahesh Kariman Tirki & Others Vs. State of Maharashtra [Criminal Appeal Nos.136 & 137 of 2017; decided on 05.03.2024].

LV. Balasaheb Gurling Todkari and Others Vs. State of Maharashtra. [2015 SCC OnLine Bom 3360].

Learned Advocate for A-10 has filed pursis at **Exh.10765,** thereby relied/adopted all judgements cited by the learned advocate for accused nos.1 and 6 and other learned defence advocates. Also he placed his reliance on the case of Sat Paul Vs. Delhi Administration [(1976) 1 Supreme Court Cases 727] and Mahesh Kariman Tirki & Others Vs. State of Maharashtra [Criminal

Appeal Nos.136 & 137 of 2017; decided on 05.03.2024].

Learned advocate for accused no.11 placed his reliance on the following citations:

I. Gangadhar alias Gangaram Vs. State of Madhya Pradesh [Criminal Appeal No.504 of 2020; decided on August 05,2020].

II. Khudeswar Dutta Vs. State of Assam [(1998) 4 Supreme Court Cases 492].

III. Salim Akhtar @ Mota Vs. State of Uttar Pradesh [(2003) 3 Supreme Court Reports 470].

Learned advocate for accused no.11 also placed his reliance on the case Avtar Singh and others Vs. State of Punjab [(2002) SUPP. 2 Supreme Court Reports 482].

On the point of Section 6 of NIA Act, learned advocate for A-9 placed reliance on the case of Naser Bin Abu Bakr Yafai Vs. State of Maharashtra and another. [(2022) 6 Supreme Court Cases 308].

52) No doubt, all they have individually pointed out the various points, admissions emerging from the evidence of witnesses favoring to them. Hence, those are required to be considered in the light of evidence on record. Besides the oral argument, the learned

advocate for accused A-1, A-4, A-6, A-9 have filed their written notes of argument in support of their contentions.

Points for determination:

53) After completion of marathon hearing advanced by them, I have gone through written notes of arguments, charge-sheets and entire evidence on record in the form of oral and documentary. Considering entire submissions and evidence on record, the following points fall for my determination and I have recorded my findings against each of them for the reasons mentioned below :

Sr. No.	Points	Findings
1	Whether the prosecution proves that Bomb-blast occurred on 29/09/2008 at about 21.35 hrs., opposite to Shakeel Goods Transport Company, between Anjuman to Bhiku Chowk, Malegaon?	Affirmative
2	Whether the prosecution proves that on the aforesaid date, time and place there was bomb explosion which caused injuries to 101 persons and death of six persons?	Partly Affirmative
3	Whether the prosecution proves that, the accused have hatched the criminal conspiracy between January 2008 to October 2008 with a common object, intention and knowledge in order to spread their activities through Abhinav Bharat Organisation, to do terror act, to strike the terror in the mind of Muslim Community, to create communal rift by holding meetings at	Negative

	various places i.e. Bhopal, Anangpur (Faridabad), Nashik, etc. and accordingly, carried out their plan secretly by fitting explosives in LML Freedom Motor-cycle bearing number MH-15-P-4572 (Original Number GJ 05 BR 1920) and thereby exploded the Bomb, in front of Shakeel Goods Transport Company, between Anjuman Chowk to Bhiku Chowk, Malegaon, on dated 29/09/2008 around 9.35 p.m. and thereby caused the death of six injured persons and injuries to 101 persons and also destroyed & caused damages to public property and thereby committed an offence punishable under section 120-B of Indian Penal Code ?	
4	Whether the prosecution proves that the death of six injured persons namely Shaikh Mushtaq Shaikh Yusuf, Farheen @ Shagufta Shaikh Liyakat, Shaikh Rafique Shaikh Mustafa, Sayyed Ajhar Sayyed Nisaar, Harun Shah Mohd. Shaha, Irfan Jiyaullah Khan was homicidal ?	Affirmative
5	Whether the prosecution proves that, the accused have committed the murder of six persons namely Shaikh Mushtaq Shaikh Yusuf, Farheen @ Shagufta Shaikh Liyakat, Shaikh Rafique Shaikh Mustafa, Sayyed Ajhar Sayyed Nisaar, Harun Shah Mohd. Shaha, Irfan Jiyaullah Khan by exploding Bomb fitted in LML Motorcycle bearing no. MH-15-P-4572 and thereby committed an offence punishable under section 302 of	Negative

	Indian Penal Code ?	
6	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion by means of Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) which resulted in causing death of six persons and injury to 101 person and this act was done to create communal rift in different groups, castes and communities, on the ground of religion or community which disturbed the public tranquillity and thereby committed an offence punishable under section 153-A of Indian Penal Code?	Negative
7	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion by means of Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) and thereby committed terrorist act which resulted in causing grievous injuries to some persons (witnesses) present nearby the spot of incident which likely to cause death and thereby committed an offence punishable under section 307 of Indian Penal Code?	Negative
8	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion by means of Improvised Explosive Device Cyclonite	Negative

	(RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) and thereby committed terrorist act which resulted in causing grievous injuries to members of public present nearby the spot of incident and thereby committed an offence punishable under section 326 of Indian Penal Code?	
9	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion by means of Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) and thereby committed terrorist act which resulted in causing hurt voluntarily to members of public present nearby the spot of incident and thereby committed an offence punishable under section 324 of Indian Penal Code?	Negative
10	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion by means of Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) and thereby committed terrorist act which resulted in causing the death of six persons and injuries to 101 persons (witnesses) and committed mischief by causing wrongful loss / damages and also caused destruction of	Negative

	public property worth Rs. 4,23,500/- (Four Lakhs Twenty three thousand and five hundred) and thereby committed an offence punishable under section 427 of Indian Penal Code?	
11	Whether the prosecution proves that accused with absconding accused hatched criminal conspiracy between January 2008 to October 2008 and made the preparatory act prior to the execution of the conspired act and abetted absconding accused, with an object and intention to strike terror in the mind of Muslim Community and thereby caused the explosion by using improvised explosive device Cyclonite (RDX) and Ammonium Nitrate by fitting in LML Motorcycle and parked at the aforesaid place in pursuance of their agreement and committed Bomb Blast and thus involved in terrorist act in order to threaten the unity, integrity, security & sovereignty of India and thereby committed an offence punishable under section 16 of The Unlawful Activities (Prevention) Act?	Negative
12	Whether the prosecution proves that the accused with absconding accused hatched criminal conspiracy between January 2008 to October 2008 and recruited persons for terrorist act with a common object, intention and knowledge in order to spread the activities through Abhinav Bharat organization, to do terror act and made the preparatory act prior to the execution of the conspired act and abetted absconding	Negative

	accused, with an object and intention to strike terror in the mind of Muslim Community and thereby caused the explosion by using improvised explosive device Cyclonite (RDX) and Ammonium Nitrate by fitting in LML Motorcycle and parked the aforesaid motorcycle at aforesaid place, which resulted in causing thereby death of 6 persons and injuries to 101 persons and damaged and destruction of public property and thereby committed an offence punishable under section 18 of the Unlawful Activities (Prevention) Act?	
13	Whether the prosecution proves that, the sanction accorded on dated 17th January 2009 by Add. Chief Secretary of Home Department, Mantralaya, Mumbai under Unlawful Activities (Prevention) Act is valid sanction?	Negative
14	Whether the prosecution proves that, the sanction accorded on dated 20th April 2011 by Add. Chief Secretary of Home Department under Unlawful Activities (Prevention) Act is valid sanction?	Negative
15	Whether the prosecution proves that the accused on the aforesaid date, time and place committed an explosion unlawfully and maliciously by means of Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate fitted in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) and thereby committed terrorist act which	Negative

	resulted in causing the death of six persons and injuries to 101 persons (witnesses) and also caused damage to public property worth Rs. 4,23,500/- (Four Lakhs Twenty three thousand and five hundred) and thereby committed an offence punishable under section 3 of Explosive Substances Act?	
16	Whether the prosecution proves that, the accused on the aforesaid date, time and place committed an explosion unlawfully and maliciously by fitting an Improvised Explosive Device Cyclonite (RDX) and Ammonium Nitrate in LML Freedom Motor Cycle bearing no. MH-15-P-4572 (Original Number GJ-05-BR-1920) with intent to endanger the life or property and thereby committed an offence punishable under section 4 of Explosive Substances Act?	Negative
17	Whether the prosecution proves that the accused with absconding accused hatched criminal conspiracy and accordingly the explosives (RDX) were kept and assembled in the house of Accused no.11 (Sudhakar Chaturvedi) with intent to use the said explosives by fitting in LML Motorcycle and parked the said motorcycle on the aforesaid place and thereby caused the explosion which resulted into the death of six persons and injuries to 101 witnesses / members of the public and thereby committed an offence punishable under section 5 of Explosive Substances Act?	Negative
18	Whether the prosecution proves that, the	Negative

	accused with absconding accused hatched criminal conspiracy and accordingly accused no.9 has brought RDX from Kashmir and supplied RDX to absconding accused and they have fitted the said explosive (RDX) in LML Freedom Motorcycle in the house of A-11 (Sudhakar Chatruvedi) and thereby caused the explosion at aforesaid place, date and time which resulted into the death of six persons and injuries to 101 witnesses / members of the public and thereby committed an offence punishable under section 6 of Explosive Substances Act?	
19	Whether the prosecution proves that, the Consent order granted under Explosive Substances Act by Concerned Authority is valid?	Negative
20	Whether the prosecution proves that, the LML Freedom Motorcycle bearing no. MH-15-P-4572 found on the spot of incident belongs to accused no.1 (Pragyasing Thakur) and she was in conscious possession or Immediate possession of the said motor-cycle?	Negative
21	Whether the prosecution proves that, absconding accused Ramji @ Ramchandra Shivnarayan Kalsangra and Sandeep Dange were the persons working for accused no.1 (Pragyasing Thakur) and she had handed over her LML Motorcycle to them for the commission of said Bomb-blast?	Negative
22	Whether the prosecution proves that the accused Nos. 4, 5, 9, 10 & 11 have	Negative

	conducted the secret meeting in at the Guest House of the Chakreshwar Hari Parvat Mata Mandir, Anangpur, Faridabad (Haryana State) on 25th and 26 January of 2008 and thereby discussed and decided to provide explosives and men to commit Bomb Blast in Muslim dominated area and accordingly the secret plan was carried out?	
23	Whether the prosecution proves that the accused Nos. 5 & 9 have conducted the secret meeting in the house of Tapan Ghosh at Kolkatta (West Bengal) between 15th and 16th February of 2008 and thereby discussed and decided to train the youth about arms and to declare that Abhinav Bharat Trust is constituted for Hindu Rashtra and accordingly to change the constitution ?	Negative
24	Whether the prosecution proves that, the accused Nos. 10, 5, 1, 4, 9, 11 have conducted and conspired in close door meeting held on 11th and 12th April 2008 at Ram Mandir, Bhopal & thereby discussed and decided to provide explosives, persons for exploding the explosives at Malegaon ?	Negative
25	Whether the prosecution proves that, the accused No.10 & 1 along with absconding accused Ramji @ Ramchandra Kalsangra and Sandeep Dange have conducted a secret meeting on 11/06/2008 at the Circuit house, Indore (M.P.) and thereby discussed and introduced the accused Ramji @ Ramchandra Kalsangra and Sandeep Dange are her confident members to carry out any	Negative

	explosion?	
26	Whether the prosecution proves that, Accused No.10 along with absconding accused Ramji @ Ramchandra Kalsangra and Sandeep Dange have conducted a secret meeting in first week of July, 2008 at Circuit house, Indore (M.P.) and thereby discussed and decided that Accused No.10 will contact to Accused No.9 to provide RDX to Ramji @ Ramchandra Kalsangra and Sandeep Dange and accordingly, Accused No.10 contacted accused No.9 on his mobile and demanded the RDX for the said explosion ?	Negative
27	Whether the prosecution proves that, Accused Nos.9, 11, 4, 6 and accused Praveen Takkalki (Discharged accused) have conducted and conspired in a secret meeting held on 15th and 16th September, 2008 at the house of Raikar at Bhonsala Military School, Nashik and thereby discussed and decided to arrange training camp of Abhinav Bharat from 15th to 20th October, 2008 at Panchmarhi and weapons acquired for Abhinav Bharat Trust to take back from the possession of Accused No.10 ?	Negative
28	Whether the prosecution proves that, Accused Nos.9, 11, 5 and Praveen Takkalki (discharged accused) have conducted and conspired in a secret meeting held on 15th to 20th October 2008 at Woodland Adventure Camp, Panchmarhi (M.P.) and thereby discussed and imparted training through the camp conducted by Abhinav Bharat	Negative

	regarding present situation of Hinduism and Muslim Militancy, Maoism, Martial Art ?	
29	What Order?	As per final Order.

REASONS

54) All the points are interlinked / interconnected with each other's and hence, I am taking up them for discussion in order to avoid the repetitions.

55) Before dealing with rival submissions, in order to have birds view on the point of details of blast / explosion, as per the charge-sheets filed by the Investigating Agencies are as follows :-

Date of incident	29.09.2008
Time	Around 9.30 to 9.35 pm.
Total blast	One
Place	Between Anjuman Chowk to Bhiku Chowk, in front of Shakeel Goods Transport Office, Malegaon, Dist. Nashik.
Casualties	Six killed, 101 injured
Period / timing	During the month of Holy Ramzan and on the eve of Holy Navratri Utsav
Total Motorcycle found on the spot	Two Motorcycles i.e. (I) LML Freedom Motorcycle bearing No.MH-15-P-4572 (II) Honda Unicorn Motorcycle bearing No.MH-41-M-15
Total bicycle found on the spot	Five
Crime no.	(I) 130/08 registered at Azad Nagar Police

	Station Malegaon. (II) 18/08 registered at ATS, Mumbai, Maharashtra. (III) 05/11 registered at NIA Police Station Delhi.
Investigating Agencies	(I) Azad nagar Police Station Malegaon. (II) LCB Nashik Gramin (III) ATS, Mumbai and its sub-units of Maharashtra. (IV) NIA, New Delhi.
Involvement of organization	Abhinav Bharat / Abhinav Bharat Organization / Abhinav Bharat Trust.

56) I have also kept in mind that, the witnesses had deposed after the gap of several years from the alleged incident. Therefore, all minute details like time, date, name, from the witnesses are not expected. Some mistakes are bound to be in their evidence which is the natural behaviour of the witnesses or phenomena. Hence, minor mistakes like date, time, name would not affect the core testimony of the witnesses.

57) At the same time, it is also necessary to mention the principles of criminal jurisprudence which are well settled and reiterated by Hon'ble Apex Court in various judgments including the case of **Jaikrishnadas Manohardas Desai Vs. State of Bombay [1960 CrLJ page 1250]**. Those three cardinal principles of criminal jurisprudence are,

(I) that the onus lies affirmatively on the prosecution to prove its case beyond reasonable doubt and it cannot derive any benefit

from weakness or falsity of the defence version while proving its case;

(II) that in a criminal trial the accused must be presumed to be innocent unless he is proved to be guilty; and

(III) that the onus of the prosecution never shifts.

58) The Ld. SPP has submitted that, the defective investigation by itself cannot be made a ground for discharging the prosecution case. The story of prosecution has to be examined de-hors the lapses on the part of the Investigating officer. Thus, defective investigation ipso-facto would not give a right to accused to claim acquittal.

59) On the other hand, the Ld. Advocates for accused have filed the judgement of Hon'ble High Court in case of **Mahesh Kariman Tirki and others Vs. State of Maharashtra Cri. Appeal No.136 & 137 of 2017**, wherein it was observed that, "it is a general principle that defective investigation does not vitiate a valid prosecution. However, it is a matter of fact and depends on the facts of each case. To our mind, if the lapses or irregularities are inconsequential or negligible then it has no impact on the merits of the case. On the other hand, if the defect or lapses on the part of the investigating officer raises an entertainable doubt on the fabric of prosecution, it matters. In short, on the basis of material adduced by the prosecution vis-a-vis the defect in investigation, the worth of evidence is to be determined."

60) In the light of aforesaid observations of Hon'ble High Court and taking into consideration the entire rival submissions, evidence on record, firstly it is necessary to see the genesis of occurrence, evidence on record and credibility of witnesses to arrive at a certain conclusion.

Conspiracy :-

61) The accused are facing the charge of conspiracy. As per prosecution case, the intention of the conspirator was to threaten the unity, integrity, security and sovereignty of India and strike terror in the mind of people, in such a manner by causing death and injuries to the persons and damages and destruction of property, essential to the life of communities of India. Accused had made preparatory acts by collection of fire arms, explosives and other articles required for assembling the bomb. They had aided and abetted to each other's by advocating, inciting and knowingly facilitating each other. As a result of it, all accused had conspired to carry out the blast at Malegaon, dist. Nashik and accordingly the conspiracy was cooked in the various secret meetings of Abhinav Bharat and plan was implemented by exploding the bomb which was fitted in LML Freedom Motorcycle on dated 29/09/2008 at Malegaon Dist. Nashik. To buttress the submissions, the Ld.SPP has placed their reliance on the following rulings / citations:

(I) **Jayendra Swamigal v/s State of Tamil Nadu [AIR 2005 SC 716].** In this case Hon'ble Apex Court has observed that,

"The opening words in Section 10 are 'where there is reasonable ground to believe that two or more persons have conspired together to commit an offence'. If prima facie evidence of the existence of a conspiracy is given and accepted, the evidence of acts and statements made by anyone of the conspirators in furtherance of the common object is admissible against all. Therefore, there should first be prima-facie evidence that the person was a party to the conspiracy before his acts or statements can be used against his co-conspirators. No worthwhile prima-facie evidence apart from the alleged confessions have been brought to our notice to show that the petitioner along with A-2 and A-4 was party to a conspiracy and the confessions of co-accused were recorded long after the murder when the conspiracy had culminated, S. 10 of the Evidence Act cannot be pressed into service."

(II) **Baburao Bajirao Patil and Ors. Vs. State of Maharashtra [MANU/SC/0088/1970]**. In this case it was observed that, once section 10 is applied then whatever is said or done by the parties to the conspiracy becomes relevant evidence as against all co-conspirators even for the purpose of proving the conspiracy itself.

(III) **State of Kerala Vs. P. Sugathan and Ors. [MANU/SC/0601/2000 ; AIR 2000 SC 3323]**. In this case

Hon'ble Apex Court has observed that, *"Section 120-B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the Court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is to say, there should be a prima-facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators."*

(IV) **State of Tamil Nadu Vs. J. Jayalalitha [MANU/SC/0354/2000]**. In this case, the Hon'ble Supreme Court observed that, the question of using anything said, done or written by any one of such conspirators would arise only if the facts were to help to sustain the first limb of section 10 of the Evidence Act, ie., there is reasonable ground to believe that two or more persons have conspired together to commit an offence. But it is open to the Court, even at this stage to consider the materials relating to what an accused would have said, done or written with reference to the common intention between the accused for the purpose of deciding whether there is reasonable ground to believe that the said accused would have been one of the

conspirators.

(V) **Ammine and Ors. Vs. State of Kerala [MANU/SC/0923/1998]**. In this case it was observed that, sections 10 and 24 Conspiring Together The trial court had held that even if the confession was regarded as voluntary and true it could be used only against the accused and not against the other accused. The High Court found the trial court wrong on this point in view of section 10 of the Evidence Act which provides that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of providing the existence of the conspiracy as for the purpose of showing that any such person was a party to it. The High Court held as there was reasonable ground to believe that accused and the other accused had conspired together and, therefore, the confession made by the accused could be used against other accused also.

(VI) **Firozuddin Basheeruddin and Ors. Vs. State of Kerala [MANU/SC/0471/2001].** In this case, it was ruled that

loosened standards prevail in a conspiracy trial regarding admissibility of evidence. Contrary to the usual rule, in conspiracy prosecution, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. It was observed that thus the conspirators are liable on an agency theory for statements of co conspirators just as they are for the overt acts and crimes committed in their confederates.

(VII) **Saju Vs. State of Kerala [MANU/SC/0688/2000 ; State of Karnataka and Ors. Vs. Selvi J. Jayalalitha and Ors. [MANU/SC/0157/2017]. In Saju v. State of Kerala (supra)**, it was observed that, it was propounded that to attract Section 120-B Indian Penal Code, it is to be proved that all the Accused had the intention and they had agreed to commit the crime. It was assumed that conspiracy is hatched in private and in secrecy, for which direct evidence would not be readily available. It was ruled that it is not necessary that each member to a conspiracy must know all the details of all the conspiracy.

(VIII) **Mohd. Husain Umar Kochra and Ors. Vs. K.S. Dalipsinghji and Ors. [MANU/SC/0123/1969]**. While dwelling on the concept of conspiracy this Court in **Mohd. Husain Umar**

Kochra Etc. v. K.S. Dalipsinghji and Anr. Etc. held that in conspiracy, agreement is the gist of the offence and a common design and common intention in furtherance of the common scheme is necessary. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. It was enounced that conspiracy may develop in successive stages and new techniques may be invented and new means may be devised, and a general conspiracy may be a sum up of separate conspiracies having a similar general purpose, the essential elements being collaboration, connivance, joint ness in severalty and coordination.

(IX) **Mir Nagvi Askari Vs. C.B.I. [MANU/SC/1412/2009]**. In this case, it was observed that courts in deciding on the existence or otherwise, of an offence of conspiracy must bear in mind that it is hatched in secrecy and that it is difficult, if not impossible to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the Accused persons had taken part are relevant. To prove that the propounder had expressly agreed to commit the illegal act or had caused it to be done, may be proved by adducing circumstantial evidence and or by necessary implications.

(X) **Sardul Singh Caveeshar Vs. The State of Bombay**

[MANU/SC/0041/1957]. *"The principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. The rule in Section 10 of the Evidence Act confines that principle of agency in criminal matters to the acts of the co-conspirator within the period during which it can be said that the acts were 'in reference to their common intention' that is to say 'things said, done or written while the conspiracy was on foot' and 'in carrying out the conspiracy'. It would seem to follow that where the charge specified the period of conspiracy evidence of acts of co-conspirators outside the period is not receivable in evidence."*

(XI) **State through Superintendent of Police, CBI/SIT Vs. Nalini and Ors. [MANU/SC/0945/1999]**. In a given case, however, if the object of conspiracy has not been achieved and there is still agreement to do the illegal act, the offence of a criminal conspiracy continues and Section 10 of the Evidence Act applies. In other words, it cannot be said to be a rule of universal application. The evidence in each case has to be tested and the conclusions arrived at. In the present case, the prosecution has not led any evidence to show that any particular accused continued to be a member of the conspiracy after his arrest.

(XII) **Mohd. Khalid Vs. State of West Bengal [MANU/SC/0722/2002].** Terrorism is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilized society. 'Terrorism' has not been defined under TADA nor is it possible to give a precise definition of 'terrorism' or lay down what constitutes 'terrorism'. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or 'terrorize' people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquility of the society and create a sense of fear and insecurity.

(XIII) **State of Maharashtra and Ors. Vs. Som Nath Thapa and Ors. [MANU/SC/0451/1996].** Under Section 120-A whether there were ingredients of 'criminal conspiracy' - Illegal Act

must be done and purported to be in furtherance of the objects of conspiracy even though there may be sometimes misfire or overshooting by some of conspirators – To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means was necessary - The prosecution does not have to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use - When the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

(XIV) **Yash Pal Mittal Vs. State of Punjab [MANU/SC/0169/1977].**

It is observed by Hon'ble Apex Court that, *"The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator*

must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators."

62) On the other hand, the Ld. Advocates for accused have submitted that, in the present case the charge u/s 120-B is independently framed against the accused. The charge of section 120-B is also framed along with other charges of UAPA, ESA, IPC. Therefore, it is incumbent upon the prosecution to prove the main charge of conspiracy that, the accused had committed offences under UAPA, ESA, IPC pursuant to the alleged conspiracy. As per charges framed, the alleged conspiracy among the accused was in existence from January 2008 to October 2008. The prosecution will have to prove that, the intention of conspirators was to create dis-harmony in Muslim Community, A-9 procured RDX, the alleged RDX was fitted in LML Freedom Motorcycle, the bomb was exploded on 29/09/2008 around 9.30 pm in front of Shakeel Goods Transport Malegaon.

63) They further submitted that, basically, the prosecution failed to prove that, there were no any agreement among the accused to do any illegal act. There is no concrete evidence on record to show that, accused had conducted any secret meetings as alleged. There is no iota of evidence to show that, accused had committed the alleged Bomb-blast by procuring RDX and thereby fitted in LML Freedom Motorcycle. In support of their submissions, they have placed their reliance on the following citations,

(I) Ajay Aggarwal Vs. Union of India and Others [(1993) 3 Supreme Court Cases 609]. In this case, Hon'ble Apex Court, has observed as under:

> *"Conspiracy to commit a crime itself is punishable as a substantive offence and every individual offence committed pursuant to the conspiracy is separate and distinct offence to which individual offenders are liable to punishment, independent of the conspiracy.*
>
> *A conspiracy is continuing offence and continues to subsist and committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon*

as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. Its continuance is a threat to the society against which it was aimed at and would be dealt with as soon as that jurisdiction can properly claim the power to do so. The conspiracy designed or agreed abroad will have the same effect as in India, when part of the acts, pursuant to the agreement are agreed to be finalised or done, attempted or even frustrated and vice versa. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory the conspirators continuing to be parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain sanction of the Central Government. All of them need not be present in India nor continue to remain in India"

(II) **State of Madhya Pradesh Vs. Sheetla Sahai and Others [(2009) 8 Supreme Court Cases 617].** In this case, Hon'ble Apex Court, has observed as under:

> *"A criminal conspiracy must be put to action inasmuch as a crime does not become punishable as long as it is only generated in the mind of the accused. What is necessary is not thoughts even if those are criminal in character, often involuntary, but offence would be said to have been committed only when thoughts take concrete shape of an agreement to do or cause to be done an illegal act or an act which although not illegal by illegal means and then if nothing further is done the agreement would give rise to a criminal conspiracy. Often conspiracy is hatched in secrecy and for proving this offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can be proved also by circumstantial evidence. Ex facie, there is no material to show that a conspiracy had been hatched by the respondents."*

(III) **R. Venkatkrishnan Vs. Central Bureau of Investigation [(2009) 11 Supreme Court Cases 737].** In this case, Hon'ble Apex Court, has observed as under:

> *"Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, must prove the same by applying legal principles which are applicable for the purpose of proving a criminal misconduct on the part of an accused. A criminal conspiracy must be put to action and so long a crime is merely generated in the mind of criminal, it does not become punishable. Thoughts, even criminal in character, often involuntary, are not crimes but when they take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal but by illegal means, then even if nothing further is done, the agreement would give rise to a criminal conspiracy. Condition precedent for holding accused persons guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of a fact which must be established by prosecution viz,*

meeting point of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from materials brought on record to arrive at a finding as to whether the charges of criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is, thus, difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which offences have been committed and the level of involvement of accused persons therein are relevant factors. For the said purpose, it is necessary to prove that propounders had expressly agreed to, or caused to be done illegal act but it may also be proved otherwise by adducing circumstantial evidence and/or by necessary implication. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from knowledge itself. A conspiracy may further be a general one and a separate one. A smaller conspiracy

may be a part of a larger conspiracy. It may develop in successive stages. New techniques may be invented and new means may be devised for advancement of common plan. For the said purpose, conduct of the parties would also be relevant."

(IV) **Adina & Another Vs. State of Maharashtra [2024 SCC OnLine Bom 2474].** In this case, Hon'ble Apex Court, has observed as under:

"15. Excluding the evidence of sole eye witness, the prosecution case remains to be based on circumstantial evidence. The law with regard to conviction on the basis of circumstantial evidence has been very well crystallized in the judgment delivered by the Supreme Court in the case of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116. Paragraph Nos. 153 and 154 which are important, are reproduced herein below :

"153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established: (1) the circumstances from

which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 where the observations were made :

"19. .....Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a

conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

16. The Supreme Court in case of Boby Vs. State of Kerala - 2023 SCC Online SC 50, in paragraph no.17 has observed as under :

"17. It can thus clearly be seen that it is necessary for the prosecution that the circumstances from which the conclusion of the guilt is to be drawn should be fully established. The Court holds that it is a primary principle that the accused 'must be' and not merely 'may be' guilty before a court can convict the accused. It has been

held that there is not only a grammatical but a legal distinction between ',may be proved' and "must be or should be proved". It has been held that the facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty. It has further been held that the circumstances should be such that they exclude every possible hypothesis except the one to be proved. It has been held that there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probabilities the act must have been done by the accused."

(V) **Bodh Raj @ Bodha and Others Vs. State of Jammu and Kashmir [Supreme Court Reports (2002) SUPP. 2 S.C.R.]** In this case, Hon'ble Apex Court, has observed as under:

"*Before analyzing factual aspects it may be stated that for a crime to be proved it is*

not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed."

(VI) **Anwar Ali and Another Vs. State of Himachal Pradesh [(2020) 10 Supreme Court Cases 166].** In this case, Hon'ble Apex Court, has observed as under:

"15. It is also required to be noted and it is not in dispute that this is a case of circumstantial evidence. As held by this

Court in catena of decisions that in case of a circumstantial evidence, the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

(VII) Shailendra Rajdev Pasvan and Others Vs. State of Gujarat and Others [(2020) 14 Supreme Court Cases 750] In this case, Hon'ble Apex Court, has observed as under:

"*17. It is well settled by now that in a case based on circumstantial evidence the Courts ought to have a conscientious approach and conviction ought to be recorded only in case all the links of the chain are complete pointing to the guilt of*

the accused. Each link unless connected together to form a chain may suggest suspicion but the same in itself cannot take place of proof and will not be sufficient to convict the accused."

(VIII) **Laxman Prasad Alias Laxman Vs. State of Madhya Pradesh [(2023) 6 Supreme Court Cases 399].** In this case, Hon'ble Apex Court, has observed as under:

"3. We do not find such conclusion of the High Court to be strictly in accordance with law. In a case of circumstantial evidence, the chain has to be complete in all respects so as to indicate the guilt of the accused and also exclude any other theory of the crime. The law is well settled on the above point. Reference may be had to the following cases:

(i) Sharad Birdhichand Sarda vs. State of Maharashtra

(ii) Sailendra Rajdev Pasvan vs. State of Gujarat."

(IX) **State (NCT of Delhi) Vs. Navjot Sandhu Alias Afsan Guru** [2005 Supreme Court Cases (Cri) 1715]. In this case the Hon'ble Apex court has observed that, *"the*

theory of agency can be extended thus far, that is to say, to find all the conspirators guilty of the actual offences committed in execution of the common design even if such offences were ultimately committed by some of them, without the participation of others. Those who committed the offences pursuant to the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy; but the non-participant conspirators cannot be found guilty of the offence or offences committed by the other conspirators. There is hardly any scope for the application of the principle of agency in order to find the conspirators guilty of a substantive offence not committed by them. Criminal offences and punishments therefor are governed by statute. The offender will be liable only if he comes within the plain terms of the penal statute. Criminal liability for an offence cannot be fastened by way of analogy or by ex-tension of a common law principle."

It was further observed that,

"A distinction was maintained between the conspiracy and the offences committed pursuant to the conspiracy. It is only in order to prove the existence of conspiracy and the parties to the conspiracy; a rule of evidence is enacted in S. 10 of Evidence Act based on the principle

of agency. S. 10 of the Evidence Act provides that anything said, done or written by one of the conspirators in reference to the common intention of all of them can be proved as a relevant fact as against each of the conspirators, subject to the condition prescribed in the opening part of the section. Thus, the evidence which is in the nature of hearsay is made admissible on the principle that there is mutual agency amongst the conspirators. Whether or not the conspirators will be liable for substantive offences other than the conspiracy and, if so, to what extent and what punishment has to be given for the conspiracy and the other offences committed pursuant thereto, depend on the specific scheme and provisions of the penal law. The offence cannot be spelt out by applying the principle of agency if the statute does not say so. For instance, in the case of S. 34, IPC, the constructive liability for the crime is specifically fastened on each of those who participate in the crime in furtherance of the common intention. But S. 120-B does not convey that idea."

(X) **State Through Superintendent of Police, CBI/SIT Vs. Nalini and Others** [1999 Supreme Court Cases (Cri) 691]. In this case, Hon'ble Apex Court has observed as under:-

"*7. A charge of conspiracy may prejudice the*

accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main

offenders".

(XI) State of Maharashtra and Others Vs. Som Nath Thapa and Others [1996 Supreme Court Cases (Cri) 820]. In this case, Hon'ble Apex Court has observed as under:-

"*24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.*"

(XII) Mohd. Hussain Umar Kochra Vs. K. S. Dalipsinghji and Another [AIR 1970 Supreme Court 45]. In this case, Hon'ble Apex Court has observed as under:-

> *"15. As to the second question the contention was that the evidence disclosed a number of separate conspiracies and that the charge of general conspiracy was not proved. Criminal conspiracy as defined in Section 120A of the I.P.C. is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. The agreement is the gist of the offence. In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out*

and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the comman plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies. In S. K. Khetwani v. State of Maharashtra, 1967-1 SCR 595 = (AIR 1967 SC 450) S. Swaminatham v. State Madras AIR 1957 SC 340 the Court found a single general conspiracy while in

R. v. Griffiths 1962-2 All ER 448 the Court found a number of unrelated and separate conspiracies."

(XIII) State of Gujarat Vs. Mohammed Atik and others [1998 Supreme Court Cases (Cri) 936]. In this case, Hon'ble Apex Court has observed as under:-

"*14. .....If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention." In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence act."*

(XIV) Mohd. Khalid Vs. State of W. B. [2002 Supreme Court Cases (Cri) 1734]. In this case, Hon'ble Apex Court has observed as under:-

"33.....*However, we find substance in the stand of learned counsel for accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against*

another conspirator restricts it to the statement made during the period when the agency subsisted. In State of Gujarat v. Mohd. Atik, it was held that principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act."

(XV) Hanumant Vs. State of Madhya Pradesh [(1952) 2 Supreme Court Cases 71]. In this case, Hon'ble Apex Court has observed as under:-

"In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take the place of legal proof. In cases where the evidence

in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

64) I have gone through the aforesaid citations. With due respect, I have no doubt about the legal propositions laid down in the aforesaid citations. In the light of aforesaid rulings / citations, it is necessary to discuss the evidence on record to arrive at certain conclusion so as decide whether the prosecution has successfully proved the charge of conspiracy or not. It is also necessary to mention that, mere placing the number of citations on record would not be enough in the absence of any evidence to that effect.

Therefore, it is necessary to go through the evidence led by prosecution.

65) In order to prove the conspiracy in the present case, the prosecution has to prove that,

(i) The A-9 had floated the organization “Abhinav Bharat” and thereby collected huge amount to the tune of Rs.21 Lakhs,

(ii) The collected huge amount had been spent by the accused for the purchasing of arms, ammunition and other related activities to carry out terrorist act or illegal activities,

(iii) In order to achieve the object, the accused persons had carried out secret meetings at various places like Bhopal, Faridabad, Indore, Ujjain, Nashik, Calcutta, etc.

(iv) The accused persons arranged the logistics, such as batteries, timer, circuit boards, detonators, RDX and ammonium nitrate. Specifically A-9 brought the RDX from Kashmir to accomplish their object,

(v) A-9 has stored the RDX in his house in a wooden cupboard.

(vi) The bomb / IED was assembled and fitted in LML Freedom Motorcycle in the house of A-9 or A-11,

(vii) Anyone accused or through any other person, they had parked the alleged motorcycle opposite to Shakeel Goods Transport between Anjuman chowk to Bhiku Chowk, Malegaon,

(viii) As per chalked out plan in secret meetings, they have

committed the preparatory act to the commission of terrorist act at Malegaon by exploding IED fitted in the LML Freedom Motorcycle and thereby caused the explosion resulted into the death of six persons and injuries to 101 persons,

66) Now I have to deal with all those aspects & rival contentions, one by one, which came on record.

Spot of Incident and Explosion :

67) The prosecution came with the case that, the accused have fitted the bomb in LML Freedom motorcycle and they have committed bomb-blast by using RDX and ammonium nitrate. More particularly, on the basis of report vide **Exh.7281** given by an Assistant Chemical Analyzer Dr. Suhas Bakre (PW-261), the prosecution claims that the RDX and ammonium nitrate was fitted in 'dikki' i.e. beneath the seat of LML Freedom motorcycle bearing no.MH-15-P-4572. The said blast resulted into death of six persons and caused injuries to 101 persons.

68) In order to prove the alleged explosion, the prosecution has examined and relied upon the testimonies of injured persons, police officers, panch witnesses and other relevant witnesses. Whereas the contention of A-1, A-4, A-5, A-9 and A-11 is that, there may be explosion but neither they are the planter nor the vehicle belongs to them or A-1. In addition to it, the defence taken by learned advocate for A-10 is that, injuries sustained by the

injured not due to the alleged explosion in the said motorcycle but it may be due to any other explosion.

69) To deal with aforesaid rival submissions, in the light of evidence on record, firstly it is necessary to mention that, there are 3 basic questions which are required to be answered as those are intermingled with each others. Those are as follows:

(i) Firstly, as to whether the prosecution has successfully brought on record that, there was explosion / blast on 29.09.2008, in front of Shakeel Goods Transport agency, between Anjuman Chowk to Bhiku Chowk, Malegaon.

(ii) Secondly, as to whether bomb was fitted in LML Freedom motorcycle or in dikki i.e. beneath the seat of said motorcycle as alleged.

(iii) Thirdly, as to whether the RDX and ammonium nitrate was used to explode the bomb.

70) It emerges from evidence on record that, it was the day of holy Ramzan. On 29.09.2008, there was gathering of people nearby the spot of incident at different locations. The surrounding area of Bhiku Chowk and other places in the vicinity of the chowk was crowded and congested due to gathering of people to purchase food, daily need articles, etc. Their presence nearby the place of incident was natural. On 29.09.2008, they were present at different place / locations nearby the spot of incident, but what they had seen, heard, observed, noticed on that day is most relevant. It has come in the evidence of PW-13 to PW-18, PW-20 to

PW-25, PW-27 to PW-33, PW-36 to PW-38, PW-40, PW-41, PW-43, PW-44, PW-46 to PW-53, PW-55 to PW-72, PW-74 to PW-78, PW-80 to PW-96, PW-99, PW-115, PW-270 that they heard the noise and some of them got the knowledge about the explosion. It has come in the evidence of PW-30, PW-44, PW-54 that, they saw the smoke on the spot of incident immediately after the blast. PW-17, PW-35, PW-36, PW-38, PW-39, PW-42, PW-54, PW-72, PW-79, PW-82, PW-102 had seen and noticed the blast in vehicle. PW-44, PW-62, PW-63, PW-71, PW-78, PW-79 had seen the flames coming out from the spot of incident. PW-94, PW-97, PW-98, PW-100 heard about the incident. PW-17 (Abdul Hamid Ahmadulla), PW-26 (Shahazad Ahmad Shabbir Ahmad) and PW-102 (Vijay Manohar Bilaghe) are the eye witness of the explosion on the spot of incident.

71) At the relevant time, PW-17 (Abdul Hamid Ahmadulla) was sitting in a rickshaw to proceed to hospital, at that time, he saw the explosion took place near the bicycle and motorcycle present at Bhiku Chowk.

72) On the day of incident, at 9.30 p.m., PW-26 (Shahazad Ahmad Shabbir Ahmad) was present at Shakeel Goods Transport at Bhiku Chowk to receive bilti of goods. When he was present, he saw the blast took place in a bike standing in front of Shakeel Goods Transport.

73) On the day of incident, PW-102 (Head Constable Bilage) was present on duty at Daregaon Police Chowki and so also at Bhiku

Chowk. He was attached to Daregaon Police Chowki which is approximately 70 feet away from the spot of incident. When he was standing outside the Daregaon Police Chowki, he saw there was a blast in one vehicle which was parked in front of Nissar Hotel. The splinters spread over and also struck to his left leg due to which he sustained injury. Admittedly, opposite to Shakeel Goods Transport, there is a Nissar hotel. Thus, testimony of PW-17, PW-26 and PW-102 are specifically pointing out that, there was a blast in one vehicle standing in front of Shakeel Goods Transport, Malegaon.

74) No doubt, PW-17 (Abdul Hamid Ahmadulla), PW-26 (Shahazad Ahmad Shabbir Ahmad) and PW-102 (Vijay Manohar Bilaghe) were closed to the spot of incident, but they had not identified the motorcycle nor described the said motorcycle. But taking into consideration their testimony, it can be said that, they are the eye witness of the blast/explosion, though they have not identified the exact motorcycle. Moreover, the presence of PW-17 and PW-102 is not specifically denied in cross-examination. Hence, I do not find any reason to disbelieve the testimony of those eye witnesses.

75) In the year 2008, PW-261 (Shri. Bakare) was working as Assistant Chemical Analyser, at DFSL, Nashik. He stated that, any explosion creates sound, gas and fire. Admittedly, on the spot, after the incident, there was sound, gas (smoke), fire and it was observed by the aforesaid witnesses as discussed supra. After the incident PW-261 visited the spot, he had seen two motorcycles on the spot. LML

Freedom motorcycle was in half burnt condition. There was oil leakage. The oil was an inflammable substance. After explosion, the oil and petrol will catch fire and burn into flames. He admitted that, due to flames the petrol tank may blown-off.

76) It is necessary to mention that, explosion of explosive material is a chemical reaction of components use in it. After explosion, it releases large amount of energy in the form of heat, light, sound and shock wave when triggered. An explosion is very fast chemical reaction involving a solid, dust or gas, during which a rapid release of hot gases and energy take place. The phenomenon lasts only some milliseconds and it results in production of very high temperature, pressure and blast waves. The blast waves contains a large part of energy that releases during detonation and moves faster than the speed of sound. After explosion the particles can travel with certain velocity and hit with certain pressure.

77) The injured witnesses have specifically stated that, what they had seen, observed, heard on the spot of incident immediately after the explosion. The witnesses has also stated that, they had sustained the injuries due to hit of some particles/splinters. After sustaining injuries due to splinters, they had been to hospital. They had narrated the incident and causation of injuries to the doctor immediately after the incident who treated them. The splinters were removed from the body of injured persons. The splinters were handed over to the police. The splinters were came to be seized under seizure panchanama. The splinters were sent for

analysis. The statement of witnesses were recorded by the Investigating Officer in which also they have testified the aforesaid facts.

78) Immediately after receipt of information, Police Inspector Shriniwas Patil (Not examined), PW-123 (PSI Sudhir Patil) and other police personnel went to the spot of incident. PW-301 (PI Shri Akade) also visited the spot. He has prepared the spot panchanama in the presence of panch witness PW-124 (Shakeel Ahmad Mohammad Amin Khalifa). The panchanama itself shows that, the spot of incident was in front of Shakeel Goods Transport Company, between Anjuman Chowk to Bhiku Chowk, Malegaon. They have found two motorcycles on the spot i.e. LML Freedom motorcycle bearing no.MH-15-P-4572 and at the distance of 5 to 6 feet, Honda Unicorn motorcycle bearing No.MH-41-M-15. They also noticed that, LML Freedom motorcycle was in half burnt condition and it was severely damage. Thus, the condition of vehicles which came on record itself shows that, there must be blast / explosion which resulted in to the half burnt condition of motorcycles and damage cause to other properties.

79) During the course of the hearing, it was brought to the notice of this Court that, certain medical professionals (Doctors), in the course of their cross-examination, acknowledged that the injuries sustained by the victims could have been caused by a different explosion. However, it is pertinent to note that, apart from the aforementioned incident, no other explosion was reported to have

occurred on that particular day. There is no material on record to establish that the injuries sustained by the witnesses could have resulted from any explosion other than the one in question. Furthermore, it is significant to observe that multiple injured witnesses sustained injuries concurrently / simultaneously, despite being positioned at different locations. In the absence of any substantive evidence pointing to the occurrence of another explosion, I found no merit in the contention advanced by the learned advocate for A-10, suggesting that the injuries may have been sustained in a separate blast. A mere suggestion made during cross-examination cannot suffice in the absence of affirmative and corroborative evidence.

80) The next contention of Ld. Advocate for A-10 is that, Police Inspector PW-217 (Babanrao Joshi) who had recorded the statement of injured had admitted in his cross examination that, on the statement of injured, there is no endorsement of doctor showing that they were fit to give statement. Hence, their statement are false and fabricated which requires to be discarded. Considering the testimony of PW-217 shows that he had not seen personally the incident of bomb-blast. But he was one of the investigating officer who had recorded the statement of number of injured witnesses. During cross examination, nothing was elicited from the mouth of this witness or other witnesses which would show that, the condition of those injured witnesses were so serious or they were on death bed or not able to talk or give the statement. The testimony of doctors shows that the splinters were removed

from the body of injured, they were conscious and all the injured were given discharge. Therefore, the question of taking the endorsement of doctor of the statement does not arise. I do not find any force in the aforesaid contention of Ld. Advocate for A-10.

81) The learned advocate for A-11, had vehemently urged and brought to my notice towards the admission given by PW-261 (Dr. Suhas Bakre) regarding crater. PW-261 has admitted that, he did not find any crater on the spot of incident. He knows how to find out crater scientifically. The crater depends upon the volume of blast. Explosion of cracker (Sutali bomb) can create the crater. Only expert can tell by observing the crater the capacity of blast. Except the Shakeel Goods Transport and the place shown by police, he had not searched any other place for crater. Although, he has admitted the aforesaid facts in his cross-examination, but he has also stated that, every time creation of crater is not possible. Absolutely, there is no evidence on record to show that, after the blast, the spot of incident had been changed or there was another spot where the explosion took place. Moreover, if the projection of blast is towards the open air space, then it is difficult to create a crater, unless and until, the explosive substances touched to the surface of ground. At the relevant time, it may be possible that, the blast may not be with such intensity to create a crater. So, mere not getting or finding the crater on the spot of incident does not mean that no blast occurred on that day. Even for the sake of moment it is assumed that, there should be a crater after the blast, but merely non creation of crater would not rule out the possibility

and evidence led by the eye witnesses. The evidence of injured witnesses or eye witnesses always remains on high pedestal. Hence, I do not find any force in the aforesaid point raised by the learned advocate for A-11.

82) Thus, I found the testimony of injured witnesses are consistent on the point of their presence, sustaining injuries, disclosing the facts immediately after the incident. Hence, I did not find any reason to disbelieve those injured witnesses and eye witnesses about their presence, location, injuries and observation made by them immediately after the incident. The surrounding circumstances, observation, immediate narration about the incident, visitation of police to the spot of incident, drawing spot panchanama, condition of vehicles and bicycles, damages caused to the nearby properties clearly establishes that, there was explosion in front of Shakeel Goods Transport Company between Anjuman Chowk to Bhiku Chowk, Malegaon. Therefore, in the light of aforesaid evidence, I have no doubt to hold that, the prosecution is successful to prove that, there was explosion in front of Shakeel Goods Transport between Anjuman Chowk to Bhiku Chowk, Malegaon on 29.09.2008 around 9.30 pm.

Place of assembling and fitting of bomb:

83) Before discussing the oral evidence and other evidence pertaining to planting / assembling /fitting of RDX and to arrive at certain conclusion, firstly it is necessary to mention that, both the premier Investigating Agencies i.e. ATS and NIA, are having dissenting view

on the aforesaid aspects. They do not agree with each others view as they have revealed different things on the aforesaid point during course of their own investigation. Hence, it is necessary to mention about it.

84) The ATS came with a case that, AA-1 (Ramchandra Kalsangra), AA-2 (Sandeep Dange), DA-12 [(Praveen Takkalki @ Pravin Mutalik) (discharged accused)] and others had planted, assembled, fitted and exploded the explosive device by using LML Freedom motorcycle. Rakesh Dhawde (A-7) had imparted the training of assembling of bomb to AA-1 (Ramji Kalsangra) and AA-2 (Sandeep Dange). They procured RDX from Pune from A-9 by visiting Pune between 09.08.2008 to 11.08.2008. DA-12 (Pravin Mutalik) had stayed with one suspected person in the house of A-11 at Deolali camp, Nashik from 22.09.2008 onward. The suspected person (AA-1) was having golden colour LML Freedom motorcycle at the relevant time. The suspected person (AA-1) and golden colour motorcycle had been noticed and seen by the witnesses residing in the vicinity of the said house. A-9 also confessed before Captain Nitin Joshi that, he along-with AA-1 and A-11 had assembled the bomb in the house of A-11. AA-1 parked the said motorcycle at Malegaon and thus they have exploded the bomb at Malegaon, Dist. Nashik.

85) Whereas, as per the charge-sheet of NIA, A-1 never been in possession of said LML motorcycle. The alleged motorcycle was in possession and use of AA-1. NIA during interrogation of Samjhota blast case, the name of Dhan Singh came from the mouth of one

Rajender Chaudhary. Dhan Singh was also arrested and interrogated on dated 17.12.2012. During interrogation, Dhan Singh disclosed that, on 29.09.2008, on the instructions of AA-1 and AA-2, he transported the IED fitted motorcycle from the house of suspect Ramesh Mahalankar @ Amit Hakla located at Indore to Sendhwa. It was handed over at Sendhwa bus stand to Ramji Kalsangra. But, NIA did not find any evidence against Dhan Singh or Amit Hakla and hence, both they are not prosecuted by NIA. On the other hand, NIA negated the story of ATS pertaining to assembling and fitting of bomb in the house of A-11 on the strength of re-verification of statement of some witnesses.

86) The A-7 (Rakesh Dhawde), who had been charge-sheeted, has since already been discharged from all sections except Arms Act. His case has been transferred to concerned competent court having jurisdiction for trial under the said act. Pravin Takkalki @ Pravin Mutalik was also discharged by my learned predecessor vide order dated 27.12.2017 as no case is made out against him. Though, the discharge order was challenged by A-1, A-5 and A-9, but the said discharge order is not set aside by the Hon'ble High Court and still it is in force.

87) Now, regarding the stay / halt of AA-1 and AA-2 at Pune, procurement of RDX, traveling from Pune to Bhopal/Indore, the prosecution has examined and relied upon the testimony of PW-148 (Vijay Manjrekar), PW-223 (Mahesh Kaushik), PW-226 (Raju Devkar).

88) It is necessary to mention that, as per the case of ATS, AA-1 and AA-2 had booked train tickets from the account of Vilok Sharma in the fake name of Balwant Pathak and Mansingh. For contact details the mobile number of Vilok Sharma was provided. Thus, Vilok Sharma from the aforesaid point of view was material witness who could narrate about ticket details, booking details and traveling history. But, the prosecution has not examined Vilok Sharma. The prosecution has dropped the said witness vide **Exh.7945**. Therefore, in the absence of any evidence on this point, it cannot be said that, from his account the railway tickets were booked in the name of two fake persons and those were actually booked by AA-1 and AA-2.

89) The another listed witness Pramod Deshmukh was on the point of meeting with AA-1 and AA-2 and telephonic talk between them for going at Indore. As per prosecution, he is the eye-witness who saw them at Pune during the relevant period. But, this witness is also not examined by prosecution and he is dropped by prosecution vide **Exh.7713**.

90) The PW-148 (Vijay Manjrekar) is examined on the point of AA-1 and AA-2 booked and traveled by train during the relevant period. The PW-148 testified that, he has given extract from his computer to ATS regarding the railway ticket booking and cancellation of railway ticket dated 11th August 2008. The ticket was booked on 4th August 2008 from Pune to Khandwa. It was canceled on 9th August. Admittedly, in the said railway ticket extract, the name of accused are not mentioned. It is a computer generated extract

marked as article 72 and 73. This document is regarding issuance and cancellation of ticket. The witness has admitted that he has not filed any 65-B certificate along-with it. The ticket is showing Pune to Khandwa. Merely on the basis of the said computer extract, it cannot be said that, AA-1 and AA-2 had booked the said tickets for them. It is not the case of ATS or the said witness that, only two passengers from Pune to Khandwa on the particular date traveled by train. Absolutely, there is no evidence on record to show that, they have booked train ticket through Vilok Sharma. The corroborative evidence on the aforesaid points not came on record due to non-examination of material witness Vilok Sharma, who is dropped by prosecution. Therefore, mere booking or cancellation by any person would not tantamount that, the AA-1 and AA-2 had booked and canceled the said ticket and also tried to travel by train.

91) The PW-223 (Mahesh Kaushik) is examined on the point of booking of ticket from Hans Travel Agency, Pune in the name of Balwant Singh and others. The date of booking was 08th August 2008 and scheduled traveling was on 11th August 2008. The PW-223 has testified that, in the year 2008, he was working in Hans Travel Agency. ATS inquired with him and obtained traveling details of the said person. He obtained the chart from data stored in computer at Indore office. He provided the said data to ATS, showing that on 11th August 2008, Balwant Singh traveled on booked ticket from Pune to Indore. In cross-examination, he has specifically admitted that they have no document showing the

identity of customer. He has not identified the accused in any way or by describing his physical appearance or from any photo identity. Admittedly, no identification parade was carried out on this point as to testify exactly who traveled on the scheduled date. In the absence of any identifying evidence, it is difficult to say that, AA-1 or AA-2 or A-9 had traveled on the particular date from Pune to Indore. Moreover, while recording statement of PW-223, the following facts are omitted in his statement and those are, "Police asked him to provide the data from 08 August to 11th August and chart was sent by Indore office and he himself booked the ticket of Balwant Singh". Thus, the aforesaid material facts are omitted in his statement and narrating those facts before the Court is nothing but improvement. In addition to it, nothing is brought to my notice that, Balwant Singh name is used at particular time by anyone of the aforesaid accused. Therefore, mere allegations are not enough in the absence of any cogent and documentary evidence. Thus, his testimony is not sufficient to prove that, the aforesaid accused at the relevant time were at Pune and tried to travel to Indore by Hans Travel.

92) It has also came in the evidence of **PW-223 (Mahesh Kaushik)** that, while booking the ticket from Hans Travel the passenger had given the mobile number 9766677736. On this point the Nodal Officer i.e. **PW-229 (Amit Raghunath Karkera)** is examined by prosecution. Already, it came on record that, the details were provided by Senior Executive IRCTC PW-148 (Vijay Manjrekar) to ATS Officer which depicts that the aforesaid mobile number belongs to Vilok

Sharma. The PW-229 also given the SDR vide **Exh.6958** showing the aforesaid number belongs to Vilok Sharma. The Nodal Officer has provided the CDR without 65-B certificate. Thus, only Vilok Sharma was the witness who could say about the booking of the aforesaid ticket. The material witness Vilok Sharma is not examined by prosecution. Non examination of material witness without any explanation give rise to draw the adverse inference against prosecution.

93) The PW-226 (Raju Devkar) is examined on the point that, he was acquainted with AA-1. He was in contact with him. Ramji used to make calls to him. He knew that Ramji was at Pune during the relevant period. The witness has testified that, being a social worker, he used to attend various functions and he was member of RSS. Except this, he stated nothing about the stay or calls made by Ramji. He denied that Ramji met him or he received the call from Ramji when he was at Himachal Pradesh. Ld. SPP cross examined the aforesaid witness with permission. But, nothing material was elicited from his mouth. The witness is also cross examined on behalf of accused. He admitted that, ATS officers called him repeatedly and they were pressurizing him to give the statement as per their say by taking the name of particular organization. He denied to act as per the say of ATS officers and hence, they beat him mercilessly. They tortured him. As a result of it, he sustained injury to his ear. Due to fear of ATS and keeping him on gun point, he did not dare to lodge the complaint against the ATS officers. The aforesaid admission shows that, the possibility cannot be ruled

out that, due to pressurizing, threatening to the witness, he has given his statement as per the say of ATS to oblige them. Therefore, I do not find any force to the contents of statement shown to be recorded by ATS officer in his name.

94) Thus, the aforesaid witnesses on whom the prosecution had relied upon could not prove the presence of AA-1 and AA-2 at Pune or procurement of RDX by them from A-9 during the relevant period.

95) As per the case of ATS, PW-316 (Dharmendra Bairagi) is a star witness of prosecution. He was the only person, who has seen the secrete meeting between A-1 and AA-1 at Ujjain on 08.10.2008 and he has heard the talk between them and confession given by AA-1 before A-1 (Pragya Singh Thakur) that, he has committed bomb-blast at Malegaon by using LML Freedom motorcycle.

96) The PW-316 (Dharmendra Bairagi) was examined by prosecution. He has not supported to the case of prosecution. He has retracted from his earlier statement. Ld. SPP cross examined him with permission but nothing material elicited from his mouth which would be beneficial to the case of prosecution. On the contrary, it came on record in his evidence that, he lodged the complaint before Magistrate of Indore for illegal detention, torture at the hands of ATS officers. They compelled him to give statement as per their say. Due to their persistent torture, ill-treatment, illegal detention, he had been forced to give the statement of which he has no knowledge about its contents. Thus, nothing came from the mouth of aforesaid witness pertaining to secrete talk or any such

alleged meeting or confession given by AA-1. Therefore, in the absence of any evidence, it remains only allegations / bare words which are insufficient to prove the said charges.

97) The another star witness of prosecution is PW-309 (Captain Nitin Joshi). The prosecution has examined him on the point that, A-9 had confessed before him that he had assembled the bomb in the house of A-11 with the help of co-accused. But the PW-309 (Captain Nitin Joshi) had not supported to the case of prosecution. He was cross examined by learned SPP but nothing material was elicited from his mouth. Moreover, it came in his evidence that, his statement was recorded by NIA officer. While recording his statement, he has narrated that, ATS officer forcefully recorded his statement and number of facts are falsely mentioned in his statement by ATS officers. A-9 never confessed before him about bringing of RDX, storage of RDX, supply of RDX or fitting of RDX. NIA officer PW-321 (Shri. Anil Dubey) has also admitted that, Captain Nitin Joshi had told them that the aforesaid falsities are being recorded in his statement by ATS officer forcefully. Thus, nothing survives in the story of prosecution that A-9 had confessed before PW-309 regarding the assembling and fitting of bomb in the house of A-11.

98) Moreover, PW-321 (Anil Dube) has admitted that, during investigation, it was transpired to them assembling of IED in the house of A-11 is false and fabricated on the strength of statements of Subhedar K. K. Pawar and Lt. Colonel Pravin Khanzode. This

position was also re-confirmed by Investigating Officer of NIA while recording their statement and deposing before the Court.

99) Now, coming to the aspect as to whether there is any other evidence showing that, AA-1 (Ramji Kalsangra), AA-2 (Sandeep Dange), DA-12 (Pravin Takkalki), A-11(Sudhakar Chaturvedi) were present in the house of A-11 (Sudhakar Chaturvedi) at Deolali, District Nashik along-with LML Freedom motorcycle at the relevant time.

100) It came on record that, the house of A-11 is situated in crowded residential area. But, prosecution had not brought a single eye witness who had seen them along-with the said motorcycle at the house of A-11 (Sudhakar Chaturvedi). Except the owner of the house, not a single eye-witness residing in the vicinity of that house is examined by the prosecution on the aforesaid point.

101) It emerges from the evidence on record that, A-11 has a rented accommodation at Deolali, Nashik. The said house belongs to A. B. Mahajan. Being owner of the house, PW-216 (A. B. Mahajan) is examined by prosecution. He testified that, he is the owner of the house situated at Bana chawl, Deolali camp, Nashik. He has given on rent his house to A-11 for the period of eleven months as mentioned in leave and license agreement. He identified the copy of leave and license agreement. The house was situated on ground floor in chawl like structure. A-11 was residing with family in that rented rooms. Whenever, he went to collect the rent, he has seen A-11 with his family. Thus, it emerges from his evidence that,

except this, he has not seen or observed any other activities or any stranger in that house. Therefore, his evidence could not be beneficial to prosecution on aforesaid point as he has not seen any other accused or stranger or suspected persons in the house of A-11 at the relevant time. He has also not seen any LML Freedom motorcycle or Golden colour motorcycle at the house of A-11.

102) It has come in the evidence of PW-307 (Keshav Karbhari Pawar) that A-11 was the source person of Army and they have issued I-card to him. They used to provide meal, tea to the source person as a hospitality. Being a source person, he used to visit the Army office. Whenever A-11 used to go outside, he used to keep the keys of his house with them. Once, he had handed over the keys to Pravin Mutalik, who came to dine for 3 days in Army office. Except this nothing came on record regarding the stay of other accused in the house of A-11. Even there is no evidence led on record to show that, in the absence of A-11, Pravin Mutalik and absconding accused AA-1 stayed in the house of A-11 along with golden colour motorcycle. Therefore, the testimony of PW-307 is also not helpful to the prosecution on the aforesaid point.

103) Considering the entire testimony of aforesaid witnesses, there is not a single eye witness or circumstantial evidence connecting the chain thereby linking the possibility of accused at the house of A-11 and fitting and assembling of the bomb in his house in golden colour LML Freedom motorcycle. The persons residing in the vicinity of the said house or any other eye witness has not seen any accused at any time along-with the said golden colour LML

Freedom motorcycle while parking or riding / roaming on that vehicle or keeping in the vicinity of the house or taking that vehicle inside the house. Therefore, mere on the assumptions or presumptions or surmises or conjectures the charges leveled cannot be said to be proved in the absence of strict proof. In the absence of any positive evidence, I am not inclined to accept that the said vehicle was brought to the house of A-11 and bomb was fitted at that place by the aforesaid accused. Thus, the theory of ATS about planting or assembling or fitting of bomb or IED in the house of A-11 do not inspire the confidence of the Court.

104) Considering the entire evidence as discussed above, I hold that, prosecution is unsuccessful to prove the theory of ATS as well as theory of NIA pertaining to procurement, planting, assembling, fitting and transportation. The evidence is scanty on the aforesaid point and it is not cogent and trustworthy.

Bomb fitted beneath the seat of motorcycle:

105) Now pertaining to the second point i.e. as per the case of prosecution, the bomb was fitted in LML Freedom motorcycle or in its dikki i.e. beneath the seat of LML Freedom motorcycle which was allegedly parked in front of Shakeel Goods Transport company. On this point, it is necessary to mention that, PW-17 (Abdul Hamid Ahmadulla), PW-26 (Shahazad Ahmad Shabbir Ahmad) and PW-102 (Vijay Manohar Bilaghe) were only eye witness of the explosion. They have only seen the blast in the vehicle standing near Bhiku Chowk in front of Shakeel Goods Transport company.

No doubt, they have not identified the vehicle. They have also not disclosed particulars of said vehicle during the course of their evidence. So, the testimony of aforesaid witnesses are restricted up to the point of explosion. They have not pointed out particular vehicle by giving its details.

106) The spot panchanama of the spot of incident and seizure of articles were prepared by PW-301 (PI Anil Akade) in the presence of panch witness PW-124 (Shakeel Ahmad Mohammad Amin Khalifa). The spot panchanama is showing the condition of motorcycle and bicycles noticed by them on the spot. They have seized 33 articles from the spot and those articles were sent to DFSL for examination.

107) The FIR was lodged by PW-123 (PSI Sudhir Patil). Though, it is mentioned in the FIR that, bomb-blast was took placed in LML Freedom motorcycle which was parked in front of Shakeel Goods Transport company, but admittedly, he is not eye witness of the incident. He is hearsay witness on the point of incident. He reached to the spot after the incident. He was not on duty at Bhiku Chowk, Malegaon at particular time. Moreover, this witness has not stated that, he has knowledge that, the bomb was fitted in dikki i.e. beneath the seat of LML Freedom motorcycle. Therefore this witness is also not helpful to the prosecution on the aforesaid point.

108) The charges leveled in the charge-sheet of ATS shows that, the bomb was fitted in LML Freedom motorcycle. More particularly it

emerges from evidence of PW-261 (Dr. Suhas Bakre) that it was fitted in dikki i.e. beneath the seat of motorcycle. The said stand seems to be taken by prosecution only on the basis of observations, opinion and report given by an Assistant Chemical Analyzer PW-261 (Dr. Suhas Bakre). Hence, it is necessary to go through the testimony of this expert witness.

109) In the year 2008, PW-261 (Dr. Suhas Bakre) was Assistant Chemical analyzer in Directorate Forensic Science Laboratory (DFSL), Nashik. He visited the spot along-with his team. He was shown the spot of incident and the damage motorcycles by one constable. He inspected those motorcycles. He described the conditions of vehicles and surroundings. He stated that the LML Freedom motorcycle was in seriously damaged condition. Fuel tank blown off and lying at some feet. Seat cover and dikki was also blown off. He searched for the time device on the spot but he did not notice any time device or its parts. He has also tried to search detonator pieces but he did not find anything. On 30.09.2008, he went back to the office and prepared the crime-scene-report vide **Exh.7281.** He again prepared his report on 01.10.2008. Admittedly, the PW-261 has issued two reports i.e. analysis report pertaining to LML Freedom motorcycle vide **Exh.7297** and other one is Crime-scene-report vide **Exh.7281**.

110) In cross-examination his both reports were confronted to him. On going through the reports he has specifically admitted that, “he has not conducted any scientific test to show as to whether the explosive device was kept inside the bike. Scientifically he would

be unable state that explosive device was kept beneath the seat of motorcycle. The **Exh.7281** is based upon his observation only. As per his observation, the explosive material might be put up below the seat of LML Freedom motorcycle. It was his guess work that the explosive might be kept beneath the seat. He did not find any proof that the explosive was kept beneath the seat of that bike".

111) Admittedly, the aforesaid expert had inspected the motorcycle twice. Firstly, at on the spot of incident and secondly at the DFSL, Nashik. Both times, he was equipped with his analysis kit including preliminary testing kit. He visited the spot with his team for preliminary analysis. But the admissions given by him as above goes to the root of the case. The expert himself admitted that he did not find any cavity beneath the seat of LML Freedom motorcycle. By carrying out preliminary test on the spot, it would be possible to opine scientifically about the same. But, his own admissions shows that he had not conducted any scientific test in order to arrive at certain conclusion.

112) In cross-examination conducted on behalf of A-1 and A-6, the suggestion was given to him that, he had not conducted any test on the spot of incident to find out explosives, he has denied the said suggestion. And on the other hand, admitted that he has not mentioned the result of aforesaid test in his crime-scene-report i.e. Exh.7281. He has further given the reason that those tests were inconclusive and hence, those are not mentioned in the report. Thus, the PW-261 has given two answers, at the one hand, he is saying that he has not conducted any test on the spot, on the other

hand, he is saying that he has conducted the test but did not find any positive result. The testimony of witness cannot be relied upon when he is giving two inconsistent answers to the same question. Even for the sake of moment, it is assumed that, he had conducted any test on the spot in order to find out the explosive used or not, but those tests were inconclusive. Moreover, pertaining to those tests there is no reference in **Exh.7281**.

113) Now, taking into consideration the condition of the bike that its bottom portion was severely damaged except rods. It was in half burnt condition. When there is a blast of RDX and ammonium nitrate, it generates a very high temperature, waves, sound etc. But, the petrol tank having petrol neither melt or caught fire nor severely damaged. The Honda unicorn bike lying near the said motorcycle was also not severely damage. Only, the holes were noticed on the petrol tank of Honda Unicorn bike. The CD submitted by ATS, when it was played in open court it shows that, Honda Unicorn motorcycle was full of petrol and it was collected in small bucket and bottle by some persons. The holes of Honda Unicorn motorcycle are also not scientifically tested to find out as to whether it was due to missiles or splinters or firing of bullets. The petrol tank even having holes did not catch fire.

114) As stated earlier, there is nothing on record except the guess work carried out by PW-261 (Dr. Suhas Bakre). He himself or his team members had not collected any exhibits from the spot as mentioned in crime scene report. The present matter is serious case of bomb-blast. In such a case, mere guess work is not enough.

Neither it is expected from expert when he is specifically called on the spot to collect the articles, to assist and to guide the Investigating Agency by carrying out some scientific tests. In such situation, there must be some scientific test to be carried out by an expert on the spot to arrive at certain conclusion.

115) Moreover, crime-scene-report which requires to be handed over immediately but it was withheld by him till 16.10.2008. Thus, the report was lying in the hands of **PW-261 (Dr. Suhas Bakre)** more than 15 days and belatedly it was forwarded to the concerned Police Station. The crime scene report is based upon rough notes/noting taken by all team members. On crime scene report other team members admittedly had not signed. Except report marked as **Exh.7281**, there is no any other document to show that, what is observed by his team members on the spot of incident and what noting they had taken.

116) Considering the entire aforesaid evidence, it makes clear that, the bomb was kept beneath the seat of motorcycle is mere guess work and not scientific observations. It is also not proved that any primary test were carried out in order to find out the explosive used. Inconsistent answers pertaining to any primary tests carried out on the spot do not inspire the confidence. The covering letter and crime-scene-report are computer generated and submitted without 65-B certificate. In the absence of positive evidence, prosecution is unsuccessful to prove that the explosive device was kept inside the motorcycle or beneath the seat of motorcycle.

117) The PW-301 (PI Anil Akade) has recorded the statement of Abdulla Jamaluddin Ansari, the owner of Shakeel Goods Transport. The PW-301 has admitted that, it came in the 161 statement of Abdulla Jamaluddin Ansari that, prior to 2008 there was a office of SIMI on the first floor of Shakeel Goods Transport. During investigation, it was also transpired that, SIMI was terrorist organization and it was banned in the year 2006.

118) The PW-320 (ACP Mohan Kulkarni) has admitted in cross-examination that, on second floor of Shakeel Goods Transport office there was an office of SIMI. It was banned organization. He knew that, how to get the information about banned organization, its activists and as to whether they were present at the same locality or not at the relevant time, but he did not investigate as to whether SIMI office was operative or not at the relevant time. Admittedly, they had not investigated from this angle to rule out the possibility that, there was no involvement of SIMI. Moreover, on the day of incident, PW-42 (Abdul Hamid Mohammed Amin) had seen one girl who was standing near the motorcycle. At the same time, it is also necessary to mention that, in what directions the matter to be investigated it is the sole prerogative of the Investigating Officer. It is also necessary to mention that, when the certain facts came to their knowledge or transpired during the course of investigation, then those angle are also required to be considered and investigated.

119) Although, it is the contention of learned Advocate for A-1 and A-6 that the SIMI activists might have exploded the bomb but there is

nothing on record to show that, any activists of SIMI was involved or seen near the spot of incident. Except the bare admission as discussed above that, there was the office located on the second floor of Shakeel Goods Transport and it is banned organization, it is not enough to draw the conclusion in the absence of any investigation and evidence on record to show that, SIMI Activist were involved in the commission of offence and exploded the bomb. Hence, I am not inclined to accept the contention of Ld. Advocates for accused.

120) Admittedly, no finger prints were obtained during the course of investigation. No dump-data was collected in order to trace out the culprits. There is no eye witness to show that, who has parked the LML Freedom motorcycle on the spot. There is no evidence to show the entry of the said motorcycle in Malegaon. There is no evidence on record to indicate that, who left the motor-cycle on the spot of incident.

121) The evidence produced by prosecution as discussed above is not sufficient to hold that bomb was fitted in LML Freedom motorcycle or it was kept beneath the seat of said motorcycle. After considering the aforesaid evidence from all angles, the evidence itself tilt towards the more possibility that explosives might had been kept or hanged or placed on the said motorcycle from outside. Mere, blast on the site and damaged condition of motorcycle, is not a conclusive proof of fitting explosive inside the dikki i.e. beneath the seat of said motorcycle. The damages caused to motorcycle is also possible, if explosives are placed or hanged or

kept on the motorcycle from outside or in closed proximity to it. At the cost of repetition, considering the entire evidence coupled with admission given by PW-261 (Dr. Suhas Bakre), the possibility cannot be ruled out of hanging or placing the explosive materials from outside to the vehicle.

122) It emerges from the evidence of prosecution witnesses that, RDX and ammonium nitrate had been used for exploding the bomb. For this purpose, the evidence of Assistant Chemical Analyzer PW-261 (Dr. Suhas Bakre) is very important. On the basis of his examination report, the prosecuting agency came to the conclusion that, there was use of RDX and ammonium nitrate in the said bomb-blast. Admittedly, as discussed under the caption of Contamination, it is observed that the contaminated articles were sent for analysis. On the spot of incident, the result of analysis was inconclusive. It is not supported by his crime-scene-report or any other preliminary test report. Admittedly, Ammonium Nitrate is also found in various articles which are available in market. All these aspects are considered in detail lateron separately. Considering all the aforesaid aspects and as discussed in detail under separate para, it is abundantly clear that absolutely there was no scientific proof or test carried out on the spot to show that IED / Bomb was fitted in the alleged motorcycle. Even for the sake of moment, it is assumed that, PW-261 (Dr. Suhas Bakre) and their team had carried out some test on the spot but the result was negative. On the basis of entire admissions given by the witnesses, it cannot be conclusively said that, result of analysis showing RDX

and Ammonium Nitrate was accurate and proper, when contaminated samples were collected and analyzed.

Casualties:

123) The accused are facing trial for offence punishable under Section 302 of IPC and Section 16 of UAPA. Therefore, it is incumbent upon the prosecution to prove the death of deceased Shaikh Mushtaq Shaikh Yusuf, Farheen @ Shagufta Shaikh Liyakat, Shaikh Rafique Shaikh Mustafa, Sayyed Ajhar Sayyed Nisaar, Harun Shaha Moh. Shaha and Irfan Jiyaullah Khan.

124) As per the prosecution, the evidence on record is sufficient to show that, all the accused had conspired and executed their plan by exploding the bomb in public place in the month of Holy Ramzan, on 29.09.2008, between Anjuman Chowk to Bhiku Chowk, in front of Shakeel Goods Transport, Malegaon. As a result of it, 101 persons sustained multiple injuries and six persons succumbed to injuries and passed-away. The testimony of experts, injured witnesses, doctors, coupled with injury certificates and post-mortem reports are self-explanatory to show that innocent persons sustained multiple injuries and six persons succumbed to injuries passed away.

125) On the other hand, advocate for A-1, A-4, A-6, A-9, A-11 and A-5 in person have submitted that, the injured persons may have sustained injuries and six may have succumbed to injuries and passed away, but those injuries were not caused by bomb explosion as per allegations. Therefore, the death of those persons cannot be

said to be unnatural or homicidal. In addition to it, as per the submissions of learned advocate for A-10, the injured witnesses did not receive the injuries in the alleged bomb-blast. The more possibility of sustaining injuries by those injured was due to use of the force by police on ferocious mob. The certificate issued by doctors are fake and fabricated, and hence cannot be relied upon.

126) The aforesaid rival submissions can be tested on touchstone of evidence on record. In order to prove the guilt of the accused, the prosecution has examined total 323 witnesses. To substantiate the death of aforesaid six persons was homicidal in nature the prosecution has placed their reliance on oral evidence as well as documentary evidence.

127) To substantiate the contentions, the prosecution has examined 85 injured witnesses, guardian for three minors, for the rest of witnesses (i.e. two injured being untraceable, two injured being medically unfit, seven injured passed-away during trial) and injured persons Doctors are examined who treated them. In order to prove the death of aforesaid six persons was homicidal in nature, the three doctors namely PW-1 (Dr. Ajit Patil), PW-3 (Dr. Laxman Chavan), PW-8 (Dr. Bhalchandra Chikhalkar) who conducted post-mortem on dead bodies are examined.

128) Besides, aforesaid oral evidence, the prosecution placed, their reliance on the documentary evidence consisting of FIR, statements of witnesses, injury certificates, post-mortem reports, inquest panchanama, seizure of clothes and splinters, reports of Chemical

Analyzer. As per the evidence on record, the list of deceased along-with cause of death and injuries sustained are mentioned in tabular format as follows:

PW No.	Name of Doctor who performed Post-mortem	Deceased name	Cause of death	Inquest & PM report
1	Dr. Ajit Patil	i)Shaikh Mushtaq Shaikh Yusuf	Haemorrhage and shock due to bomb blast injuries as noted in Post-mortem report.	Exh.5753 & Exh.5100
		ii) Farheen @ Shagufta Shaikh Liyakat	Haemorrhage and shock due to bomb blast injuries as noted in PM report.	Exh.5751 & Exh.5101
		iii) Shaikh Rafique Shaikh Mustafa	Haemorrhage and shock due to bomb blast injuries as noted in PM report.	Exh.5754 & Exh.5102
		iv) Sayyed Ajhar Sayyed Nisaar	Haemorrhage and shock due to bomb blast injuries as noted in PM report.	Exh.5752 & Exh.5103
3	Dr. Laxman Chavan	Harun Shaha Moh. Shaha	Shock due to brain injury due to bomb blast	Exh.5741 & Exh.5119
8	Dr. Bhalchandra	Irfan Jiyaullah	Haemorrhage and shock due to	Exh.5732 &

	Chikhalkar	Khan	multiple injuries in a case of bomb blast.	Exh.5223

Evidence on the Point of Death of Shaikh Mushtaq Shaikh Yusuf:-

129) In order to prove the death of Shaikh Mushtaq Shaikh Yusuf was homicidal in nature, the prosecution has examined and placed their reliance on the testimony of PW-1, PW-106, PW-113, PW-114, PW-117, PW-128, PW-184.

130) The PW-114 (Ismali Khan Sagir Khan) is relative of deceased Shaikh Mushtaq Shaikh Yusuf. He testified that, the incident of bomb-blast which took place at Bhiku Chowk. Shaikh Mushtaq Shaikh Yusuf sustained injuries in the said blast. On hearing the news of his relative, he rushed towards the Faran Hospital and came to know that Shaikh Mushtaq passed away. His dead body was forwarded to Wadiya hospital. Then, he went to Wadiya hospital. No doubt, PW-114 is hearsay witness about the incident and injuries sustained, but he has seen the dead body of his relative in the hospital and identified the same. Thus, dead body was duly identified.

131) The PW-106 (Salim Ahmed Khurshid Ahmed) has deposed that, on 30.09.2008, he was present in Wadiya hospital. He acted as a panch witness while preparing inquest panchanama. He has seen the dead body of Shaikh Mushtaq Shaikh Yusuf in Wadiya Hospital. The inquest panchanama vide **Exh.5753** is prepared in his

presence. And injuries observed by them are also mentioned in the inquest panchanama.

132) The inquest panchanama is prepared by PW-117 (Executive Magistrate / Tahsildar, Malegaon). He has also testified that, the inquest panchanama was prepared in presence of Panch witnesses and the injuries noticed by them are mentioned in inquest panchanama vide **Exh.5753**. Thus, prosecution has duly proved the inquest panchanama vide **Exh.5753** through the testimony of PW-106 and PW-117. Thus, both are corroborating to each other on the point of preparation of inquest panchanama and mentioning of injuries in inquest panchanama.

133) The PW-1 (Dr. Ajit Patil) has conducted autopsy on four dead bodies, out of which one dead body of Shaikh Mushtaq Shaikh Yusuf. He received the dead body along-with inquest panchanama. He has noticed some external injuries on the dead body, those are abrasions over forehead, face, left knee, left ankle, left hand, performed injury over back and left side, oozing of blood from injury site. These injuries are also specifically mentioned in post-mortem report. All injuries were ante-mortem and fresh.

134) **PW-1 (Dr. Ajit Patil)** opined that, the cause of death was hemorrhage and shocked due to blast injuries and noted in post-mortem report. The manner of causation of injury impact with hard and blunt object, may cause abrasion, contused abrasion. Metallic foreign object may cause perforated injury mentioned in column 7B. The injury is noted in post-mortem which is not self-

inflicted. Those are collectively sufficient in ordinary course of nature to cause the death of person. The perforated injury mentioned in column no.7B is individually sufficient in ordinary course of nature to cause the death of person.

135) The PW-1(Dr. Ajit Patil) has identified the post-mortem report (**Exh.5100**) prepared under his signature and signature of Dr. A. G. Pathak. Thus, post-mortem report is duly proved by PW-1. Thus, testimony of doctor coupled with post-mortem report itself shows the opinion given by the doctor on the basis of the nature of injuries, types of injuries, cause of death. So, it cannot be brushed aside lightly merely on the count that, viscera report is not filed on record by prosecution.

136) The PW-1 (Dr. Ajit Patil) has handed over the specimens collected and sealed parcel to Police Constable BN.1410 Mr. Deshmukh. The learned advocates for accused have rightly pointed out that, the police constable Deshmukh was not examined by prosecution on this point. The clothes seizure panchanama (**Exh.5828**) was prepared in the presence of **PW-113 (Ramesh Nikam)**. He identified the said panchanama and clothes (Art.12 colly). The PW-128 (Rajendra Chaudhari) testified that, the viscera were preserved for analysis purpose along-with clothes. The sealed viscera and clothes parcel were handed over to him by Shri. Akade along-with four reports of Medical Officer to deposit the same at DFSL, Nashik. He had deposited the said parcels in DFSL Nashik.

137) The PW-184 (Dr. More) has also corroborated the testimony of PW-128 (Rajendra Chaudhari) on aforesaid point. He has deposed that, he received the 8 sealed parcels with covering letter of LCB, Malegaon. In those parcels there were clothes of Shaikh Mushtaq Shaikh Yusuf for analysis. He has done analysis by performing the various tests. He found Nitrite test positive and accordingly, he prepared the report mentioning that Nitrite the residue of explosion of Organo Nitro compound was detected on Exh.no.1 i.e. cloth of deceased Shaikh Mushtaq Shaikh Yusuf. Therefore, non-examination of Police Constable Deshmukh would not affect the case of prosecution.

138) The PW-184 (Dr. More) for conducting the blood grouping, forwarded the clothes to biological department. As per biological department, the stains on clothes were human blood and blood grouping could not be detected.

Evidence on the point of death of Farheen @ Shagufta Shaikh Liyakat:

139) In order to prove the death of Farheen @ Shagufta Shaikh Liyakat was homicidal in nature, the prosecution has examined and placed their reliance on the testimony of PW-95, PW-106, PW-01, PW-128, PW-184, PW-117, PW-113.

140) It has come in the evidence of PW-95 (Liyakat Moiddin Shaikh) that, there was blast at Bhiku Chowk, Malegaon. His daughter who was present at Bhiku Chowk, at the relevant time, sustained injuries and admitted to Faran Hospital. He rushed towards Faran Hospital and he saw his daughter died due to incident of blast.

Though, he is hearsay witness, but he has seen his daughter who sustained injuries and admitted in hospital and passed away due to succumb to injuries.

141) It has come in the evidence of PW-106 (Salim Ahmad Khurshid Ahmad) that, he has acted as a panch witness being called at Wadiya Hospital. He had seen the dead body of Farheen @ Shagufta. They noticed injuries on back portion of dead body caused by splinters. The inquest panchanama was prepared in his presence vide **Exh.5751**. He identified the same. The testimony of this witness is also corroborated by PW-117 (Executive Magistrate Kisanrao Mhasane). He prepared the inquest panchanama of dead body of Farheen @ Shagufta in the presence of panch witnesses. They noticed some injuries on dead body and those are mentioned in the inquest panchanama. Thus, inquest panchanama is duly proved through the testimony of aforesaid witnesses.

142) The PW-1 (Dr. Ajit Patil) alongwith Dr. A. G. Pathak have performed autopsy on the dead body of Farheen @ Shagufta. They have noticed the external injuries on the dead body, those were perforated injury on her face, jaw was fracture and dislocated, contused lacerated would on her scalp, perforated injury on her back, contused lacerated wound over back, lacerations and abrasions on her arm, etc. They have mentioned all the injuries in their post-mortem report. Those injuries were ante-mortem in nature and fresh. The manner of causation of injury impact with hard and blunt object which caused abrasions and contused

abrasions. Metallic foreign object caused perforated injury mentioned in column no.3(B). The injuries noted in post-mortem report were not self-inflicted injuries. Those injuries are collectively sufficient in ordinary course of nature to cause the death of a person. Perforated injury mentioned in column no.3(B), is individually sufficient in the ordinary course of nature to cause a death of person. They have also collected specimen from a dead body as mentioned in PM report and handed over to Police Constable BN.1410 Shri. Deshmukh. He has identified the post-mortem report vide **Exh.5101**. Thus, PM report is duly proved through the testimony of PW-1.

143) The clothes seizure panchanama marked as **Exh.5825** was prepared in the presence of PW-113 (Ramesh Nikam). He identified the said panchanama and clothes vide **Art.9**.

144) The PW-128 (Rajendra Chaudhary) testified that, the viscera and clothes which were preserved for analysis were sent for analysis to DFSL, Nashik alongwith covering letter. PW-184 (Dr. Bhausaheb More) has deposed that, he received the parcels and covering letter. He has received the exhibits i.e. viscera of left lung, skin at injury site, metallic pieces in bottle, skin from injury site. After analysis, he has given the result of analysis in his report vide **Exh.6769**. The result of analysis was nitrite the residue of explosion of Organo Nitro compound was detected on Exh.1 to 4.

145) The post-mortem report itself crystal clear indicating that the death is unnatural and injuries are consistent with blast injuries. Post-

mortem report is duly proved by PW-1. The testimony of Doctor coupled with post-mortem report itself shows the opinion given by the doctor on the basis of the nature of injuries, types of injuries, cause of death. Nothing brought to my notice or on record to disbelieve the said post-mortem report.

Evidence on the point of death of Shaikh Rafique Shaikh Mustafa:-

146) In order to prove the death of Shaikh Rafique Shaikh Mustafa is homicidal in nature, the prosecution has relied upon the testimony of PW-94, PW-106, PW-113, PW-117, PW-1, PW-128, PW-184, PW-185 and documentary evidence on record.

147) It has come in the evidence of PW-94 (Noor Jaha Shaikh Rafiq) that, her husband had been to Bhiku Chowk on the date of incident. He sustained injuries and taken to Faran hospital. She came to know the said news from some persons. Later on, she came to know that her husband passed away in the hospital. No doubt, she is hearsay witness about the incident and injuries caused to her husband.

148) The inquest panchanama is prepared by PW-117 (Mr. Kisanrao Sukaji Mhasane, Executive Magistrate/Tahsildar, Malegaon) in the presence of panch witness PW-106 (Salim Ahmad Khurshid Ahmad). Both of them have identified the inquest panchanama vide **Exh.5754** and their signatures. In Wadiya hospital, they have seen the dead body of Shaikh Rafique Shaikh Mustafa and injuries appearing on the dead body. Those injuries are also mentioned in the inquest panchanama. The apparent cause of death as per these

witnesses are due to big bleeding injury below the chest portion of the deceased.

149) The PW-1 (Dr. Ajit Patil) has conducted autopsy on the dead body of Shaikh Rafique Shaikh Mustafa. He received dead body along with inquest panchanama. He noticed some external injuries on the dead body of deceased Shaikh Rafique Shaikh Mustafa and those are – Perforated injury on chest, contused lacerated wound over right leg, contused lacerated right side face, contused abrasion on right neck. The chest injury was deep and bleeding injury. All injuries noted in post-mortem report were ante-mortem in nature and fresh. The manner of causation of injury impact with hard and blunt object, may cause abrasions and contused abrasions. Metallic foreign object may cause perforated injury mentioned in column no.1(B). The injuries mentioned in post-mortem report were not self inflicted injuries. Injuries mentioned in the report are collectively sufficient in ordinary course of nature to cause the death of the person. Perforated injury mentioned in column no.1(B) is individually sufficient in ordinary course of nature to cause the death of a person. He has also collected the specimens from the dead body and handed over to PC BN-1410 Shri Deshmukh. He has identified the post-mortem report and its contents vide **Exh.5102**.

150) As discussed supra, though, PC BN-1410 Shri Deshmukh is not examined by the prosecution, but the clothes of deceased vide **Exh.5827** were seized in the presence of panch witness PW-113

(Ramesh Ukha Nikam). He has also identified the said clothes vide **article-11** during the course of evidence.

151) The PW-128 (Rajendra Pundalik Chaudhari), testified that, the sealed viscera and clothes parcels which were handed to him by Shri Akade. He had deposited the same to DFSL, Nashik.

152) The PW-184 (Dr. More) has also corroborated the testimony of PW-128 on the point of receipt of said parcels. He has deposed that, he received 8 sealed parcels with covering letter of LCB, Nashik, in it, there were clothes of deceased Shaikh Rafique Shaikh Mustafa vide Exh.5 (torn stained underwear), Exh.6 (Torn stained full shirt) and Exh.7 (torn stained full pant). He has done the analysis. He has conducted various tests on the said exhibits. The test regarding RDX, TNT, PETN, NCNG found negative. Only Nitrite test found positive. Accordingly, he has prepared the report mentioning that, Nitrite the residue of explosion of Organo Nitro compound was detected on the cloth of deceased Shaikh Rafique Shaikh Mustafa.

153) The PW-184 (Dr. More) further testified that for conducting blood grouping of the said articles, he has referred it to biological department. The PW-185 (Narendra Ramchandra Gosavi) deposed that, he received 8 articles from PW-184 (Dr. More). He has done the analysis and came to know that, the stains found on the clothes were human blood. The blood group could not be detected hence he has given the opinion as inconclusive.

Evidence on the point of death of Sayyed Ajhar Sayyed Nisaar:-

154) In order to prove the death of Sayyed Ajhar Sayyed Nisaar is homicidal in nature, the prosecution has examined PW-98, PW-117, PW-106, PW-01, PW-113, PW-184, PW-185, PW-128, PW-261.

155) It has come in the evidence of PW-98 (Sayyed Aasif Haji Sayeed Ahmed) that, the incident took place in the month of Ramzan. He came to know from telephonic conversation that, his cousin brother namely Sayyed Ajhar passed away in the said incident. His body was taken to Wadiya hospital and hence, he visited to Wadiya hospital.

156) The inquest panchanama of dead body was prepared by Executive Magistrate PW-117 (Mr. Kisanrao Sukaji Mhasane) in the presence of panch witness PW-106 (Salim Ahmad Khurshid Ahmad). Both of them identified the inquest panchanama and its contents vide **Exh.5752**. In Wadiya hospital they have seen dead body of Sayyed Ajhar Sayyed Nisaar and injuries appearing on the dead body. Those injuries are also mentioned in inquest panchanama vide Exh.5752. They have noticed burnt injuries and splinter injuries on the dead body of Sayyed Ajhar Sayyed Nisaar.

157) The PW-1 (Dr. Ajit Patil) has conducted the autopsy on the dead body of Sayyed Ajhar Sayyed Nisaar. He received dead body alongwith inquest panchanama. The dead body was identified by his cousin. He noticed some external injuries on the dead body of deceased Sayyed Ajhar Sayyed Nisaar and those are Superficial burn injury, contused abrasion, multiple small contused abrasions

over chest, abdomen, lacerated wound, perforated wound present over right neck posteriorly, punctured would over right scapular region. All injuries noted in post-mortem were ante-mortem in nature and fresh. All internal and external injuries in post-mortem report were ante-mortem in nature and fresh. The manner of causation of injury impact with hard and blunt object, may cause abrasions, contused abrasions, lacerations. Metallic foreign object may cause perforated injury mentioned in column no.12(B). The injuries were not self inflicted. Injuries mentioned in the report are collectively sufficient in ordinary course of nature to case death of a person. Perforated injury mentioned in injury in column no.12(B) is individually sufficient in ordinary course of nature to case death of a person. He also collected the specimen from dead body i.e. skin from burn injury site, burnt pieces of shirt and metallic pieces and handed over to the PC 1410 Deshmukh. Accordingly, PW-1 prepared post-mortem report. He identified his signature and signature of Dr. A. G. Pathak appearing on post-mortem report vide **Exh.5103**.

158) Though, PC BN 1410 Shri. Deshmukh is not examined by the prosecution, but clothes of deceased were seized under seizure panchanama vide **exhibit-5826** in the presence of panch witness PW-113 (Ramesh Nikam). He has also identified said clothes vide **Article No.10** during the course of evidence.

159) As per testimony of PW-128 (Rajendra Chaudhary), the sealed parcels were handed over to him by Shri. Akade to deposit the

same to Nashik FSL. He has deposited those articles to FSL, Nashik. The PW-184 (Dr. More) also corroborated to the testimony of PW-128 on this point. He deposed that after receipt of those parcels there were clothes of deceased Sayyed Ajhar Sayyed Nisaar vide **Exh.8** (stained torn underwear). He has done the analysis. He has conducted various tests on said exhibit. The test regarding RDX, TNT, PETN, NCNG were found negative. Only nitrite test was found positive. Accordingly, he has prepared the report mentioning that, nitrite residue of explosion of Organo Nitro compound was detected on the clothes of deceased Sayyed Ajhar Sayyed Nisaar.

160) It has come in the evidence of PW-185 (Narendra Gosavi) that, he has confirmed the presence of human blood on stained torn underwear (**Exh.8 i.e. Article-10**) of deceased Sayyed Azahar Sayyed Nissar.

161) The PW-261 (Suhas Bakre) deposed that, he has received 3 bottles which were brought by HC 1731 on 04.10.2008. He found in first bottle i.e. Exh.1 small metallic piece, in Exh.2 blackish colour pieces of shirt with yellow strips, in Exh.3 skin pieces in glass bottle. All the exhibits were lebeled as "PM no.AGP/784/2008 date 30/9/08 Sayyed Azahar Sayyed Nissar." He has done chemical analysis on 3 bottles and prepared report. He mentioned in it that, nitrite the residue of explosion of Organo Nitro compound was detected on Exh.1 to 3.

<u>Evidence on the point of death of Harun Shaha Mohd. Shaha</u> :-

162) In order to prove the death of Harun Shaha Mohd. Shaha is homicidal in nature, the prosecution has examined PW-100, PW-101, PW-105, PW-3, PW-117.

163) It has come in the evidence of PW-100 (Ekbalshaw Hrun Shah) that, he was present at Bhiku Chowk. There was a bomb-blast at Bhiku Chowk. His father sustained injuries in said bomb-blast. His father was admitted in Faran hospital. He went to see his father in Faran hospital and came to know that his father sustained burn injuries on various part of his body. His father passed away during the treatment in the hospital. He identified the dead body of his father.

164) It has come in the evidence of PW-101 (Mustaq Shah Harun Shah) that, his father sustained injury in the incident of bomb-blast at Bhiku Chowk and taken to Faran hospital. His father received burn injuries on various part of body and thereafter referred to Medical Hospital, Malegaon. His father died in the hospital while taking treatment.

165) The PW-105 (Rizwan Khan Amanulla Khan) deposed that, on 12.10.2008, he had been to City care hospital, Malegaon. He saw the dead body of deceased Harun Shah. They noticed burn condition on back, legs, chest, ears and nose of the dead body. The son of deceased has identified dead body of his father. A inquest panchanama was prepared in his presence vide **Exh.5741**. The inquest panchanama was prepared by PW-117 (Mr. Kisanrao Mhasne, Executive Magistrate, Malegaon) in the presence of panch

witnesses. He has also seen dead body of Harun Shah Mohd. Shah and burnt injuries appearing on the dead body of Harun Shah Mohd. Shah. It is also mentioned in the inquest panchanama.

166) The PW-3 (Dr. Laxman Chavan) has deposed that, on 12.10.2008, he received dead body of Harun Shah Mohd. Shah for post-mortem examination. He conducted post-mortem on the dead body of Harun Shah Mohd. Shah. He has noted the injuries noticed on dead body at serial no.17 of his post-mortem report. The 74% burn injuries were found deep in nature on the dead body. The injuries were ante-mortem in nature. After examination, he had opined that, the cause of death was due to shock due to burn injuries due to bomb-blast. He identified the PM report vide **Exh.5119**.

Evidence on the point of death of Irfan Jiyullah Khan :-

167) In order to prove the death of Irfan Khan Jiyaullah Khan is homicidal in nature, the prosecution has examined PW-96, PW-97, PW-104, PW-179, PW-8, PW-109, PW-110, PW-261, PW-185.

168) The PW-96 (Ziyaulla Khan Ainulla Khan) is father of deceased Irfan Khan. It has come in his evidence that, on 29.09.2008, the incident occurred at Bhiku Chowk, Malegaon. His son Irfan had been to Bhiku Chowk. His son was admitted in Faran hospital for treatment. Then, referred to Nashik Civil hospital and at last he was shifted to Mumbai J.J. hospital. His son passed away in J. J. hospital, Mumbai.

169) The PW-97 (Usman Khan Ainulla Khan) is relative of deceased Irfan Khan. It has come in his evidence that, his nephew Irfan sustained injuries in bomb-blast incident which took place at Bhiku Chowk. He was shifted to Faran hospital, thereafter to Nashik hospital and at last he was referred to J. J. hospital, Mumbai. He passed away in J. J. hospital, Mumbai.

170) The PW-104 (Ashfaq Shaikh) is a panch witness. He deposed that, he had been to J.J. Hospital. He saw dead body of Irfan Jiyaullah Khan. The dead body of Irfan Jiyaullah Khan was identified by his brother. Inquest panchanama was prepared in his presence of PW-104 by police. He identified contents of panchanama vide **Exh.5732**.

171) In the year 2008, PW-179 (Uttam Trambak Pawar) was serving as PSI. He had been to J. J. hospital for preparing inquest panchanama. He prepared panchanama in the presence of panch witnesses. The dead body of deceased Irfan was identified by his brother. His brother told that, Irfan sustained injuries in bomb-blast and hence, he was admitted in the hospital. He identified the inquest panchanama vide **Exh.5732**. The doctor has conducted post-mortem and prepared the report. Thereafter, the doctor has handed over preliminary cause of death certificate to him. The inquest panchanama is duly proved by prosecution through the testimony of PW-104 and PW-179.

172) The PW-8 (Dr. Bhalchandra Chikhalkar) has testified that, he had received dead body of Irfan and he conducted autopsy on the dead

body of Irfan. He noticed external injuries on the dead body and mentioned in column no.17. Those injuries are wound on abdomen, multiple abrasion on chest, wound on arm, multiple superficial punctured wound on back and on buttocks, two circular punctured wound present on calf region, lacerated wound. In his post-mortem report, he has given the cause of death as hemorrhage and shock due to multiple injuries in case of bomb-blast (Unnatural). He identified the post-mortem report and contents of post mortem report vide **Exh.5223**.

173) On the point of seizure of clothes the prosecution has examined PW-109 (Ansari Ahmed). He deposed that, the clothes were seized in his presence under panchanama. He has identified the said seizure panchanama vide Exh.5784 and the clothes bearing article nos.4 and 5. The splinters were removed from the body of deceased. On the point of seizure of those splinters, the prosecution has examined PW-110 (Ansari Shakil Ahmed Sohail Ahmed). He deposed that, the splinters were kept in 6 bottles which were seized by Mr. Akade by preparing a panchanama in his presence. He identified all six panchanama papers vide **Exh.5786 colly**.

174) The PW-261 (Dr. Suhas Bakre) deposed that, he received the articles as per **Exh.6051** on dated 07.10.2008 from LCB Nashik Gramin. He had done the chemical analysis on all those articles.

-Nitrite the residue of explosion of Organo Nitro compound was detected on exhibit nos.(1), (2), (3), (4), (7), (9), (13), (18), (19), (21), (22), (23), (25) and (26)

-No explosive/explosive residues were detected on exhibit nos. (5), (6), (8), (10), (11), (12), (14), (15), (16), (17), (20) and (24).

Accordingly, he prepared report and forwarded to PI LCB Nashik Gramin vide **Exh.7302**.

175) The PW-185 (Narendra Gosavi) deposed that, he received two articles from S. M. Bakare of General Analytical and Instrumentation Division. One article was yellow colour stained full pant and other was white stained full shirt. The articles were containing blood. He analyzed as to whether the said blood was human or not. After examination, he came to know that, the stains which were noticed of human blood. Accordingly, he prepared the report vide **Exh.6772**.

176) Firstly, it is necessary to mention the admitted position which came on record that, all accused persons except the advocate for A-10 have admitted the post-mortem (Autopsy) reports of all six deceased persons / victims. The autopsy reports are duly admitted on behalf of A-1, A-4, A-5, A-6, A-9 and A-11 in their respective cross-examination of PW-1 (Dr. Ajit Patil), PW-03 (Dr. Laxman Chavan), PW-08 (Dr. Bhalchandra Chikhalkar).

177) Now, pertaining to the first contention of learned advocates for A-10 is that inquest panchanama are not properly drawn. The dead

bodies were not duly identified. Panch were not called on the spot. In order to decide it, it is necessary to mention that, the requirement of law is that, an inquest panchanama should be drawn in the presence of panch witnesses by mentioning the apparent cause of death and by describing the wounds, fracture, bruises and other marks of injuries are found on the dead body and stating that, in what manner or by what weapon or by what instrument if such marks appear to have been inflicted.

178) In the present case, admittedly, the inquest panchanamas are prepared by Executive Magistrate (Tahsildar) in the presence of panch witnesses. Both of them have identified the inquest panchanama. In their presence, the dead bodies were also identified by the relatives of deceased persons. Prima facie, on the dead body of injured persons what injuries apparently they have noticed are mentioned by them in the inquest panchanama and it is admissible in evidence. They have also narrated and mentioned the apparent cause of death. Thus, the basic requirement or basic purpose of holding an inquest is to report regarding apparent cause of death namely, whether it is suicidal or homicidal or accidental or by some machinery, etc. is also fulfilled.

179) Considering the testimony of aforesaid witnesses, as discussed supra, it can be said that, in inquest panchanama the apparent cause of death is based upon the observations and inspection of condition of dead body by the witnesses. Moreover, all the inquest panchanamas are duly proved by the witnesses. It was prepared in

their presence. Therefore, nothing survives in the point raised by the learned advocate for A-10.

180) The PW-1 (Ajit Patil) is not cross examined by learned advocates for A-1, A-4, A-6, A-9, A-11 and A-5 in person. PW-1 was cross examined by learned advocate for A-10 only. In cross examination, he has admitted that, the viscera of four dead bodies which were collected after the post-mortem were sent to Ballistic Experts only and not to Chemical analysis. Merely, not sending the visceral organs to chemical analyzer will not affect the finding given by the doctor in his post-mortem report. The findings are very specific regarding the cause of death. Injuries sustained by the deceased persons are sufficient in ordinary course of nature to cause the death. In view of aforesaid findings, I am not inclined to accept that not sending the viscera chemical analyzer and obtaining their report is fatal to prosecution. It is one of the lapse but it would not be benefited to the accused in view of oral and documentary evidence i.e. inquest panchanama and PM report on record.

181) In cross-examination, PW-1 has admitted that, the injuries noticed in post-mortem report on the body of Shaikh Mushtaq Shaikh Yusuf would be possible on account of explosion of any other kind in ordinary course. Though, the admission is given by the witness but I did not find any force in the said admission as except the said explosion, there were no any other explosion brought on record. Therefore, mere suggestions and admission given will not affect

the core testimony of the said witnesses and other documentary evidence placed on record.

182) The another contention of learned advocate Shri. Sangle for A-10 is that the viscera report of deceased Shaikh Mustaq Shaikh Yusuf is not filed on record. So death could not be confirmed due to blast injuries. As discussed supra, the oral testimony of aforesaid witnesses coupled with documentary evidence on record itself depicts that, the injuries sustained by the deceased Shaikh Mustaq Shaikh Yusuf is sufficient in ordinary course of nature to cause death. Therefore, even the viscera report along with the final cause of death is not filed on record would not affect the findings given by the doctor while conducting the post-mortem report alongwith the cause of death and injuries noticed by them. Moreover, in the absence of any other reasons for causation of injuries which resulted into death, it cannot be said that he passed away due to any other reasons other than those are mentioned in post-mortem report. Therefore, I do not find any force in the said contention.

183) In cross-examination of doctors, the learned advocate Shri. Sangle for A-10 had given some suggestions and thereby tried to bring it on record that, the injuries sustained by deceased persons and reason of cause of death would be different than narrated by the witnesses. But, all the suggestions are denied by the doctors except the stray admissions. The cause of death given by the doctors are specific. The doctors have specifically given their opinion and

findings that the injuries sustained by the deceased persons are sufficient in ordinary course of nature to cause death. Though, the viscera report along with final cause of death are not filed on record, as discussed supra, but it would not affect the concurrent findings given by the doctors while conducting the post-mortem report along with cause of death. The evidence on record clearly suggests that, the deceased have sustained the injuries in the said explosion and not by any other means. The inquest panchanamas are also clearly shows that, the apparent cause of death which is based upon the observations and inspection of condition of dead bodies. The injuries sustained by the deceased persons as discussed above in tabular format, by stretch of imagination does not suggest that, those are self inflicted injuries or due to any other explosion caused such injuries. Considering the entire testimony of witnesses along with the supporting documents as discussed supra, in my view, except the aforesaid incident there is nothing on record to show that how the victim has caused the injuries which resulted into their death. There is nothing on record which will suggest that the death of victim/injured were accidental or suicidal or natural.

184) The post-mortem reports directly and exclusively correlate with the death of victims and injuries sustained by them. The medical evidence supported by the oral testimonies of witnesses are consistent and correlate to each others on material aspects. So, minor contradictions in their testimony would not affect the core testimony of witnesses.

185) The splinters are recovered from the dead bodies of deceased. The internal and external injuries are mentioned in post-mortem reports. Those are duly proved. All those documents are collectively establishes the cause of death. Hence, taking into consideration the entire documentary evidence (inquest panchanama, post-mortem, analysis reports of expert) on the aforesaid aspect coupled with oral testimony of witnesses are sufficient to hold that, the death of aforesaid deceased persons were homicidal in nature. Therefore, the prosecution is successful in proving the death was homicidal of aforesaid six persons only.

186) The learned advocates for accused have pointed out that, though Mushtaq Ahmed Yusuf Ahmed name is appearing in FIR in the list of deceased but prosecution has not proved his death and his name is replaced by the name of Shaikh Mushtaq Shaikh Yusuf which could be clearly observed in **Exh.5753**. Considering the aforesaid contention, it is necessary to mention that the informant PSI Sudhir Patil had lodged the report, in which he had given the names of four deceased persons, who are passed away due to bomb-blast injuries. Their names are -

(I) Farheen @ Shagufta Shaikh Liyakat
(II) Sayyed Ajhar Sayyed Nisaar.
(III) Mushtaq Ahmed Yusuf Ahmed and
(IV) Shaikh Rafique Shaikh Mustafa.

187) Taking into consideration all the evidence as discussed supra, it is evident that the prosecution has failed to prove the death of the

third injured witness as named in the FIR, namely Mushtaq Ahmed Yusuf Ahmed. A bare perusal of inquest panchanama marked as **Exh.5753**, clearly indicates that, the name of Mushtaq Ahmed Yusuf Ahmed was originally inscribed and subsequently erased using whitener by the scribe of the document, and the said name was replaced with that of the deceased, Shaikh Mushtaq Shaikh Yusuf. On careful examination of **Exh.5753**, the alteration and replacement of the name is apparent. Furthermore, a thorough review of the entire record shows that, admittedly, no inquest panchanama or post-mortem report pertaining to the alleged deceased Mushtaq Ahmed Yusuf Ahmed has been prepared or placed on record. This fact is not disputed by the prosecution. Therefore, mere mentioning the name of Mushtaq Ahmed Yusuf Ahmed as a deceased person in the FIR is not sufficient to establish his death, in the absence of corroborative or any documentary evidence. Accordingly, I held that the prosecution has not succeeded in proving the death of Mushtaq Ahmed Yusuf Ahmed, despite his name appearing in the FIR as one of the deceased persons. I thus found substance in this point raised by the learned advocate Shri. Sangle for A-10.

<u>Injuries to 101 persons</u>:-

188) As per prosecution, in the bomb-blast incident 101 persons sustained multiple injuries on various parts of body. In order to prove the aforesaid contention, the prosecution has examined and relied upon the testimony of injured witnesses, doctors and medical certificates issued by concerned doctors.

189) On the other hand, learned advocates for A-1, A-4, A-6, A-9, A-11 have submitted that, the injured persons may have sustained the injuries but there is nothing on record to show that, those injuries were caused due to alleged bomb-blast. In addition to it, the learned advocate Shri. Sangle for A-10 submitted that, the injured witnesses as shown did not receive any injury in the alleged bomb-blast. They have obtained the bogus and fake certificates only to claim the compensation from Government. The evidence on record itself shows that, the more possibility of sustaining injuries by the injured persons due to use of heavy force by the Police on the ferocious mob during the relevant time.

190) Considering the claim of prosecution, in this regard, the testimony of doctors and injured persons / witnesses are important so as to decide in the explosion 101 persons sustained injuries or as per the claim of defence side as to whether it was merely shown as injured persons for getting the compensation from Government at that time. The aforesaid rival submissions can be decided on the touchstone of evidence on record. The prosecution has examined 85 injured persons/witnesses. Those are PW-12 to PW-68, PW-70 to PW-92, PW-99, PW-102, PW-103, PW-115, PW-170. In addition to it, the other witnesses are examined. The three injured being minor and hence, their relatives are examined. The two injured witnesses were not traceable and two witnesses were medically unfit during the course of trial and hence, they are not examined by prosecution. On behalf of and in addition to aforesaid witnesses

the doctors are also examined who medically treated them at the relevant time. The other witnesses excluding the aforesaid 85 witnesses are mentioned in following tabular format :-

Being reported dead during Trial	Relatives Examined	Not Traced Out during trial	Medically Unfit at the relevant time	Not called by prosecution for the want of 161 statement
07	05	02	02	01

191) It emerges from evidence on record that, after the incident, the injured were shifted to the various hospitals for medical treatment. The available doctors in those hospitals were PW-2 (Dr. Jatin Kapadnis), PW-04 (Dr. Farani Siddhiqui), PW-5 (Dr.Mahesh Telrandhe), PW-6 (Dr. Vyankatesh Zawar), PW-07 (Dr. Rajesh Sonawane), PW-09 (Dr. Ansari), PW-10 (Dr. Saeed Faizee), PW-11 (Dr. Vikram Vaidya). They have examined those injured and medically treatment provided them. They have issued the certificates. In this regard, the testimony of doctors is very important who have actually provided treatment to the injured witnesses at the relevant time. Therefore, separate charts are prepared showing the doctors have examined how many witnesses and what injuries individually they have noticed at the relevant time are mentioned.

192) The PW-2 (Dr. Jatin Kapadnis) has examined Abdul Abibul Rehman at the relevant time. He testified that, patient had lost his speech and hearing capacity in the said explosion. He issued

injury certificate narrating therein the nature of injury noticed by him. The details are mentioned as follows:-

Sr. No.	PW	Patient / injured	Nature of injuries	Injury certificate
1	Nil	Abdul Abibul Rehman @ Abdulla Habeerburr Reheman	Unable to hear and speak	Exh.5106

193) The injured witness Abdul Abibul Rehman @ Abdulla Habeerburr Reheman is examined by two doctors viz. PW-2 (Dr. Kapadnis) and PW-10 (Dr. Faizee). Both of them issued the injury certificate by mentioning the injuries noticed by them individually during the course of examination.

194) The PW-4 (Dr. Farani Siddhiqui) deposed that, the name of his hospital is Farani hospital, Malegaon. On 29.09.2008, he has examined 56 patients / injured. Accordingly, the injury certificates are issued narrating therein the nature of injuries noticed on the body of injured persons / patients as follows:-

Sr. No.	PW	Patient / injured	Nature of injuries	Injury certificate
1	33	Rasheed Mohammad Aameen	Contusion lacerated wound on left lower costal region. Multiple penetrating wound all over body, upper and lower extremities, face, abdomen and back.	Exh.5126
2	------	Qummruddin	Penetrating wound over chest.	Exh.5127

		Mohammad Sami	X-ray taken and showing splinters and hemopnumothorax. Penetrating wound on right forearm and lower extremity.	
3	------	Jameel Ahmed Noorul Hooda(Huda)	Penetrating would over abdomen and chest. Blood in the abdominal cavity (Medical terminology-hemoperitonium). Found splinters pieces in abdomen cavity.	Exh.5128
4	68	Iftekar Ahmed Manzoor Hasan	Contusion lacerated wound over left ear. Contusion lacerated wound on right index and middle finger. Abrasions over back.	Exh.5129
5	49	Atiq Ahmed Badruddin	Contusion lacerated wound over face. Tooth injury. Contusion Lacerated wound over chest. Burn over face.	Exh.5130
6	------	Amanullah Mohammad Ismail	Swelling, haematoma, penetrating wound over left chest and backside. Penetrating wound over left arm. Abrasions over extremities. X-ray of chest was taken, which shows splinters.	Exh.5131
7	30	Javed Ahmed Abdul	Swelling with tenderness and deformity near right elbow joint. X-ray of the	Exh.5132

		Kayyum	injury part was taken and it noticed dislocation of joint.	
8	17	Abdul Hamid Ahmedullah	Burn over left hand. Burn over head and face. Burn over right Lumber region	Exh.5133
9	59	Sajid Khan Aijub Khan	Contusion Lacerated wound over left temporal region. Contusion lacerated wound over right thigh.	Exh.5134
10	42	Abdul Hamid Mohammed Amin	Abrasion over left eye with head injury.	Exh.5135
11	46	Sayyed Faiz Sayyed Majid	i] Contusion Lacerated wound over right iliac region. ii] Penetrating wound over right forearm. iii] Penetrating wound over right left hand. iv] Penetrating wound over left chest. The X-ray was obtained at hospital and it shows splinters in right arm, but splinters were not removed.	Exh.5136
12	35	Fajal Rehman Lukman Khan	Penetrating wounds over left hand, left arm, left shoulder, left ankle, left leg, and right foot.	Exh.5137
13	81	Shaikh Shakil Shaikh Yunus	Penetrating wound over left foot. The x-ray of the injury part was taken in hospital and after examination of x-ray plate, it noticed two big	Exh.5138

			splinters.	
14	54	Shaikh Sharif Shaikh Yunus	Two penetrating wounds over right chest.	Exh.5139
15	41	Rashid Akhtar Atiq Ahmed	i] Penetrating wound over left ankle joint. ii] Penetrating wound over left thigh.	Exh.5140
16	29	Abu Osama Khalil Ahmed	Penetrating wound over right thigh through and through.	Exh.5141
17	65	Mujamil Hussain Mohammad Kamil	i] Penetrating wound over left eye with oedema, hemorrhage with contusion lacerated wound over eye brow. ii] Penetrating wound over chest iii] Penetrating wound over left arm iv] Penetrating wound over left scapula. v] Penetrating wound over left knee joint. vi] Penetrating wound over left ankle joint.	Exh.5142
18	------	Abdul Khalique Shafique Ahmed	i] Contusion lacerated wound over right arm. ii] Multiple penetrating over chest. iii] Penetrating wound over left hand. iv] Penetrating wound over right ankle joint. v] left eye oedema. Foreign body present.	Exh.5143

19	79	Aatiqur Rehaman Jalil Ahmed	i] The injured lost his right eye vision with punctul injury with oedema, haemorrhage. ii] Penetrating wound over left chest. iii] Penetrating wound over right elbow. iv] Penetrating wound over lower lip. v] Penetrating wound over left leg. vi] Penetrating wound over left shoulder.	Exh.5144
20	25	Siraj Ahmed Mukhtar Ahmed	i] Contusion lacerated wound over left knee. ii] Contusion lacerated wound over left leg. iii] Right parietal region, contusion lacerated wound.	Exh.5145
21	45	Shaikh Ishaque Shaikh Yusuf	i] Abrasion over extremities. ii] Contusion lacerated wound over right palm.	Exh.5146
22	62	Abdul Khaliq Mohammad Hanif	i] Penetrating wound over left forearm. ii] X-ray was taken and it shows presence of splinters.	Exh.5147
23	99	Mohammad Rizwan Mohammad Salim	i] Multiple Penetrating wounds over right shoulder. The X-ray of the injury part was taken in hospital and it shows small pieces of splinters. ii] Penetrating wound over left leg. X-ray taken and it shows presence of splinters in injury part. iii] Abrasion	Exh.5148

			over right side of face.	
24	24	Mushtaque Ahmed Shahabuddin	Contusion lacerated wound on left frontal region having size of 3 cm x 2 cm x bone deep.	Exh.5149
25	85	Mohammad Juber Ahmed Mohammad Faruq	Contusion lacerated wound over frontal region.	Exh.5150
26	34	Abdul Wahid Nisar Mukadam	i] Contusion lacerated wound over right medial side having size of injury as 14 cm x 4 cm x bone deep, bleeding was present. ii] Contusion lacerated wound over right thigh lateral side having size of 10cm x 3cm x bone deep with presence of bleeding. The X-ray had been obtained and it shows presence of splinters.	Exh.5151
27	57	Yunus Khan Yusuf Khan	i] Multiple penetrating wound over back. ii] Penetrating wound over left thigh. iii] Penetrating wound over face left side.	Exh.5152
28	58	Shaikh Shakeel Shaikh Samad	i] Injury on right and left over lower extremities having penetrating wounds. ii] Contusion lacerated wound on Left ankle joint. The size of injury was 4cm x 2cm x bone deep.	Exh.5153
29	16	Akbar Ali Murad Ali	i] Multiple Penetrating wound over face and left	Exh.5154

			eye. ii] Penetrating wound over chest. iii] Penetrating wound on right and left ankle. iv] Penetrating wound epigastric region. v] Abrasion on right forearm vi] Abrasion over left forearm. The X-ray had been taken on right arm, chest and presence of splinters are noticed on the injury portion.	
30	28	Fayaz Khan Majid Khan	i] Abrasion over frontal region. ii] Abrasion over right side face. iii] Abrasion over chest. iv] Penetrating wound on right thigh and knee joint so also left foot. X-rays were taken. The presence of splinters in thigh noticed through X-ray. The splinters were removed.	Exh.5155
31	26	Shahzad Ahmed Shabbir Ahmed	i] Penetrating wound over frontal region. ii] Multiple contusion lacerated wounds on left foot. iii] Penetrating wounds over left knee, left thigh, left foot and right buttock, X-rays were obtained of the	Exh.5156

			injury part. We noticed multiple splinters present over extremities. The injury portions were cleaned, suturing and dressed.	
32	23	Mohmmad Aabid Abdul Khalif	i] Abrasion over right hand. ii] Numbness on right side.	Exh.5157
33	19	Shahid Iqbal Farooque Ali	Contusion Lacerated wound on back having size of 6 cm x 3cm with bone deep injury.	Exh.5158
34	14	Abdul Hafeez Abdul Hameed	i] Big Contusion lacerated wound on left Iliac crest. ii] Penetrating wound over left hand. iii] Penetrating wound over forearm. iv] Penetrating wound over left temporal region. v] Contusion lacerated wound over umblicus. vi] Multiple penetrating wounds over chest and neck. X-rays were taken. The splinters were found present in x-ray report on humerus, hand, hip joint. The wounds were cleaned, bleeders ligated.	Exh.5159
35	22	Rashid Akhtar Abdul Rahim	Contusion lacerated wound on right thigh having size of 6 inch x 3 cm with bone deep.	Exh.5160
36	------	Abdullah Jamlauddin	i] Deep burn over face, head, left leg.	Exh.5161

		Ansari	ii] The wound was cleaned and then ointment was applied on injury portion.	
37	12	Sajid Ahmed Mohammad Mustafa	i] Penetrating wound over right knee joint. ii] Abrasion over extremities.	Exh.5162
38	21	Imran Ahmed Mushtaque Ahmed	i] Abrasion over face on right side. ii] Penetrating wound over right arm iii] Penetrating wound over right thigh. iv] Penetrating wound over right thumb. X-rays were obtained and it noticed splinters which were removed. The injury portions were cleaned, suturing and dressed.	Exh.5163
39	74	Aatiq Ahmed Abdul Jabbar	Penetrating wound over sacral region with presence of bleeding having injury size 1.5 cm. X-ray of pelvis was taken and noticed presence of foreign body in pubic region. On exploration, a bullet was found retroperitonially at posterior superior iliac spine. Bullet was removed and then drain kept and wound closed.	Exh.5164
40	40	Anees Ahmed Abdul Majid	Compound fracture over lower end of tibia fibula, on left side.	Exh.5165

41	27	Shaikh Isarail Shaikh Shakil	Penetrating wound over back, right knee, right ankle and left ankle. X-rays were taken. In Injury portion of right ankle x-ray, presence of splinters were noticed and it were removed.	Exh.5166
42	15	Haris Anjum Anis	Penetrating wound over right thigh, right lumbar, right ankle and right leg. X-rays were obtained and after verification of x-ray plates, it noticed presence of splinter in right hip, legs, and thigh. The splinters were removed.	Exh.5167
43	82	Mohammad Sohail Mohammad Harun	i] Multiple Penetrating wound over left lower leg. ii] X-ray was obtained and noticed splinters in left lower leg injury portion.	Exh.5168
44	20	Sayyed Hussain Sayyed Latif	i] Penetrating wound over chest, left lumbar, left knee and left ankle, so also multiple penetrating wounds over backside of body. iii] Contusion lacerated wound on left index finger. X-rays were obtained in respect of injury portions and after checking x-ray plates, we noticed multiple small splinters were present on left knee ankle injuries portion. The wounds were cleaned, sutured and	Exh.5169

			dressed.	
45	13	Shaikh Mohammad Mobin Gulam Gaus	Grade third compound fracture on left lower leg.	Exh.5170
46	67	Nawaz Ahmed Mohammad Salim	Contusion lacerated wound over thumb left hand, nail removed, then wound was cleaned.	Exh.5171
47	-------	Shaikh Md. Hanif Md. Shafi	i] Multiple penetrating wound over back. ii] Contusion lacerated wound over left ankle joint.	Exh.5172
48	-------	Azmi Farzan Mudabbir Iqbal	i] Contusion lacerated wound over skull. ii] Abrasion over chest.	Exh.5173
49	92	Jubedabi Sardar Khan)	Contusion lacerated wound over left parietal region having size of 5 cm x 2cm with bone deep.	Exh.5174
50	91	Tayabba Sohail Anwar (Ansari)	i] Contusion lacerated wound on frontal region. ii] Wound was cleaned and dressed.	Exh.5175
51	86	Mohammad Sadique Mohammad Yunus	Contusion lacerated wound over left thigh - through and through, size 6 cm x 3cm – through and through, 5cm x 2cm x through and through.	Exh.5176
52	115	Abdul Hakim Adbul Karim	i] Penetrating wound over left knee joint.	Exh.5177

		Khan	ii] Abrasion over left ankle.	
53	76	Shahid Ahmed Abdul Sattar	Injuries burn over chest.	Exh.5178
54	18	Mujjamir Ahamd Nisar Ahmad	i] Contusion lacerated wound over right forearm, ii] Abrasion over extremities.	Exh.5179
55	61	Israr Ahmed Abdul Khalique	Contusion lacerated wound over frontal region having size of 4 x 1cm with bone deep.	Exh.5180
56	------	Ashfaque Shaikh Ishaque	i] Bilateral sub conjunctival haemorrhage ii] Abrasion over left leg, knee joint. iii] Tenderness over L.S. Point. The abrasion injury was cleaned and dressed.	Exh.5181

195) It has come in the evidence of PW-33 (Rashid Ahmed Mohammad Aamin) that on 29.09.2008, at about 9.30, he had been to Bhiku Chowk for purchasing chappal. There was explosion and loud sound at Bhiku Chowk. He sustained injuries and taken to Faran Hospital for treatment.

196) It has come in the evidence of PW-68 (Iftekhar Ahmed Manjur Hasan) that, due to Ramzan, he was present on his Kachori Cart. There was a blast at night hours. Some particle hit to him and he sustained injury on his hand and back. He also received flame injury on his back. He was taken to Faran hospital for treatment.

197) It has come in the evidence of PW-49 (Atiq Ahmed Badruddin) that, he was proceeding to Bhiku Chowk for purchase of some material, at the time there was a blast. The two wheelers motorcycles and cycle standing at Bhiku Chowk had damaged. He received injury on his left side nose and also on upper teeth. He was taken to Faran hospital for treatment.

198) It has come in the evidence of PW-30 (Javed Ahmed Abdul Kayyum) that, on 29.09.2008, around 9.30 p.m., he went to Masjid near to Bhiku Chowk for offering prayer, there was a loud sound at Bhiku Chowk. The smoke was coming out. He received injury on his right hand elbow portion. He was admitted to Faran hospital for treatment.

199) It has come in the evidence of PW-17 (Abdul Hamid Ahmadulla) that, on 29.08.2009, he had been in a Mosque for prayer at Bhiku Chowk, Malegaon. There was blast/explosion took place near Bhiku Chowk. He received injuries to his face, hand and also on back. He was taken to Faran hospital for treatment. While sitting in rickshaw to proceed towards hospital, he also saw there was explosion near a bicycle and motorcycle present at Bhiku Chowk.

200) It has come in the evidence of PW-59 (Sajid Khan Aijub Khan) that, on 29.09.2008, around 9.30 p.m., he was taking tea at Bhiku Chowk. There was a loud sound of blast. He sustained bleeding

injury on his right leg thigh. He was admitted to Faran hospital for treatment.

201) It has come in the evidence of PW-42 (Abdul Hamid Mohammed Amin), on 29.09.2008, around 9.30 p.m., he was on his Ragda Patice stall. There was a blast. One girl standing near the motorcycle-vehicles standing at Bhiku Chowk at that time, the said blast occurred. He sustained injury on his left side forehead. He was taken to Faran hospital for treatment.

202) It has come in the evidence of PW-46 (Sayyed Faiz Sayyed Majid) that, on 29.09.2008, around 9.30 p.m., he was at Bhiku Chowk near a Tea stall due to Ramzan festival. There was a blast at Bhiku Chowk. He received injuries of splinters on his right hand, chest and stomach. He was taken to Noor hospital for treatment.

203) It has come in the evidence of PW-35 (Fajal Fehman Lukman Khan) that, on 29.09.2008, around 9.30 p.m., he was at Bhiku Chowk for offering the prayer. There was bomb blast in a motorcycle. He received injuries on his back and both legs. He was taken to hospital for treatment.

204) It has come in the evidence of PW-81 (Shaikh Shakil Shaikh Yunus) that, on 29.09.2008, around 9.30 p.m., he was present in a hotel. In front of Nissar dairy, Bhiku Chowk, Malegaon, there was a loud sound of blast. He sustained bleeding injury by some particles on his leg. He was taken to Faran hospital for treatment.

205) It has come in the evidence of PW-54 (Shaikh Sharif Shaikh Yunus) that, around 9.30 p.m., he had been to Bhiku Chowk for taking tea. There was a blast in motorcycle. There was a heavy smoke on account of blast. He received splinters injury to his stomach.

206) It has come in the evidence of PW-41 (Rashid Akhtar Atiq Ahmed) that, he was at the shop of watches at Bhiku Chowk on 29.09.2008, around 9.30 pm, there was a blast at Bhiku Chowk. He sustained injuries on his legs and head. He was taken to Faran hospital for treatment.

207) It has come in the evidence of PW-29 (Abu Osama Khalil Ahmed) that, on 28.09.2008, he went to offer the prayer and while taking tea at hotel, at that time, there was a blast and he received injury on his right leg. He was admitted to Faran hospital for treatment.

208) It has come in the evidence of PW-65 (Mujamil Hussain Mohammad Kamal) that, on 29.09.2008, around 9.30 p.m., he was present at Bhiku Chowk for taking tea. There was a blast. He received injury on his left scalp. He was taken to Faran hospital for treatment and thereafter, he was referred to Vaidya hospital for further treatment.

209) It has come in the evidence of PW-79 (Aatiqur Rehaman Jalil Ahmed) that, he had been to Kidwai road for taking tea around 9.30 pm. There was a blast in a motorcycle and flames of fire in

air. He sustained injuries by splinters on his right eye, tooth and chest. He was taken to Faran hospital for treatment.

210) It has come in the evidence of PW-25 (Siraj Ahmad Mukhtar Ahmad) that, he was at Khudwayi Road for purchasing the articles. When he was taking tea near Bhiku Chowk, Malegaon, at that time, there was a blast at Bhiku Chowk. He sustained injury on his left leg. He was taken to Faran hospital for treatment.

211) It has come in the evidence of PW-45 (Shaikh Isaq Shaikh Yusuf) that, on 29.09.2008, around 9.30 p.m., he was proceeding to his home from Bhiku Chowk. At that time, he received injuries on his right hand and right leg. He was taken to the hospital for treatment.

212) It has come in the evidence of PW-62 (Abdul Khalik Mohammad Hanif) that, on 29.09.2008, he was proceeding towards the bazar for purchasing of material. He heard sound of blast and flame. Some motorcycles were burnt in the said incident. He received injury by some particle on his left hand. He was taken to Faran hospital for treatment.

213) It has come in the evidence of PW-99 (Mohammad Rizwan Mohammad Salim) that on 29.09.2008, he was present at Bhiku Chowk. All of sudden, there was a blast and splinters struck to his person. Somebody lifted him to Faran hospital.

214) It has come in the evidence of PW-24 (Mushtaq Ahmad Shahbuddin) that, around 9.35 pm, there was a bomb blast at Bhiku Chowk. He sustained injuries on his forehead and left eye. He was taken to Faran hospital for treatment.

215) It has come in the evidence of PW-85 (Mohammad Juber Ahmed Mohammad Faruq) that, there was a blast at Bhiku Chowk. He received injury on his upper portion of right eye/forehead. He was taken to hospital for treatment.

216) It has come in the evidence of PW-34 (Abdul Wahid Nisar Mukadam), on 29.09.2008 at about 9.30 pm, when reached near Bhiku Chowk, there was a blast and also smoke of fire. He received injury on his right thigh. He was taken to Faran hospital for treatment.

217) It has come in the evidence of PW-57 (Yunus Khan Yusuf Khan) that, on 29.09.2008, around 9.30 p.m., he was at Bhiku Chowk for purchasing chappal. There was a loud sound and fire on the spot. He sustained injury by splinters. He was taken to Faran hospital for treatment.

218) It has come in the evidence of PW-58 (Shaikh Shakil Shaikh Samad) that, on 29.09.2008, around 9.30 p.m., he was present at Bhiku Chowk near tea stall. He heard loud sound of blast. He sustained injury on his legs and admitted to Faran hospital.

219) It has come in the evidence of PW-16 (Akbar Ali Murad Ali) that, on 29.09.2008 around 9.30 p.m., he had been Bhiku Chowk, Malegaon for purchasing some articles. There was explosion near Bhiku Chowk. He sustained some injuries in the said explosion. He was taken to Faran Hospital for treatment and thereafter, taken to Nashik hospital for further treatment.

220) It has come in the evidence of PW-28 (Fayaz Khan Majid Khan) that, on 29.09.2008, around 9.30 pm, there was a blast near Bhiku Chowk, Malegaon. He became unconscious due to blast and when he regain the consciousness at that time, he saw himself in Faran hospital. He received injuries on his face, legs, chest and back.

221) It has come in the evidence of PW-26 (Shahazad Ahmad Shabbir Ahmad) that, he was present in Shakeel Goods Transport on 29.09.2008 and there was a blast at 9.30 pm at Bhiku Chowk in front of Shakeel Goods Transport. He sustained injuries on his legs and admitted to Faran hospital for medical treatment. The blast took place in a bike standing in front of Shakeel Goods Transport.

222) It has come in the evidence of PW-23 (Mohmmad Aabid Abdul Khalif) that, on 29.09.2008, he was proceeding to Khudwayi Nagar, from Bhiku Chowk, Malegaon. He heard noise of a blast. He sustained injuries on his right leg and left hand. He was taken to Faran hospital for treatment.

223) It has come in the evidence of PW-19 (Shahid Iqbal Faruq Ali) that, there was a bomb blast at Bhiku Chowk, Malegaon, which is market area. He sustained injury on his back due to splinters. He was taken to the hospital for treatment.

224) It has come in the evidence of PW-14 (Abdul Hafiz Abdul Hamid) that, on 29.09.2008, around 9.30 p.m. there was explosion and big sound at Bhiku Chowk, Malegaon. He received injury on his right hand, head, left leg, thigh, stomach, left hand, private part. He was admitted to Faran hospital for treatment and thereafter, transferred to Balaji Hospital for further treatment.

225) It has come in the evidence of PW-22 (Rashid Akhtar Abdul Rahim) that, there was blast at Bhiku Chowk, Malegaon. He sustained injury on his right leg. He was taken to Faran hospital for treatment.

226) It has come in the evidence of PW-12 (Sajid Ahmad Mohammad Mustafa) that, he had been to hotel situated at Bhiku Chowk for a tea on 29.09.2008. Thereafter, he went on pan shop for purchasing beedi. He heard big noise of explosion. He saw two wheelers were damaged. He sustained injury to his right leg and having chest pain. He was taken to Faran hospital for treatment. The witness has heard only noise of explosion. He has not pointed out exactly which vehicles were damaged.

227) It has come in the evidence of PW-21 (Imran Ahmad Mustaq Ahamad) that, he had been to Bhiku Chowk around 9.30 p.m. for purchasing clothes. There was bomb blast. He received injuries on his hand, leg and face. He was taken to the Faran hospital and Balaji hospital for treatment.

228) It has come in the evidence of PW-74 (Aatiq Ahmed Abdul Jabbar) that, on 29.09.2008, on account of festival, while he was proceeding towards his home from Bhiku Chowk, there was a loud sound. He sustained injury on his back. He was taken to Faran hospital for treatment.

229) It has come in the evidence of PW-40 (Anis Ahmed Abdul Majid) that, on 29.09.2008 at about 9.30 pm, he was at Bhiku Chowk near pan shop. There was a blast at Bhiku Chowk. He sustained injuries and taken to hospital for treatment.

230) It has come in the evidence of PW-27 (Shaikh Israil Shaikh Shakil) that, on 29.09.2008, he was proceeding to purchase chappal at that time, he heard noise at Bhiku Chowk. He received injuries on his right leg and back.

231) It has come in the evidence of PW-15 (Haris Anjum Anis) that, on 29.09.2008 around 9.30 pm, he had been to Bhiku Chowk, Malegaon. There was a bomb explosion. He received injuries in the said explosion. He was taken to Faran hospital for treatment.

232) It has come in the evidence of PW-82 (Mohammad Sohel Mohammad Harun) that, at the relevant time, he was proceeding towards Kidwai road from Bhiku Chowk. There was a blast in motorcycle. He sustained injury on his left leg and taken to Faran hospital for treatment.

233) It has come in the evidence of PW-20 (Sayyed Hussain Sayyed Latif) that, he had been to Bhiku Chowk around 9 or 9.30 p.m. He was near a tea stall. He heard big sound. He sustained injuries and shifted to Faran hospital for treatment.

234) It has come in the evidence of PW-13 (Shaikh Mohammad Mobin Gulam Gaus) that, on 29.09.2008, around 9.30 pm, he had been to cloth market, Kidvai road, Bhiku Chowk, Malegaon. He heard noise. He sustained injury to his left leg. He became unconscious on the spot. He was taken to Faran hospital for treatment.

235) It has come in the evidence of PW-67 (Nawaj Ahmed Mohammad Salim) that, on 29.09.2008, around 9.30 pm, he was taking tea at Bhiku Chowk. There was a blast and some particle hit on his left hand thumb. He sustained injury. He was taken to Faran hospital for treatment.

236) It has come in the evidence of PW-92 (Jubedabi Sardar Khan) that, she has been to Bhiku Chowk for purchase of Burkha. Around 9.30 p.m., there was a blast at Bhiku Chowk. She sustained injury on her head. Somebody taken to her to Faran hospital for treatment.

237) It has come in the evidence of PW-91 [Tayabba Sohail Anwar (Ansari)] that, she had been at Bhiku Chowk for purchase of some material. Around 9.30 p.m., there was a blast at Bhiku Chowk. She sustained injury on her right side forehead by splinters. She was taken to Faran hospital for treatment.

238) It has come in the evidence of PW-86 (Mohammad Sadik Mohammad Yunus) that, the incident occurred at Bhiku Chowk. There was a blast. On account of said blast, he sustained injury on his left leg thigh. He was taken to hospital for medical treatment.

239) It has come in the evidence of PW-115 (Abdul Hakim Adbul Karim Khan) that, on 29.09.2008, he was proceeding towards Bhiku Chowk. When he came near Shakeel Goods Transport, there was a blast. He sustained injury on his left leg below knee part by some particle. He was taken to Faran hospital for medical treatment.

240) It has come in the evidence of PW-76 (Shahid Ahmed Abdul Sattar) that, on 29.09.2008, around 9.30 p.m., he was present at Bhiku Chowk near a cloth shop. There was blast and loud sound. He was taken to the Faran hospital for treatment. He sustained injuries on his chest, left side scalp and left hand.

241) It has come in the evidence of PW-18 (Mujjamir Ahamd Nisar Ahmad) that, on 29.09.2008 around 9.30 p.m., he was proceeding towards Jama Masjid to offer a prayer. Near a hotel at Bhiku

Chowk, there was big explosion and he received injury on his right hand. He was taken to Faran hospital for treatment.

242) It has come in the evidence of PW-61 (Israr Ahmed Abdul Khalik) that, on 29.09.2008, he was going to Bhiku Chowk for purchasing a chappal. He heard loud sound. Some particles hit on his right forehead over right eye. He was taken to Faran hospital for treatment.

243) The PW-5 (Dr. Mahesh Telrandhe) was having Balaji Hospital and it is run by him. He has examined 08 injured persons / patients and mentioned the injuries as follows:

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-21	Imran Ahmed Mustak Ahmed	Injured was having foreign body in his right thumb, right forearm and right tibia posteriorly.	Exh.5188
2	PW-20	Sayyad Husaine Sayyad Latif	Foreign body on skull posteriorly, one from left clavicle posteriorly, one from left ankle joint near lower end tibia, four foreign bodies from right knee joint laterally.	Exh.5189
3	PW-14	Abdul Hafiz Abdul Hamid	i) Foreign body in lower end radius and thumb of left hand. ii) One foreign body	Exh.5190

			from right humorus lateral part. iii) One foreign body over penis anteriorly. iv) Crush injury on left side iliac bone.	
4	PW-82	Mohammad Sohel Mohammad Haroon	There was presence of foreign body in left fibula.	Exh.5191
5	PW-26	Shahazad Ahmad Shabbir Ahmad	i) Presence of foreign body in left ankle joint laterally. ii) Presence of foreign body in left knee joint posteriorly. iii) Presence of foreign body in left thigh (femur) posteriorly.	Exh.5192
6	PW-62	Abdul Khalik Mohammad Hanif	Presence of foreign body in left forearm laterally.	Exh.5193
7	PW-102	Vijay Manohar Bilaghe	The injured was having injuries on left lower leg laterally and middle. Foreign body was removed from the injuries part.	Exh.5194
8	PW-40	Anis Ahmed Abdul Mujid	Injuries on left ankle joint anteriorly. There was fracture on lower end tibia fibula on left leg. He was given medical treatment and foreign body removed from the	Exh.5195

			injury part.	

244) It has come in the evidence of PW-21 (Imran Ahmad Mustaq Ahamad) that, he had been to Bhiku Chowk around 9.30 p.m. for purchasing clothes. There was bomb blast. He received injuries on his hand, leg and face. He was taken to the Faran hospital and Balaji hospital for treatment.

245) It has come in the evidence of PW-20 (Sayyed Hussain Sayyed Latif) that, he had been to Bhiku Chowk around 9 or 9.30 p.m. He was near a tea stall. He heard big sound. He sustained injuries and shifted to Faran hospital for treatment.

246) It has come in the evidence of PW-14 (Abdul Hafiz Abdul Hamid) that, on 29.09.2008, around 9.30 p.m., there was explosion and big sound at Bhiku Chowk, Malegaon. He received injury on his right hand, head, left leg, thigh, stomach, left hand, private part. He was admitted to Faran hospital for treatment and thereafter, transferred to Balaji Hospital for further treatment.

247) It has come in the evidence of PW-82 (Mohammad Sohel Mohammad Harun) that, at the relevant time, he was proceeding towards Kidwai road from Bhiku Chowk. There was a blast in motorcycle. He sustained injury on his left leg and taken to Faran hospital for treatment.

248) It has come in the evidence of PW-26 (Shahazad Ahmad Shabbir Ahmad) that, he was present in Shakeel Goods Transport on 29.09.2008 and there was a blast at 9.30 pm at Bhiku Chowk in front of Shakeel Goods Transport. He sustained injuries on his legs and admitted to Faran hospital for medical treatment. The blast took place in a bike standing in front of Shakeel Goods Transport. **(He neither described the said vehicle nor seen its number)**

249) It has come in the evidence of PW-62 (Abdul Khalik Mohammad Hanif) that, on 29.09.2008, he was proceeding towards the bazar for purchasing of material. He heard sound of blast and flame. Some motorcycles were burnt in the said incident. He received injury by some particle on his left hand. He was taken to Faran hospital for treatment.

250) The PW-102 (Vijay Bilaghe), who was on duty and standing at Daregaon Police Chowky. He testified that he also sustained splinter injury. He was examined by PW-5 (Dr.Telrandhe) and issued certificate showing the nature of injuries noticed during examination.

251) It has come in the evidence of PW-40 (Anis Ahmed Abdul Majid) that, on 29.09.2008 at about 9.30 pm, he was at Bhiku Chowk near pan shop. There was a blast at Bhiku Chowk. He sustained injuries and taken to hospital for treatment.

252) The PW-06 (Dr. Vyankatesh Zawar) was attached to City Care Multi-specialty Hospital at Malegaon. He has examined 09 injured persons / patients who sustained injuries in the said blast and issued the certificates by mentioning the injuries as follows:

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-270	Shaikh Imran Shaikh Wahab	i) Contused lacerated wound of 2 X 0.8 X 1 cm over left foot dorsal aspect with underlying tendon injury. ii) Friction abrasion of 0.8 cm over right arm. iii) Friction abrasion of 0.6 cm over chest, left lateraly aspect. iv) Friction abrasion of 0.6 cm over left lower thigh laterally. v) Friction abrasion of 1.5 cm over left knee joint medially.	Exh.5202
2	PW-31	Mohammad Yaseen Mohammad Aamin.	i) Contused lacerated wound of 2 X 0.8 X 1 cm over dorsum of right hand with underlying tendon injury. ii)Multiple friction abrasions over right hand, palmar aspect.	Exh.5203
3	Dead	Ahmed Haji Mohammad	i) Friction abrasion of 1 cm with underlying	Exh.5204

		Hanif.	contusion over left buttock ii) Friction abrasion of 0.6 cm over left palm. iii) Fraction abrasion of over left ring finger. All the injuries were simple in nature.	
4	PW-73	Tausif Ahmed Saleem Ahmed.	i) Friction abrasion of 0.2 cm over medial aspect of left clavicle aspect of chest ii) Friction abrasion of 0.1 cm over medial aspect of right clavicle aspect of chest.	Exh.5205
5	PW-32	Abdul Rahman Raees Ahmed.	Friction abrasion of 0.6 cm over right leg lateral aspect, it was simple injury in nature.	Exh.5206
6	PW-77	Haji Abdul Hakim Aangan.	i) Contusion of 2cm over forehead, right lateral aspect. ii) Friction abrasion behind left ear pinna. iii) '3' friction of abrasions with underlying contusion over neck posteriorly. iv) Patient has sustained head injury therefore, C.T. Brain shows Cerebral edema.	Exh.5207
7	PW-63	Ziaoor Rehman Khalil Ahmed	i) Nasal bleed was present. ii) Friction abrasion of upper lip. iii) Patient has	Exh.5208

			sustained head injury, C.T. Brain shows Cerebral edema.	
8	PW-89	Tuba Aafareen Hajiju Rehaman	i) Scald of left ear pinna, upper aspect. ii) Friction abrasion over left mandibular region.	Exh.5209
9	PW-90	Ariba Sidhika Maifujur Rehaman	Friction abrasion of 0.3 cm over right leg medially. Nature of injury – Simple.	Exh.5210

253) It has come in the evidence of PW-270 (Shaikh Imran Shaikh Wahab) that, he was present at Bhiku Chowk on 29.09.2008 along with his friend. He heard loud noise. Some articles flew and struck to his leg. He was taken to City Care Hospital and by operating the iron ball was removed from his left leg.

254) It has come in the evidence of PW-31 (Mohammd Yaseen Mohammd Aamin) that, on 29.09.2008, around 9.30 pm., at Bhiku Chowk, Malegaon, there was a blast in a vehicle. He sustained injuries in the said blast and taken to hospital.

255) It has come in the evidence of PW-73 (Tausif Ahmed Salim Ahmed) that, there was a blast at Bhiku Chowk, Malegaon. He sustained injury on his chest and also sustained bleeding injury. He was taken to Wadiya hospital for treatment and thereafter, for further treatment, he was taken to City Care hospital.

256) It has come in the evidence of PW-32 (Abdul Rehaman Raees Ahmed) that, on 29.09.2008 around 9.30 pm, he had been to Bhiku Chowk for purchasing clothes. He heard loud noise in the chowk and sustained injury on his right leg. Firstly, he was taken to Dr. Iftekar hospital and thereafter, to Wadiya hospital and then City Care hospital for treatment.

257) It has come in the evidence of PW-77 (Haji Abdul Hakim Aangan) that, on 29.09.2008, he was proceeding towards Kidwai road to Bhiku Chowk for purchasing clothes. There was a blast and loud sound. There was a flames on fire in the air on account of blast. He was taken to Wadiya hospital for treatment and thereafter, City Care Hospital. He sustained injury on his back side of skull, behind right ear and on neck.

258) It has come in the evidence of PW-63 (Ziaoor Rehman Khalil Ahmed) that, on 29.09.2008, at about 9.15 or 9.20 p.m., he left Masjid after prayer. Near Bhiku Chowk, there was a loud sound and flame. He became unconscious on account of sound and flame. He was taken to City Care hospital for treatment.

259) It has come in the evidence of PW-89 (Tuba Aafareen Hajiju Rehaman) that, he was present at Bhiku Chowk. Around 9.30 p.m., there was a blast. She sustained injury to her left ear and left cheek. She was taken to City Care hospital.

260) It has come in the evidence of PW-90 (Ariba Sidhika Maifujur Rehaman) that, she had been to Bhiku Chowk for purchasing bangles. Around 9.30 p.m. there was a blast. She heard sound of blast. She sustained injury on her right leg. She was taken to City Care hospital for treatment.

261) The PW-07 (Dr. Rajesh Sonawane) was working as an Orthopedic Surgeon in City Care Multi-specialty Hospital, Malegaon. He has examined 03 injured persons / patients who sustained injuries in the said bomb-blast. Those are mentioned as follows in the tabular format along with other details:-

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-56	Shaikh Jamil Shaikh Rafique.	i) There was injury on left ring finger. X-ray was taken and I noticed fracture injury. ii) Injury on right knee joint. There was haeamarthosis in said injury. X-ray was taken, however, there was no bone injury.	Exh.5213
2	PW-55	Shaikh Usman Shaikh Luhman Qureshi.	Swelling and deformity of right knee joint, X-ray shows neck of fibula. I also notice presence of multiple abrasion on his body. Injury to knee joint was grievous injury.	Exh.5214
3	PW-75	Irfan Khan Mehamud Khan	Sever swelling over left knee joint, suggestive	Exh.5215

			of haemarthosis. X-ray report shows there was no injury to bone except soft tissue swelling.	

262) It has come in the evidence of PW-56 (Shaikh Jamil Shaikh Rafiq) that, on 29.09.2008, he was present at Bhiku Chowk. Around 9.30 p.m., there was blast and loud sound. He sustained injury on his legs, hands by splinters. He was taken to City Care hospital for treatment.

263) It has come in the evidence of PW-55 (Shaikh Usman Shaikh Lukman) that, on 29.09.2008, due to Ramzan, he went to Nisar hotel, at Bhiku Chowk, Malegaon for taking tea. There was a loud sound of blast. He received injury on his leg. He was taken to City Care hospital for treatment.

264) It has come in the evidence of PW-75 (Irfan Khan Mehamud Khan) that, he was present at Bhiku Chowk for purchasing cap. There was a loud sound in the chowk. He sustained injury to his left leg. He was taken to Government hospital and thereafter he was taken to City Care hospital for treatment.

265) PW-9 (Dr. Saeed Ahmed Ansari) was attached to Ali Akbar Hospital as a Medical Officer in the year 2008. He has examined 9 patients / injured. Those are mentioned as follows in the tabular format along with other details:-

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-44	Riyaz Ahmed Abdul Gaffur Tamboli.	Blast injury on right arm (Simple)	Exh.5250
2	Dead	Shaikh Haroon Shaikh Kalu.	i) Very small wound on right side of neck. ii) Dorsum- just below neck swelling with wound spasm of neck muscle. iii) Blunt injury right side of thigh 1/2" swelling behind right ear in scalp. iv) Swelling at right side of parietal bone v) Blunt injury on right thigh.	Exh.5251
3	PW-72	Jafar Aabid Muqtar Ahmed	Very little countusion below left clavicle.	Exh.5252
4	PW-51	Shaikh Sultan Shaikh Kalu.	Injury on right index finger on dorsum of first interphalangeal joint, the injury was caused by flying particle.	Exh.5253
5	(His mother examined as PW-93)	Mohmmad Ahemad Noor Md.	Scald back of neck, it was simple injury by burning particle.	Exh.5254
6	(Her mother examined as PW-93)	Tayyaba Sadaf Noor Md.	Abrasion over chin, it was Simple. Caused by flying object.	Exh.5255
7	PW-64	Shaqib Ahmed Rais Ahmed	i) Scald tip of nose. ii) Abrasion bridge of	Exh.5256

			nose. iii) Abrasion forehead ½ inch X 3 inch.	
8	PW-49	Atiq Ahmed Badruddin	i) Contusion lacerated wound on upper lip sutured with one stitch. ii) One tooth broken. iii) Blunt injury on chest. The nature of injuries as noticed in certificate as "Trauma by blunt object".	Exh.5257
9	PW-47	Mushtaque Ahmed Mohd. Hanif	i) Very small wound on left arm above elbow. ii) Small cut injury dorsum of second toe left region. iii) Very small wound on lateral side of left thigh. X-rays of left foot second toe, left thigh and left arm lateral side of Humer were taken and after perusal of X-ray plats it noticed Foreign Body in injury part.	Exh.5258

266) It has come in the evidence of PW-44 (Riyaz Ahmed Abdul Gafur Tamboli) that, he was having pan shop at Bhiku Chowk, Malegaon. On 29.09.2008, there was a blast at Bhiku Chowk, around 9.30 p.m. There was some fire with smoke. The water tank kept on Nissar hotel was also damaged on account of blast. He sustained

injury on his left hand. He was admitted to hospital for treatment.

267) It has come in the evidence of PW-72 (Jafar Aabid Muqtar Ahmed) that, on 29.09.2008, around 9.30 p.m., he was at Bhiku Chowk. The blast occurred in vehicle, which was standing in front of Shakeel Goods Transport, Bhiku Chowk, Malegaon. He sustained injury on his chest. He was taken to hospital for treatment.

268) It has come in the evidence of PW-51 (Shaikh Sultan Shaikh Kalu) that, on 29.09.2008, at about 9.30 p.m., there was blast at Bhiku Chowk. He sustained injury to his right index finger. He was taken to Ali Akbar hospital for treatment and his brother who also sustained injury taken to Faran Hospital.

269) It has come in the evidence of PW-93 (Nafisabanoo Noor Mohammad Ansari) that, she had been to Bhiku Chowk with her family. Around 9.30 p.m., there was a blast. Her son and daughter sustained injuries on their person. They were taken to hospital of Dr. Shakil and thereafter, for further treatment at City Care Hospital.

270) It has come in the evidence of PW-64 (Shaqib Ahmed Rais Ahmed) that, on 29.09.2008, around 9.30 p.m., he was proceeding towards Anjuman and Bhiku Chowk. He heard loud sound. Some particle hit on his head. He was taken to Ali Akbar hospital for treatment.

271) It has come in the evidence of PW-49 (Atiq Ahmed Badruddin)

that, he was proceeding to Bhiku Chowk for purchase of some material, at the time there was a blast. The two wheelers motorcycles and cycles standing at Bhiku Chowk had damaged. He received injury on his left side nose and also on upper teeth. He was taken to Faran hospital for treatment.

272) It has come in the evidence of PW-47 (Mushtaque Ahmed Mohd. Hanif) that, on account of Ramzan festival he had been to Anjuman Chowk, Khudwai Nagar for purchase of some material. There was a blast at Bhiku Chowk. He sustained injuries on his right hand and left leg. He was taken to hospital for treatment.

273) PW-10 (Dr. Saeed Ahmed Faizee) was a Private Medical Practitioner and Consulting Surgeon of Noor Hospital, Malegaon. He has examined 19 patients / injured. The injury certificates were issued and the injuries are mentioned as follows:-

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-66	Mohd. Mudassir Abdul Samad.	He had punctured injury having size of ½" X ½" over left thigh anteriorly.	Exh.5266
2	PW-87	Navid Ahmed Jamil Ahmed Ansari.	Lateral to canthus left side size by 1" X ½" X 1". (debridement suturing)	Exh.5267
3	PW-53	Shoaib Ahmad Atiq Ahmad.	Injury on right forearm contusion lacerated wound measuring 0.5" X 0.5"	Exh.5268

			volar aspect of right wrist. Foreign body was found and it was removed.	
4	PW-38	Ijaz Ahmed Riyaj Ahmed	Puncture wound on left shoulder over lateral 1/3 of left clavicle deep admeasuring 1" X 2" X 1". Foreign body (splinter) found, it was removed.	Exh.5269
5	PW-37	Tariq Abul Aziz.	i) Punctured wound on right leg on shin ½" X ½". ii) Injury on right lumber region superior to anterior superior iliac spine measuring 1" X 1". iii) Injury on right arm below elbow joint anteriorly, 1" X 1" Foreign body removed.	Exh.5270
6	PW-84	Imtiyaz Ahmed Mohammad Abbas Qureshi	Contusion lacerated wound over face measuring 2" X 1" X 1" below left eye. Debridement suturing was done. He had blood injury over coccygeal region.	Exh.5271
7	PW-60	Mohammad Hanif Khan Mohammad	Punctured wound on chest and face lateral to left eye ½" X ½".	Exh.5272
8	PW-78	Moieddin	Multiple punctured	Exh.5273

		Jamiluddin	wounds over right and left lower limbs. One injury over medial border of left scapula. Foreign body removed.	
9	PW-80	Nafiz Ahmed Jalil Ahmed	On left leg below knee joint laterally 1" X 1" and second on scalp ½" X ½". Foreign body (Splinters) removed from left leg.	Exh.5274
10	PW-83	Israr Ahmed Mohd. Farooque.	Punctured wound on right leg over shin anteriorly 1" X 1". Foreign body (Splinters) removed and discharged on 01.10.2008.	Exh.5275
11	Unfit	Shaikh Shabbir Shaikh Nooruddin.	Punctured wound on palm of right hand. The splinter was very small and therefore was not possible to remove it.	Exh.5276
12	PW-70	Firoz Ahmed Mehmud Ahmed.	He had splinters on right thigh and knee injury.	Exh.5277
13	PW-39	Mohammad Hanif Shaikh Chand	i) Injury to left testis which was hanging outside and shattered. Orchidectomy was done under general anaesthesia. ii) Injury to scalp on frontoparietal region	Exh.5278

			with fracture on skull deep. Brain was seen, debridement suturing was done.	
14	PW-52	Shaikh Ismail Shaikh Ibrahim.	i) Multiple punctured wound on scalp, right leg and abdominal wall. ii) Fracture injury of tibia fibula on left with contusion lacerated wound measuring 2 cm X 2 cm X 1 cm deep over lower 1/3rd of left leg. iii) Contusion lacerated wound measuring 3 cm X 2 cm X 1 cm in deep over anterolateral aspect of left leg. It also noticed compound fracture injury on tibia and fibula.	Exh.5279
15	PW-71	Mohammad Salim Mohammad Sabir	i) Injury on right thigh posteriorly. ii)Injury on right arm over triceps. iii)Multiple punctured wound over face and chest. Foreign Bodies (Splinters) removed from injury parts of arm and thigh under general anaesthesia.	Exh.5280
16	PW-50	Mohammad	i) Injury over right thigh above knee joint	Exh.5281

		Issac Mohammad Istrail	laterally, measuring 4" X 2" X 2" ii) Injury on right shoulder measuring ½" X ½". iii) Multiple punctured wounds over face and right arm. The Foreign Body (splinters) were removed from injury right thigh part.	
17	(Not found as per report of prosecution)	Abdulla Habeerburr Raheman.	i) Injury of blunt trauma to chest wall and throat. ii) There was blurring of vision with breathlessness. iii) Not able to talk.	Exh.5282
18	PW-36	Javed Akhtar Mohd. Israil.	i) Superficial to deep burn over both shoulder, face and both hands. ii) Multiple punctured wounds all over back and contusion lacerated wound on right arm laterally. The splinters were passed through and through.	Exh.5283
19	PW-43	Nadeem Anjum Salim Ahmed.	i) Contusion lacerated wound measuring 2" X 1" X 1" deep over posterior aspect of left knee. ii) Contusion lacerated wound	Exh.5284

			measuring 2" X 1" over posteromedial aspect of left knee. He had also multiple splinters over the back.	

274) It has come in the evidence of PW-66 (Mohammad Muddasir Abdul Samad) that, he was present at Bhiku Chowk. There was a blast and loud sound. He received injury by some particle on his left leg. He was taken to Noor hospital for treatment.

275) It has come in the evidence of PW-87 (Navid Ahmed Jamil Ahmed Ansari) that, around 9.30 pm, there was a blast at Bhiku Chowk and he sustained injury near left eyebrow. He was taken to Noor hospital for treatment.

276) It has come in the evidence of PW-53 (Shoaib Ahmad Atiq Ahmad) that, on 29.09.2008, around 9.30 p.m., he was near to Bhiku Chowk for purchasing some material. There was a blast at Bhiku Chowk. He sustained injury on his right hand. He was taken to Noor hospital for treatment.

277) It has come in the evidence of PW-38 (Ijaz Ahmed Riyaj Ahmed) that, on 29.09.2008, around 9.30 pm, there was blast explosion in motorcycle. Due to said blast, there was darkness before his eyes and he sustained injuries on his left hand shoulder. He was taken to Noor hospital for treatment.

278) It has come in the evidence of PW-37 (Tariq Abdul Aziz) that, he was at pan shop near Bhiku Chowk. There was a blast. He sustained injuries on his legs, face and stomach. He was admitted to Noor hospital.

279) It has come in the evidence of PW-84 (Imtiyaz Ahmed Mohammad Abbas Qureshi) that, he was present at Bhiku Chowk for taking tea. There was a blast at Bhiku Chowk. He sustained injury below the portion of left eye. He was taken to Noor hospital for treatment.

280) It has come in the evidence of PW-60 (Mohammad Hanif Khan Mohammad) that, on 29.09.2008, he was present at Bhiku Chowk for taking tea. Around 9.30 pm, there was a blast. He sustained injury on his left side scalp. He was taken to Noor hospital for treatment.

281) It has come in the evidence of PW-78 (Moieddin Jamiluddin) that, he was proceeding towards Kidwai road for purchase of clothes. When he reached near Bhiku Chowk around 9.00 p.m., he heard loud sound and there was flames of fire in the said chowk. He sustained injury on his back side of both legs. He was taken to Noor hospital for treatment.

282) It has come in the evidence of PW-80 (Nafiz Ahmed Jalil Ahmed) that, on 29.09.2008, he was present in a hotel located at Bhiku

Chowk. There was sound of blast. He sustained injuries on his head, left leg. He was taken to Noor hospital for treatment.

283) It has come in the evidence of PW-83 (Israr Ahmed Mohammad Farukh) that, he was present near Nisar hotel and taking tea at Bhiku Chowk. There was a blast. He heard the sound of it. He sustained injuries on his legs by some particles. He was taken to Noor hospital for treatment.

284) It has come in the evidence of PW-70 (Firoz Ahmed Mohammad Ahmed) that, on 29.09.2008, around 9.30 p.m., he had been to Bhiku Chowk near pan shop. There was a sound of some articles which was burst. He received injury by splinters on his right leg. He was taken to Ayesha hospital. Thereafter, he was referred to Noor hospital and splinters were removed from his body.

285) It has come in the evidence of PW-39 (Mohammad Hanif Shaikh Chand) that, on 29.09.2008 around 9.30 pm, there was a blast in motorcycle at Bhiku Chowk, near Shakeel Goods Transport. He received injury on his squall, private part, various parts due to splinter. He was taken to the hospital for treatment and thereafter, KEM hospital, Mumbai for treatment.

286) It has come in the evidence of PW-52 (Shaikh Ismail Shaikh Ibrahim) that, on 29.09.2008, at about 9.15 p.m. to 9.30 p.m., there was a blast at Bhiku Chowk. He sustained injury on his left leg. He was taken to Noor hospital for treatment.

287) It has come in the evidence of PW-71 (Mohammad Salim Mohammad Sabir) that, on 29.09.2008, he had been to Bhiku Chowk, around 9.30 p.m., there was a blast in motorcycle. There was flame in chowk on account of blast explosion. He sustained injuries on his right hand shoulder portion and also right leg. He was taken to Noor hospital for treatment.

288) It has come in the evidence of PW-50 (Mohammad Issac Mohammad Istrail) that, on 29.09.2008, around 9.30 pm., there was a blast at Bhiku Chowk, Malegaon. He received injuries on his right leg and right hand. He was taken to Noor hospital for treatment.

289) It has come in the evidence of PW-36 (Javed Akhtar Mohammad Istrail) that, on 29.09.2008, at 9.30 pm, he was present at Bhiku Chowk. There was blast in a bike. He sustained injuries on his face and hands. On account of blast of noise, his ears became numb. He was taken to Noor hospital for treatment.

290) It has come in the evidence of PW-43 (Nadeem Anjum Salim Ahmed) that, on 29.09.2008, at about 9.20 p.m., he went to purchase chappals and clothes at Bhiku Chowk. There was a loud sound and he became unconscious. He sustained various injuries on his body. He was taken to Noor hospital for treatment.

291) The PW-11 (Dr. Vikram Punjabrao Vaidya) was serving as Medical

Practitioner in Vaidya Hospital at Malegaon. He has examined 6 patient/injured. Those are mentioned as follows in the tabular format alongwith other details:-

Sr. No.	PW No.	Patient/injured	Nature of injuries	Injury certificate
1	PW-48	Najmul Hassain Nurul Hassain	2 to 3 splinter injury on back with contusion over occipital region with vomiting and drowsiness.	Exh.5302
2	Not found (As per report of prosecution)	Nadeem Ahemad Mohammad Lukman.	Foreign Body noticed in injury part of right leg lower region. It was penetrating fresh injury, caused by blast.	Exh.5303
3	PW-88	Shahin Usman Gani.	He noticed multiple splinter injury over face.	Exh.5304
4	PW-103	Ramjan Nisar Shah	i) Multiple splinter injury over body. ii) Contusion on occipital region.	Exh.5305
5	PW-65	Mujamil Hussain Mohammad Kamil	i) One right eye multiple splinter with cellulitis with retinal detachment. ii) Multiple splinter injury on all over body.	Exh.5306
6	PW-43	Nadeem Anjum Salim Ahmad.	i) Multiple blistar marks on body. ii) Multiple splinter removed from back	Exh.5307

			and anterior chest wall. iii) The left leg of the patient was found parasis due to splinter in spine.	

292) It has come in the evidence of PW-48 (Najmul Hassain Nurul Hassain) that, on 29.09.2008, around 9.30 p.m., he heard sound near Bhiku Chowk. He fell on the ground. He received injury on his left hand index finger. He was taken for treatment at Vaidya hospital.

293) It has come in the evidence of PW-88 (Shaheen Usman Gani) that, he had been to Bhiku Chowk for purchasing some articles. Around 9.30 p.m., there was a blast and loud sound. He sustained injury on his left side neck and taken to Vaidya hospital for treatment.

294) It has come in the evidence of PW-103 (Ramjan Nisar Shah) that, he was present at Sadar Chowk for drinking tea. Some particles struck to his body i.e. on his left hand, back side of skull and left leg. Thereafter he was taken to the hospital for treatment.

295) It has come in the evidence of PW-65 (Mujamil Hussain Mohammad Kamil) that, on 29.09.2008, around 9.30 p.m., he was present at Bhiku Chowk for taking tea. There was a blast. He received injury on his left scalp. He was taken to Faran hospital for treatment and thereafter, he was referred to Vaidya hospital for

further treatment.

296) It has come in the evidence of PW-43 (Nadeem Anjum Salim Ahmed) that, on 29.09.2008, at about 9.20 p.m., he went to purchase chappals and clothes at Bhiku Chowk. There was a loud sound and he became unconscious. He sustained various injuries on his body. He was taken to Noor hospital for treatment.

297) In the backdrop of aforesaid facts and evidence, it is also necessary to consider the various admissions given by the witnesses including doctors during the course of evidence, so as to decide as to whether the prosecution is successful to prove that total 101 persons sustained the injuries in the said explosion / blast.

298) Ongoing through the entire testimony of doctors / Medical Professionals, it can be said that, at the relavant time, they had examined total 101 patients / injured. The total 101 certificates are placed on record by the Investigating Officer of the ATS. Although, the testimony of doctors are considered, the total number of patients / injured as reflecting in tabular format goes to 111. But, total ten patients / injured are examined twice. Those are PW-14, PW-20, PW-21, PW-26, PW-40, PW-43, PW-49, PW-62, PW-65, PW-82. If the aforesaid twice listing is excluded then it comes to total number 101. Thus, the number of patients / injured tallies with the number of certificates placed on record. On the other hand, excluding the number of doctors and their testimony, the prosecution has examined only 85 injured witnesses and five

relatives of injured witnesses. Thus, the total number of 90 witnesses are examined by prosecution to prove the injuries sustained by the injured persons.

299) Rest of the injured witnesses are not examined by prosecution for the various reasons. Ashfaque Shaikh Ishaque is one of the injured as per the list of injured. He is not examined as a witness to prove the injuries sustained by him. The prosecution has submitted the reason that his statement under Section 161 being not recorded by Investigating Officer and hence, he is not examined. It is well settled position of law that though the statement of witness is not recorded by the I.O., even he can be examined as a witness. There is no bar in the law to examine such witnesses. Such witness could be examined by obtaining the permission of the Court even though he is not cited in witness list or whose statement is not recorded. Therefore, I am not inclined to accept the reason given by the prosecution for non-examining this witness.

300) The prosecution has not examined the injured witnesses Abdul Abibul Rehman alias Abdulla Habeerburr Reheman, Nadeem Ahemad Mohammad Lukman, as prosecution could not find out their whereabouts during the course of trial. On behalf of these witnesses, their relatives or friends are also not examined who had knowledge and accompanied them while taking to the hospital after the incident.

301) The next two injured witnesses namely Amanullah Mohammad

Ismail and Shaikh Shabbir Shaikh Norruddin were medically unfit at the relevant time as per prosecution. Hence, they are not examined. On behalf of these witnesses, their relatives or friends are also not examined who had knowledge and accompanied them while taking to the hospital after the incident.

302) It is necessary to mention that, learned advocate for A-10 only cross examined the doctors and injured witnesses and their relatives. A-5 in person or rest of the learned advocates for accused persons have not cross examined the doctors and injured witnesses or their relatives. The learned advocate Mr. Sangle for A-10 has given emphasis on the ID cards of injured persons / patients. In cross examination, it came on record that, injured had not carried their ID cards with them and doctors have not verified their ID cards. Hence, on the basis of the aforesaid admission, it is the contention of learned advocate for A-10 is that injured were not duly identified by the concerned doctors. Hence, without identification, it cannot be said that those were the same injured persons/patients.

303) Though, the aforesaid admission is given by some Doctors and injured persons, but it is necessary to mention that, at the relevant time, it is not expected that who sustained the injuries in the explosion should go at home or office and collect their ID cards and thereafter, only after due verification they could avail the medical treatment. The first situational demand was medical help i.e. to provide medical aid to injured persons and not the collection

& verification of their ID cards. Mere non-carrying ID cards or non-showing their ID cards or not verified their ID cards during treatment would not affect on their identity, when those injured are also examined before the Court. The aforesaid contention raised by learned advocate for A-10 is also not acceptable on another count that, there is nothing on record to show that as to why the injured person would state his wrong name at the time to taking treatment and during deposition. So, nothing survives in the aforesaid point. I don't find any force in it.

304) The learned advocate Mr. Sangle for A-10 also pointed out that, some witnesses/injured persons statement is recorded in Marathi language. They admitted that, they don't know the Marathi language. Considering the aforesaid submission and admission given by some injured, it is necessary to mention that, they deposed injuries sustained to them on that night in said explosion. Doctors have treated them and issued the injury certificates. Mere recording their statement under Section 161 of Cr.P.C. in Marathi language, which may not be known to them, would not affect the core testimony of injured witnesses. Moreover, they have specifically deposed about their location, injuries sustained by them, Doctor who treated them. Their testimony is also corroborated by doctors. So, nothing survives in this point also.

305) Though, the learned Advocate Mr. Sangle for A-10 has pointed out during the course of argument that, Atiq has sustained the bullet injury. But, it is necessary to mention that, on this sole count, it

cannot be said that the entire case of prosecution pertaining the injuries sustained by the all injured persons are false and concocted one. The PW-301 (Akade) has testified that, Atiq had sustained the bullet injury qua other injuries. The Doctor Farani (PW-4) also testified that, he removed the bullet from the body of Atiq Ahmed and handed over the police for sending the same for analysis. It may be possible that the injury sustained by injured Atiq Ahmed was due to firing of police on the furious mob during the course of post incident. PW-74 (Atiq Ahmed) had deposed that, he received the injuries in the said blast / explosion. Splinter also struck to his back and he sustained injuries. He also narrated the history of injury to Doctor. Thereafter, Doctor has examined him and medical treatment was provided to him. The doctor has issued the medical certificate also by narrating the injuries noticed by him during his examination. No doubt the Doctor has removed the bullet from the body of injured Atiq. But it is also necessary to mention that, number of persons were injured and the bullet injury is noticed in the body of single person and not in the body of other injured persons. The prosecution has examined number of injured persons before the Court but none of them except the aforesaid witnesses have deposed that they had sustained the bullet injury. Only a single person sustained the bullet injury along with other injuries. It does not mean that, all other injuries sustained by Atiq was due to firing by police. Nothing is on record to show that, in that process of firing the splinters were emitted and struck to the body of persons standing nearby the spot of incident. All the injured have categorically stated that, they have sustained the

injuries due to blast / explosion. The best available witnesses on the injuries are the injured persons who sustained the injuries in said explosion. So, did not find any force in this contention raised by the ld. Advocate for A-10.

306) Though, the ld. Advocate Mr. Sangle for A-10 urged that, the number of injuries noticed on the body of injured might be caused by counter attack by police. Considering the entire factual position and evidence on record, the possibility cannot be ruled out that some injuries sustained by injured might be used of force by police. But in the absence of positive evidence to that effect and without bifurcation of injuries or possibility shown / admitted by doctors in evidence, it is difficult to ascertain & bifurcate those injuries. Therefore, I am not inclined to accept the said proposition in toto in the absence of positive evidence on record to that effect.

307) No doubt, as per the admissions given by PW-5 (Dr. Mahesh Telrandhe) in his cross examination that, he had no knowledge as to whether those injured were examined at which hospital and who had referred them for the further medical treatment to his hospital. The medical certificates vide **Exh.5188 to 5195** are issued by Mr. Vikas Dhivare working in his hospital. Mr. Vikas Dhivare is unqualified medical practitioner. PW-5 had not issued those certificates. Those certificates does not bear his signature. Those were given at the instance of Police. Those certificates were issued to claim compensation. Those are not actual injury certificates in proper format. If those certificates would have been in proper

format then he would have personally singed it. He did not verified the identity of those injured persons. Hence, considering the aforesaid admissions, it raises the cloud of doubt regarding the injury certificates which are not issued by qualified medical practitioner i.e. PW-5. Such prohibited practice had been adopted and issued the certificates at the instance of police by unqualified medical practitioner. Admittedly, the injury certificates are required to be issued by qualified medical practitioner only as he is only authorized person to issue. Therefore, the aforesaid admissions given by Doctor, are self-sufficient to hold that, medical certificates are issued by unqualified medical practitioner only at the instance of police. Therefore, it requires a separate probe for adopting such unauthorized practice of issuing certificates without concerned doctors signature and his knowledge. Moreover, those certificates are issued by unauthorized medical practitioner on the instance of police only to claim compensation. Taking into consideration the aforesaid admissions, I am not inclined to accept those certificates as documentary evidence. It cannot be looked into as evidence, even though those are exhibited during the course of evidence. Hence, exhibit numbers 5188 to 5195 i.e. medical certificates are kept out of consideration.

308) During the course of evidence of PW-11 (Dr. Vikram Vaidya) was directed by the predecessor of this Court to submit the photostat copies (xerox) of medical certificate which he had brought with him as record of his hospital. Those photostat copies are marked as Article 'A' (Colly). PW-11 was also confronted with the medical

certificates filed on record by ATS. He admitted that those medical certificates i.e. Exh.5302 to 5307 did not disclose the date on which those were issued and handed over. The aforesaid certificates which are produced and shown to him are not original certificates. He had brought the original record. By comparing with original record, he had stated that the seal and stamp of his hospital were put later on date on the say of police. The two seals of the hospital and two stamp of his name not appearing on certificates. He cannot assign any reason for the same. Admittedly, the exhibited medical certificates i.e. filed by ATS do not match fully with the Article 'A' (Colly) i.e. filed by Doctor. The admissions given by the Doctor in cross-examination clearly shows that, there is alteration / addition seems to be done in the certificates filed on record. The said addition / alteration was done without his knowledge and consent. The alteration / addition / insertion in certificates are in the form of putting thumb impressions, serial numbers, filing up the bottom portion of certificates, adding address, etc. He has also admitted that in respect of serial number of MLC there are some fabrication of documents. In normal course, he never put / affix seal and stamp on photostat copies. He specifically admitted that to the some extent the certificates vide exhibits 5302 to 5307 are fabricated. Considering the entire admissions given by the witness and comparing the medical certificates i.e. Exhibits 5302 to 5307 with Article 'A' makes it clear that there are some insertion / addition in it. Therefore, I am not inclined to accept the aforesaid altered documents and hence, the medical certificates shown to be issued

by Doctor vide Exhibit nos.5302 to 5307 are kept out of consideration.

309) Though, the aforesaid certificates are kept out of consideration, but at the same time, it cannot be overlooked that, the injured were taken to the hospital, they narrated the injuries cause of injuries and incident to the doctors. Narrating the causation of injuries and incident immediately after the happening of incident is covered under the purview of res-gestae under Section 6 of Evidence Act. Therefore, the testimony of injured cannot be thrown away merely on the count that the aforesaid certificates are kept out of consideration. Hence, I have taken into consideration the testimony of injured witnesses.

310) Explosive is a chemical compound material or a device which releases large amount of energy in the form of heat, light, sound and shock wave when triggered. An explosion is very fast chemical reaction involving a solid, dust or gas, during which a rapid release of hot gases and energy takes place. The phenomenon lasts only some milliseconds and it results in the production of very high temperatures, pressures and blast waves. The blast waves contains a large part of the energy that releases during detonation and moves faster than the speed of sound. After explosion the particles can travel with certain velocity and hit with certain pressure.

311) The PW-261 (Dr. Suhas Bakre) deposed that there was used of RDX and Ammonium nitrate for causing the said blast / explosion. As

per testimony of prosecution witnesses, near LML Freedom Motorcycle the other bicycles were also parked. Obviously, at that time of blast number of goods / articles are get destroyed or damaged or separated from number of objects and may fly in random directions and may hit the object or persons. Thus, there is more possibility to get injuries by such flying objects / particles.

312) It emerges from the testimony of injured witnesses that, they were present at different locations nearby the spot of incident. Some of them heard the huge sound, some of them saw fire, some of them saw smoke, some of them saw damaged motorcycles, some of them saw fumes coming out, etc. So, it is natural phenomenon i.e. what they had seen from their location, they had disclosed the same. Thus, narrating various things what they saw may not be similar only because they were present at different places and looking towards the spot from different angles at the relevant time. Therefore, their version cannot be similar about the incident.

313) As per the experts, the splinters are emitted in the blast and may hit the body of person or object. The testimonies of injured are corroborates with the testimonies of doctors and police witnesses. After the incident, the injured were immediately taken to the hospital. They were treated by Doctors. Number of injured were admitted in the hospital. From the body of some injured the splinters were removed by the doctors and handed over to the police. The police had seized the said splinters under panchanama. The splinters were sent for analysis. Thereafter, doctors issued

injury certificates. Immediately after the incident, the injured were taken to hospital and they have also narrated the causation of injuries to the doctors. It is admissible as it covers under Res-Gestae (Section 6 of Indian Evidence Act) i.e. narration of the causation of injuries and incident immediately after the explosion.

314) On the point of evidential value to the testimony of injured witnesses, the Ld. SPP has placed his reliance on the following citations,

i) State of Madhya Pradesh Vs. Mansingh and Ors. (MANU/SC/0596/2003)

ii) Chittar Lal Vs. State of Rajasthan (2003 CrLJ 3548)

iii) Rijo Vs. State of Kerala (MANU/KE/0949/2009)

In case of State of **Madhya Pradesh Vs. Mansingh and Ors**. the Hon'ble Apex Court has observed in para no.9 as follows,

> 9. "*The evidence of injured witnesses have greater evidentiary value and unless compelling reasons exists, their statements are not to be discarded lightly. Merely because there was no mention of a knife in the first information report. That does not wash away the effect of evidence tendered by the injured witnesses PWs 4 and 7. Minor discrepancies do not corrode credibility of otherwise acceptable evidence. The circumstances highlighted by the High Court to attach vulnerability to evidence of the*

injured witnesses are clearly inconsequential. Though, it is fairly conceded by learned counsel for the accused that though mere non-mention of the assailants' names in the requisition memo of injury is not sufficient to discard the prosecution version in entirety, according to him it is a doubtful circumstance and forms a vital link to determine whether prosecution version is credible. It is a settled position in law that omission to mention the name of the assailants in the requisition memo perforce does not render prosecution version brittle."

In case of **Chittar Lal Vs. State of Rajasthan**, the Hon'ble Apex Court has observed in para no.8 that,

8. "*Evidence of the person whose name did not figure in the FIR as witness does perforce become suspect. There can be no hard and fast rule that the names of all witnesses more particularly eye-witnesses should be indicated in the FIR. As was observed this court in Shri Bhagwan Vs. State of Rajasthan MANU/SC/0296/2001 : 2001 CrLJ 2925 mere non-mention of the name of an eye-witness does not render prosecution version fragile*."

In case of **Rijo Vs. State of Kerala [MANU/KE/0949/2009],** Hon'ble High Court has observed as under:-

"48. Section 6 of the Indian Evidence Act reads as follows:

> *6. Relevancy of facts forming part of same transaction. - Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.*

49. The essential feature is that if a fact, which is not in issue, but which is connected to the fact in issue as to form part of the same transaction, it is admissible. As per the above provision, it has been held that the statements by an injured witness to those who come immediately to the place, regarding the incident are admissible in evidence. The principle is known as res gestae."

315) It is fairly settled position that, the testimony of injured eye witnesses always remains at higher pedestal. It should not be overlooked or discarded unless it is shown to be patently unworthy of credence. The testimony of injured witnesses has its own relevancy and efficacy and hence, on numerous times, testimonies of injured witnesses are accorded special status and are readily accepted.

316) Going by the story of prosecution, considering the entire evidence and facts narrated by the injured witnesses, I have no doubt to say that, the occurrence of incident has taken place opposite to Shakeel Goods Transport Company, between Anjuman Chowk and Bhiku Chowk, Malegaon. It is a public place. It was a month of Holy Ramzan. During that period, it was crowded and congested area. The witnesses were present nearby the spot area due to holy Ramzan. The witnesses were present there to purchase household articles, commodities / goods required for daily needs and eatables are for various other reasons. Gathering of people on the occasion of Ramzan is natural phenomena. As discussed supra, some stray admissions are given by the injured witnesses and doctors in their cross examination. But, merely on this count, the evidence of natural witnesses, injures sustained by them and their presence cannot be doubted.

317) Moreover, the testimony of injured witnesses are consistent on the point of hearing of loud sound, sustaining injuries due to explosion and it is not shaken in cross-examination. The suggestions given to the witnesses in cross examinations are categorically denied by the witnesses. From the body of injured persons the splinters are removed by the doctors. There are no any other reason came on record to show that as to why the splinters are found in the body of injured persons. Therefore, the injuries sustained by the injured persons cannot be doubted.

318) Upon over all consideration of evidence, it can be said that,

prosecution has filed total 101 medical certificates of injured persons and examined 90 injured persons including their relatives. On the point of medical certificates issued by the concerned doctors were marked as **Exh.5188 to 5195 and 5302 to 5307** are kept out of consideration for the reasons as discussed supra. The injured witnesses namely, Abdul Abibul Rehman, Nadeem Ahmed Mohd. Lukman, Amanullah Ismail, Shaikh Shabbir Shaikh Naruddin, Ashfaque Ishaque are not examined by the prosecution for the reasons as discussed supra. The prosecution has also not examined their relatives or friends in order to support the injuries sustained by them or to show their presence on the spot of incident. Hence, it cannot be said that they were present on the spot and sustained the injuries. Though, the aforesaid medical certificates (**Exh.5188 to 5195 and 5302 to 5307**) are kept out of consideration, even though it cannot be overlooked that, the injured were examined before this Court and the injuries sustained by them are also corroborated by the testimony of doctors. Therefore, it can be said that, they were present on the spot and sustained the injuries as mentioned by doctors during the course of their evidence. Thus, prosecution is successful to prove the injuries caused to 96 persons and not to 101 persons as claimed by them.

Report (फिर्याद), FIR & Station Diary Entry :-

319) The report, FIR, Station Diary entries are extensively disputed by the Ld. Advocates for accused. Before adverting the rival submissions on the point of report (फिर्याद), FIR, Station Diary, it is necessary to mention the FIR which are registered by investigating

agencies in the present case. Firstly, the FIR was registered at Azad Nagar Police Station, Malegaon & thereafter, re-registration of crime number by ATS, Mumbai. After investigation handed over to NIA, they have separately re-registered the FIR. The relevant details are mentioned in tabular format as follows:-

S.No.	Police Station	Crime Number	FIR Date
1	Azad Nagar Police Station, Malegaon	130/08	30/09/2008
2	Anti-Terrorist Squad (ATS), Kalachowki, Mumbai	18/08	21/10/2008 [Only Re-registered the crime number.]
3	NIA, Delhi.	05/2011	13/04/2011

320) The Ld. SPP has placed his reliance on the following citations on the point of FIR :-

I] Apren Joseph alias Current Kunjukunju & others Vs. The State of Kerala [AIR 1973 SC 1]. In this case Hon'ble Apex Court has observed that, the receipt and recording of information report by police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that, such information report can only be made by an eye witness. First information report u/s 154 is not a substantive piece of evidence and it can be used only to corroborate or contradict the informant's evidence in the court. In the present case, eye witness did not gather up enough courage to go to the police station and to lodge a report or to go to the place of occurrence

during the night or early in the morning to give some aid to the deceased, who undoubtedly was no blood relation of any one of the witnesses, does not show that, they had not witnessed the occurrence and the whole story is imaginary.

II] Hallu and others Vs. State of Madhya Pradesh [AIR 1974 SC 1936]. In this case Hon'ble Apex Court has observed that, FIR can be lodged by anybody. Informant need to have personal knowledge of the incident. Such report cannot be refused to be treated as FIR holding that, it is based on hearsay evidence.

III] State of Maharashtra and Ors. Vs. Mohd. Sajid Husain and Ors. [AIR 2008 SC 155]. In the present case the appeal was filed against the judgement and order dated 27.06.2007 passed by the Hon'ble High Court of Bombay, Aurangabad Bench granting anticipatory bail to the respondents. Hon'ble Apex Court has observed that, Anticipatory bail cannot be granted to the accused who can believe to be destroying evidence related to crime.

IV] Dasu and Ors. Vs. State of Maharashtra [1985 Cr.LJ 1933] In the present case, two appeals were filed against the conviction of Appellant under Section 302 read with 34 of IPC. In the present case, Hon'ble High Court has observed that, if court finds that, a single witness examined by prosecution is a truthful witness then conviction can be based on sole testimony of that witness.

V] State of A.P. Vs. V.V. Panduranga Rao [2009 Cri.LJ 2972]. In this case Hon'ble Apex Court has observed that, any telephonic information about the commission of cognizable offence irrespective of the nature of details of such information cannot be treated as FIR.

VI] Mundrika Mahto and Ors. Vs. State of Bihar [AIR 2002 SC 2042]. In this case Hon'ble Apex Court has observed that, "*In fact, the case diary shows that the furdbeyan was recorded earlier and inquest later and, thus, inquest could not be treated as the F.I.R. Similarly, the telephonic conversation also could not be treated as F.I.R., as contended, as it was a cryptic information that was received and recorded in the daily diary regarding the commission of offence.*"

VII] Dhananjoy Chatterjee Vs. State of West Bengal [1994 2 SCC 220]. In the present case Hon'ble Apex Court has observed that, "*It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis, except the guilt of the accused and the chain of the evidence must be so complete as not to leave*

any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinise the evidence lest suspicion takes the place proof."

VIII] Thaman Kumar Vs. State of Union Territory of Chandigarh [AIR 2003 SC 3975]. In this case Hon'ble Apex Court has observed that, the opinion given by the doctors pertaining to death was caused due to asphyxia caused by strangulation and the post-mortem report has been proved by the doctor. There was no inconsistency between the testimony of eye witnesses and medical evidence. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can be safely recorded even if, the motive for the commission of the crime has not been proved.

IX] Animireddy Venkata Ramana and Ors. Vs. Public Prosecutor H. C. of A.P. [AIR 2008 SC 1603]. In this case Hon'ble Apex Court has observed that, "*A court in the process of its job of appreciation of evidence may rely on a statement of a witness or may not. It may even accept the evidence of a witness in part. But without taking recourse to the right methodology of appreciation of evidence, no court of law should jump to the*

conclusion that a prosecution witness is wholly untrustworthy only because his evidence has not been corroborated by other witnesses."

X] State of Gujarat Vs. Anirudhsing and Ors. [1997 Cri.LJ 3397]. In this case Hon'ble Apex Court has observed that, it is well settled position that FIR is not a substantive piece of evidence and it can be used only to corroborate the statement of the maker u/s 157 of Evidence Act or to contradict it u/s 145 of evidence Act. The FIR can only discredit the testimony of the maker thereof. The case of prosecution cannot be thrown out on the mere ground that in FIR an altogether different version was given by the informant.

XI] Soma Bhai Vs. State of Gujarat [AIR 1975 CriLJ 1201]. In the present case the appeal was preferred by the appellant against the conviction order passed by the Hon'ble High Court. In this case Hon'ble Apex Court has observed that, "the omission about some facts would not affect the FIR as the FIR was lodged immediately after the occurrence without the least possible delay. There were no reliable evidence from which an inference can be drawn that FIR was not lodged at the Police Station Olpad but in the village Dandi."

XII] The State of Bombay Vs. Rusy Mistry and Ors. [AIR 1960 SC 391]. In this case, on the point of FIR Hon'ble Apex Court has

observed that, it is well settled that the FIR is not substantive evidence, but can be used to corroborate or contradict the evidence given by the informant in the court or to impeach his credit. It follows that, a Judge cannot place such a report before the jury as a substantive evidence, but can only refer to that portion of it which had been used for one or other of the aforesaid purposes.

XIII] Ravi Kumar Vs. State of Punjab [2005 Cri LJ 1742]. In this case Hon'ble Apex Court has observed that, "*The First Information Report is a report giving information of the commission of a cognizable crime which may be made by the complainant or by any other person knowing about the commission of such an offence. It is intended to set the criminal law in motion. Any information relating to the commission of a cognizable offence is required to be reduced to writing by the officer-in-charge of the Police Station which has to be signed by the person giving it and the substance thereof is required to be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf. The registration of the FIR empowers the officer-in-charge of the Police Station to commence investigation with respect to the crime reported to him. A copy of the FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of such offence. After recording the FIR, the officer-in-charge of the Police Station is obliged to proceed in person or depute one of his subordinate*

officers not below such rank as the State Government may, by general or special order, prescribe in that behalf to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. It has been held time and again that the FIR is not a substantive piece of evidence and can only be used to corroborate the statement of the maker under Section 161 of the Indian Evidence Act, 1872 (in short the 'Evidence Act') or to contradict him under Section 145 of that Act. It can neither be used as evidence against the maker at the trial if he himself becomes an accused nor to corroborate or contradict other witnesses. It is not the requirement of law that the minutest details be recorded in the FIR lodged immediately after the occurrence. The fact of the state of mental agony of the person making the FIR who generally is the victim himself, if not dead, or the relations or associates of the deceased victim apparently under the shock of the occurrence reported has always to be kept in mind. The object of insisting upon lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed."

XIV] Surjit Singh Vs. State of Punjab [AIR 1992 SC 1389]. In this case Hon'ble Apex Court on the point of FIR has observed that, FIR is not an encyclopedia of the entire case and is even not a substantive piece of evidence.

XV] State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors. [AIR 1992 SC 604]. In this case Hon'ble Apex Court on the point of FIR has observed that, "it is manifestly clear that if any information disclosing a organizable offence is laid before an officer incharge of a police action satisfying the requirements of Section 154 (1) of the Code, the void police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information."

XVI] Ravishwar Manjhi and Ors. Vs. State of Jharkhand [AIR 2009 SC 1262]. In this case Hon'ble Apex Court has observed that, "First Information Report, in case of criminal nature can provide for valuable piece of evidence, although it shall not be substantial evidence."

XVII] Pattad Amarappa and Ors. Vs State of Karnataka [AIR 1989 SC 2004]. In this case Hon'ble Apex Court has observed that, "the first information report Ex.P-42, however is not a wholly confessional statement, but only that part of it is admissible in evidence which does not amount to a confession and is not hit by the provisions of Section 25 of the Evidence Act."

XVIII] Damodar Prasad Chandrika Prasad and others Vs. State of Maharashtra [AIR 1972 SUPREME COURT 622]. In this case the

Hon'ble Apex Court has observed that, "FIR can be used for one of the limited purposes of corroborating or contradicting the makers thereof. Another purpose for which the first information report can be used is to show the implication of the accused to be not an afterthought or that the information report can be used under section 32 (1) of the Evidence Act or under section 8 of the Evidence Act as to the cause of the informer's death or as part of the informer's conduct."

XIX] Hasib Vs. The State of Bihar [AIR 1972 SUPREME COURT 283]. The Hon'ble Apex Court has observed that the object of FIR from the point of view of the informant is to set the criminal law in motion. Such a report does not constituted substantive evidence, though it is important as conveying the earliest information about the occurrence. It was further observed that, the FIR can be used only as a previous statement for the purpose contemplated under section 157 or section 145 of the Evidence Act.

XX] Dharma Ram Bhagare Vs. **State of Maharashtra [AIR 1973 SUPREME COURT 476].** In this case Hon'ble Apex court has observed that, "The first information report is never treated as a substantive piece of evidence. It can only be used for corroborating or contradicting its maker when he appears in Court as a witness. Its value must always depend on the facts and circumstances of a given case. The F.I.R. can only discredit the testimony of its maker. It can by no means be utilized for

contradicting or discrediting the other witnesses who do not have any desire to spare the real culprit and to falsely implicate him. Thus the prosecution case cannot be thrown out on the mere ground that in the first information report an altogether different version is given by its maker."

XXI] Nanhku Singh Vs. The State of Bihar [AIR 1973 SUPREME COURT 491].

In this case Hon'ble Apex court has observed that, " F. I. R. is not a substantive piece of evidence. It is an information of a cognizable offence given under Section 154 of the Criminal Procedure Code and if there is any statement made therein it can only be used for the purposes of contradicting and discrediting a witness under Section 145 of the Evidence Act."

XXII] George and others Vs. State of Kerala and another [1998 CRI. L. J. 2034]

In this case Hon'ble Apex Court has observed in para 30 that, "that brings us to the dying declaration made by the deceased before P. Ws.3 and 4 which has been pressed into service by the prosecution to corroborate the ocular version of P. W. 3. Before proceeding further we must confess that we have not able to fathom how the trial Court could rely upon the contents of Ext. P. 1, lodged by P. W. 1, and that too for the purpose of discarding the evidence of P. Ws. 3 and 4. P. W. 1 turned hostile and testified that he did not make any statement before the police but signed on the dotted lines. It is trite that an F. I. R. is not

substantive evidence (unless of course it is admitted under S. 32(1) of the Evidence Act) and can be used to corroborate or contradict the maker thereof; and, therefore, the question of corroborating P. W. 1 by his purported statements, as contained in Ext. P. 1 could not arise. In spite thereof the trial Court observed '. . . . . the first informant statement is further supported by the evidence of P. W. 1' and used the statements contained therein (Ext. P. 1) as substantive evidence to discredit P. Ws. 3 and 4. It must, therefore, be said that the approach of the trial Court in dealing with the F. I. R. was legally impermissible."

321) I have gone through the aforesaid rulings. With due respect, I have no doubt about the legal proposition laid down in the aforesaid rulings. In the light of aforesaid legal propositions, it is necessary to deal with the evidence came on record in the present case.

322) On 30.09.2008, around 3 a.m., informant **PW-123 (PSI Sudhir Patil)** had lodged the report of Bomb-blast incident which occurred on 29/09/2008, between Anjuman Chowk to Bhiku Chowk in front of Shakeel Goods Transport Company.

323) The PW-123 (PSI Sudhir Patil) has lodged the report to Azad Nagar Police Station Malegaon, in presence of PW-301 (PI Anil Akade) and it was taken over by PW-118 (Constable Raju Gosavi). PW-118 has signed over the said FIR as officer in charge of Azad

Nagar police station, Malegaon. On the basis of his report, the FIR was registered bearing crime no. 130/08 at Azad Nagar Police Station, Malegaon.

324) After the registration of FIR, the investigation was commenced. Police Inspector Anil Akade took the charge of the said case as per the oral directions of S.P. Nashik Gramin. At the relevant time, Police Inspector Shriniwas Patil was the incharge of Azad Nagar Police Station, Malegaon.

325) On 30.09.2008, the order was passed and issued by Special IGP Rashmi Shukla marked as **Exhibit-8784** and thereby directed to take over the investigation by ATS, Mumbai in the present case. ATS high ranking Officers Late Shri. Hemant Karkare, Shri. Sukhavindar Singh, Shri. Param Bir Singh were monitoring the investigation carried out by PI LCB Nashik Gramin and time to time, issuing the directions to the investigating officers. It emerges from the evidence on record that, ATS had carried out parallel investigation without re-registering the FIR or re-registering the crime number immediately.

326) Ongoing through the testimony of **PW-320 (ACP Mohan Kulkarni)** Chief investigating officer of ATS, it shows that, the ATS has re-registered the crime number 18/08 on dated 21.10.2008. Though, he has admitted in cross examination that, before his joining, the FIR was registered by the ATS in the present case. But there is nothing on record in the form of documentary evidence to show

that the FIR was re-registered by ATS. He also admitted that, he has not filed the copy of FIR bearing crime no.18/08 along-with the charge-sheet. The oral evidence on record shows that, ATS re-registered the crime number i.e 18/08 but admittedly to this effect also, there are no documentary evidence is placed on record i.e. extract of crime register or any other register showing the said entry was taken on the particular date. Though PW-320 was the chief investigating officer in the present case but his own admission shows that, he has not seen the original copy of FIR registered at Azad Nagar Police Station, Malegaon which was admittedly kept with themselves by Azad Nagar Police Station, Malegaon in their FIR book, till issuance of directions from court.

327) Thereafter, NIA has re-registered the FIR after getting the directions from MHA New-Delhi for taking up the investigation. On this point, the testimony of **PW-321 (DySP Anil Dubey)** Chief Investigating Officer of NIA and **PW-298 (Lahari Lhatoo)** SP NIA, who registered the FIR is important.

328) The PW-321 testified that, the present case has been transferred to NIA on dated 01/04/2011 by the order of MHA (Ministry of Home Affairs) New Delhi. On receipt of the said order, NIA re-registered the FIR on dated 13/04/2011. The PW-298 (SP NIA Mr. Lahari Lhatoo) also corroborated to his testimony on the aforesaid point and further deposed that, after receipt of the order from Central Government, he has re-registered the FIR at Police Station NIA New Delhi bearing crime no. 05/2011. Both the witnesses

identified the copy of FIR vide **exhibit 8190**. The PW-298 (Mr. Lahari Lhatoo) further admitted that, he received the copy of FIR registered at Azad Nagar Police Station, Malegaon. He has gone through the said FIR before registering the FIR bearing crime no.05/2011. He has also given the intimation about registration of FIR by NIA to the concerned. Thereafter, he directed Officer Mr. Rajesh Yadav to carry out further investigation.

329) Though, the Ld. Advocate for accused have pointed out that, there are two FIR registered by the different investigating agencies and there cannot be two FIR of same incident. But, I did not find any force in it as it is no more res-integra. Now, it is settled position that different investigation agencies can re-register the FIR. Merely, NIA had re-registered the FIR would not affect on the case of prosecution in any way. Re-registration of FIR by NIA after receipt of order from MHA, New-Delhi is nothing but to give effect to the provisions of NIA Act and to initiate the further investigation. Thus, nothing survives in the aforesaid point raised by the learned advocates for the accused.

330) It would be also beneficial to quote the judgement of Hon'ble Apex Court in case of **Pradeep Ram Vs. State of Jharkhand [2019 CRI. L. J. 3801],** the Hon'ble Apex court has observed that, *"In the present case, when order was issued by Central Government on 13.02.2018, it was not competent for police officer of the State Government to proceed with the investigation. FIR, which was re-registered by NIA on 16.02.2018 cannot be held to be second FIR*

in respect of the offences rather it was re-registration of the FIR to give effect to the provisions of the NIA Act and re-registration of the FIR is only procedural Act to initiate the investigation and the trial under the NIA Act. The re-registration of the FIR, thus, is neither barred nor can be held to be second FIR."

331) In order to prove the Report, FIR and Station Diary entry taken at Azad Nagar Police Station, Malegaon, the prosecution has examined four material witnesses and those are PW-123 (PSI Sudhir Patil), PW-118 (Havaldar / Head Constable Raju Gosavi), PW-301 (Police Inspector Akade), PW-320 (A.C.P. Mohan Kulkarni).

332) On the other hand, the sanctity, validity, legality & truthfulness of contents report, FIR and entries appearing in station diary is challenged by the Ld. Advocates on the multiple grounds. Those grounds of attack are summarized as follows,

i) Delay in lodging FIR.
ii) Material aspects are omitted in FIR.
iii) Section 120B of IPC invoked on First Day itself.
iv) Best Available witnesses did not lodge report.
v) Name of deceased are mentioned in report without corresponding entries.
vi) Carbon Copy of FIR is filed on record.
vii) FIR is based on noting and not on actual incident.
viii) Presence of Informant on spot is doubtful.

ix) Informant is hearsay.

x) Unseen events are narrated by informant.

xi) No station diary entry of cognizable offence.

xii) Wrong station diary entry supported by prosecution witnesses.

xiii) Veracity in testimony of witnesses.

xiv) Replacement of report.

333) In order to decide all aforesaid aspects including law points raised by the Ld. Advocates for accused, firstly it is necessary to deal with the evidence of relevant witnesses which came on record.

334) The PW-123 (PSI Sudhir Patil) is the informant. He had lodged the report. He testified that, he was on night duty on 29/09/2008 from 20.00 to 8.00 a.m. Police Inspector Shriniwas Patil was the incharge of the Azad Nagar Police Station, Malegaon, Dist. Nashik. PI Shriniwas Patil received information on his mobile from HC Bapu Pandit Thorat about the blast incident at Bhiku Chowk, Malegaon. Shriniwas Patil told the said information to him at about 21.35 hrs. So he himself, PI Shriniwas Patil and other Police Personnel immediately went to the spot of incident.

335) They reached on the spot within 5 to 10 minutes. After reaching to the spot site, PW-123 (PSI Sudhir Patil) saw mob gathered there. The mob were scuffling with them. They tried to pacify the mob present near the spot site. He also noticed that one LML Freedom

Motorcycle was lying there in half burnt condition. Near to it 4 to 5 bicycles were lying in scattered condition and one Hero Company Motorcycle lying near the scene of offence. A.S.P. Prabhu, Add.S.P. Patil along with staff came on the spot for aid / assistance. QRT (Quick Response Team) also came on spot. He also noticed the blood stains near the spot site. The mob was pelting the stones. A.S.P. Prabhu received the stroke of stone and fell into a gutter (drainage / Nala). In injured condition, P.S.I. Thorat lifted him on shoulder and taken to the Hospital. The driver of QRT team also sustained injuries due to pelting of stones by Mob. On account of blast, four persons died on the spot. As per the directions of Police Inspector Shriniwas Patil, he came to Azad Nagar police station, Malegaon and lodged the report of incident. His report was taken by L.C.B. Police inspector Shri. Anil Akade. Thereafter, PW-301 (PI Anil Akade) also directed the station diary incharge to take entry in station diary. He has identified his report (**फिर्याद**) and FIR on being confronted.

336) It would be apposite to reproduce the report (**फिर्याद**) as it is challenged on multiple grounds. It is as follows,

फिर्याद

	श्री. सुधिर भिमराव पाटील, वय — ३५ धंदा — नोकरी (पोलीस उप निरीक्षक), नेमणुक — आझाद नगर पो. स्टे. मालेगाव राहणार — मालेगाव मोतीभवन बारा बंगला ता. मालेगाव जिल्हा नाशीक.
	.....
आझादनगर पोलिस स्टेशन मालेगाव गु राजि.	सरकारतर्फे फिर्यादी होवून फिर्याद लिहून देतो की, मी आझाद नगर पोलीस ठाणेस सुमारे ३ वर्षापासून नेमणूकीस आहे.

न १३०/२००८ भा.द.वि. कलम ३०२,३०७,३२६, ३२४,४२७,१५३ (अ) १२० (ब) स्फोटक पदार्थाचा कायदा कलम ३,४,५ प्रमाणे ३०/०९/०८ ०३/००वा स्टे. डा. नो. क्र ०७/०८ पोलीस ठाणे अमंलदार आझादनागर पोलीस ठाणे	काल दिनांक २९/९/०८ रोजी मला २०.०० ते २४.०० व दिनांक ३०/९/०८ रोजी ००.०० ते ०८.०० वा. पावेतो ठाण्यात डयुटी ऑफिसर म्हणून डयूटी होती. मी सदरचे डयूटीवर पोलीस ठाण्यात हजर असताना पोलीस ठाणे प्रभारी पो.नि. श्री. श्रीनिवास पाटील यांना पो.उ.नि. थोरात यांनी दिनांक २९/०९/०८ रोजी २१.३५ वा चे सुमारास मोबाईल फोनवरून कळविले की अंजूमण चौक ते भिकू चौक दरम्यान शकील गुड्स ट्रान्सपोर्ट कंपनी समोर एका एल एम एल फ्रिडम कंपनीची मो/सायकल क्रमांक MH 15 P 4572 मध्ये बॉम्ब स्फोट झाला आहे व लोकांची गर्दी जमा होत आहे असे सांगितल्याने सदरची बातमी पो.नि पाटील यांनी मला कळविल्याने शासकीय वाहनाने पो. नि. पाटील, मी तसेच पो. शि. पठाण, दमाले, मोरे, होमगार्ड वगैरे लोकांना गाडीत बसवून आम्ही २१.४० वा. चे सुमारास भिकू चौक येथे आलो त्यावेळी तेथे सुमारे ८ ते १० हजार लोक जमा झाले होते त्यावेळी आम्ही काय प्रकार झाला आहे यांची खात्री करण्यासाठी जात असताना लोक आम्हा सर्वांना धक्काबुक्की करू लागले. त्यावेळी आम्ही शकील गुड्स ट्रान्सपोर्ट कंपनी ऑफिस समोर मो/सायकल क्रमांक MH 15 P 4572 हीचा स्फोट होवून तीचे पाठीमागील भागचे पुर्णत: छिन्न विछीन्न झालेले दिसत होते तसेच तिचे बाजूस एक होंडा कंपनीची मो/सायकल क्र MH 41 M 15 ही पडलेली दिसत होते. तसेच आजूबाजूस पाच सायकली पडलेल्या दिसत होत्या. त्यावेळी जमावातील लोक हे आक्रमक होवून पोलीसांचे अंगावर चालून येत होते व मोठयाने आरडा ओरड करून पोलीस को मारो अशा प्रकारे ओरडत होते व जमावातील लोकांना भडकवीत होते व आम्हा पोलीसांना धक्का बुक्की व मारहाण करत होते. त्याचवेळी सहा. पो. अधिक्षक श्री. विरेश प्रभू, अपर पोलीस अधिक्षक, श्री संजय पाटील हे त्यांचेजवळील शासकीय वाहनांनी पोलीस स्टाफसह घटनास्थळी दरेगाव चौकी जवळ आले होते परंतू जमावास शांत करण्याचा प्रयत्न करत होते त्यावेळी जमाव अधिकच आक्रमक होत चालला होता.

	तसेच जमावास त्यांचे आक्रमकतेपासून परावृत्त करण्याचा प्रयत्न करत होते. सदरचा प्रकार हा ५ ते १० मिनीटे चालू होता. त्यावेळी जमाव अधिकच वाढत होता व तो सुमारे १५ हजारांवर पोहचला होता. जमाव अधिकच आक्रमक होवून पोलीसांचे दिशेने दगडफेक करत होता त्याचवेळी सदरचे घटनास्थळी शिघ्र कृती दलाचे पथक त्यांचे शासकीय वाहनासह हजर झाले असता त्यांना पाहून जमावातील लोकांनी सदरचे गाडीवर जोराची दगडफेक केली व गाडीचे केबीनमध्ये घुसुन गाडी चालक नामे माळी यांस दगडाने जोराची मारहान करून जखमी केले त्यावेळी सहा. पोलीस अधिक्षक श्री. एस. विरेश प्रभू साहेब हे जमावास शांत करत जमावाकडे पुढे गेले तेव्हा जमावातील लोकांनी त्यांना ओढून त्यांना दगडाने डोक्यास मारहान करून गटारामध्ये लोटले. त्यामूळे प्रभू साहेब हे गंभीर जखमी झाल्याने त्यांना पो. उप निरिक्षक श्री थोरात यांनी गटारातून काढून त्यांना खांदयावर उचलून औषधोपचारासाठी नेले. तसेच इतर जखमी पोलीस कर्मचारी यांना वेगवेगळया अधिका—यांनी औषधोपचारासाठी नेले. त्यानंतर मी भिकू चौकातील शकील गुड्स ट्रान्सपोर्ट कंपनी हया ठिकाणी आलो. सदर ठिकाणी एल एम एल फ्रिडम कंपनीची मो/सायकल एम एच १५ पी ४५७२ ही अर्धवट उध्वस्त व जळलेल्या अवस्थेत होती तसेच शकील गुड्स ट्रान्सपोर्ट कंपनीचे ऑफिस अर्धवट जळालेले होते. सदर मो/सायकलच्या जवळ होंडा कंपनीची मो/सायकल क्र. एम एच ४१ एम १५ तसेच आणखी जवळच पाच सायकलीही पडलेल्या होत्या. शकील गुड्स ट्रान्सपोर्टच्या समोरच्या दुकानांमध्ये व रस्त्यावर जखमी इसमांचे रक्त पडलेले होते तसेच दुकानांचे नुकसान झालेले होते. एकंदरीत एल एम एल फ्रिडम कंपनीची मो/सायकल एम एच १५ पी ४५७२ च्या परिस्थितीवरून सदर मो/सायकलमध्ये कोणीतरी अतिरेक्याने बॉम्ब ठेवून त्याचा स्फोट घडवून आणला हे स्पष्ट झाले. त्यानंतर मला सदरचे बॉम्बस्फोटामध्ये जखमी झालेले पुढिल इसम हे मयत झालेचे समजले. त्यांची नावे — १) फरीन शेख शेख लियाकत

	वय १० मुलगी, २) सययद अझहर निसार, वय १९, ३) मुस्ताक अहमद युसुफ अहमद, वय २५, व ४) शेख रफीक शेख मुस्तफा वय ४२ सर्व राहणार मालेगाव. तसेच इतर सुमारे ७९ लोक जखमी झालेचे समजले. तरी कोणीतरी अज्ञात इसमांनी नियोजीत कट रचून अंजूमण चौक ते भिकू चौक दरम्यानचे शकील गुड्स ट्रान्सपोर्ट कंपनीचे समोर मो/सायकल एल एम एल फ्रिडम क्रमांक MH 15 P 4572 मध्ये स्फोटके भरून ती सदर ठिकाणी ठेवून तीचा स्फोट घडवून आणला त्यामध्ये चार लोक ठार झाले व इतर जखमी झाले. सध्या मुस्लीम बांधवांचा रमजान महिना चालू असून उदईक हिंदू समाजाचा नवरात्रोत्स्व सुरू होणार आहे. सदर कालवधीत मोठया प्रमाणावर हिंदू व मुस्लीम लोकांची गर्दी होत असते. गर्दीमध्ये बॉम्बस्फोट घडवून आणून जास्तीत जास्त जिवीत हानी घडवून आणायची व त्याद्वारे दोन्ही समाजात तेढ निर्मान करून जातीय दंगे भडकवायचे व सामाजीक सुरक्षीतता धोक्यात आणायची व दहशत निर्माण करावयाची या एकमेव उददेशाने वरील बॉम्ब स्फोट घडवून आणले आहेत म्हणून अज्ञात इसमांविरूध्द माझी कलम ३०२, ३०७, ३२६, ३२४, ४२७, १५३ (अ), १२०(ब) भा.द.वि. सह स्फोटक पदार्थाचा कायदा कलम ३, ४ व ५ अन्वये फिर्याद आहे. समक्ष फिर्यादीची सही

337) The PW-118 (Raju Gosavi) was attached as Havaldar in Azad Nagar Police Station, Malegaon. His testimony shows that, on 29.09.2008 since 8 p.m. to 8.00 am of 30.09.2008, he was on duty at Police Station of Azad Nagar Police station. P.S.I. Bapu Pandit Thorat informed on the cell phone of Police Inspector Shriniwas Patil about the bomb blast incident. Thereafter, Shriniwas Patil has

informed Raju Gosavi about the said incident. Immediately, on receipt of information, P.S.I. Sudhir Patil, P.I. Shriniwas Patil and other police personnel went to the spot. He had forwarded the message of said incident to other police officers. On 30.09.2008, at about 3 a.m., as per the directions of Police Inspector Akade, the report was lodged by PSI Sudhir Patil. He had registered the FIR bearing crime no.130/08 and taken the station diary entry. He identified the FIR vide exhibit-5883 and admitted that, the contents of said FIR are in his handwriting. The original register of FIR is handed over in the custody of the court. The report (फिर्याद) is having endorsement at left side, which is made by him. He identified the said endorsement. He further identified the station diary entry no.06/2008 vide exhibit 5884, and admitted that it is in his handwriting.

338) The testimony of PW-301 (PI Anil Akade) shows that, in the year 2008, he was attached to LCB Nashik Gramin. On 29.09.2008, he was at Newasa for the purpose of investigation in one Dacoity case. After receipt of information about the said Bomb-blast, he came back around 1.30 a.m. and met Superintendent of Police, Nashik Gramin. S.P. Gramin had verbally told him to register the offence and to take the Investigation in his hand. The offence was registered by PW-118 (Raju Gosavi). In his presence, the report was lodged by PW-123 (Sudhir Patil) at Azad Nagar Police Station, Malegaon. He has also seen the station diary entry taken by Raju Gosavi and identified the station diary entry no.6.

339) After reaching to the spot of incident, **PW-301 (PI Anil Akade)** saw Police Inspector Shriniwas Patil and his staff were present. Spot of incident was barricaded. On the spot two motorcycles were lying in scattered condition. Out of those motorcycle, one motorcycle was bearing number MH-15-P-4572 and another was Honda Unicorn bearing no. MH-41-M-15. The spot of incident was located in Bhiku Chowk in front of Shakeel Goods Transport.

Delay in Lodging FIR:-

340) Admittedly, the date of alleged incident is 29.09.2008 and FIR is lodged on dated 30.09.2008. After the said incident, the report was lodged after lapse of 5 to 5.30 hours. The time lag between the incident and lodging of FIR shows that, there is delay in lodging the report. Admittedly, the evidence on record also shows that, FIR was not promptly lodged or registered. But the said delay is fatal to prosecution or not required to be considered in the light of evidence on record.

341) It is well settled position that, "the receipt and recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. Nor does the statute provide that such information report can only be made by an eye witness. First Information Report under section 154 is not even considered as a substantive piece of evidence. It can only be used to corroborate or contradict the informant's evidence in court. But the information which is recorded becomes the basis of the case set up by the informant. It is always desired to record promptly before

informant's memory fades. Undue or unreasonable delay in lodging the F.I.R., inevitably give rise to suspicion. Moreover, no duration of time in the abstract is fixed as reasonable for giving information of a crime to police, the question of reasonable time depends upon the facts and circumstances of each case."

342) Ld. SPP during course of hearing invited my attention towards the situational aspect as came in the evidence of prosecution witnesses. He specifically pointed out that, importance of situation is required to be considered. How the situation was worse could be gathered from the evidence of injured witnesses and police officers PW-123 (PSI Sudhir Patil), PW-118 (Constable Raju Gosavi), PW-301 (PI Anil Akade), PW-320 (ACP Mohan Kulkarni). Conjoint reading of their evidence itself sufficient to shows that, number of innocent persons sustained multiple injuries and some of them were passed away due to Bomb blast injuries. It was an unexpected and unforeseen incident which occurred on dated 29.09.2008. The people were gathered due to Ramzan. It is natural and to celebrate Ramzan festival, people gathered at various shops, stalls, hotels and other places. After explosion of Bomb, there was a panic situation in the whole Malegaon City. It was not an incident which occurred in normal way of life. In such situation, one has to analyze the movements of every person including the police officers and officials. Considering the aforesaid situation, it can't be said that, there was delay in lodging the FIR.

343) Admittedly, P.I. Shriniwas Patil had received the information on

his cell-phone from Bapu Pandit Thorat about the said bomb-blast immediately. The said message was including time, date, place of incident and how it was occurred. The said message cannot be said to be cryptic or vague. But at the same time, it also shows that, the intention of the caller to inform the concerned and immediately call the police to the scene of offence for help and to control the situation. It also came on record that, at the relevant time, the situation was tense / worse. Immediately, the huge Mob had been gathered after the incident and became aggressive. After receipt of the said information, Police Inspector Shriniwas Patil, P.S.I. Sudhir Patil and other police personnel immediately rushed to the spot of incident. Other teams like S.R.P.F., Q.R.T., Staff of L.C.B., Senior Police Officers, etc. all were present on the spot of incident. Around 15,000 people (mob) gathered there. The huge mob was shouting, jostling, pelting stones on police, vandalized the vehicles, set on fire Daregaon police chowky and police vehicles. All police were trying to pacify their anger and to control the situation. The demand of time was to control the situation and hospitalize the injured persons.

344) The PW-320 (ACP Mohan Kulkarni) has admitted in his cross examination that, the reasons for delay are not mentioned in FIR i.e. in column no.8. The PW-123 (PSI Sudhir Patil) or PW-118 (HC Raju Gosavi) has also not given any explanation about the delay in lodging the FIR. Though, it is admitted by prosecution witnesses in their cross examination that, the reasons for delay are not mentioned in FIR but the aforesaid situation speaks itself for not

lodging the FIR promptly or immediately. There was panic & unforeseen situation, attack by furious mob, time consumed to control the mob, hospitalizing the injured are the plausible circumstances emerging from the evidence on record for not lodging of FIR immediately after the said incident. Visualizing and taking into consideration the entire the aforesaid situational aspects, it can be said that these are the mitigating circumstances. No doubt there is delay in lodging the FIR but I am not inclined to accept that, the said delay in lodging the FIR is fatal to prosecution.

Material Aspects Omitted :-

345) The next contention of Ld. Advocates the material aspects are dropped / omitted while lodging the report / FIR i.e. how much area was barricaded and who were deployed on spot for Duty on that day, various teams viz. B.D.D.S., Finger Print Expert, Chemical Analyzers, R.P.F., Photographer, Videographer, LCB Staff, Q.R.T., etc. were called on the spot, visited the spot and present there on that day. Moreover, the mobile numbers of those officers, their CDR of that day, the vehicle numbers which is used to reach on the spot, etc. is not mentioned in FIR.

346) Before adverting the aforesaid contention, it is necessary to mention that, it is also well settled position that, each and every minute details are not required to mention in FIR. It is not an encyclopedia. It is sufficient that how, when, where the incident occurred is mentioned in FIR. Therefore, non mentioning of

aforesaid aspects / contents would not be fatal to prosecution or cannot be a ground to disbelieve the contents of FIR on the aforesaid count.

347) On going through the report / FIR, it depicts that, place of incident, date and time, occurrence of incident, hearing of loud noise by injured witnesses, condition of vehicles, gathering of mob, attack by mob, injuries to police, and the inference drawn about the commission of offence by taking into consideration the entire crime scene are mentioned in FIR. Thus, the facts which are noticed, heard and seen by the informant are mentioned in FIR. Therefore, non-mentioning about barricading, name of police on spot duty, mobile duty, fixed point duty, arrival of various squad / teams, vehicle numbers or their CDR etc. will not affect the FIR. It is not an encyclopedia. Each and every minute details are not expected. Hence, the prosecution version cannot be doubted, merely on the ground that FIR does not contain the aforesaid details.

348) But on the other hand, it is also settled position that, FIR should give the clear idea / picture of incident. It should not be vague or Cryptic or discrepant. It is a mirror of incident. Material things should not be suppressed while lodging the report. If any material facts are suppressed while lodging the report, then obviously it creates a doubt and loses its sanctity. In present FIR, the post incident events are also narrated by the informant. It is specifically mentioned that, there was an attack by an aggressive mob on

police but to control the aggressive mob and to disperse them from the spot the force had been used by police including lathi charge, tear gas, firing is not mentioned in FIR. Prosecution witnesses were fully aware about the action taken by the police. They were present on the spot since beginning. Post incident events occurred in front of them. Even though the said material fact did not find any place in FIR. Those were relevant and material facts. Therefore, it is nothing but suppression of material fact without mentioning what type of force used by police.

Invoking Section 120B :-

349) The next contention is regarding invoking of section 120B of IPC while lodging the FIR. The FIR shows that, initially the offence was registered under section 120B of IPC along-with other sections of Indian Penal Code and Explosive substances Act. Though, the section 120B of IPC was invoked and registered at the time of lodging of FIR would not be fatal to prosecution. The invoking of section 120-B of IPC was situational. The FIR registering officer after considering the entire aspects as mentioned in report / FIR invoked the section 120B of IPC. At the initial stage, considering the entire scenario, police might have thought that there must be involvement of more than one accused. This possibility cannot be ruled out. At the initial stage, mere invoking section 120B of IPC would not take away the FIR. The another aspect is that, during investigation, on collecting the information or data, if the investigating officer came to conclusion that, only one accused is involved, then he could drop the section (s) invoked initially while

submitting charge-sheet or next remand. There is no bar to invoke or to drop the section(s). Hence, mere registering the FIR along with section 120B would not be fatal to the case of prosecution. Therefore, I do not find any force in the argument advanced by the Ld. Advocate for A-9 that, without any data / information available about the involvement of more than one accused in the said incident, at the initial stage, the offence came to be registered u/s 120B of IPC and it was mysterious to invoke section 120B only on the count to please the then Government.

Eye Witnesses :-

350) The next contention is that, the FIR is not lodged by the best available eye witnesses. No doubt, on the day of incident number of persons were present near the spot of incident. Some of them sustained injuries in the said incident. None from injured witness had lodged the report. On that day, the station diary entries taken itself shows that, police were deployed on Bandobast duties on various fixed points including Bhiku Chowk. Mobile patrolling duties were also assigned to some police officers. Daregaon Police Chowky is near to Bhiku Chowk and number of police were present in chowky also. Thus, all they were best available eye witnesses of the incident. Admittedly, none of them lodged the report of incident in Azad Nagar Police Station after the incident or next day or lateron. But merely on this count, it would not take away the case of prosecution. At the outset, it is necessary to mention that, the criminal law can be set in motion by anybody. The FIR can be lodged by anybody. It is not a condition precedent

that the FIR should be lodged by the eye witness only. Therefore, lodging of report by police officer who was not the eye witness of the incident would not affect on the case of prosecution. Only it can be said that, even after availability of eye-witnesses, their report is not taken down so the said fact can be taken into consideration along-with other evidence on record.

Corresponding entries about Deceased :-

351) The next point which was raised that, no corresponding entries are taken in station diary or anywhere in writing about the death of the deceased and without the names mentioned are imaginary. Ongoing through the report, it depicts that, the name of four deceased person are mentioned in FIR, who succumb to injuries and passed away. Those are,

Sr.No.	Name of Deceased	Inquest Panchanama Exhibit	Date	Time
1	Sayyed Ajhar Sayyed Nisar	Exh.5752	30.09.2008	2.35 to 3.00 am.
2	Mustaq Ahamad Yusuf Ahmad	----------	----------	----------
3	Shaikh Rafiq Shaikh Mustafa	Exh.5754	30.09.2008	3.35 to 4.05 am.
4	Farheen @ Shagufta Shaikh Liyakat	Exh.5751	30.09.2008	2.00 to 2.30 am.

352) The testimony of PW-123 (Sudhir Patil) shows that, on account of blast four person died on the spot. As per the report lodged by the said witness, the aforesaid name of deceased persons came to his notice and he has mentioned their names in the report. Though the inquest panchanama of aforesaid deceased are prepared at different time but it doesn't mean that the confirmation of death of those deceased persons could done only after inquest panchanama. The evidence of PW-123 shows that, four persons died on the spot. Their names he came to know from concerned Hospital. No doubt, the receipt of said information is not recorded in station diary or no separate entries are taken. The concerned doctor is duty bound to inform the concerned police station immediately if any patient or injured is brought dead or passed away. After receipt of the said information the entry in station diary or separate entry is required to be taken by the concerned police station. Non-taking of such entry doesn't mean that no death information had been received by the concerned police station. At the most it could be said that, it is one of the lapse on behalf of concerned station diary officer or informant for not taking the relevant entry. Therefore, I am not inclined to accept that anticipating death the ante-time FIR being lodged.

353) It is necessary to mention that, as per the evidence on record, there are no documentary evidence to show and to prove the death of deceased Mustaq Ahmad Yusuf Ahmad. The inquest panchanama vide exhibit. 5753 depicts that, his name is erased by applying whitener by the author of document and the name of Sk. Mustaq

Sk. Yusuf is inserted in the inquest panchanama. Thus, the mere mentioning the name of the aforesaid person in the FIR would not be sufficient to prove his death, in the absence of any documentary evidence. It cannot be said that, it was correctly mentioned in conformity with information and inquest panchanama received by the Azad Nagar Police station. Therefore, I found substance in the argument of Ld. Advocate for accused to the extent of mentioning the name of aforesaid person as deceased in FIR is nothing but imaginary or without verification.

Carbon Copy of FIR:-

354) The A-5 in person, has rightly pointed out that carbon copy of FIR is presented in the court along-with charge-sheet. The original record i.e. FIR and concerned Station Diary was in the custody of ATS, Mumbai. Lateron, in the year 2019, the prosecution has moved an application below exhibit-5829 to allow the production of original documents i.e. FIR Book and Station Diary Register. As per the order below exhibit-5829 dated 17th May 2019, my Ld. predecessor allowed the production of original Station diary register and FIR register maintained at Azad Nagar Police Station, Malegaon. The original were taken in custody of the court. He further pointed out that, on the carbon copy of FIR which is presented in the court, the signature of Police Inspector Anil Akade as well as the station diary entry number is missing over it.

355) It is well settled position that, the carbon copy can be admitted as primary evidence, when it is prepared in one uniform process by

which original is prepared. As per evidence on record, the carbon copy in this case is prepared from original in the same uniform process. Hence, it is primary evidence. It is also necessary that both the copies should be fully tallied or matched. Whatever mentioned in original copy should appear on carbon copy, when it is prepared in one uniform process. It is not the case of prosecution that, the carbon copy was prepared later-on after registration of FIR. Ld. SPP while hearing also admitted that, it is prepared in the same uniform process.

356) Ongoing through the original FIR and carbon copy and if both are compared, then it depicts that, on original FIR the station diary entry no.07/08 is mentioned, however it is not appearing on carbon copy which was filed in the court along with charge-sheet in the year 2009. Moreover, on original FIR the signature of P.I. Anil Akade is appearing, however on carbon copy it is not appearing. Thus, carbon copy and original FIR doesn't match fully. The carbon copy of FIR should be exact replica of original FIR. There is discrepancy in the FIR on record (carbon copy) and original FIR which was produced after the lapse of 11 years. Therefore, I found substance in the argument advanced by A-5 on this point. After comparing both documents, it clearly indicates that, the possibility cannot be ruled out that the station diary entry number mentioned in FIR and signature of Shri. Akade are taken on the original FIR later-on as per their convenience.

Rough Noting :-

357) The next point which is raised that, the contents of FIR is based on the rough noting taken by the other officer on the spot. Though, PW-123 (Sudhir Patil) has deposed that, he had been to the spot on the day of incident and present there till 2.50 am on 30/09/2008, but his testimony itself shows that, he has not taken personally any noting on the spot of incident. Neither any rough noting taken down by him is annexed with the charge-sheet. No any other prosecution witnesses corroborates to him on this point or seen him while taking noting or in their presence he had taken the noting. Admittedly, it came on record that, the condition of vehicles and other things are noted down by PW-301 (Police Inspector Akade) and PW-261 (Dr. Suhas Bakre). Thus, it can be said that the rough noting was taken by Mr. Anil Akade and not by PW-123 (Sudhir Patil).

358) In cross examination, PW-123 (Sudhir Patil) has admitted that he has mentioned the damage condition the vehicle and blast in Motorcycle MH-15-P-4572 on the basis of noting only. On the basis of it, he came to know on that there was blast in motorcycle but not 100% confident about it. Thus, rough noting was not his personal noting. Therefore, it can be said that whatever rough noting taken by PI Anil Akade, on that basis he has described the condition of vehicle and blast incident in FIR. Thus, his own admission itself clarifies that, aforesaid contents in report are not his personal observations but totally based upon the noting taken by other officers.

Hearsay and Unseen Events :-

359) The next contention is that, the informant is hearsay and unseen events are narrated by him. Admittedly, at the time of incident, the informant was present in police station. He was not present on the spot. The informant received the information about the said incident from Police Inspector Shriniwas Patil. Thus, he is not an eye witness of the incident. He is hearsay witness.

360) The PW-123 (PSI Sudhir Patil) went on the spot within five to ten minutes after the receipt of information about the said incident. He reached on the spot around 09.40 pm. He inquired and on gathering information, he lodged the report. Though, his testimony itself shows that, he is eye witness of the post incident of the alleged blast, but he lodged the report on the basis of hearing and collection of information only as per the admissions given by him. Thus, up-to this extent, it can be said that unseen events are narrated by him.

Presence of informant on the spot:

361) The testimony of PW-123 (Sudhir Patil) shows that, he had been to the spot within five to ten minutes after the incident. He was present on the spot till 2.45 am or 2.50 am. Lateron, he went to police station and lodged the report around 3.00 am. He has not noticed any injured or dead bodies lying on the spot. He has not personally seen or having any knowledge as to who lifted the injured from the spot and taken to the Hospital. He also denied

that suggestion that when they reached on the spot, the injured were already lifted from the spot and taken to the hospital. The aggressive mob attacked on police and to control the aggressive mob, admittedly force was used by Police i.e. tear gas, Lathi Charge, Firing, etc. But he has not seen the use of force by police on aggressive mob. He has not noticed any expert present or visited on the spot. He did not talk with his senior about the incident. He did not remember the location of Bhiku Chowk. He denied the gathering of mob around 15,000 on the spot within the span of few minutes. But when FIR was confronted, he admitted that it is correctly mentioned. He has not sustained any injury from mob. In examination-in-chief, he stated that mob scuffled with them but in cross examination, he admitted that the aggressive mob did not obstruct or attack on them when they were proceeding towards the spot. The condition of vehicle is narrated by him on the basis of noting. Admittedly, the said rough noting was taken by Mr. Akade and not by him. He had not visited or entered or seen the exact condition of shops opposite to Shakeel Goods Transport Company, even though it is narrated in FIR. He was present on the spot but did not notice that the spot was barricaded or not. How much police officers sustained the injury due to attack by Mob, he is fully unaware about it. He has not personally observed about the condition or damages caused to Shakeel Goods Transport and Nisar Dairy which were at the distance of 8 to 10 feet only from the spot of incident.

362) No doubt, all the aforesaid facts are seen and observed by the

other police witnesses who were present on the spot and it came on record in their testimony. Admittedly, within the span of five minutes after the alleged huge incident, it is difficult to take the injured from the spot to the Hospital. The person will take its own time to regain from traumatic situation, to think over it, to analyze situation and to help the others. But PW-123 (PSI Sudhir Patil) has neither seen any injured person in the mob nor seen any dead bodies lying on the spot. But he categorically deposed that, due to blast four persons died on the spot. Thus, he has not observed the aforesaid material aspects or those are not came to his notice, even after as testified by him about early reaching to the spot and stayed there till 2.50 am.

363) The mob was pelting stones, vandalized the police vehicles, set on fire the Daregaon Police Chowky and to control the aggressive mob the force had been used by police i.e. Lathi Charge, Tear Gas, Firing, etc. This action was continued upto 12.30 am and it specifically came in the evidence of PW-102 (Police Constable Bilage) who was present on the spot being deployed for Fixed Point (Bandobast) Duty. The spot was barricaded lateron and police were deployed around the barricading. The total 58 rounds are fired by Police on aggressive mob but he has not seen personally. Three ways grenades are thrown on the mob to disperse them but he has not seen the same. It is indeed peculiar that, despite the informant being present from 9.40 p.m. to 2.50 a.m., he failed to observe or report any of the aforementioned occurrences or incidents.

364) In cross examination he has admitted that, he had not seen or visited or entered any shop opposite to Shakeel Goods Transport Company. He admitted that, he has mentioned in FIR that, by entering into the spot opposite to Shakeel Goods Transport Company, he has noticed the blood spot and damage caused to the shops. It clearly shows that unseen events are narrated by him. He has not visited or entered into Shakeel Goods Transport Company but in FIR he has mentioned that the Shakeel Goods Transport Company was found in half burnt condition. He had not seen anybody while lifting the injured from the spot. He deposed that on account of blast, four persons died on the spot, but surprisingly he had not seen any injured or dead body on the spot. Thus, the facts stated in the FIR appear to be based solely on the informant's own inferences and conjecture, without any direct observation or personal knowledge of the incident. Therefore, it clearly indicates that, he was not present full time on the spot as deposed by him. His assertion regarding presence on the spot as narrated by him is doubtful, and clearly shows that unseen events are narrated by him.

365) The next contention pertains to wrong station diary entry supported by witnesses. The report is lodged by PW-123 (Sudhir Patil). On the left side of the report (Exh.5944), the endorsement shows the station diary entry no. 07/08 (स्टे. डा. नो. क्र ०७/०८) is taken down by PW-118 (Raju Gosavi) as In-charge of Police Station, Azad Nagar Malegaon. The bare perusal of original station

diary register shows that, no such entry is taken down i.e. entry number 07/08 in station diary register maintained by Azad Nagar Police Station, Malegaon. Moreover, the original station diary register shows that entry number 07/08 is nowhere written or mentioned in station diary register of dated 30.09.2008. After entry no. 06/08, there is direct entry at serial number 08 showing entry no. 08/08. Thus, entry number 07/08 is missing in original register. The endorsement appearing on report had been shown to PW-118 (Raju Gosavi). On confrontation, he admitted that, the endorsement and entry are correct and taken by him. He issued the FIR after taking the said entry. The original station diary was shown to him and even after going through the original station diary, he was unable to point out station diary entry no.07/08. Even after confrontation, it was not his contention that the said entry number was taken inadvertently. On the contrary, he supported the said entry and entry number. He waited to take entry till lodging of report by an officer and he had put the endorsement on the report after taking the said station diary entry i.e. entry no. 07/08.

366) Bare perusal of original FIR itself shows that, in column number 3(c) of FIR the station diary entry number 07/08 is mentioned. Here also the entry 06/08 is not mentioned. Whereas initially the carbon copy of FIR was filed on record bearing exhibit no. 5883 which doesn't show the station diary entry number in column no.3 (c). The informant (PW-123) has admitted that, the contents of FIR are correct. The FIR was also shown to PW-118 (Raju Gosavi),

PW-301 (Police Inspector Anil Akade), PW-320 (A.C.P. Mohan Kulkarni) but nobody says that the entry bearing number 07/08 is wrongly taken. It means according to those witnesses the said entry is correct.

367) Admittedly, the copies of charge-sheet and documents filed on record by chief investigating officer of ATS had been supplied to the accused. Police officer PW-118 (Raju Gosavi) has admitted that, the copies which were supplied to the accused, at the time of filing of charge-sheet, which bears no station diary entry. It is also not the contention of prosecution that the said entry was truncated while supplying the copy to accused. Thus, the aforesaid admission itself shows that, the station diary entry was taken afterwards i.e. before submitting original record before the court.

368) The next contention raised by Ld. Advocates for accused that, the offence was cognizable and even after the receipt of cognizable information, the station diary entry was not taken.

369) Before dealing with the aforesaid contention, it is necessary to mention that, the first informer P.S.I. Bapu Pandit Thorat is not examined being reported dead as per exhibit-7860. The Police Inspector Shriniwas Patil, incharge of Azad Nagar Police Station, Malegaon, who received the information from P.S.I. Bapu Thorat as well as from P.S.I. Balasaheb Bhausaheb Thorat about the cognizable offence is also not examined by the prosecution. Thus, the aforesaid material witnesses are not examined by prosecution.

In addition to it, there are no plausible explanation for non-examining these material eye-witnesses of the incident.

370) It is well settled position that, "the cryptic and vague telephonic message cannot be treated as FIR." Admittedly, P.S.I. Bapu Pandit Thorat specifically informed that, on 29.09.2008, around 9.30 pm, there was a blast in motorcycle MH-15-P-4572 standing at Bhiku Chowk. Thus, the place, time, date and occurrence of incident had been narrated by P.S.I. Thorat to P.I. Shriniwas Patil on his cell-phone. Admittedly, the said information could not be said to be cryptic and vague information.

371) It is also evident from the certified copy of FIR bearing crime no.131/08 co-jointly read with station diary entry no.10/08, the informant P.S.I. Balasaheb Bhausaheb Thorat was on Mobile Patrolling duty at Bhiku Chowk on 29/09/2008, along with other police personnel. He was also the witness of the incident. But he is not examined as a witness. After watching the incident, he also immediately informed on the cell phone of P.I. Shriniwas Patil about the said incident. On the basis of said information, the entry seems to be taken in Station diary bearing entry no.34 dated 29.09.2008 as follows,

"यावेळी मा. पो.नि. श्री S.J. पाटील यांनी कळविले की दरेगांव पो.चौक — भिकु चौक येथे स्फोट झाला आहे. आपण स्टाफसह घटनास्थळी या असे त्यांना पो.उपनिरी श्री. बी.बी. थोरात यांनी भ्रमणध्वनीवरून कळविलेचे सांगितल्याने त्यांचे सोबत घटनास्थळी P.S.I. S. B. पाटील, HC १५३३ परदेशी शिक, PC पठाण १०५०, PC दमाले १२०, PC मोरे, DG १२०६ व दोन होमगार्ड असे सरकारी वाहनासह घटनास्थळी रवाना झालेत.

तसेच घटनास्थळावर जाणेबाबत C.R. मालेगांव यांनी बिनतारी संचावर कळविले बाबत नोंद."

Ongoing through the aforesaid entry itself shows that, it is a cryptic telephonic information without any requisite details. Therefore, on the basis of aforesaid cryptic telephonic information, it cannot be said that police ought to have register the FIR.

372) The message of cognizable offence is passed on by P.S.I. Bapu Pandit Thorat to Police Inspector Shriniwas Patil and he further passed on the said message. Admittedly, Bapu Pandit Thorat was the first person who gave the detail information about the cognizable offence. And Balasaheb Bhausaheb Thorat is subsequent person who also confirmed the incident and passed on the information to Police Inspector Shriniwas Patil and others. The police Inspector Shriniwas Patil is next person who passed on the message of cognizable offence among the police officers and personnel present in the police station. Thus, it clearly shows that, PI Shriniwas Patil had received the information about the said bomb-blast twice from their officers, who were performing the duty on fixed point. Thus, he was also a material witness but the prosecution has not examined him.

373) The information is wider term than complaint. Information includes any communication relating to the commission of an offence. Information is genus of which complaint is species. Any information about the Cognizable offence is received by police is required to be noted down in Station Diary / General Diary which

is maintained in every police station. The section 44 of the Police Act,1861, mandates that every officer in charge of police station must maintain a General diary. The Significance of Station Diary / General Diary (GD) has been highlighted by Hon'ble Apex Court and Hon'ble High Court in catena of judgements. Maintaining General Diary is mandatory as per Law and provision incorporated in Bombay Police Manual. It is the most important document / record of all activities and incidents that take place in a police station on a daily basis. It is a comprehensive log of all important activities. The offence may be cognizable or non-cognizable but its reference can be found in General diary. It is important station house internal record. General Diary reference is noted in FIR and FIR number is mentioned in general diary entry. Thus, the parallel documents ensures that both records are kept up to date. General Diary is maintained in chronological order on day-to-day basis. Thus, the basic purpose of general diary is to maintain integrity, to ensure transparency and accountability in police operations and activities.

374) No doubt, the investigation of an offence starts either on receipt of information of cognizable offence and entry is taken to that effect in General diary / Station Diary. Then recording of FIR is not a condition precedent to set in motion the criminal investigation. The evidence on record shows that, the information about cognizable offence was received by P.I. Shriniwas Patil on his cell-phone. He had narrated the said information to other police officers and officials present in the police station on that night. The

information disclosing the cognizable offence. Though, non-registration of FIR immediately will not affect the case of prosecution as discussed supra, but at the same time, it is also necessary to see whether the concerned officers and officials or anyone of them has taken the entry disclosing the cognizable offence in the Station Diary or not.

375) Even assuming and visualizing the panic situation, as discussed earlier, at the relevant time, it can be said that they were not having time to record FIR immediately. However, it is equally imperative to examine whether adequate time was available to make a station diary entry reflecting the information pertaining to the cognizable offence, which had been gathered by their own officers and communicated without delay.

376) On this point, PW-118 (Raju Gosavi) has admitted that, Police Inspector Shriniwas Patil was present in his cabin, on that day, when he received the said information. He further admitted that, the information received by Shriniwas Patil was disclosing the cognizable offence. The nature of information was told by Shriniwas Patil to him. Neither he himself nor Shriniwas Patil had taken the note of it separately or recorded the said information in concerned station diary. Thus, both of them has not taken down the entry of cognizable offence in Station Diary, even after having knowledge that information is cognizable in nature and entry is mandatory.

377) The PW-301 (PI Anil Akade) has admitted that, the information received by Police Inspector Shriniwas Patil was cognizable in nature. It was pertaining to cognizable offence and there should be a station diary entry about it. But he did not come across the said station diary entry taken by anybody. His testimony is completely silent on the point that, when he got the knowledge about the said fact, even though as to why he had not directed the concern to take the entry or verified the said entry. Thus, the testimony of PW-301 also shows that he had knowledge that the information is cognizable in nature and entry is necessary, but it was not taken down.

378) On the point of Station Diary entry, PW-123 (PSI Sudhir Patil) has narrated that, they were having knowledge that the information pertains to cognizable offence. But, they wanted to verify the said information and hence, the entry was not taken by them. Thus, the testimony of this witness depicts that, he tried to cover up the said fact on the count of verification of information. His own admission shows that, he was possessing the knowledge about the said information was cognizable in nature, even though entry was not taken by anybody. Moreover, he also admitted that, there was no reason to disbelieve their own officer (Bapu Pandit Thorat). They did not disbelieve him or the information given by him.

379) It is settled position that, for registering FIR or taking station diary entry of cognizable offence it is not necessary to test the reliability, genuineness and credibility of information. It is not condition

precedent for registering FIR or taking station diary entry. It can be considered after registering the case. Even then for the sake of moment, it is assumed that, the verification was required, then the said spot of incident was only 700 to 800 meters away from Azadnagar Police Station, Malegaon. They went on the spot within the span of 10 minutes. Then information could have been verified within 15 minutes. Moreover, time to time, police officers were repeatedly in contact with police station and station diary officer. They were updating the information gathered from the spot to the police personnel present in the police station or station diary officer present in the police station. So they could direct to take necessary entry, even though they failed to direct. It is not the case of prosecution that, at the relevant time, nobody was present in the police station or police station left unattended. Therefore, the reason given by PW-123 (PSI Sudhir Patil) seems to cover up the said fact is not acceptable in the light of aforesaid evidence on record. If the entry would have been taken belatedly, then the reason given by the PW-123 could have been considered for delay in taking the said entry, but it can not be considered for not taking any entry at all without any justifiable reason.

380) On the point of said entry, the chief investigating officer PW-320 (A.C.P. Mohan Kulkarni) has admitted in his cross examination that, Bapu Pandit Thorat was the first person who reached on the alleged spot and given information about the said incident to Shriniwas Patil on his cell phone. The said information was about cognizable offence. He further admitted that, he himself has not

perused the message book or station diary of Azad Nagar Police Station.

381) Thus, the evidence of prosecution witness itself shows that, Police Inspector Akade, PSI Sudhir Patil, Police Inspector Shriniwas Patil, Havaldar Raju Gosavi, and other police staff were present in the Police Station on that night. Even chief Investigating officer of ATS has admitted that the information was cognizable in nature. Thus, it clearly shows that, all they were having full knowledge that, the information received disclosing the cognizable offence and its entry is mandatory. The evidence also shows that none of them have taken a little bit effort to take the necessary entry or to direct the same to take the entry in concerned register. There are no reasons or nothing brought on record to disbelieve the said information. On the contrary, the evidence on record depicts that, the Station Diary Officer was continuously present in the police station on that day. In cross examination, it is admitted by PW-118 (Raju Gosavi) that, he received calls from P.I. Shininwas Patil and P.I. Akade from the spot of incident. Thus, they were in contact of each other's and updating the information and exchanging the instructions among them. Therefore, if any message disclosing the cognizable offence, then it is incumbent upon the police to mark a note of it is Station diary or General Diary. Surprisingly, in such a sensitive case, number of important entries are missing in station diary.

382) It is not the case of prosecution that, the aforesaid witnesses were

unaware about the nature of information or that they failed to disclose the commission of a cognizable offence. Upon receipt of such information, any one of the aforesaid officers either immediately or subsequently was legally empowered to make an appropriate entry in the records or to direct that such entry be made. But they failed to do so. It is nothing but the glaring lapse on behalf of concerned officers. Therefore, I found substance in the aforesaid point raised by defence advocates.

383) The next points which are raised that, veracity in testimony of witnesses and oral report is replaced by ready-made written report / already prepared report. Both these points are discussed together in order to avoid the repetitions.

Report (फिर्याद)	Exh. 5944
Endorsement on left side of Report (फिर्याद)	Exh. 5885
FIR (Printed form)	Exh. 5883
Station Diary Entry no.6	Exh. 5884
Station Diary Entry no.10	Exh.5884-A

384) The testimony of P.S.I. Sudhir Patil shows that, he had lodged the oral report as per the directions given by police Inspector Shriniwas Patil. Whereas, Police Inspector Anil Akade had issued directions to PSI Sudhir Patil to lodge the report. On the other hand, in cross examination P.S.I. Sudhir Patil admitted that, he

cannot to tell the name of his superior officer, who directed him to lodge the report and to sign the same.

385) Informant PSI Sudhir Patil deposed that, he had lodged the oral report in presence of Police Inspector Anil Akade, and he was present entire time till completion of recording of his report. However, P.I. Anil Akade has admitted that, he was present for a while and not during the entire recording of report. Thus, on this point testimony of both witnesses differs, and the possibility cannot be ruled out that P.I. Anil Akade did not hear the entire contents of report as narrated by Sudhir Patil.

386) P.I. Akade has also admitted in cross examination that, the informant Sudhir Patil orally stated the contents of report to Raju Gosavi and he has computerized the same. Moreover, PI Anil Akade is also not sure when it was asked in cross examination that, whether the report lodged by Sudhir Patil was oral or in writing. Firstly, he has stated that, Sudhir Patil had given the written report (लेखी फिर्याद). Lateron, he stated that Sudhir Patil has given the oral report. Thus, to the single question, he has given two answers. Thus, multiple answers to a question itself show that he himself not aware about the type of report even after going through the FIR and station diary entry. There cannot be a multiple answer to a single question as he is not an ordinary person, but at the relevant time, he was investigating officer. His multiple answer shows that either he is not fully aware about it or tried to cover up some unfolded facts.

387) The admission given by PW-123 (Sudhir Patil) in his cross examination that, if oral report is given then it can be jotted down in handwritten or typed or computerized. When the report is given in writing or typed written or prepared on computer, then it is mentioned as written report **(लेखी फिर्याद)**. Thus, his admission shows that, he knows the basic difference between oral and written report. He is also aware that, the entry of oral or written report is required to be mentioned in column no.4 of FIR. Thus, type of report can be identified from the bare perusal of FIR. PSI Sudhir Patil was also confronted the copy of FIR, specifically column no.4, where the type of report was mentioned as "in writing (लेखी)". He has not refuted the said entry nor taken the stand that it is wrongly mentioned. On the contrary, he has supported the said entry which shows his report was given in writing (लेखी). He admits that it is correct entry. Thus, the officer who has knowledge about the basic difference between oral report and written report, even after he has admitted that, the entry pertaining to written report is correct. So it falsifies his own evidence on the point of lodging the oral report by him and subsequently the entry of written report is taken down.

388) The testimony of PI Anil Akade depicts that, he went to the spot of incident around 2.00 am after reaching at Malegaon. He left the spot only during 2.15 am to 3 am to go to police station. Thereafter, since from 3 am, he was continuously present on the spot till 18.15 hrs. Admittedly, the report was lodged around 3

pm. If it would have been given orally, then for completion of process of recording report i.e. computerized, preparing FIR, taking necessary entries would have taken its own time. It would not be a work of five or ten minutes. The aforesaid admissions clearly shows that, when Sudhir Patil had lodged the report around 3 am, at that time, Mr. Akade would not be present as he had left the police station to go back the spot of incident. Thus, testimony of both the witnesses are differs from the stand taken by them pertaining to lodging of report, type of report, presence of P.I. Anil Akade and verification by him.

389) The testimony of PW-118 (Raju Gosavi) depicts that, the contents of FIR Exh.5883 are in his handwriting. The endorsement on report in his handwriting. Whereas, PSI Sudhir Patil orally narrated the contents of report (**Exh. 5944**) and it was jotted down or computerized by PW-118 (Raju Gosavi). On this point testimony of PW-118 (Raju Gossvi) is completely silent. In cross examination, he has admitted that, Sudhir Patil orally narrated the contents of report. He also admitted that, Sudhir Patil had lodged the written report **(फिर्याद)**. Thus, he himself is not aware which type/nature of report had been lodged by Sudhir Patil even after the stand taken by these star witnesses that oral report was given in presence of PI Anil Akade and it was computerized by PW-118 (Raju Gosavi)

390) Bare perusal of FIR (Exh.5883) and wording of report (Exh.5944) itself shows that, the report was lodged in writing and it was not an oral report. It is nowhere mentioned in the documents that

Sudhir Patil had lodged the oral report on that day and thereafter it was computerized in his presence by Raju Gosavi and read over to him. Sudhir Patil, Raju Gosavi or Anil Akade has not denied the entry taken in column no.4 of FIR as incorrect. The entry itself shows that, the report was given in writing and accordingly it is mentioned in it. Hence, question of taking wrong entry doesn't arise. Thus, all the aforesaid witnesses are police officers. They knew the difference between oral report and written report. It can't be said that they were unaware about the difference between it. The testimony of PI Anil Akade shows that, he was not present after 3 am when the report was presented or narrated. His admission also substantiate that, he was present for a while in the police station during recording of FIR. Thus, there is variance in the testimony of witnesses on the point of nature of report, who exactly taken the report, in whose presence exactly the contents of report are narrated by Sudhir Patil.

391) The counter entry of the report can be verified by Station Diary or General Diary. In station diary, the entry pertaining to FIR was taken by Raju Gosavi as per the directions of PI Anil Akade. In station diary the entry bearing no. 06/08 is taken-down pertaining to crime no.130/08. PSI Sudhir Patil was also confronted with the entry taken at serial no.6 of station diary. Even after going through the said entry, he admitted that he cannot say about its correctness. Moreover, the demeanor of this witness is recorded by the court. It was observed that he was not answering the questions properly and giving the evasive answers. During course of

evidence, this witness had narrated the entry no.10/2008 recorded in Station Diary without referring the station diary. The entry no.10/08 is not connected with crime no.130/08 but it is pertaining to crime no.131/08. It is very strange that even after confronting FIR, Station diary, the present witness did not remember the relevant entry or facts of the incident.

392) The PW-118 (havaldar Raju Goasvi) has made the endorsement on the report lodged by Sudhir Patil. The said endorsement bears the station diary entry number i.e. 07/08. The PW-118 (Raju Gosavi) has admitted that, the copies supplied to the accused, at the time of filing of charge-sheet, the station diary entry didn't appear on it. The endorsement (Exh.5885) made on report was also confronted to him and he admitted that, it is correct endorsement. It is not his contention that, the entry was taken inadvertently. His evidence also shows that, he waited to take entry till lodging of report by any officer and he had put the endorsement on report after taking the station diary entry bearing no.07/08.

393) It will be apposite to mention the station diary entry no.6/08 appearing in station diary register of Azad Nagar Police Station, Malegaon. It is as follows,

आझादनगर पो.ठाणे मालेगांव. स्टेशनडायरी ३०/०९/०८ मंगळवार

अ. क्र.	वेळ	नोंद	तपशील
६	०३/००	गुन्हानोंद गुरन	यावेळी मा.PI सो.स्थागुशा नाशिक (ग्रा) यांनी समक्ष घेतलेली फिर्याद—आझादनगर पो.स्टे. क्राईम डयुटीचे पो.ना.१७५९

		१३०/२००८ भादविकलम ३०२,३०७,३२६,३२४,४२७, १५३(अ), १२०(ब) स्फोटक पदार्थ कायदा कलम ३,४,५ प्रमाणे	दिलिप देशमुख यांचे हस्ते लेखी फिर्याद पो.स्टे. ला आल्याने त्यावरून खालीलप्रमाणे गुन्हा दाखल केला. १.फिर्याद :— एस.बी.पाटील पो.उनि.आझादनगर पो.ठाणे. मालेगाव नाशिक (ग्रा) २.आरोपी :— अज्ञात ३.अ.घ.ता.वेळ.ठिकाण — दि.२९/०९/०८ रोजी २१/३५ वा. सुमारास मालेगांव शहरात अंजुमन चौक ते भिकुचौकचे शकील गुड्स ट्रान्सपोर्ट कंपनी ऑफिस समोर रोडलगत मालेगांव. ४.मयतांची नांवे—१.फरीन शेख लियाकत वय—१०वर्ष—मुलगी २.सैय्यद अजहर निसार वय—१९वर्ष. ३.मुश्ताक अह. युसुफ अह. वय—२५ ४.शेख रफिक शेख मुस्तफा वय—४२वर्ष सर्व रा. मालेगांव ५.स्फोटात जखमी लोकांची संख्या:— ७९ ६.आरोपीतांनी गुन्हयांत वापरलेली वाहन :— LML फ्रिडम मो. सायकल MH-15-P-4572 ७.थोडक्यात हकीगत :— सध्या मुस्लीम बांधवांचा पवित्र्य रमजान महिना सुरू असुन हिंदु बांधवाचा नवरात्र उत्सव सुरू होणार आहे. सदर कालावधीत मोठया प्रमाणात हिंदु व मुस्लीम लोकांची खरीदीसाठी गर्दी होत असते. दरम्यान वरील तारखेस वेळी ठिकाणी कोणीतरी अज्ञात आरोपीतांनी नियोजीत कट रचून LMLफ्रिडम मो. सायकल नं. MH-15-P-4572 मध्ये स्फोटकेभरून ती भिकुचौकात रोडवर उभी करून मुस्लीम व हिंदु या दोन्ही धर्मिय लोकांमध्ये जातीय तेढ निर्माण करण्याच्या हेतुने जातीय दंगली भडकावणेचे व सामाजीक सुरक्षितता धोक्यात आणून दहशत निर्माण करण्याचे उद्देशाने बॉम्बस्फोट घडवून आणून त्या चार लोकांचे मरणास व सुमारे ७९ लोकांचे गंभीर व किरकोळ दुखापतीस व आजुबाजुचे इमारतीचे नुकसानीस कारणीभूत झाले म्हणून गुन्हा. सदर गुन्हयांच्या खबरी रिपोर्ट में. कोर्टास रवाना केला असून गुन्हयांच्या स्पेशल रिपोर्ट वरिष्ठांना फोनद्वारे व वायरलेसद्वारे पाठविण्यात आला असून गुन्हयांच्या पुढील तपासावरील आदेशान्वये श्री.ए.सी. आकडे पो.निरी. स्थागुशा नशिक (ग्रा) हे करीत आहे.

394) The aforesaid entry itself shows that, the report which was taken down by PI LCB at LCB Gramin office. The said report was brought to Azad Nagar Police station, Malegaon by P.C. 1759 Dilip Deshmukh Crime Duty Officer of Azad Nagar Police Station,

Malegaon. On the basis of the said report the offence was registered. It means no oral or written report was lodged by Sudhir Patil at Azadnagar Police Station, Malegaon, in the presence of Shri Akade or Raju Gosavi, as deposed by the said witnesses. The report was already prepared at LCB Gramin office in the name of informant PSI Sudhir Patil. The prepared report i.e. ready-made report was brought by P.C. 1759 to the Azadnagar Police Station, Malegaon. On the basis of the said report, the entry was taken down. Thus, it falsifies the testimony of aforesaid witnesses on the point of lodging oral or written report in their presence at Azadnagar Police Station, Malegaon. Thus, the documentary evidence i.e. station diary entry taken by station house officer is contradictory to the oral testimony of witnesses. Thus, it falsifies their evidence and it clearly shows that, the ready-made report prepared in the name of Sudhir Patil and brought to the police station over which he had signed at Azad Nagar Police Station. No explanation from aforesaid witnesses came on record even after going through the said entry by them. Absolutely, there is no reason as to why the aforesaid facts are suppressed, when station diary entry on this point is very specific. Therefore, I found substances in the argument advanced by Ld. Advocates for accused that the oral report is replaced by written report i.e. ready-made report.

395) Considering the entire aspects on the point of FIR, in my considered opinion, there is variance in the testimony of witnesses, on point of type of report, station diary entry, preparation and

recording of report, presence of officers, timing, wrong entry, etc. The material facts were suppressed. The number of facts as discussed above are found inconsistent and untrue. The testimony of aforesaid witnesses on the point of FIR is not inspiring the confidence of the Court. All the aforesaid aspects after considering in detail creates the doubt about the sanctity of FIR and makes it unreliable.

Source, procuring and transportation of RDX:

396) Firstly, it is necessary to mention that, pertaining to the source and fitting of RDX and transportation of LML Freedom Motorcycle, the two different stands are taken by the two premier investigating agencies. During the course of their respective investigation they had revealed the different facts.

397) In short, as per the case of ATS, the source of RDX is related with the posting of A-9 at Kashmir. He has brought RDX from Kashmir, after completion his posting period. After bringing the RDX, he has kept the said RDX in the cupboard of his house. He has also confessed before some witnesses that, he had assembled the explosives at the residence and with the help of A-11. The bomb was fitted in the house of A-11. Thereafter, AA-1 (Ramji Kalsangra) has exploded the said bomb at Malegaon on 29.09.2008.

398) The NIA came with a case that, AA-1 (Ramji Kalsangra) and AA-2 (Sandeep Dange) was in possession of LML Freedom Motorcycle. They were using the said motorcycle more than one year prior to

the incident of blast. During the interrogation of accused Dhansingh, the information was reeled-off that on 29/09/2008, on the instructions of Ramji Kalsangra and Sandeep Dange, he transported the said motorcycle fitted with IED from the house of suspect Ramesh Mahalankar @ Amit Hakla located at Manavata Nagar, Indore to Sendhawa with other person namely Dinesh, who was unidentified. He handed over the said motorcycle to AA-1 (Ramji Kalsangra) at Sendhawa Bus Stand. Thereafter, the said motor-cycles was transported from Sendhawa to Malegaon.

399) Thus, in short, as per ATS case the RDX was fitted in the house of A-11 by A-9 with the help of other co-accused. Whereas, NIA case depicts that it was fitted at Indore and brought to Malegaon from Sendhawa bus stand. Thus, there is material variance in their charge-sheet and both the investigation agencies are not consistent with each other on the material aspects like, fitting, transporting and involvement of accused.

400) It is well settled position that, mere wording of charge-sheet are insufficient when there is no evidence to support it. The mere wording of charge-sheet cannot be construed as conclusive proof. Therefore, it is necessary to see what evidence is brought on record by prosecution to prove the said charges as leveled in the charge-sheet.

401) On the other hand, the learned advocate for accused had submitted that, absolutely there is no direct evidence in the present

case. Everything is based upon circumstantial evidence. The chain of evidence is neither consistent nor complete. Mere bringing on record the stray circumstances without consistent and complete chain of evidence is neither reliable nor enough to prove the case of prosecution.

402) It is well settled position that the burden of proof in a criminal case rest on the prosecution and not upon the defence. It is also well settled position that, the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. The falsity of defence cannot take the place of proof of facts which the prosecution has to establish in order to succeed. There are five golden principles which should be fulfilled in order to convict a person solely on the basis of circumstantial evidence. Those are,

i) The circumstances from which the conclusion of guilt is to be drawn should be finally established.

ii) The facts so established should be consistent only with the hypothesis of the guilt of accused that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

iii) The circumstances should be of a conclusive nature and tendency.

iv) Every possible hypothesis except the one to be proved should be excluded, and

v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent

with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

403) In the light of aforesaid settled position and golden principles of circumstantial evidence, it is necessary to go through the evidence led by prosecution on the point of posting, source, procuring, transportation and storage of RDX by A-9. The prosecution has examined total five witnesses namely PW-208 (Shailesh Shankar Raikar), PW-259 (Shirish Yashwant Date), PW-309 (Capt. Nitin Joshi), PW-220 (Milind Avinash Joshirao), PW-320 (ACP Mohan Kulkarni).

404) The PW-208 (Shailesh Raikar) was serving in Army till March 2008. Thereafter he left the service and joined Bhonsala Military School, Nashik. He is an independent witness whose statement came to be recorded during investigation by the Investigating Officer PW-266 (PI Kabdule). PW-208 has partly resiled from his earlier statement recorded by ATS and hence he was cross examined by learned SPP with permission. In cross-examination, it only came on record that, in Kashmir mission A-9 had sustained injury to his leg. Except this, nothing came on record to show that, RDX was brought by A-9 after completion of his posting and stored in the cupboard of his house. Moreover, the aforesaid admission given by the witness, itself shows that, A-9 was on Kashmir mission, but he has not given any details pertaining to his period of posting, completion of posting. Therefore, the evidence of PW-208

on the point of Kashmir posting of A-9 and bringing of RDX is not sufficient or helpful to the prosecution in any way.

405) The learned SPP though, urged that PW-266 (PI Kabdule) has recorded the statement of PW-208 (Shailesh Raikar) and proved the portion marked 'A' (Exh.7437) of his statement, but it cannot be used except for the purpose of contradiction and omission. The statement cannot be used for the corroboration of prosecution witnesses or defence witnesses or even court witnesses. The 161 Statement are not conclusive proof of evidence. Moreover, the contents of portion marked 'A' of his statement are categorically denied by PW-208. The admission given by the witness in cross-examination conducted on behalf of accused itself shows that, his own officer Col. Shrivastava and ATS officer extended threat to him to give the statement as per their say, otherwise they will implicate him in this case. Considering his admission, the possibility cannot be ruled out that, his statement being recorded by using coercion, and undue influence. He also admitted that, his statement was recorded behind his back. Therefore, though the contents of statement are proved but such statement has no evidential value as the contents of the said statement were not within the knowledge of the witness.

406) The PW-259 (Shirish Date) is examined by prosecution on various points including the point of Kashmir posting details of A-9. He was having business of sell and purchase of land. ATS inquired with him about incident of Malegaon bomb-blast 2008. His

statement was recorded behind his back by ATS officer. He was unaware about the contents mentioned in the statement which shown to be recorded in his name. He was ill-treated and tortured and forced to give the statement. He was cross-examined by ld. SPP with permission. During cross examination, the suggestion was given pertaining to Kashmir posting of A-9 and his stay at Kashmir. He has only admitted that, in the year 2004, he along with his family friends went to Kashmir trip. But he categorically denied that, A-9 was posted at Badgam and he provided traveling facility and accommodation facility to them. Thus, nothing material elicited from the mouth of aforesaid witness which would be beneficial to the case of prosecution. Neither the witness has stated that, A-9 was posted during relevant period at Kashmir or any help they received from him. Mere Kashmir trip of the witness cannot be directly connected with the posting and help of A-9. Therefore, the testimony of this witness is also not helpful to the case of prosecution.

407) In the year 2008, PW-309 (Capt. Nitin Joshi) was serving at Chief Admin and Training officer at Bhonsala Military school, Nashik. He is one of the star witness of prosecution. As per the case of ATS, in his presence, A-9 has confessed that, he has brought RDX from Kashmir after completion of his posting and the said RDX was kept in cupboard of his house.

408) During the course of evidence, the witness PW-309 (Capt. Nitin Joshi) has completely resiled from his earlier statement recorded

by ATS officer during the course of investigation. He particularly stated that, he has not given any such statement shown to be recorded in his name by ATS officer. He never disclosed that, in the year 2006, he met A-9 and at that time, A-9 told him that, when he was posted at Kashmir, he got 60 kgs RDX from one operation and he has thrown the same in the river. PW-309 stated that, he never met A-9 in the year 2007 and A-9 never told him that while coming from Kashmir, he has brought any RDX with him and kept in wooden cupboard of his house. Thus, nothing came on record from the mouth of PW-309 regarding the posting of A-9 or source / procuring of RDX or transportation of RDX or keeping that RDX in wooden cupboard of his house.

409) The PW-309 (Captain Nitin Joshi) has categorically stated that, he was forcibly taken by ATS officer in their vehicle at Nashik. They inquired with him upto late night. They also threaten him to narrate the facts as per their say. He was sick-off and fed-up due to repeated calls and taking him forcibly by ATS. Due to their persistent pressure, threat and hammering, he had given the statement as dictated by them and hence, the aforesaid facts are appearing in the statement which are baseless. He had also lodged the complaint before Human Right Commission against some ATS officers. Thus, the possibility cannot be ruled out that, his statement was recorded by browbeating and threatening him to face dire consequences. The testimony of this witness itself shows that, his statement was involuntary and forceful. Such statement cannot be relied upon.

410) In the year 2008, PW-220 (Milind Avinash Joshirao) was having business of lifts. He testified that, on 28.10.2008, he was taken by ATS and they kept him in their custody till 07.11.2008. They treated him like accused. They inquired with him about Abhinav Bharat, its business, donations received and working members of the trust. He specifically deposed that, he never met A-9 nor A-9 had disclosed him about any war event when he was posted at Kashmir. Thus, the testimony of this witness is also not helpful to the prosecution in any way.

411) The PW-320 (ACP Mohan Kulkarni), is the Chief investigating officer of ATS. He has admitted that, he had not collected any information about the posting of A-9 at Kashmir. He had not taken any information as to whether any injury was sustained by A-9 in Kashmir operation. During the remand of A-9, he had given the information pertaining bringing of RDX by A-9 from Kashmir and on the strength of this information they sought the remand of A-9. He has also admitted that, he had not made any inquiry with senior officer of A-9 pertaining to RDX brought by A-9 from Kashmir.

412) The admissions given by the PW-320 (ACP Mohan Kulkarni) are self sufficient to show that he had not collected any information pertaining to source, procuring, transportation of RDX with the senior officer of A-9 during his alleged posting at Kashimr. There is nothing on record to show that, how A-9 has brought RDX from

Kashmir except the bare allegations. Therefore, the testimony of PW-320 is also not helpful to the prosecution to connect A-9 with the said allegations of procuring, bringing RDX from Kashimr after completion of his posting.

413) The Investigating Agencies had not inquired or collected or filed any documentary evidence on record to show that A-9 was posted at Kashmir during the particular period. Admittedly, for transportation of RDX, several formalities are required to be completed along-with several permissions. Transportation of RDX cannot be done alike other articles. There are several checks and restrictions for transportation of RDX. Not a single witness has deposed that, anyone had seen A-9 during his posting at Kashmir at specific place or for particular period or he has procured the RDX or he has brought the RDX. Thus, in the absence of any positive evidence, I am not inclined to accept that A-9 has brought any RDX from Kashmir as alleged.

Storage of RDX :

414) In short, as per case of prosecution A-9 has stored the RDX in the wooden cupboard of his house. It emerges from evidence on record that the house of A-9 was searched twice by ATS officers in his absence.

415) The first house search was conducted on 12.11.2008 and the second house search was conducted on 26.11.2008. The first house search was conducted by PW-257 (API Satish Gurav) ATS

Sub-unit Pune. During the first house search as per panchanama vide **Exh.6697**, only two CDs came to be seized from the cupboard of house of A-9. The Investigating Officer did not find any RDX or traces of RDX or any other explosive material or any other suspicious articles from the house of A-9.

416) The second time, house search was carried out on 26.11.2008, on the basis of suspicion that, he had kept / stored the RDX in the cupboard and assembled the bomb in his house. Accordingly, the letter was issued by the Investigating Officer to the Director of FSL Pune to send the expert team to collect the samples from the house of A-9. The letter was issued on 25.11.2008. The house search was carried out by PW-300 (API Atul Subnis) in the presence of Assistant Chemical Analyzer and their team. The house was extensively searched.

417) Expert team had collected the various samples from the house of A-9. Those samples were analyzed in the laboratory. The Chemical Analyzer has submitted her report and negated the theory of RDX or traces of RDX. The Chemical Analyzer has opined in her report that, "After extensive search, it was revealed that, no explosive or explosive residues were detected. No suspected devices like detonators, wires used for detonators, times are found. Clocks, etc. used for the assembling of IED were also not found." The aforesaid report was given by Assistant Chemical Analyzer Smt. Ghosarwardkar, Regional Forensic Science Laboratory, Pune. She was not examined as a witness by prosecution. But, by taking the

aid of section 293 of Cr.PC, Court can go through the said report, which clearly shows that nothing incriminating articles or RDX traces were found in that extensive house search.

418) The aforesaid facts of extensive search of the house of A-9 in the presence of Assistant Chemical Analyzer is came on record through the testimony of PW-300 (Atul Subnis). He also testified that, they had called two panch witnesses and forensic laboratory team for the house search of A-9 forensically. All they went inside the house of A-9 and extensive search was carried out. Expert had taken the photographs, examined suspicious spot, done some preliminary tests by Martial Explosive Kit. But, they did not find any suspicious things during the extensive house search. He identified the panchanama vide **Exh.8283** showing that, nothing came to be seized from the house of A-9.

419) The PW-309 (Capt. Nitin Joshi) has specifically admitted in cross-examination that, A-9 had not given any weapons or ammunition. He had not seen any RDX in the house of A-9. The A-9 never confessed that he had supplied RDX. Thus, the story of ATS pertaining to supply and storage of RDX by A-9 in his wooden cupboard is also negated by the independent witness.

420) Thus, there is nothing on record to show that A-9 has assembled the bomb in his house or utilized the RDX for the preparation of bomb after storing the RDX in the wooden cupboard of his house. Taking into consideration the entire testimony of aforesaid

witnesses, I am of the view that, in the absence of any positive evidence, the prosecution is unsuccessful to prove that any RDX was brought by A-9 from Kashmir and he has stored the said RDX in the cupboard of his house and assembled and utilized the said RDX for bomb-blast.

Assembling and Fitting of RDX:

421) As per prosecution, AA-1 and AA-2 went to Pune and collected RDX and thereafter went to Indore by train. Now, in the backdrop of facts and evidence on record it is necessary to discuss the relevant witnesses connected on the aforesaid point. Those are PW-148 (Vijay Manjrekar), PW-223 (Mahesh Kaushik), PW-226 (Raju Devkar), PW-216 (A.B. Mahajan), PW-307 (Keshav Pawar).

422) The ATS had given the letter in the name of Chief Commercial manager, CST, Mumbai for getting the information of booking of train ticket and cancellation of ticket issued in the name of Balwant Pathak and Mansing. The PW-148 (Vijay Manjrekar) being senior executive of IRCTC had supplied the copy of extract printed from his computer to ATS regarding the railway ticket booking dtd. 04/08/2008 and cancellation of railway ticket dated 11th August 2008. Being computer generated copy he has not filed any 65 B certficiate nor annexed to it. The details were demanded Pune to Bhopal by issuing letter vide exh.6600, but ticket reflects that it was from Pune to Khandawa. Admittedly, there is no name of AA-1 and AA-2 or name of Balwant Pathak or Mansing mentioned in it nor there is any evidence on record they have booked the same. So

mere booking and cancellation by any other person would not point out that those wanted accused had booked and cancelled the ticket and tried to travel by train.

423) The PW-223 (Mahesh Kaushik) is examined on the point of booking of ticket of Hans Travel by one Balwant Singh on 8th August 2008 so as to travel on scheduled date 11th August 2008. He deposed that, the chart was not available with him. The data was stored in computer at Indore and hence, he called their Indore office to provide the data. A computer print-out was provided which shows that Balwant Singh has travelled on dated 11th August 2008 from Pune to Indore. In cross examination, he has admitted that it is computer generated list. Admittedly, it is without 65-B certificate. Moreover, it came on record that, in his statement before police he has not stated that, police asked him to provide the data from 8th August to 11th August and chart was sent by Indore Office and he himself booked the ticket of Balwant Singh. Thus, these material facts are omitted in his statement. They did not have copy of proof or any other document showing the identity of customer. He has not identified the said accused in any way nor he has described the physical appearance of Balwant Singh. Moreover, it is not the case of prosecution that AA-1 was also using the name as Balwant Singh and there is nothing on record which suggest that, the ticket was booked by AA-1 in the name of Balwant Singh to hide his identity.

424) The PW-226 (Raju Devkar) has deposed that, he was social worker

and member of RSS. Being social worker, he used to attend the various functions. ATS has recorded his statement but he doesn't remember the same. As the witness has not supported to the case of prosecution and hence, Ld. SPP with permission cross examined the witness. In cross examination, he was confronted with his statement. He denied the contents of statement. He denied that Ramji met him and when he was at Himachal Pradesh at that time he phoned him. Nothing material was elicited from his mouth during his cross examination which will support the case of prosecution. On the other hand, in the cross examination conducted by Ld. Advocates for accused, he has admitted that ATS officer called him repeatedly. They were pressurizing to give the statement as per their say by taking the name of particular organization. He denied to do so, hence they beat him mercilessly. They tortured him. As a result of assault, he sustained injury to his ear. Due to fear of ATS and keeping him on gun point, he did not lodge the complaint against the ATS officers. Thus, his testimony itself shows that, by pressurizing, threatening his statement has been recorded. Therefore, he seems to be retracted from his earlier statement.

425) During investigation of ATS it was transpired that, assembling and fitting of RDX at the house of A-11, whereas the theory of planting and fitting of RDX at the house of A-11 is negated by NIA in their charge-sheet. As per NIA charge-sheet, it was assembled and fitted at Indore. Thus, both the prime investigating agencies came up with different stories and found different things during their

investigations. But admittedly there is no evidence on the point of assembling, fitting or transporting the said motorcycle from Indore to Sendhawa and from Sendhawa to Malegaon.

426) Now coming to the aspect that as to whether there is any evidence who has seen AA-1 (Ramji Kalsanagra), AA-2 (Sandeep Dange), DA-12 (Praveen Takalki), A-11 (Sudhakar Chaturvedi) with the said LML Freedom Motorcycle in the house of A-11 at Deolali, Nashik. It came on record that, it is crowded residential area. But there is not a single eye-witness examined by the prosecution, who was residing in the vicinity of that house except the owner of the house.

427) It emerges from evidence on record that, A-11 had a rented accommodation at Deolali, Nashik. The rented house was situated on ground floor in chawl like structure. The said house belongs to A.B. Mahajan. Being owner of the house, PW-216 (A.B. Mahajan) is examined by prosecution. He deposed that, he is the owner of the house situated at Bana Chawl, Deolali Camp, Nashik. He has given on rent his house to A-11 for the period of eleven months as mentioned in leave and license agreement. A-11 was residing with his family in the rented rooms. Whenever he went to collect the rent, he has seen A-11 with his family. Except this he has not deposed nothing which would be beneficial to the prosecution on aforesaid point. It clearly indicates that he has never seen any stranger in his house or any guest in his house.

428) There is no evidence showing that, DA-12 (Pravin Mutalik) had stayed with one person at the house of A-11 at Deolali Camp, Nashik from 22/09/2008 onwards and that person was having golden colour LML Freedom motorcycle.

429) The PW-307 (Keshav Pawar) deposed that, A-11 was their source person. The Army office has issued the I-card to him to work as a source person. They used to provide meal, tea to the source person as a hospitality. Being source person, he used to visit the office. Whenever A-11 used to go outside, he used to keep his keys of house with them. PW-307 (Keshav Pawar) has handed over the said keys to Praveen Mutalik on the say of A-9 and A-11. His testimony clearly indicates that, he had not seen any golden colour LML Freedom Motorcycle brought by any stranger or AA-1 and stayed with Praveen Mutalik. The testimony of this witness only shows that in the absence of A-11 Pravin Mutalik stayed in his house except this nothing is on record. Hence, predecessor of this court discharged Pravin Mutalik from the charges levelled against him. Admittedly, the said discharge order is not set aside.

430) Thus, there is not a single eye-witness who says that, he has seen any one of the aforesaid accused at any time with the said vehicle while parked or accused were roaming on that vehicle or taking inside the house. Therefore, mere on assumption / presumption or as per the charges levelled in the chargesheet, it cannot be said that the said vehicle was brought to the house of A-11 and bomb was fitted there by the aforesaid accused. In the absence of any

evidence, it does not inspire the confidence to accept the same.

Recci / Rekki (Reconnaissance) of Spot :-

431) Ongoing through NIA supplementary charge-sheet, it shows that, NIA has leveled the charges that, during interrogation they came to know that, Dhan Singh (A-16) and one Amit Hakla had carried out the preliminary Survey (Rekki) of Malegaon in the month of September 2008 for selection of place for committing bomb-blast as per the instructions of Ramji Kalsangra. Though prosecution has examined total 323 witnesses but absolutely there is not a single eye-witness or any other witness deposed about the same. Thus, there is no evidence on record in any form to show that, the aforesaid accused committed Recci and they have admitted the said facts during the course of interrogation. Moreover, against Dhan Singh NIA did not get any evidence even after thoroughly investigated. Therefore, I am inclined to hold that, it remained bare words about alleged Recci. Except the bare wordings, no iota of evidence and hence, nothing survives in it.

Parking of vehicle on spot of incident :-

432) It has come in the evidence of PW-102 (Vijay Bilage), PW-301 (Anil Akade), PW-123 (Sudhir Patil) that, the said place of incidence was a crowded place. It was a month of Holy Ramzan. Number of Peddlers, stall holders, shopkeepers and other persons were present. The said alleged incidence took place opposite Shakeel Goods Transport Company, between Anjuman Chowk to Bhiku Chowk.

433) The testimony of **PW-102 (Vijay Bilaghe)** depicts that, on 29/09/2008, he was on duty at Bhiku chowk till 9 p.m. along with other police personnel. They have also not seen anybody while parking of vehicle or presence of accused on the spot. The witnesses / people on the spot or nearby the spot had also not seen anybody while parking the alleged motorcycle.

434) Police did not find a single eye-witness who confirms the presence of any accused on the spot before or after the said incident. Even during the course of evidence, not a single witness spoke about the presence of the accused on the spot of incident prior to the said incident or at the time incident or subsequent to the incident. The charge-sheet of ATS and NIA is also silent on this point. Thus, there is no direct evidence on the point of presence of accused at Malegaon, on the date of incident or before or after the incident.

435) The PW-136 [(Abdul Mannan Abdul Khalik (Master)] has admitted in his cross examination that, the holy Ramzan Eid period was going on. So the spot and nearby area remains heavily crowded. In those period it was not possible for vehicle(s) to pass from the said road on account of barricading by police near Mushawart Chowk and Nehru Chowk. On account of presence of large number of people on the said road and presence of hawkers, the vehicles were not allowed to park near the said road in front of shops.

436) The evidence on record shows that, number of police officers and

personnel were deployed on fixed point duty (Bandobast Duty) at Bhiku Chowk and nearby area being Holy Ramzan was going on. No outside vehicle was allowed. The entry of outsiders vehicle were banned by barricading. Police had kept watch on every movement people so as to avoid any unwanted incident or untoward incident. In the backdrop of the said facts, bringing the vehicle from outside and parking the same seems to be impossible. Thus, there is also no evidence in any form on the point of parking of vehicle loaded / fitted with RDX in front of Shakeel Goods Transport at Malegaon by any accused or on behalf of accused by any other person.

437) On the aforesaid points, the entire case rest on circumstantial evidence. For reaching the conclusion, as to whether the bomb explosion caused by accused as per alleged conspiracy or not, it is necessary to scan the entire evidence came on record. It is well settled position that, the circumstances should be so linked so as to form a chain and the chain should be complete and there should be no other chance of anyone else committing the offence.

Occurrence of Incidents and scenario after post incident:-

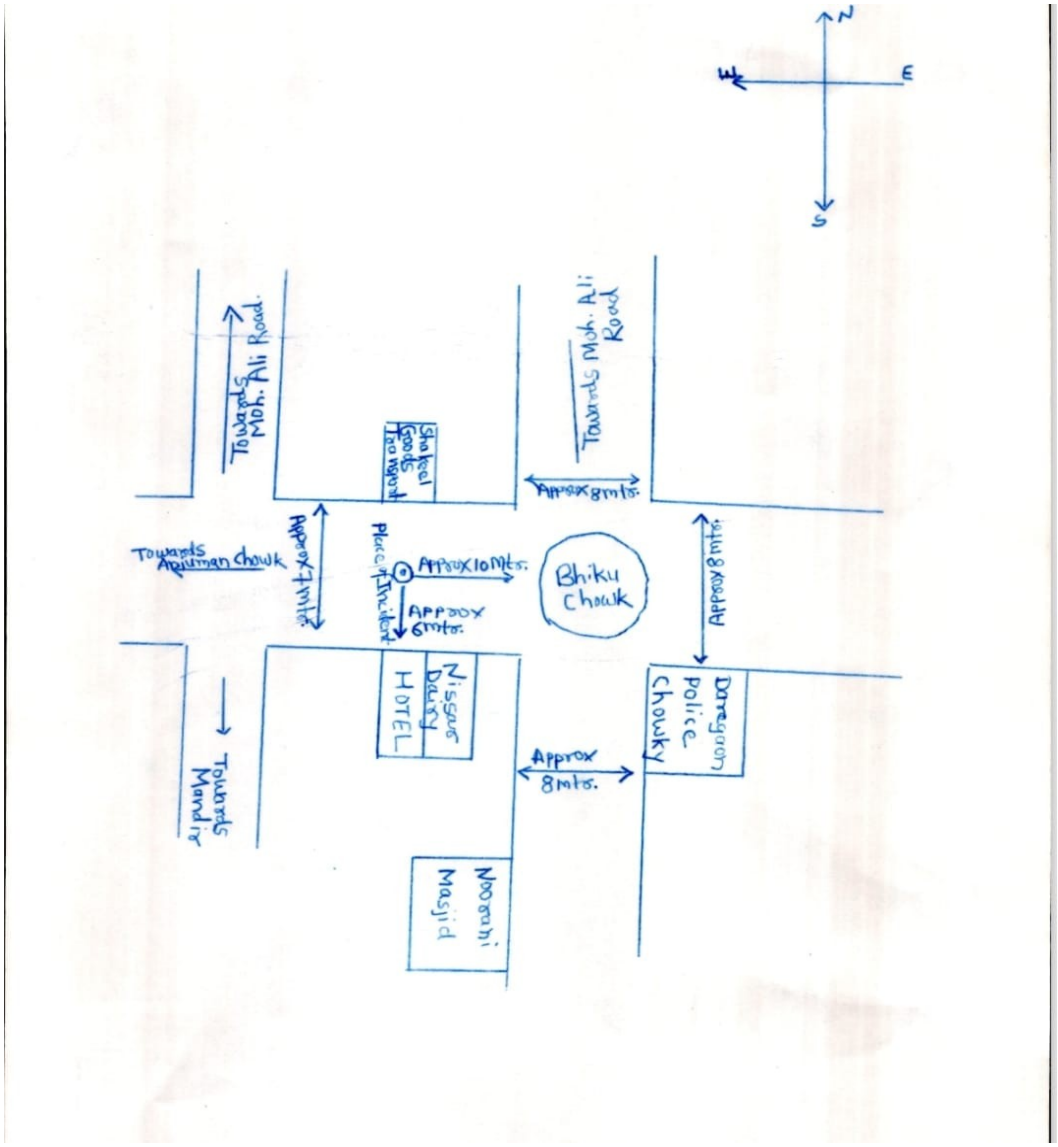
438) As per the case of prosecution and evidence on record, there are two incidents. First one is bomb-blast incident and second one is after blast incident i.e. attack of mob on police and counter attack by police on mob. Thereafter, arrival of DFSL team, BDDS team, the preparation of spot panchanama, seizure of articles from the spot, report of Experts, etc.

439) Now pertaining to first incident i.e. bomb-blast incident, firstly the three police officers, namely, Bapu Pandit Thorat, Balasaheb Bhausaheb Thorat and Vijay Bilage required to be considered as they were on duty at Bhiku chowk and nearby area on the day of incident and their names are specifically emerged from the documentary evidence on record. The testimony of other police personnel is also required to be considered who were allotted the duty at Bhiku Chowk and its vicinity.

440) It is also necessary to mention that, out of these three crucial police witnesses, only PW-102 (Vijay Bilage) is examined by prosecution. Bapu Pandit Thorat being reported dead and hence not examined. Bhausaheb Balasaheb Thorat had lodged the report against the aggressive mob bearing crime no.131/08 (arising out of same incident) is also not examined. The parallel entry of crime no.131/08 is taken in station diary bearing entry no.10/08. On this point, testimony of station diary officer Raju Gosavi and investigating officer PI Anil Akade is taken into consideration while discussing the evidence.

441) It would be apposite to incorporate a rough sketch map of the spot and its surroundings, drawn based on the evidence available on record. Such a visual representation shall facilitate a clearer understanding of the precise location of the incident and its contextual environment.

ROUGH SKETCH MAP



442) The testimony of PW-102 (Vijay Bilage) shows that, he was on duty at Bhiku Chowk from 19.00 hrs and onwards along with six police personnel. Around 9.25 p.m. he was waiting outside the Daregaon Police Chowki for arrival of Killa Police Inspector for patrolling duty. The Daregaon Police Chowky is approximately 70

feet away from the spot of incident. At that time, he saw there was a blast in one motor-cycle parked in front of Nisar Hotel. Persons nearby the blast site were thrown away. Splinters spread over and also struck to his leg.

443) The station diary entry no.10 (Exh-5884-A) is proved in the evidence of PW-301 (PI Anil Akade). The bare perusal of Station Diary entry no.10 with FIR of Crime No.131/08 shows that, on that day Anjuman Chowk to Bhiku Chowk was over-crowded. police officer Balasaheb Bhausaheb Thorat had been to Bhiku Chowk for mobile patrolling duty with other police personnel. At the relevant time, he was 50 meters away from the spot. Around 21.35 hrs., in front of Shakeel Goods Transport, there was big sound, fire and smoke were coming out. He immediately rushed to the spot and saw that the smoke was coming out from LML Freedom vehicle and it' back portion was completely destroyed. He had lodged the report on 30/09/2008 around 4 a.m. against the aggressive mob for attack on police vide crime no.131/08 (arising out of same incident i.e. post blast incident).

444) The number of injured witnesses, as discussed earlier, have also narrated that they have heard loud noise and seen the smoke coming out at Bhiku Chowk. The PW-136 (Abdul Mannan Abdul Khalik had testified something different than others. On that day he was present in Masjid (Mosque). He heard loud noise. He came out of mosque and saw the electricity went off. The fire was present in Shakeel Goods Tranport and some cycles were lying in

scattered manner. He had not seen any damaged vehicle on the spot.

445) All the aforesaid witnesses were present at different-different locations / place. So, there is possibility that, there can be variance in their testimony about exact place of incident. But admittedly, nobody from injured witnesses or their relatives have lodged the report about the said Bomb-blast Incident. Admittedly, none of the eye witness of the said incident had lodged the report.

446) Now coming to post-blast-incident. To get exact picture of post blast incident, it is necessary to see the testimony of witnesses connected on this point. Their testimony would threw the light on the various disputed aspects like contamination of the spot and seizure of contaminated articles from the place of incident, in order to arrive at certain conclusion.

447) Firstly, it is necessary to see the evidence of Police Havaldar PW-102 [Vijay Bilage]. It came in his evidence that, after the bomb-blast incident, immediately the huge mob gathered near the spot. The mob was furious and aggressive. Mob attacked on Daregaon Police Chowky also and tried to break down the door of the police chowky. To push back the aggressive mob there was air firing from Daregaon Police Chowky. Mob pelted stones, bottles on Daregaon Police Chowky and caused damages to Daregaon Police Chowki.

448) It has further come in his evidence that, the mob was increasing.

To control the said situation and to disperse the mob, the force had been used by police. There was lathi charge, tear gas, firing by police. Even after that, the mob was not in a mood to listen the police. Mob also attacked on police van and vandalized the police vehicles. They also attack on Asst. S.P. Prabhu resulted into head injury and fell in Drainage (Nala/Gatar). From 9.30 p.m. to 12.30 p.m., the process of firing and controlling the mob was going on.

449) Thus, the testimony of PW-102 (Vijay Bilage) shows that, on 29/09/2008, he was on Bandobast Duty (Fixed Point Duty) at Bhiku Chowk along with other police personnel. He is the eyewitness of the activities / movements prior to blast and after the blast. He is the eye witness of the incident who has narrated the entire scenario of incident including the reaction of mob and force used by police against the mob. Though he was on duty on that day, but he had not seen or noticed that who had brought and parked the said motor-cycle on the spot. He is only aware that some motor-cycles were parked in front of Nisar Hotel and out of those motor-cycles in one motor-cycle there was a blast. He has not identified the said motorcycle either on the spot or during the course of his evidence.

450) The station diary entry no.10 having contents of FIR bearing Crime no.131/08. If both the documents are read co-jointly, it shows that, PSI Balasaheb Bhausaheb Thorat has also seen the post incident. He was present at Bhiku Chowk. He saw initially mob gathered on the spot comprises of five to six thousand people

initially and lateron increased upto fifteen thousand. The mob was aggressive and shouting “pakado maro”. They pelted stones, vandalized the police vehicles. Caused stone injury to driver on police vehicle Shri. Mali, Asst. S.P. Viresh Prabhu. The mob came very close by pelting stones and hence, Police-Naik Dinesh Jadhav fired shell through the gun. The tear gas was spread over. Again he threw three-ways 5 grenades towards the mob. The state reserve police force has fired 58 rounds. The mob also snatched the 10 rounds and loaded 9 MM pistol from Police Constable Borse. Thus, there was attack and cross attack.

451) The testimony of Shri. Anil Akade shows that, he reached to the spot around 2 a.m. on 30/09/2008, therefore he had not seen pre-incident or post-incident personally. But he came to know that number of teams had been to the spot of incident to control riot including the Riot control Vajra Unit with Vajra Vehicle. There was firing by police. The personal body guard Constable Borse of Addl. S.P. also fired towards mob from his pistol.

452) The testimony of PW-123 (Sudhir Patil) depicts that, he has heard the incident of Bomb-blast from Police Inspector Shriniwas Patil, hence they immediately went on the spot. People were gathered near the spot of incident. The LML Freedom motorcycle was in half burnt condition. Four to five bicycles were lying in scattered condition. One Hero company motorcycle lying near the scene of offence. The blood stains found near the spot site. The mob was pelting stones. Number of police teams like Q.R.T. and other

reached on the spot. Asst. S.P. Viresh Prabhu received a stroke of stone and he fell into gutter (drainage / Nala). PSI Thorat lifted him on shoulder and admitted in hospital. The driver of Q.R.T. team was also assaulted by mob. On account of blast four persons died on the spot. He admitted in cross examination that the mob was increased upto 15,000 people within five to ten minutes. The mob did not attack on them when they were proceeding towards the spot of incident. He has not lifted any injured nor he has noticed any dead body on the spot. He was present till 2.45 am.

453) Thus, the testimony of all aforesaid witnesses shows that the mob comprises of 15,000 people and gathered within the span of 5 to 10 minutes only. Sudhir Patil (informant) has not seen the bomb-blast incident personally. He is hearsay witness as he received information from Shriniwas Patil. The testimony of aforesaid witnesses itself shows that to control the aggressive mob various teams were called on the spot. Admittedly, there was used of heavy force by police which comprises of lathi charge, use of tear gas, three ways five hand grenades, firing of 56 rounds, firing by body guard of Asst. S.P. Prabhu from his pistol towards the mob, air firing from Daregaon police chowki.

<u>Spot Panchanama & Seizure of Articles</u> :-

454) Admittedly, after the post incident, the spot panchanama was prepared by PW-301 (PI Anil Akade). The various samples were collected and seized from the spot. Various teams visited the spot. In the backdrop of aforesaid facts, now it is necessary to consider

the evidence led by prosecution on the aforesaid points as they are interconnected with each other's. There are eight material witnesses on the aforesaid point. Those are PW-301 (Police Inspector Akade), PW-124 (Panch witness Khalifa), PW-119 (Photographer Sunil More), PW-120 (Videographer Ambadas Jagtap), PW-261 (Expert witness Dr. Suhas Bakre), PW- 121 (Uttam Gaikwad PSI BDDS), PW-116 (Land Surveyour Pandharinath Chaudhary), PW-117 (Tahsildar Kisanrao Mhasane).

455) In order to prove the spot panchanama, the prosecution has examined Police Inspector Akade and Panch witness Khalifa. Police Inspector Akade had been to the spot around 2 a.m. on 30/09/2008. The two panch witnesses, namely Dattu Jadhav and Shakil Ahmad Moh. Khalifa were called by Police Inspector Shriniwas Patil for the preparation of Spot Panchanama and seizure of articles. The PW-301 has testified that under the supervision of Shri. Bakre (Asst. Chemical Analyzer) they have prepared the spot panchanama. He has started the spot panchanama around 6 a.m. and completed at 3.00 p.m. He has identified the said panchanama (Exh.5962). He had seized the 33 articles from and nearby the spot site. He himself and his staff had taken the various acetone extract and water extract / swab from the spot of incident and its vicinity. The articles were seized and sealed on the spot and sent for Examination in Directorate Forensic Science Laboratory (DFSL).

456) The panch Witness Khalifa also testified that, he had been to Spot

of Incident around 6 a.m. He acted as a Panch Witness. Police Inspector Akade Prepared spot panchanama. He identified his signature appearing on spot panchanama. The motorcycles were lying on the spot was shown to him by police. He also observed the damaged condition of motorcycles and inspected its numbers. The police seized 33 articles from the spot and its vicinity.

457) Before adverting rival submissions on the point of spot panchanama and relevant evidence, it would be apposite to mention three motorcycles details as its reference would come repeatedly during the course of further discussed evidence. Those are mentioned in tabular format as follows :-

Sr. No.	Make	Number	Documents of Ownership
1	LML Freedom Motorcycle As per case of prosecution Original Number	MH-15-P-4572 GJ-05-BR-1920 {As per documents maintained at RTO office & Form 22 issued by Manufacturer,	Nil Exhibits 7111 & 7112 colly.

		it is LML Freedom DX vehicle}	
2	Honda Unicorn Motorcycle	MH-41-M-15	Seized but not produced.
3	Hero Honda S.S.	MH-15-P-4572	Not seized

458) Bare perusal of spot panchanama (**Exh-5962**) shows that, it is combined panchanama. It is spot-cum-search-cum-seizure panchanama. It was prepared in Marathi language. Police Inspector Akade deposed that, Panch Witness Khalifa can talk Marathi and read Marathi Language. Whereas, panch Witness Khalifa has admitted in cross examination that, he doesn't know Marathi language. He cannot read and write the Marathi language. During the course of his evidence, the panchanama was given to read him but he could not read it more than 2 to three lines. Thus, it clearly shows that he is unaware about the Marathi Language in which Panchanama was drawn.

459) The admissions given by Panch witness Khalifa further shows that, Police were taking the rough notes of articles on the separate paper individually. Police had not taken his signature on rough notes. On the basis of the said rough notes the Spot Panchanama was prepared later-on. Police Inspector Anil Akade also admitted that he himself and his staff had taken the notes on separate

papers. He has not included those papers as a part of investigating papers. He did not obtain the signature of panch witnesses on those papers. Thus, panch witness is unaware about the contents of noting taken by Mr. Akade and his staff, on the basis of which the spot panchanama and seizure of articles were made. Considering the admission given by him, it cannot be said that, Panch Witness Khalifa was fully aware about the contents of panchanama being ignorant about Marathi Language and noting taken by the police and contents thereof. Moreover, those noting papers are also not the part of investigation papers, so it cannot be said that, contents of panchanama fully tallies with the articles & noting taken on the spot.

460) Police Inspector Anil Akade deposed that, the Spot Panchanama was prepared under the supervision of PW-261 (Dr. Suhas Bakre) and the articles were seized in the presence of Dr. Suhas Bakre. But it is categorically denied by Dr. Suhas Bakre in his evidence. He stated that spot panchanama was not prepared under his supervision. Articles were not seized in his presence. Moreover, he deposed that, he is unaware as to whether the spot panchanama was prepared between 6 a.m. to 3 p.m. Admittedly, on spot panchanama there is no signature of Mr. Bakre. If it would have been prepared in his supervision, then at least the witness would have admitted its contents and his signature. But on the contrary, it shows that, in his presence since morning to 3.00 p.m. the police had not prepared the Spot Panchanama. Thus, it clearly shows that, spot-cum-search-cum-seizure panchanama was neither

prepared under the supervision nor it was prepared between 5.30 am to 3 pm in his presence. Thus, expert testimony is not supporting to the testimony of PW-301 on the aforesaid material aspect. Thus, it falsifies the testimony of PW-301 pertaining to preparation of spot panchanama during 6 a.m. to 3 p.m. under the supervision of PW-261 (Dr. Suhas Bakre).

461) The evidence on record and spot panchanama shows that 33 articles were seized from the spot and its vicinity. Admittedly, it came on record that, the Honda Unicorn bike was also lying at distance of 5 to 6 feet from LML Freedom Vehicle. The Honda Unicorn bike is seized from the spot as per spot-cum-seizure panchanama. But the documents of Honda Unicorn Bike which were lying on the spot, as per PW-124 (Shakeel Khalifa) those were sized by police but not mentioned in seizure list of panchanama.

462) Whereas, the testimony of PI Anil Akade shows that, the documents lying on spot showing that Majid Ahmad is owner of Honda Unicorn Bike. The said vehicle was parked by PW-70 (Firoz Ahmad) but those documents are not produced on record nor shown to the witness.

463) The owner of vehicle Majid Ahmad is also not examined. The PW-70 (Firoz Ahmad) doesn't say in his testimony that, he had parked that vehicle in front of Shakeel Goods Transport at the relevant time. On the contrary, his statement recorded u/s 161 shows that,

he was at Pan Shop with his vehicle at the time of blast. But the said portion was neither confronted to him nor marked or contradicted. Hence, the contents of the statement though showing the spot of Honda Unicorn Bike at Pan Shop and not on the spot but it would not be helpful in any way as the statement can only be used for omission and contradiction purpose.

464) The portion mark 'A', 'B', 'C' as marked in Panchanama are showing the position, condition of motorcycles and bicycles at the relevant time. The panch witness PW-124 (Shakeel Khalifa) has admitted that, the contents of Portion mark 'A', 'B', 'C' of Spot-cum-seizure panchanama is incorrectly mentioned. Thus, narration about the position and conditions are denied by the panch witness in whose presence the prosecution claims that the panchanama was prepared.

465) The mob was around 15,000 which gathered on the spot within ten minutes. They pelted stones, set on fire the Daregaon police chowky, vandalized the police vehicles, police fired on the mob, etc. But the investigating officer did not find a single stone or other articles thrown by mob. He has not seized those articles from the spot. The bottle pieces, bullets, empty caps / shell of bullets were also not seized from the spot. It shows that PW-301 (Anil Akade) had taken the selective approach while seizure of articles from the spot of incident. Not bringing the clear picture of the spot, non-collection of other articles lying on the spot is nothing but the suppression of material facts.

Visit of Expert team to the Spot of incident :-

466) Admittedly, PW-261 (Dr. Suhas Bakre) had visited the spot of incident with his team. As per the testimony of Police Inspector Akade, he has not given the information to PW-261 about the incident. PW-261 deposed that, PI Akade met him on the spot and told only that there was 5 death and 80 persons sustained injury in the blast incident. One constable took him to the spot and shown LML Vespa MH-15-P-4572 which was in damaged condition. Police told him that it was suspected bike, therefore collect proper exhibits and guide the investigating agency.

467) In cross examination, at one hand PW-261 admits that, the history of incident was briefed by PI Anil Akade and on the other hand, in cross examination he stated that, there was riot, firing, use of tear gas, pelting of stone, etc. was not told to him. Thus, he has give two inconsistent answers to the same question which falsifies his own testimony on the aforesaid point. Even for the sake of moment, it is assumed that no information was passed on from PI Anil Akade to Dr. Suhas Bakre, but still the question remains that PI Anil Akade had knowledge about the incident. He knew that there was post incident and use of force by police when mob attack on police. Number of teams were called on the spot. In such contingencies also it would not be acceptable that he did not narrate the material facts. If really it is not narrated then it amounts to suppression of material facts from expert who was called for specific purpose. The explanation offered by PW-301 that

it was skipped off from memory would not be acceptable in backdrop of aforesaid situation. The said reason is not seems to be logical when such huge incident occurred and specifically the expert was called for the purpose of collection of samples.

468) Moreover, PW-261(Dr. Suhas Bakre) had met to late Shri. Karkare in the evening on 30/09/2008 and they had discussed about the scene of offence and overall observations made by him. Considering the aforesaid facts, it is difficult to accept that even in the said discussion also PW-261 (Dr. Suhas Bakre) did not get the knowledge about the post incident.

469) In addition to it, the testimony of PW-184 (Dr. Bahusaheb More) shows that, he was one of the members of the team headed by PW-261. All team members along with PW-261 had been to the spot of incident on 29/09/2008 also. Thus, it makes crystal clear that, they had visited twice to the place of incident.

470) The PW-261 (Dr. Suhas Bakre) had visited spot and nearby places along with other persons. So there must be some talk between him and other persons. In the backdrop of those facts, not a single person spoke to him about incident or nor he had asked the same is difficult to accept. Therefore, I am not inclined to accept that PW-261 was not having the knowledge about post incident even after briefing of incident by PI Anil Akade, discussion with ATS Chief Late Shri Karkare, twice visit to spot, visit to nearby places of spot along with other persons and team members.

Inspection of Vehicles & it's numbers :-

471) After visit to the Spot by PW-261 (Dr. Suhas Bakre), in the presence of Panch witness, all they have inspected / examined the damaged LML Vehicle and its chassis number and engine number.

472) On the point of those numbers, PI Akade deposed that, they noticed that, the number of LML Freedom was erased by rubbing some instrument. The fake chassis number C10P1937 was noticed.

473) Thereafter, the LML Freedom vehicle was shown to the Panch witness Khalifa on the Spot. He has examined the vehicle but he did not find any chassis number on the LML Freedom Motor-cycle. He deposed that the Chassis number of LML Motorcycle was not found visible as the number was scratched.

474) Thus, testimony of both the witnesses on the point of finding of Chassis number is different. As both the witnesses inspected the vehicle on the spot but one did not find any number and another one has noticed some numbers.

475) The testimony of Chemical Analyzer PW-261 (Dr. Suhas Bakre) shows that, he noticed chassis number on the LML bike. Then he moved towards engine number. With laboratory lens, he examined the engine number but he did not find it on the motorcycle /bike and there were scratches on the surface of engine number plate.

476) Admittedly, PW-261 and his team members had taken noting on spot. On the basis of it, he had prepared the crime-scene-report **(Exh.7281)** in his office at DFSL. The crime-scene-report is based upon their observations and joint inspection note taken on the spot. Admittedly, the Chassis number is not mentioned in crime-scene-report except the photograph. If really, PW-261 would have observed the chassis number on the spot, then it would have been appeared in his noting as well as the Crime-Scene-Report. The crime-scene-report was not forwarded immediately but it was forwarded after giving other reports and after the lapse of 15 days. So possibility of addition or deletion in the report cannot be ruled out. Thus, it clearly shows that, first time he got the knowledge about the alleged Chassis number, when he has examined the Bike at the office of DFSL. Therefore, it can be said that, prior to it, PW-261 was not having the knowledge of Chassis number or seen or found any chassis number on the spot.

477) The second Panch witness of spot panchanama is not examined by the prosecution. Considering the aforesaid testimony of witnesses, it makes clear that all they have inspected the damaged motorcycles on the spot individually. Chassis number of LML Freedom motorcycle which they saw on the spot was not visible when PW-124 (Shakil Khalifa) has checked the vehicle on the spot. Only PW-301 (Anil Akade) noticed one number as narrated by him.

478) Moreover, the Assistant chemical analyzer PW-261 (Dr. Suhas Bakre) who had used his lens also did not find any scratches on the surface of chassis number. But Mr. Akade was only person who saw the chassis number by naked eyes on the spot and drawn the conclusion on the spot itself that it is fake number. No doubt, the said conclusion was drawn before sending the said vehicle for analysis and before analysis report of expert. Thus, on the spot itself, the inspection of vehicle number was done by them individually, but the observations made by them about Chassis number and inference drawn by them did not tally with each other's testimony.

479) The PW-124 (Shakil Khalifa) deposed that, Police collected the earth soil, splinters / pellets, blood stain spots found beneath LML Motorcycle. He also deposed that, two persons had been to spot and they started to collect the material from the spot. The spot panchanama shows that, the two experts had been to the spot when the spot panchanama was commenced i.e. around 6 a.m. Out of those two experts, as per panchanama, one expert was Mr. Jaiswal (Assistant Chemical Analyzers) from Aurangabad and another expert was PW-261 (Dr. Suhas Bakre) from Nashik. It means that these two experts were also collecting the material from the spot. Assistant Chemical Analyzer Mr. Jaiswal was not examined as a witness. On the other hand, PW-261 denied the collection of any material or samples from the Spot & nearby area by him. Therefore, the question remained unanswered on record that, as to why those facts are denied by Expert when witnesses

saw them while collecting samples from the spot and nearby places. Therefore, question arises as to what they had actually collected from the spot. When it is evident on record that, he visited twice to the spot along with his team members as well as along with another expert Shri. Jaiswal of Aurangabad. Moreover, witnesses also saw them while collecting articles from nearby area of the spot. So it creates the suspicion about the actual collection of material by experts, denial by them and not mentioning those collected articles in Spot Panchanama or in their own reports.

Non collection of Finger prints, dump-data and DNA samples:

480) It emerges from the evidence of PW-320 (ACP Mohan Kulkarni) that, on perusal of the entire charge-sheet he had stated that, Finger Print Expert had not been visited the spot on that day. It means finger prints were not obtained from the spot on the day of incident or next day. Admittedly, the finger print of accused were taken after their arrest. The testimony of PW-320 on the aforesaid point is falsified by PW-261 (Dr. Suhas Bakre) who was admittedly present on the spot twice. He stated that, apart from BDDS team, the finger Print Expert team was also present on the spot. Thus, it clearly shows that, the evidence pertaining to finger print are not brought on record for the best reason known to the investigating agency.

481) The PW-320 (ACP Mohan Kulkarni) has admitted that, they did not ask the experts to collect DNA from the spot so as to find out the real culprit. PW-261 (Dr. Suhas Bakre) has admitted that, he

has knowledge that DNA of culprits can be obtained from the articles found on the spot. But, for collecting DNA samples, they had not called any such expert team from FSL on the spot. His team though present on the spot, but neither they had collected nor they had suggested the police personnel to take DNA samples from the spot of incident.

482) The PW-320 (ACP Mohan Kulkarni), has admitted that he is aware that, dump-data could have been obtained in order to identify individuals who were present at the location / spot of incident prior to and subsequent to the incident. However, it is an admitted position that, no such dump-data was collected during the course of investigation.

Spot Barricading :-

483) The spot of incidence requires to be barricaded immediately in order to preserve the scene of offence, to ensure the safety, to prevent manipulation, to prevent unauthorized entry, to secure the spot etc. On this point, the testimony of PW-301 shows that, he reached on the spot around 2 am and at that time he saw the spot of incident was covered by barricading. He didn't know exactly when it was barricaded. The PW-261 (Dr. Suhas Bakre) when he himself and his team reached to the spot of incident around 5.30 am, they saw the spot was barricaded. He also didn't know when exactly it was barricaded. On this point, the station diary entry bearing no.46 was taken in Azad Nagar Police Station, Malegaon is relevant which shows that around 23.15 hours the

spot was barricaded and it was informed by S.J. Patil to Police Station. Considering the entire evidence on record, it can be said that the spot was not barricaded immediately. Admittedly, it was barricaded around 23.15 hours and not prior to it.

Contamination: -

484) It is evident on record that, the mob gathered around the spot within the span of 10 minutes of the incident which comprises of 15,000 people. They pelted stones on police, threw bottles, vandalized the vehicles. Due to riot, there was counter attack by police by using heavy force as discussed supra.

485) In the backdrop of aforesaid facts, the questions were asked to PW-301 (PI Anil Akade) and PW-261 (Dr. Suhas Bakre) in their cross examination pertaining to contamination of spot when such huge post incident occurred. PW-261 has admitted in cross examination that, if there is pelting of stone by mob on the spot and entering of the mob on the spot, then there is more possibility of tampering and manipulation of the crime scene. In case of tampered and manipulated crime scene, it is not possible to have genuine and proper scientific report.

486) Whereas the PW-301 (PI Anil Akade) had knowledge and admitted that, on the spot of incident, if there is riot by mob, then there is much possibility of contamination. The blast site without contamination is required to be investigated. He had not taken any information that before his arrival how much crime scene had

been contaminated. He had full knowledge that the crime scene without contamination is required to be handed over to the team of DFSL. Not informing the expert even after the knowledge that due to riot the crime scene could have been contaminated give rise to suspicion that some material facts might have been suppressed in order to get desired result.

487) The aforesaid point is required to be considered with collection of samples / exhibits from the spot of incident. Being an expert and having Special knowledge in collection of samples, the PW-261 (Assistant Chemical Analyzer Shri Bakre) had been called on the spot. After being called, it was expected to carry out preliminary test in order to ascertain the material used in the blast, and to opine and guide the investigating officer as to whether the blast was artificial or accidental or natural or in any other way as well as to collect the proper samples / specimen from the place of occurrence for the purpose of analysis and to guide the police machinery.

488) The PW-261 (Dr. Suhas Bakre) reached on the spot along with his team members namely Shri. B.P. More (Asst. Chemical Analyzer), Shri. Bandgar (Scientific Assistant), Shri. Taru (Laboratory Attendant). They were also equipped with their own preliminary testing kit. Mr. Bakre deposed that, on 30/09/2008, they visited the spot after 7.30 am and inspected the spot and surrounding area / places. As per his testimony, he has not collected any samples from the spot or vicinity of spot. For the sake of moment,

if it is assumed to be true, then it gives rise to inference that, expert and their team members have not taken little bit efforts to collect the samples / specimens from the spot of incident. On the contrary, the other evidence on record, as discussed supra, they have collected some samples from the spot and its vicinity but it was not shown in the documents.

489) Admittedly, the job of collection of samples was left with PW-301 (PI Anil Akade) and his staff. It has come in record in the testimony of PI Anil Akade, Police officer Bilage, Sudhir Patil and others that immediately after the incident, huge mob comprises of 15,000 people had been to the spot. They pelted stones, assaulted police officers, vandalized the police vehicles. There was counter attack from police i.e. Lathi Charge, tear gas, throwing of three-ways grenades, 58 rounds were fired. PW-301 has specifically admitted that he is not an expert in collection of samples / specimen. He has not undergone any specific formal training in respect of Bomb-blast crime scene investigation prior to 2008. What SOP he has adopted he has no knowledge / aware about it. He knew that the bomb-blast site should be investigated without contamination. He further admitted that without knowledge of acetone extract, he himself and his police staff had taken the acetone extract swab. His police staff has also done the work in similar fashion. PW-261 and their team had not explained to them any SOP (Standard Operating Procedure). Even though they have collected the samples from the spot without knowledge about it. Thus, the aforesaid admissions go to the root of matter which

shows that PI Anil Akade and his staff was not an expert or having any special knowledge or skilled person in the field of collection of samples / specimen from the spot and nearby area. When such huge incidents occurred (pre & post incidents) and presence of two experts along with their team on the spot, even after that, it is very strange and unnatural that the police had preferred to collect the samples in unscientific manner.

490) Considering the aforesaid aspect, in my humble opinion, the expert team was duty bound to collect the specimen / samples from the spot of incident in the scientific manner in the backdrop of the facts. The said job cannot be left with unexpertize persons. Even though the experts were present but they had given the task of collection of samples to PI Anil Akade and his staff. It is nothing but shouldering the responsibility on unskilled, unqualified and unexpertize persons in the field of collection of samples. Therefore, the approach and such decision taken by PW-261 (Dr.Suhas Bakre), PW-301 (PI Anil Akade) and their teams, even after happening of the said huge incidents, is unnatural, improper and give rise to suspicion. It also is giving rise to draw the inference that they promoted unwarranted procedure in collection of samples and failed to perform their own duty.

491) Thus, aforesaid evidence itself shows that, the samples were collected in unscientific manner as well as by the non-technical persons even after the knowledge that, there was every possibility of contamination. In such a fashion, there was the collection and

seizure of contaminated articles from the spot and its nearby area.

492) In addition thereto, the spot panchanama, the forwarding letter addressed to the Chemical Analyzer, as well as the report of the Chemical Analyzer, collectively indicate that, all the swabs collected from the bicycles and motor-cycles at the scene of offence were stored together, without being individually packed in separate polythene bags or segregated distinctly. Consequently, it cannot be ascertained as to how much swab material was collected from each bicycle or motor-cycles, nor can it be determined with certainty as to which swab pertains to which specific article.

493) Moreover, the Crime-Scene-Report marked as **Exh.7281** issued by PW-261 (Dr. Suhas Bakre) itself shows that, in exhibits collected from the Crime Scene includes the acetone extract cotton swab taken / collected from the office of Shakeel Goods Transport office also. Thus, it indicates that PW-261 also found RDX in the aforesaid acetone extract cotton swab.

494) Considering the entire admissions given by both the material witness itself shows that, the contaminated articles were collected and sent to DFSL for examination. Moreover, the admission given by PW-261 (Dr. Suhas Bakre) in his cross examination is self-explanatory that, if articles are contaminated, then there is every possibility that the result would not be 100% accurate. Hence, I am inclined to accept that the result of analysis was not 100% accurate.

495) After receipt of the articles, the analysis on those articles were carried out at DFSL, Nashik. PW-261 (Dr. Suhas Bakre) has given his report vide **exhibit-7282** about finding of RDX and ammonium Nitrate in those articles.

496) Although, the PW-261 (Dr. Suhas Bakre) has given positive report but he had given number of admissions pertaining to the detonator & explosive substances alleged to be used in the Bomb-blast. He has admitted that, Detonator is primary explosive. He and his team searched about detonator but they did not find any detonator on the spot or its remnants. Pertaining to detonator he narrated that, it might be flown off but no such things are mentioned in his report. Only after analysis of pieces or wires found on the spot the expert can tell those are pieces of detonator or not. While performing scientific tests, there were no wires or detonator found. If the blast site is changed the possibility of not getting detonator or its wire or remnants are more.

497) He also admitted that RDX is secondary explosive and not a primary explosive. RDX suo-moto cannot blast. Ammonium Nitrate and RDX are in powder form only. RDX and Ammonium Nitrate are not compatible with each other. RDX cannot be exploded without initiating mechanism like detonator. For preparing bomb, RDX requires a metallic container. The residues of container are possible to be found on the place of blast. The current from wire is required to ignite the bomb. They did not find any wire on the

spot. He had found cast iron pipe pieces on the spot but he has admitted that he has not mentioned in his report.

498) He has used GCMS technique to arrive at conclusion and given a report that he found RDX in exhibit numbers 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 33 and found Ammonium Nitrate and Nitrite ions on exhibit number 2.

499) He also admitted that RF value is required to be drawn to ascertain that which type of component is used. RF is distance traveled by component ÷ distance traveled by the solvent. He has not mentioned in his report which type of technique he had used. He has also not mentioned in his report how much distance was traveled by component and solvent. His examination reports were not confirmed or verified by any other experts of FSL. RDX is explosive and forms a part of ammunition. There is separate department of Ballistic and Toxicology in FSL. In that department the experts of that field were working at that time. The reports in respect of explosives were neither analyzed nor confirmed by the ballistic expert. In his Chemical Analysis Reports he has not mentioned the initiating mechanism for explosion. He has mentioned in crime scene report but it could not be confirmed later-on. For explosion booster is required. Ammonium Nitrate is booster but both are not compatible with each other. He carried out the some preliminary test on the spot but the results were inconclusive / negative and hence, not mentioned in his report. He has minutely observed the spot of incident and nearby place but he

did not find any proof regarding any device on the spot. It was his guess work that explosive might had been kept beneath the seat of bike. He did not find any proof of the explosive were kept beneath the seat of the bike. Scientific preliminary test were inconclusive. He could not say scientifically that the explosive device were kept beneath the seat of LML Freedom Motorcycle. In his reports, he has not mentioned which tests he has carried out to determine the presence of RDX. There are number of articles available in the market containing ammonium nitrate. He later-on admitted that PI Anil Akade briefed the incident to him. He kept faith on police and carried out the tests on the spot regarding Bomb-blast. The test were carried out assuming that neither police have interfered with articles lying on the spot nor the mob.

Spot Map :-

500) Admittedly, rough sketch map is not drawn and annexed to spot panchanama or appended to charge-sheet, which requires to be drawn by the investigating officer on the spot showing the exact place of occurrence, boundaries and surrounding circumstances. The preparation of site plan is not a mere formality but it is an essential feature in order to reach the firm conclusion by the court in order to ascertain whether the offence has been committed by the accused or not as alleged, what was the exact place or location, what was the surrounding circumstances, what was the exact position of the bikes & bicycles, whether the spot was barricaded or not, etc. PW-301 (PI Anil Akade) has admitted cross examination that he has not drawn the rough sketch map of the

spot of incident. Omission to prepare the rough site plan by the investigating officer is serious lapse.

501) For Spot Map, PW-301 (Anil Akade) had made correspondence with PWD department and with TILR (Taluka Inspector Of Land Record) when there was nothing on the spot site. The letters given by him for the said purpose were shown to him. He identified those letters **(Exh. 8319 & 8320).**

Visit of Land Surveyor:

502) The PW-116 (Pandharinath Chaudhary) is land surveyor. He deposed that, he had been to the crime scene on 17/10/2008 along with 7 to 8 police officials. He has prepared on map without taking measurement and the other map was drawn by him by using the scale in ration 1:500. He has drawn the map on plain paper on the spot and thereafter he prepared the final map **(Exh.5857)** in his office.

503) The Ld. Advocate for A-9 has relied upon the judgement of **Hon'ble Bombay High Court in Criminal WP No. 2723/2010 in case of Dyaneshwar Balu Patole Vs. State of Maharashtra reported in 2004 (2) ALL MR 40,** in which the Hon'ble High Court has observed that, *"the Maps / Plans are made for the purpose of any cause must be proved to be accurate. Onus of proving such Map is accurate lies on the party who produced it. Map must be proved by the person who prepared it."*

504) The Ld. Advocates for accused had submitted that TILR never visited the spot and taken the actual measurement. He drew the map by sitting in office on the basis of the spot panchanama and other documents provided to him.

505) Thus, the actual visit of the TILR to the spot of incident and drawing the map by taking actual measurement on the spot is also disputed. The admissions given by the witness coupled with the map produced on record shows that, there is no disclosure of Bhiku Chowk, Anjuman Chowk, Mushawart Chowk in the map prepared by him. There is no disclosure of Shakeel Goods Transport in front of which the alleged incident took place. He prepared the map after going through the panchanama and shown the places in the map as per panchanama. He had not seen the Chowki i.e. Daregaon Police Chowki near the spot of incident. He cannot say as to whether there was any Bhiku Chowk or not. The chowk which he had seen, he did not disclose its name in the Map. He had not seen any board hanging on city survey numbers 184, 184A, 184B, 181 to 183. He had not seen any drainage passing beside the road. He did not disclose any drainage in his map. He had not seen any boards of hotel or their names. He is not aware the name of any police officials who had been to the spot with him. He has not drawn the spot map in the presence of PI Anil Akade.

506) It is well settled position that Maps / Plans made for the purpose of any cause must be proved to be accurate. Onus of proving that such map is accurate lies on the party who produced it. Map must

be proved by the person who prepared it. Though, PW-116 (Pandharinath Chaudhary) deposed that, he visited the spot and prepared those spot map doesn't inspire the confidence because whenever the surveyor visits the spot site or crime scene, then there must be his observations or what he has seen on the spot should be noted down or must be reflected in the Spot Map. The Map should clearly show the spot of incident, surroundings and anything noticed on the spot of by the surveyor. So, whenever the Map is used as evidence or produced in the court, then it must reflect the actual scenario in order to get clear idea / picture of the spot of incident.

507) The report drawn by the surveyor is admissible under section 83 of the Evidence Act, but the condition precedent is that it should not create the doubt or it should be prepared by actual visiting to the spot. It must be accurate and showing the topography of the spot along with the factual position of the spot. When such report is creating doubt that it is not prepared by actual visiting to the spot of incident and prepared in the office by bare perusing the Panchanama, then it cannot be relied upon for any purpose. Admittedly, the Spot Map drawn by surveyor after 11 days of the incident, when scenario of the spot of incident was completely changed. Therefore, from his map no inference can be drawn about the standing position of bikes, distance between those bikes and bicycles, location of mob, articles lying on the spot, barricading area, surroundings and factual topography, etc.

508) Thus, the aforesaid admissions goes to the root of the case which clearly shows that, he prepared the Spot Map on the basis of Spot Panchanama and his visit to spot do not inspire the confidence. Therefore, I found substance in the argument advanced by the Ld. Advocates for accused on the aforesaid point.

Visit of Photographer:-

509) The Photographer PW-120 (Mr. Ambadas Jagtap) had been called on the spot to take the Photographs. On 29/09/2008, he had been to the spot along-with Raju More, but by seeing heavy crowd gathered there, they returned back to home. Again after 3.30 am, he went to the spot of incident. He snapped the photos of place of incident. He has taken the digital printout of the said photographs and handed over the Azad Nagar Police Station. He also prepared the DVD of said photographs and handed over the Police Inspector Shaikh. The album and CD /DVD was shown to him. He identified the same. The DVD was inserted into Laptop brought by NIA officer, but the said DVD could not be operated. And the prosecution had moved an application for not playing the said DVD. Hence, it was not played and the contents in the CD / DVD was not identified by the witness.

510) The PW-120 (Mr. Ambadas Jagtap) has given several admissions in his cross examination which shows that, when they reached to the spot, they saw crowd was spread over up-to 2 Kms radius. Whatever the Photographs were collected by him are saved in Memory Card. From the memory card the CD/ DVD was prepared

with the help of his computer. It was handed over to police without panchanama and without their order or requisition. There is no 65-B Certificate on record. The original memory card is not produced on record. The photographs presented in the court do not have date and time even after the date and time was set before snapping by witness. In the album the photographs produced before the court all are not snapped by him. It means that some photographs are added in it under his name. Considering the aforesaid admissions, the possibility cannot be ruled out that all the photographs are not taken by him and the photographs which he had taken showing date and time are not filed on record.

Visit of Videographer :-

511) The Videographer PW-119 (Mr. Sunil More) had been called on the spot for videography. He had been to the spot of incident around 11 p.m. on 29/09/2008 and present there till next morning. He captured the video of the spot of incident in his handy camera. The video shooting data was converted into a CD. The CD was handed over to Police Inspector on payment of charges. He identified the CDs marked as **Article-13 Colly**.

512) The admissions given by him shows that, he has not handed over the 65-B certificate to police or filed any 65-B certificate on record. He did the videography and captured only that portion which are pointed out by police. It means the said videography was selective and not covering the overall crime scene. He saw mob pelting stones, even though he has not left the spot till next morning. But

the said fact is contradictory to his statement recorded by police, in which he has stated that he left the spot when mob was pelting the stones. Considering the aforesaid admissions, I am not inclined to accept his presence till morning and did the videography of entire-crime-scene accurately. In my considered opinion, it was selective videography.

513) There is no reference about the videographer (PW-119 Sunil More) or photographer (PW-120 Ambadas Jagtap) in spot panchanama. Moreover,the Panch witness Khalifa had not seen the aforesaid photographer or videographer on the spot even though, they were present till 11.00 am. Therefore, it is nothing but embellishment of facts / improvements / exaggeration during the course of evidence by the witnesses.

<u>Visit of BDDS</u> :-

514) The BDDS team reached on the spot on 30/09/2008 around 2.30 a.m. to 2.45 a.m. the BDDS team was headed by PW-121 (Uttam Gaikwad). He deposed that, along with other staff and Dog-handler Shri. Shete, he had been to the spot of incident. They noticed the spare parts of the vehicle were scattered near the spot. The dog handler given the smell to Dog “Shan”. After sniffing the spot area by the dog “Shan”, had given a signal of Bomb Blast. He identified his report vide exhibit-5903. It is mentioned in the report that, they have handed over the spot after 5 am to the officer present for Bandobast Duty.

515) The Ld. SPP has placed his reliance on the judgement of Hon'ble Apex Court in case of **Gade Lakshmi Magraju Alias Ramesh Vs. State of Andhra Pradesh reported in AIR 2001 Supreme Court 2677**, in which Hon'ble Apex Court has observed that, "*identification by sniffer dogs are fragile piece of evidence. The evidence based on sniffer dogs has inherent frailties. The possibility of error on the part of the dog or its master is the first among them. The possibility of misunderstanding between the dog and its master is close to its heels. The possibility of misrepresentation or a wrong inference from the behaviour of the dog could not be ruled out. The last, but not the least, is the fact that from a scientific point of view, there is little knowledge and much uncertainty as to the precise faculties which enable police dogs to track and identify criminals. Police dogs engaged in these actions by virtue of instincts and also by the training imparted to them. Criminal Courts need not therefore bother much about the evidence based on sniffer dogs. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them*."

516) In case of **State of Maharashtra Vs. Mangilal reported in AIR 2009 SC (Supp) 2801,** the Hon'ble Apex court has observed that, *"the police dog traced the scent from the place of incident to the house of the accused is really no evidence in the eye of law."*

517) In the light of aforesaid citations, it is necessary to mention that, in cross examination, it came on record that, the vehicle number

noticed on the spot and sniffed by dog is not mentioned in his certificate. The dog has identified only the spot where blast had taken place.

518) The PW-121 (Uttam Gaikwad), who issued the certificate is neither trained dog handler nor expert in handling the dog. For the inspection of Blast site by BDDS, the site should be cleared and not contaminated. It already discussed above that the blast site was contaminated. When site is uncleared and contaminated then result cannot be accurate.

519) The report (**Exh-5903**) which is placed on record itself shows that, the smell of scattered parts was given to Dog to sniff. It means the vehicle which were present on the spot were not given to sniff otherwise it would have been mentioned or referred in report. Moreover, PW-121 is not dog handler and the Dog handler was Shri. Shete and he is not examined as a witness. Admittedly, the certificate i.e. Exh.5903 is neither signed by Shri. Shete nor issued by him.

520) On the aforesaid point, the testimony of PW-124 (Shakil Khalifa) is somewhat different which shows that, he was present near the spot around 6 a.m. Thereafter, he was called to act as Panch for Spot Panchanama. He reached first, then dogs along-with persons came later-on. They were on the spot for 1 to 1 ½ hours. The sniffer dogs sneezed both the motorcycle lying on the spot. Basically, considering his testimony and other facts emerging on

record, for the sake of moment it can be said that, both the motor-cycles might have been shown to sniff but PW-124 testified that, sniffer dogs sneezed both the motor-cycles. Admittedly, it is not the testimony of PW-121 (Uttam Gaikwad) that, after sniffing the particular motorcycle the dog has given the signal. It is also not mentioned in his certificate showing that, dog had given the smell of motor-cycles standing on the spot. The smell given to the spot of the articles / spare parts collected from the spot of incident. Thus, his own testimony along with report shows that the scattered parts of vehicle which were collected given to sniff and then the dog has given the signal. All the collected scattered parts cannot be said to be of one bike or bicycle. Obviously, as per Spot Panchanama the parts were collected after 6 a.m. Therefore, between 2.45 a.m. to 5 a.m. the collected parts which were given to sniff seems to be doubtful. His own report shows that he completed inspection between 2.50 am to 5 am and at 6 am they have handed over the spot site to Bandobast Officer. Thereafter, they went away. At the one hand Panch witness is saying he saw them after 6 am, whereas their own report says that they left the spot at 6 am. Thus, testimony of witnesses is contradictory to each other on material aspects.

521) Moreover, the admissions given by PW-301 (PI Anil Akade) shows that, he was present when Dog Squad came on the spot. Dog sniffed the spot and articles but he has not prepared it's panchanama. He didn't know as to whether he has stated about contamination of blast site to BDDS team. As per the report

(**Exh.5903**) given by PW-121 (Uttam Gaikwad), he inspected the spot with Dog-handler and Dog between 2.50 am to 5 am in the presence of Shri. Akade. Whereas, PI Anil Akade had been to Police Station, Azad Nagar, Malegaon from 2.45 am and onwards. It would be apposite to quote the wordings of certificate issued by PW-121 (Uttam Gaikwad) as follows:

"प्रमाणपत्र देण्यात येते की, आज दिंनाक ३०/०९/२००८ रोजी मा.श्री. मालेगाव शहर, भिकु चौक, दरेगांव पोलीस चौकी समोर झालेल्या स्फोटाबाबत आजुबाजुच्या परिसराची घातपात विरोधी तपासणी पो. निरी श्री. आकडे एल.सी. बी. नाशिक उपस्थितीत २.५० वाजे पासुन ५.०० वाजे पर्यंत पुर्ण करण्यात आली आहे. तपासणी दरम्यान कोणतीही बॉम्बसदृश्य संशयीत वस्तु आढळुन आली नाही. तपासणी पुर्ण करून ६.००वा. कॅनव्हायचा/कार्यक्रमाचे ठिकाणचा ताबा बंदोबस्त अधिकारी यांना देण्यात आला आहे."

522) Considering the entire testimony, it clearly shows that the contaminated spot & articles was given to sniff to Dog. The timing of inspection mismatched with other witnesses. Prior to 6 am the collected articles seem to be given to sniff. The entire presence of PI Anil Akade during inspection by Dog-Squad on the spot is also not inspiring confidence as narrated by the witness.

Visit of Tahasildar to Spot and Inspection Report showing damages caused to Immovable properties: -

523) The PW-117 (Tahasildar/ Executive Magistrate Kisanrao Mhasane) has deposed that, he had submitted report of Asst. Police Inspector, ATS, Nashik, in respect of damaged caused to the Shops in the alleged bomb-blast. His report is of dated 15/12/2008. The report

was shown to him and he identified his report vide **exhibit-5877**.

524) In cross examination, it came on record that, he cannot produce the letter given by ATS to him to prepare the report about damages caused to properties. He has carried out the panchanama of damaged properties. The properties shown in **Exh.5877** were only the damaged properties.

525) He has also submitted the report of API A.T.S. Nashik, in respect of damage caused to the shops in the said bomb blast. He submitted the report on the basis of Mandal Adhikari (Circle Inspector) who had submitted his report to him about the damages caused to properties. All the copies of Panchanama carried out were handed over to Police. He has no personal knowledge about the damaged properties noted in **Exh.5877**. He also admitted that he had not forwarded the damage report panchanama to the police.

526) Thus, the admissions given in the cross examination shows that, he has prepared the report **(Exh.5877)** on the basis of panchanamas of damaged properties submitted by Mandal Adhikari. The copies of those panchanama are not filed on record by investigating officer along with charge-sheet. The mandal Adhikari who prepared those panchanamas is not examined as a witness. At the one hand, he asserts that the Panchanamas were handed over to Police and on the other hand, on confronting the letter dated 15/12/2008, he admits that he has not forwarded the Panchanamas to the Police.

527) The PW-117 (Kisanrao Mhasane) also admitted in cross examination that, Except the damaged immovable properties shown in the said report no other immovable properties were caused damaged. On this point, the Ld. Sr. Advocate for A-1 & A-6 has rightly pointed out that, the name of Shakeel Goods Transport is not enlisted or mentioned in the report vide **Exh.5877**. The spot panchanama shows that, Shakeel Goods Transport was also damaged and testimony of prosecution witnesses PW-301 (PI Anil Akade) also supports the same. On the contrary, if the report coupled with testimony of this witness is considered, then it shows that, circle inspector visited the spot. He has personally seen the damaged properties. He drew the panchanamas. On the basis of it, the report was prepared and submitted to ATS. But in the report, non-mentioning the name of Shakeel Goods Transport indicates that, the circle inspector did not notice any damage during his visit. The original Panchanamas showing actual assessment of damages were also handed over to ATS but those are also not annexed with the charge-sheets. Thus, the property damage report of Tahasildar is contradictory to the observations made in the Spot Panchanama about the damages caused to Shakeel Goods Transport. Therefore, the property damage report given by Tahasildar is not fully supporting to the case of prosecution. On the contrary, it demolishes the facts mentioned in the spot panchanama.

Forwarding Articles for Analysis :-

528) As per prosecution, the seized muddemal was forwarded to Chemical Analysis on dated 01/10/2008. The true copy of muddemal register of Azad Nagar Police Station Malegaon is placed on record. Ongoing through it shows that, there is no reference in muddemal register showing that when those articles were deposited in the Malkhana, to whom those articles were handed over, when it was handed over and when it was re-deposited in the Malkhana. The Muddemal register doesn't depict that, sealed articles were deposited in the Malkhana and corresponding receipt entry mentioned in the register. Thus, Muddemal register is bereft of aforesaid entries.

529) The PW-301 (PI Anil Akade) deposed that, those seized articles from the spot along with vehicles were sent for Chemical Analysis. He sent those articles with Head Constable Sanjay Aher by arranging one Large Vehicle. Some constables were also arranged to load and unload those heavy muddemal.

530) Whereas, the PW-127 (Sanjay Aher) who has deposited the said articles deposed that, Police Inspector handed over 33 sealed packets to him on 01/10/2008 and he deposited those articles in the office of DFSL. He has lifted all those articles on his shoulder and went by ST Bus to FSL Nashik. Thereafter, on 10.10.2008 PI Anil Akade recorded his statement.

531) Thus, the testimony of both the witnesses are different pertaining

to collecting & carrying of articles. The PW-301 (Anil Akade) has admitted in cross examination that, he had not taken any station diary entry showing that for loading and unloading constables were deputed and one big vehicle was arranged. He also admitted that, it is not possible that head Constable Sanjay Aher lifted the said articles on his shoulder and it is untrue that he carried those articles to ST Bus Stand and he traveled by Bus to Nashik. Whereas, PW-127 (Sanjay Aher) has stated that, he lifted those sealed articles at the officer of DFSL Nashik on his shoulder. He carried those articles to ST Bus Stand, Malegaon and traveled by Bus to Nashik. He had no knowledge as to what articles were kept in those sealed packets.

532) Thus, the theory about knowledge about articles and sending those articles by arranging the large vehicle is categorically denied by the head constable PW-127 (Sanjay Aher) who carried those articles. It is also impossible for the person to take those articles on his shoulder which includes motorcycles and bicycles. If his testimony is taken into consideration then, it indicates that heavy articles i.e. Motorcycles and Bicycles would not be included in it, as he carried 33 sealed packets. If those are packets (envelopes) then, he can easily carry those articles given with him. Thus, his testimony rules out the possibility of sending of motorcycle and bicycles with him.

533) Admittedly, the PW-301 (PI Anil Akade) had not taken any station diary entry to show that which vehicle was arranged, who

was driver, which constables were deputed. He has also not recorded their statement. Those constables or vehicle driver is not examined by the prosecution. Thus, there is no documentary or oral evidence to support him on this point. As a result of it disrupts the chain of knowledge of articles to carrier and sending of bikes, bicycles along-with other articles as per their narrations through the private vehicle.

Sale Purchase Transaction of Vehicle:-

534) In the meanwhile, the team was constituted to investigate the number MH-15-P-4572 noticed / found on LML Freedom Motorcycle. Accordingly, the investigation was carried out to find out the owner of vehicle number MH-15-P-4572. The similar number was noticed on Hero Honda Motorcycle S.S. On this point, the prosecution has examined number of witnesses.

535) PW-301 (PI Anil Akade) deposed that, during the course of investigation, they have noticed that, the sale purchase transaction of Vehicle number MH-15-P-4572 took place for nine times among several persons. He himself and his team inquired with them and recorded their statements.

536) The Hero Honda Motor-cycle bearing no. MH-15-P-4572 originally belongs to PW-130 (Eknath Shankar Pingale), who purchased the said vehicle in 2001. He sold out the said vehicle to PW-131 (Dipak Goswami) by signing on blank transfer form. PW-131 admitted that, he obtained the said vehicle through broker PW-132

(Rahul Deshmukh) on transfer form. The said transfer form i.e. form no.29 & 30 were not filled up by PW-132. Those were having original signature of Seller and it was handed over to PW-131 i.e. purchaser. And till 2008 i.e. even at the time of bomb explosion the said motorcycle stands in the name of PW-130 (Eknath Pingale). Only the possession of the said vehicle seems to be transferred from one person to another person. In the year 2007, PW-135 (Shoaib Akhtar Siraj Ahmad) purchased the Hero Honda SS from Mohd. Shabir Khan. He has not got it transferred in his name. Thereafter, he resold the said vehicle due to major repairing work to PW-133 (Imran Sayyad Shaukat Ali). The PW-133 working as Auto Consultant at Malegaon. He admitted that, he purchased the said vehicle from Shoaib Akhtar Siraj Ahmed and get the vehicle repaired through Motor-mechanic Ahmed. The number plate of said vehicle was prepared by Ali Mohammad, a radium plate maker. However, PW-134 (Shakeel Ahmed Mohd. Akbar) had stated that, Imran bhai had been to his shop and he prepared the radium number plate for his motorcycle Hero Honda SS bearing no. MH-15-P-4572. Then he sold out the said vehicle to Samadhan. The PW-238 (Samadhan Yayiz) deposed that, he purchased the said vehicle from Imran Sayyad Shaukat Ali. The said vehicle was not transferred in his name. Due to financial crisis, he sold out the said vehicle to one person. In cross he admitted that, Imran Shaukat Ali was not the owner of the said vehicle and he was only mediator. He had not seen RC book of the said vehicle and no documents were handed over to him. Though the aforesaid transactions shows that, in the year 2008, the vehicle

was lying in the possession of PW-130 (Eknath Pingale) but he was not legally owner & possessor of the said vehicle as the ownership was not transferred legally through RTO record.

537) The PW-137 (Kishor Shirapure) deposed that, he purchased the said vehicle from Samadhan Yayiz. Thereafter, he sold out the vehicle to Vijay Ahire. After 2-3 months, again Vijay Ahire sold out the said vehicle to him on account of machine defect. He got done repainting, repairing and new number plate to the said vehicle and then sold out to Bapu Kishor Sonawane. In cross examination, he admitted that the vehicle was in possession of Bapu Sonawane. And the vehicle was taken in custody by Police from Bapur Sonawane in his presence and kept in their custody for 7 to 8 days. The police handed over the said vehicle in his custody on 12/10/2008.

538) It is evident from the testimony of aforesaid witnesses that, the entire sale purchase transaction took place among those witnesses were on the basis of T.T. form only & by handing over possession without any authentic ownership transfer entry in the record of RTO office. PW-301 (Anil Akade) has admitted in cross examination that, the vehicle bearing no. MH-15-P-4572 though sold and purchased for nine times but he did not find any such sale purchase transactions entered into the register maintained at the office of RTO. Thus, the motorcycle bearing no. MH-15-P4572 was passed from hand to hand without getting it transfer in the name of purchaser.

539) The PW-320 Chief Investigating officer of ATS (Shri. Mohan Kulkarni) has stated that A-1 is made an accused only on the basis of her motor-cycle found involved in the offence. He further admitted that the vehicle bearing no. MH-15-P-4572 was in the name of Pingale, but he was not suspected accused in this case. Whereas, PW-274 (Arvind Sawant) has admitted in cross examination that, all officers were making inquiry with A-1 as to whom she sold out the vehicle. She replied them during the course of inquiry that, she sold out the vehicle to one Sunil Joshi. PW-320 admitted that, the name of Sunil Joshi was not crop-up as suspect during investigation.

540) Admittedly, as discussed above, the sale purchase transaction of Hero Honda SS bearing no. MH-15-P-4572 took place on mere TT form and by handing over the possession. The said transaction is relied upon by ATS during entire investigation. On the other hand, after bringing A-1 from Indore near-about 10 days ATS inquired with her and asking the same questions about her vehicle & it's ownership. Day to day during the course of her inquiry, A-1 had narrated to them that, she had transferred the said vehicle to Sunil Joshi on the basis of such documents. Even though, admittedly, investigation had not carried out in that regard to cross verify & ascertain the said facts as narrated by her. It clearly indicates that, at one hand they have relied upon the sale purchase transaction among those persons but on the other hand, they were not inclined to accept her contention for the reasons best known to them.

Restoration of Chassis Number and Engine Number:-

541) As discussed Supra, Panch witness PW-124 (Shakil Khalifa) & Assistant Chemical Analyzer PW-261 (Dr. Suhas Bakre) did not find any chassis number while inspecting the vehicle on the spot. Only PW-301 noticed one chassis number C-10P-1937 which is mentioned in Spot Panchanama. Admittedly, the said Spot Panchanama was prepared later-on on the basis of noting and not in the presence of Dr. Suhas Bakre.

542) During the course of evidence, my Ld. Predecessor had done the verification and inspection of articles and taken notes of it, in the presence of prosecution and defense advocates. The said note shows that the Motorcycles were not wrapped in a gunny bag nor having any sealed label on it.

543) The PW-124 (Shakil Khalifa) has admitted in cross examination that, he did not find labels on those articles (Motorcycles) bearing his signature. Without his signature it is difficult to him to identify those articles. Whereas, PW-261 (Dr. Suhas Bakre) on showing Exh.6058 has admitted that, there is no reference to show that six gunny bags were in sealed condition.

544) Admittedly, the true copy of Muddemal register of Azad Nagar Police Station Malegaon had been called by the Court during the trial. It also didn't reflect the movements of articles. Only the entry 33 articles seem to be taken entry in the register without any

details like on which dates the articles were deposited, whether those were sealed or unsealed, corresponding station diary entry number, corresponding Muddemal receipt Number, to whom it was handed over, on what date it was handed over, receivers signature, when it was re-deposited or not etc. Though, it is a procedural lapse or irregularity but in such a serious case, it should have been maintained accurately, precisely and in proper order as per Police Manual and corresponding rules. It is the starting point of chain of custody. If the chain of custody itself derailed then nothing survives in the further procedure adopted.

545) As discussed earlier, the Police Havaldar PW-127 (Sanjay Aher) deposited the 33 articles, as mentioned in **Exh.6058**, which were given to him in sealed envelope to DFSL, Nashik. It is not possible to hand over the Motorcycles and Bicycles in envelope which he lifted on his shoulder and handed over to office of DFSL, Nashik.

546) The PW-261 (Dr.Suhas Bakre) has deposed at length. He was extensively cross examined by the Ld. Advocates for accused as in his report there is no reference about the procedure adopted by him, basis, reasoning to arrive at certain conclusion. Therefore, he was cross examined mainly on the procedures of wiping out, restoration of numbers / etching process, metal combination, visit of spot, crime-scene-report, his skill and qualification, etc. which are narrated by him during the course of his evidence only.

547) It emerges from the evidence of PW-261 (Dr. Suhas Bakre) has

taken LML Freedom Bike for analysis on dated 04/10/2008. He noticed chassis number C10P-1937 and the engine number was not present on the plate. There were scratches on the surface of engine number plate. To restore the numbers, he has applied chemicals on the aforesaid number plates.

548) The PW-261 (Dr. Suhas Bakre) had described the procedure, during the course of his evidence, which was adopted by him to restore the numbers. For visible chassis number, he had prepared the Fries Solution containing chemicals i.e Copper Chloride & Hydrochloric Acid, distilled water, nitric acid. The said Fries solution, he applied on the cotton of glass rod and wiped the chassis number surface slowly. After repeating the process continuously, the said number was wiped out. He also tried to restore the number but could not get success. He noticed on chassis rod there were long scratches. Thus, he was unsuccessful to restore the wiped-out chassis number or any other number.

549) Thereafter, he moved towards the Engine number plate. Firstly, he applied acetone on the engine number plate to remove dirt, grease, etc. Then by polish paper, he polished the surface area of engine number plate He prepared the mixture of chemicals i.e glycerin, hydrofluoric acid, nitric acid and applied on cotton of glass rod. He applied it on Engine number plate repeatedly. After some time, he visualized some numbers which was restored by him. He further testified that, he took the photographs of aforesaid numbers and those are,

-------50K		
261886	267886	261686

550) Admittedly, in the evidence of PW-261 (Dr.Suhas Bakre), it came on record that, he had found total nine numbers including alphabets and numerical as mentioned in the chart. He has given three probable numbers as stated above in which "50K" was common. The "50K" denotes series number, whereas the rest of the numbers denotes the serial numbers. In his report (**Exh.7297**) there are seven dashes (-------) prior to "50K", which means seven numbers / alphabets he could not restored. During the restoration process, the numbers which were generated by bubbles, he has provided those numbers to ATS. Those numbers were tentative, probable and incomplete numbers.

551) The PW-261 (Dr. Suhas Bakre) has further testified that, he had also inspected the Honda Unicorn Bike (Exhibit-10). The chassis number and Engine Number of the said bike were intact. Hence, he had not analyzed those numbers. Therefore, he was unable to say as to whether Chassis number and Engine number of Honda Unicorn Bike were tampered or erased or superimposed. But the report vide **exhibit 7297** given by him speaks contrary to his oral testimony. It shows that, he has taken persistent efforts chemical restoration on engine block and Chassis panel of Exhibit No.10 (Honda Unicorn Bike) also.

552) It would be apposite to quote the judgements cited by Ld.

Advocates for the accused on the point of expert. In the case of **State of H.P. v. Jai Lal and Ors., [(1999) 7 SCC 280],** the Hon'ble Apex Court has observed that, *"Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject."*

553) In case of **Ramesh Chandra Agrawal Vs. Regency Hospital Limited and Others [(2009) 9 Supreme Court Cases 709]**, Hon'ble Apex Court has observed as under,

*"11. **Expert Opinion:***

The law of evidence is designed to ensure that the court considers only that evidence which will enable it to reach a reliable conclusion. The first and foremost requirement for an expert evidence to be admissible is that it is necessary to hear the expert evidence. The test is that the matter is outside the knowledge and experience of the lay person. Thus, there is a need to hear an expert opinion where there is a medical issue to be settled. The scientific question involved is assumed to be not within the court's

knowledge. Thus cases where the science involved, is highly specialized and perhaps even esoteric, the central role of expert cannot be disputed. The other requirements for the admissibility of expert evidence are:

i) that the expert must be within a recognized field of expertise,

ii) that the evidence must be based on reliable principles, and

iii) that the expert must be qualified in that discipline.

[See Errors, Medicine and the Law, Alan Merry and Alexander McCall Smith, 2001 ed., Cambridge University Press, p.178]

12. Section 45 of the Indian Evidence Act speaks of expert evidence. It reads as under:

45. Opinions of experts - When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger-impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions, are relevant facts. Such person called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the

symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is whether A, at the time of doing a certain act, was by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinion of experts on the question whether the two documents were written by the same person or by different persons are relevant.

13. The importance of the provision has been explained in the case of State of Himachal Pradesh Vs. Jai Lal and *Others. It is held, that, Section 45 of the Evidence Act which makes opinion of experts admissible lays down, that, when the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that*

point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

14. It is not the province of the expert to act as Judge or Jury. It is stated in Titli v. Jones AIR 1934 All 237 that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.

15. An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions

and the data and material furnished which form the basis of his conclusions. (See Malay Kumar Ganguly v. Dr. Sukumar Mukherjee and Ors.) Criminal Appeal Nos. 1191-1194 of 2005 alongwith Civil Appeal No.1727 of 2007, decided on 7.8.2009.

16. In the case of State of Maharashtra v. Damu S/o Gopinath Shinde and Ors. AIR 2000 SC 1691 at page 1700, it has been laid down that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone. In this regard, it has been observed in The State (Delhi Administration) Vs. Pali Ram, that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him."

17. In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore, the emphasis has been on the data on

basis of which opinion is formed. The same is clear from following inference: Mere assertion without mentioning the data or basis is not evidence, even if it comes form expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, may be excluded from consideration as affording no assistance in arriving at the correct value."

554) In the light of aforesaid citations, it can be said that, the tests carried out by the expert are the matter which is outside the knowledge and experience of the lay person or ordinary prudent man. To arrive at certain conclusion, the first and foremost requirement for expert evidence to be admissible is that it is necessary to hear the expert evidence on that point who has opined. The other requirements for the admissibility of expert evidence are:

(i) that the expert must be within a recognized field of expertise
(ii) that the evidence must be based on reliable principles, and
(iii) that the expert must be qualified in that discipline.

555) In the light of aforesaid judgements, it is necessary to see the testimony of PW-261 (Dr.Suhas Bakre) pertaining to mode of erosion and restoration of numbers as stated by him. PW-261 has admitted that, he was fully aware and having knowledge about the modes of erosion but he was unable to state the mode of erosion of the engine number of LML Bike. He could not restore the original numbers of LML Freedom motorcycle. He also admitted that, for

restoration of the number, it is necessary to know the mode of erosion. For restoration of number, the nature of the metal on which the number is embossed is also important. He knew that each metal gives different reaction to the chemical which he had applied. But before restoration, he has not verified the metal. He has also not mentioned the nature of metal in his report. In his report, there is no reference of solution used by him for the restoration of engine number.

556) The PW-261 was unable to tell the nature of chassis number of LML freedom motorcycle before analysis. He further admitted that, there were no scratches or tampering signs on the chassis number of LML Freedom Motorcycle. Even-though, he carried out the analysis on the said bike by applying chemicals resulted into visible number disappeared. Considering the aforesaid admissions, I found substance in the argument advanced by Ld. Advocate for A-1 & A-6 that, the possibility cannot be ruled out that rubbing by polish paper repeatedly can also leave the scratches on the surface, which the witness had noticed during his examination.

557) Though, PW-261 had denied about the application of wrong chemicals. But, he admitted that, after chemical reaction, the visible chassis number of LML Freedom Motorcycle was disappeared. Thus, the possibility of application of wrong chemicals resulted into disappearing of number cannot be ruled out completely. He further admitted that, the special department for restoration of numbers in FSL was available at that time. In

that department the more experienced and senior experts were working at the relevant time. Even after the knowledge, and admittedly, more senior expert of that specialized field was available but he had not taken their help or assistance to restore the chassis number for the best reason known to him. Admittedly, without both the numbers i.e. Chassis and Engine Number the vehicle cannot be identified with certainty.

558) After inspection of both bikes, he prepared the report (**Exh.7297**) and forwarded along with covering letter dated 07/10/2008 vide **exhibit-7296**. Only during the course of his evidence, PW-261 had described the procedure / technique followed by him, name of chemicals applied, reasons and reasoning to arrive certain conclusion. His analysis reports are bereft of process adopted/ technique adopted, chemicals name which were used, solution prepared and applied, findings, reasons/ reasoning, etc.

559) The PW-261 (Dr. Suhas Bakre) further admitted that, he has full knowledge that, every bike has identification numbers. In addition to Chassis number and Engine Number, on every bike there are cylinder head number, clutch cover number, cylinder block number, crank number, crank case number, magnet case number, clutch bell number and clutch housing number. Though, he had admitted that, he allowed Mr. Dhaygude (Motor Vehicle Inspector) to inspect those parts of bike but he himself has not inspected those parts or recorded their numbers and provided to ATS immediately. Thus, even after the knowledge, except the probable

engine number, he had not provided the aforesaid unique identification numbers to investigating agency on the basis of which the vehicle could be identified by fetching the details from Manufacturer.

560) Whereas, the Motor Vehicle Inspector PW-122 (Tukaram Dhaygude) had submitted his examination report dtd. 08/10/2008 vide exhibit 5910 in which he had described the numbers of aforesaid parts i.e. cylinder head number, clutch cover number, cylinder block number, crank number, crank case number, magnet case number, clutch bell number and clutch housing number. But on the basis of this examination report vide exhibit 5910, admittedly no inquiry or investigation had been carried out.

561) Though, PW-261 (Dr. Suhas Bakre) had stated that, Tukaram Dhaygude had visited DFSL, Nashik on 04/10/2008 and he had shown the entire motorcycle to him as per his request. The motorcycle was given for inspection do not inspire the confidence as the testimony of PW-122 (Tukaram Dhaygude) is totally contradictory to him. Motor Vehicle Inspector PW-122 (Tukaram Dhaygude) had been to DFSL, Nashik for the examination of motorcycles. However, he has admitted in cross examination that, he met PW-261 (Dr. Suhas Bakre). At that time, the parts of LML Freedom were lying in open condition in the office of DFSL. He requested to Dr. Suhas Bakre to provide Engine Number and Chassis number but he has not provided for his examination / inspection. Thus, it clearly indicates that, the LML motorcycle was

not shown fully to the said independent witness. Only some separated parts were provided for inspection. Therefore, PW-122 (Tukaram Dhaygude) did not get an opportunity to inspect the motorcycle thoroughly or to go through the chassis number or engine number plates and state about its condition. And in such a fashion, he could not confirm the Chassis Number and Engine number or actual condition of number plate and rod on which those numbers were visible / appearing.

Importance of Engine and Chassis Number to trace out vehicle:-

562) It can be gathered from the evidence of PW-320 (ACP Mohan Kulkarni), PW-122 (Tukaram Dhaygude), PW-152 (Rajendra Bhangui), PW-195 (Paresh Gandhi), PW-249 (Champakbhai Rana), PW-256 (Jitendrasing Vaghela) that for the identity of any Motorcycle both the numbers i.e. Chassis and Engine Number are required. In the absence of any number, the Motorcycle cannot be identified with certainty. For proper identification of vehicle, the chassis number and engine number should also be tallied with the record of manufacturer. Only after getting the knowledge about chassis number, engine number and names of dealers, the original owner of the vehicle can be traced out.

563) On this point PW-320 (ACP Mohan Kulkarni) has admitted that, for proper identification of vehicle chassis number and engine number should be tallied with the record of Manufacturer.

564) Whereas, PW-122 (Tukaram Dhaygude) Motor Vehicle Inspector

has admitted that, at the time of registration of vehicle in R.T.O. office, it is mandatory to make a note of Engine Number and Chassis Number of the bike. But he didn't get an opportunity to examine those numbers as it was not provided for his inspection when he visited to DFSL, Nashik.

565) The PW-152 (Rajendra Bhangui) admitted that, from Chassis and engine number both, they can confirm the vehicle as to whether it was manufactured by their company or not. Both numbers are required for confirmation. They cannot confirm the vehicle on the basis of any single number only. They cannot give any confirmation in the absence of any number out of both the numbers.

566) The PW-195 (Paresh Champaklal Gandhi) has also stated that, in the open market, one can find engine and chassis of the vehicles. The engine number and the chassis number should be tallied with the records, then only they can give the confirmation about the vehicle as to sold by them or not.

567) The PW-256 (Jitendrasinh Vaghela) RTO Surat had also admitted that, whatever the chassis number and engine number provided by manufacturer, the same should be reflected in the RTO Record, then only it can be said that it is the same vehicle.

568) In addition to aforesaid point, PW-320 (ACP Mohan Kulkarni) has specifically admitted in his cross examination that, they had not

collected any information from the manufacturer of two wheelers pertaining to chassis number C10P-1937. The numbers appearing in **Exhibit-7297**, they had not inquired about it to the manufacturer of two-wheeler as to whether those are correct or false numbers. Prior to 06.11.2008, he was having knowledge of engine no. E55OK261886. But he himself or his investigating team had not made any inquiry pertaining to corresponding chassis number of said engine number i.e. E55OK261886. For proper identification of vehicle chassis number and engine number should be tallied with the record of manufacturer. They had not collected any information as to whether the chassis number was fake or not. They had not investigated on the basis of chassis number. And hence, the vehicle which was traced out by them bearing no. Gj-05-BR-1920 didn't pass through the conformity or certainty test in order to show that it was the said vehicle which was used in the alleged bomb-blast. Everything was based on probability. During investigation the said probability had been turned by them into certainty without the aforesaid foundation.

569) Thus, testimony of aforesaid witnesses makes it clear that both the numbers i.e. Engine and Chassis are required to identify the vehicle. Without getting both the numbers the vehicle cannot be identified. It is also evident on record that, unless and until both the Chassis number and engine number are confirmed and both the numbers are tallying with the numbers provided by the manufacturer, the identification of the vehicle cannot be confirmed or validated.

Identification of Vehicle bearing no. GJ-05-BR-1920:

570) In the backdrop of the aforesaid facts, how the vehicle was identified bearing number GJ-05-BR-1920 requires to be discussed in the light of evidence on record. It would be apposite to mention the chronology of events related to his point in tabular format as follows,

Sr. No.	Date	Particulars
1	03/10/2008	Letter to LML Ltd. Mumbai
1.	03/10/2008	Received Email of 2 Lakhs LML Freedom Deluxe Motorcycles
2.	07/10/2008	Received report / information about three probable numbers.
3.	----------	After searching got knowledge that engine number 261886 belongs to Siddhi Agencies, Surat.
4.	----------	After searching got Knowledge that engine number 261686 belongs to Pranjal Motors, Badaun, U.P.
5.	----------	Engine Number 267886 not traced out.
6.	07/10/2008	PI Sawant visited Siddhi Agencies, Surat.
7	08/10/2008	Collected information submitted to PI Khanvilkar.
8.	17/10/08	ATS officer Khanvilkar issued letter

		to RTO Surat to provide details of M/Cycle GJ-05-BR-1920.
9.	31/10/08	Letter to LML Ltd.
10.	06/11/2008	Received Reply from LML Ltd.
11.	10/11/2008	PI Sawant visited to RTO office Surat.
12	11/11/2008	Report Exh.7629 by PI Sawant pertaining to his visit dated 10/11/08 at Surat and recording of statement and collection of documents
13.	26/11/2008	Recorded the Statement of Bhangui. (PW-152)

571) It emerges from the evidence of PW-181 (Police Inspector Agarwal) that, he was working as Incharge Data Unit, attached to ATS. As per the orders given by Late Shri. Karkare, he met PW-152 (Mr. Rajendra Bhangui) in order to get the information about the chassis number and engine number of LML Freedom Motorcycles and dealer list. He sent the letter dtd. 03/10/2008 (**Exh.6748**) to Divisional Manager, LML Ltd. Mumbai for sending the information about LML Freedom Deluxe Model Motorcycle as it was involved in this case. Accordingly, he got the information on his email address mahaatsdata@gmail.com. The said information was consisting of two lacks motorcycles and dealers list. He also got the knowledge of probable engine numbers on 07/10/2008.

572) He had admitted that the email was having some material information but he had not provided that information (email) to his senior officers including Late Shri. Karkare. The soft copy or hard copy of the email is not filed on record.

573) On the other hand, it emerges from the evidence of PW-152 (Rajendra Bhangui) that, in the year 2008, he was serving as Regional Office of LML Ltd., Mumbai. All the information about vehicles were stored at Kanpur Office. On 26/11/2008 his statement was recorded at ATS office. PW-181 (Dinesh Agarwal) never met him on 03/10/2008. They had received only one letter dated 31/10/2008 to their office sent by PW-181 (Dinesh Agarwal) and thereby called the information of LML Freedom Deluxe Model Motorcycle.

574) On the point of correspondence, PW-320 (ACP Mohan Kulkarni) testified that, PI Agarwal was only the person, who had made correspondence with LML Company. He made correspondence only on 31/10/2008 and not prior to it as per the documentary evidence.

575) Admittedly, PW-320 (ACP Mohan Kulkarni) is the chief investigating officer and filed charge-sheets, but even after that he had no knowledge about the information supplied by LML Ltd. in reply to the correspondence. PI Agarwal submitted compliance report to him but he had not annexed that report with charge-sheet. Thus, withholding the material documents i.e. email, report,

without any reason creates a doubt about the genuineness /authenticity of those documents. The oral testimony is not supported with documentary evidence on record. Therefore, it remained only bare words without any specific particulars that they had received material information through email along-with dealer's name.

576) Admittedly, the letter dated 31/10/2008 issued by ATS officer PW-181 (Dinesh Agarwal) to Divisional Manager LML Ltd. Mumbai. He narrated therein that, till today they had not received any written communication from the office of LML Ltd. Thus, it clearly shows that the reason of making correspondence as no information was received officially to them till 31/10/2008. By issuing the aforesaid letter, he called the following information of LML Freedom Deluxe Model Motorcycle.

----- 5 OK 261886
----- 5 OK 267886
----- 5 OK 261686

577) In reply to the aforesaid information, PW-152 (Rajendra Bhangui) had issued two reply letters dated 6th November 2008 vide **Exh. 6611, 6748** and provided the following information.

Exh.6611

1.	Engine No. E 55 OK 261886	LML Freedom Deluxe M/Cycle was sold to M/s Siddhi Agencies, 2/267, Rustam Pura, Surat Vide our Invoice No. 12/1/2004/704

		Dated 22.08.2003
2.	Engine No. E 55 OK 267686	We have not produced Motor/Cycle related to this Engine No.
3.	Engine No. E 55 OK 261686	LML Freedom Deluxe M/Cycle was sold to M/s Pranajal Motors, New Indira Chowk Budaun.

Exhibit-6752

1.	Engine No. E 55 OK 261886	LML Freedom Deluxe M/Cycle was sold to M/s Siddhi Agencies, 2/267, Rustam Pura, Surat Vide our Invoice No. 12/1/2004/704 Dated 22.08.2003
2.	Engine No. E 55 OK 261686	LML Freedom Deluxe M/Cycle was sold to M/s Pranajal Motors, New Indira Chowk Budaun.

578) The letter on record vide **exhibit 6752** itself speak that the engine numbers mentioned in the letter were only similar numbers. It means those numbers were close to the three probable numbers and not the same or confirmed numbers. Thus, according to correspondence, the ATS got knowledge officially about the entire number which was close to probable numbers only on 6th November 2008 and not prior to it. In the aforesaid letter it also found that, LML Ltd. never manufactured engine number bearing

series “5 OK”. They never sold engine number 5 OK 261886 to Siddhi Agency, Surat.

579) The PW-181 (Dinesh Agrawal) has also admitted that, the letter issued by them i.e. **Exh.6611** there is no reference of “---” (three dash) even though they came to know that those three dashes “---” were never retrieved / restored by DFSL, Nashik. While recording statement of Mr.Bhangui, he also came to know that LML Company never manufactured any LML Freedom Deluxe Motorcycle with engine number starting with 5 OK series. Admittedly, PW-181 (Dinesh Agrawal) had called and received the information about engine number of LML Freedom ‘Deluxe’ motorcycle. The spot panchanama, report given by expert, examination report given by motor-vehicle inspector did not show that, a motorcycle which was found on the spot was of deluxe model.

<u>Visit to Surat and Investigation</u> :-

580) The testimony of PW-274 (Arvind Bapu Sawant) shows that, he had been to Surat on 07.10.2008 as per the order given by late Shri. Karkare to trace out the owner of Engine no. E-55 OK 261886. He stayed there till 10/10/2008. Admittedly, there is nothing on record to show that, he stayed at Surat during the relevant period for inquiry or investigation as stated by him.

581) He further testified that, he met owners of Siddhi Agencies, Shreenathji Auto, Khusboo Auto and during investigation, he got

the confirmation that the said vehicle was sold to A-1. Thereafter, he went to the office of RTO Surat and got the confirmation that the aforesaid vehicle was lying in the name of A-1. Thus, it clearly shows that, he went to Surat to inquire / investigate with the specific entire / complete engine number which was never retrieved or restored or provided by the expert witness or within the knowledge of ATS. Admittedly, expert had provided only three probable numbers and not the entire number with conformity or certainty. In addition to it, the expert also admitted that, there may be more probable numbers. Even after that, the testimony of PW-274 shows that, he went with certain complete engine number and after due inquiry those numbers were re-confirmed showing that the motorcycle belongs to A-1.

582) The admissions given by him in cross examination are more crucial which shows that, he was at Malegaon till 07/10/2008. There is no record showing that what work he had done during 07/10/2008 to 10/10/2008 at Surat. He had not recorded the statements of all the persons to whom he had visited on 07/10/2008 at Surat. For the first time, he had deposed the aforesaid facts before the court. Therefore, the visit as narrated by PW-274 to Siddhi Agency, Shreenathji Auto, Khushboo Auto do not inspire the confidence in the absence of their statement or any other documentary evidence. There is no station diary entry brought to my notice showing that from 07/10/2008 to 10/10/2008, PW-274 had visited Surat during that period and carry out the aforesaid inquiry/ investigation. The chief

investigating officer PW-320 (ACP Mohan Kulkarni) had not recorded the statement of PW-274 (Arvind Sawant). There is no copy of report on record which will show that PW-274 (Arvind Sawant) had been to Surat during that period and he had reported in writing to his superior. The testimony of PW-249 (Champakbhai Rana) head clerk at RTO office Surat and PW-256 (Jitendrasinh Vaghela) are also completely silent on the point of any such visit to RTO Office by PW-274 (Arvind Sawant) during that period and personally made any inquiry. Moreover, the report vide **exhibit-7629** annexed with charge-sheet itself shows that, it was submitted by PW-274 (Arvind Sawant), specifying that he had visited Surat on 10/11/2008 and recorded the statement of PW-197 Suresh Parekh (Khushboo Auto), PW-196 Vallabhbhai Goyani (Shreenath Auto), PW-195 Paresh Gandhi (Siddhi Agency), RTO head clerk Champak Bhai Rana. PW-195 to PW-197 also testified that PW-274 (Arvind Sawant) had inquired with them on 10/11/2008 and not prior to it. He also recorded their statement on 10/11/2008. Thus, the all-aforesaid independent witnesses had not corroborated his testimony. Therefore, the aforesaid admissions on record falsifies the oral testimony of PW-274. Though, he had also tried to justify that, he provided all the collected information to his senior PI Khanvilkar. Admittedly, PI Khanvilkar is not examined by prosecution. Therefore, his testimony does not inspire confidence about inquiry / investigation and visit Surat RTO Office during that particular period. Considering all the aforesaid aspects, it also gives rise to inference that getting the knowledge of entire numbers prior to examination

by Expert is nothing but creation of own pre-decided story and followed the pre-determined path of investigation.

Supply of Documents pertaining to GJ-05-BR-1920:

583) In the year, 2008, PW-249 (Champakbhai Rana) was serving as head clerk in the RTO office Surat. The nature of his work includes to supply the particulars of vehicle if it is demanded by anybody. On confronting the letter (**Exh.7111**) of dated 17/10/2008 bearing O.W. No.1008/ATS/ SR.PI /2008, he admitted that, it was received by their office and accordingly he might have given the particulars of vehicle bearing no. GJ-5-BR-1920.

584) In the year 2008, PW-256 (Shri. Jitendrasinh Vaghela) was serving as RTO Surat. The letter vide **exhibit-7111** was received by their office. He has supplied the information with requisite documents as per **exhibit 7112 Colly** (form nos.19, 20, 21, 22 showing insurance and data entry bearing particulars of vehicle). Except those documents, he had not handed over any particulars or documents. He has not provided the certificate of registration containing the particulars of vehicle which is maintained in their separate register. He also admitted that there are number of columns given in those forms are incomplete. Form no.34 was also not annexed with Exh.7112 colly.

585) The letter (**Exh.7111**) was issued by Police Inspector Khanvilkar, who is not examined as witness. The documents were handed over to PNC 9852 **(Shri. Domb)** but he is also not examined as

witness. The contents of **Exh.7111** cannot be said to be proved as the scriber of the document is not examined. Only it can be said that RTO office received one letter dated 17/10/2008. Accordingly, the forms were handed over to the concerned as narrated by PW-256 (Jitendrasinh Vaghela). Thus, whatever the information called from RTO office had been supplied only on or after 17/10/2008 and not prior to it.

586) The PW-181 (Dinesh Agrawal) had received the email as official communication. Admittedly, it was having material information but the soft or hard copy of email is not filed on record. He also admitted that he had not handed over the said mail copy to his superior officers also. Thus, it clearly shows that the material facts are suppressed and not brought on record for the best reason known to the witness and concerned Investigating Officer. So adverse inference is required to be drawn for keeping back the material information without assigning any reason.

587) Admittedly, the chassis number appearing on the LML Freedom Motorcycle was wiped out during analysis and could not restore any number. Even for the sake of moment, it is assumed that the chassis number was also fake, but on the basis of said number i.e. before wiping out, no efforts are taken to trace out the motorcycle.

588) The PW-122 (Tukaram Dhaygude) visited the DFSL Office, Nashik to inspect the LML Freedom vehicle. He noted down the number of parts shown and made available to him for inspection. He noted

down the number of Cylinder head, Clutch Cover, Cylinder Block, Crank, Clutch Housing. Accordingly, he prepared report (Exh.5910) and submitted to ATS. He admitted that on the basis of number noted by him the vehicle could easily be traced out or find out. Admittedly, on the basis of aforesaid numbers no efforts are taken to trace out the motorcycle even those numbers were original numbers. Moreover, he did not get any opportunity to inspect, the nature of plates showing the chassis number and engine number, as those parts were not made available for his inspection.

Series and Serial Number:

589) It is evident on record that, from the testimony of prosecution witnesses that, the first part of engine number is called as series number (E55OK) and the second part (261886) is called as serial number.

590) On the aforesaid point, it came in the evidence of PW-195 (Paresh Gandhi) that, if the series number is changed say for example E45OK, even then serial number may be 261886. Thus, series number may vary but the serial number would be the same. If the aforesaid admission is considered then, it cannot be said with certainty that the series number of alleged motorcycle was E55OK as first digits were not recovered fully but based upon assumption that it would be the same.

591) The PW-249 (Champakbhai Rana), who was working as RTO

Clerk in the office of RTO Surat had also admitted that, even if the series number of the vehicle is changed, then it may also bear the same serial number.

592) The PW-256 (Jitendrasinh Vaghela), the RTO officer of Surat also categorically admitted that, the registration number includes series number and serial number. If instead of BR, if CR is given, then it may also have similar number.

593) Thus, the aforesaid admissions given by the witnesses goes to the root of the case. It clearly shows that, on the basis of probable numbers close to the numbers are traced out, which resulted into the direct jumping to conclusion showing that, it was the same vehicle without searching out the other probabilities. Thus, probabilities are converted into certainty only on the basis of surmises, conjecture, assumption and presumption without any foundation or base as discussed supra.

Possession of Vehicle :

594) No doubt the charges levelled in the charge-sheets filed on record by ATS shows that, there was a deep-rooted conspiracy which was reeled-off by ATS and they had collected the huge evidence on the point of ownership of vehicle. As per the testimony of police witnesses, during investigation it was transpired that, the motorcycle traced out by them bears the original number of the vehicle is GJ-05-BR-1920. It is registered in the name of A-1 (Pragyasing Thakur).

595) On the other hand, during the course of investigation of NIA, it was transpired that, the motorcycle bearing no. GJ-05-BR-1920 though registered in the name of A-1 (Pragyasing Thakur) but it was in possession of AA-1 (Ramji Kalsangra). He was using the said Motorcycle since long and even before the blast. On the strength of statements of Jitendra Bhakroda, Dilip Nahar, Dilip Patidar, Kailash Solanki taken by ATS and reassessed by NIA. They came to know that accused AA-1 (Ramchandra @ Ramji Kalsangra) was in possession of golden colour LML Freedom Motorcycle bearing no. GJ-05-BR-1920 and he was using the same.

596) Admittedly, there are two material aspects involved pertaining to aforesaid motorcycle. One is the Ownership and another aspect is exclusive and Conscious Possession. Already, I had discussed the first part pertaining to search of ownership, nexus between the probable engine number and traced out number. Now, the second part is regarding conscious and exclusive possession.

597) The PW-320 (ACP Mohan Kulkarni) has clearly admitted that the vehicle in question was in possession of absconding accused AA-1 (Ramji Kalsangra) in the year 2007–2008. He also admitted that the vehicle LML Freedom Motorcycle being used by Ramji Kalsangra as per the investigation of ATS. The PW-321 (Anil Dubey) has also admitted that, it was transpired during the investigation of NIA that, since from last two years of alleged incident, the alleged vehicle was not in possession and control of

A-1 (Pragyasingh Thakur). They also did not find any evidence to show that, the alleged vehicle was being used by the alleged person with the knowledge and consent of A-1 (Pragyasingh Thakur).

598) Moreover, ongoing through the charge-sheets coupled with the testimony of aforesaid witnesses, it clearly shows that, A-1 was not having the possession of the said vehicle since after taking the Sanyas. It was in the exclusive possession of AA-1 (Ramji Kalsangra). Thus, ATS and NIA themselves claiming that, the vehicle was in possession of absconding accused AA-1 (Ramji Kalsangra) since beginning. A-1 had renounced the material world prior to some years of the alleged bomb-blast, which clearly shows that she was not in possession of the said motorcycle.

599) Prosecution had not led any evidence on record to show that, she was in conscious possession of the said motorcycle even after renouncement of the material world. Nobody has seen her with the said motorcycle or it was with her at Jabalpur Aashram even after taking the Sanyas.

600) From the charge-sheets, it can be said that, during the course of investigation it was transpired that, the register which was maintained at Car Polish and Bike Care Garage, Indore having an entry pertaining to the motor-cycle bearing no.GJ-05-BR-1920 which was used to bring for servicing by AA-1 (Ramji Kalsangra). Thus, the register entry was sufficient to prove that, the alleged

vehicle was in possession of and used by AA-1 (Ramji Kalsangra). The owner of said garrage Mr. Bakroda being summoned but not examined by the prosecution. He was dropped by the prosecution. The PW-320 (ACP Mohan Kulkarni) has admitted that, Mr. Jitendra Bakroda was the important witness as to possession of the vehicle in question. Due to dropping of the aforesaid material witness, the entry appearing in the aforesaid register is not duly proved. He was the only person who could narrate about the said entry, possession of vehicle and bringing of the said vehicle for servicing. Considering the aforesaid facts, it can be said that, if he would have been examined, then there would have been possibility of coming such aspects which would not favour to prosecution and the another possibility also cannot be ruled out that, the prosecution case regarding alleged exclusive and conscious possession of the said motor-cycle by A-1 would have been materially weakened.

601) Considering the entire testimony of witnesses, absolutely there is no evidence on record to show that, AA-1 (Ramji Kalsangra) was the person working at the instance of A-1 and hence, she had handed over the vehicle to him. Neither she had any knowledge about possession and used by any other person nor the prosecution proved the alleged ownership. Moreover, NIA after due investigation and considering the entire evidence collected by ATS and themselves, they had exonerated the A-1 from all the charges while submitting the charge-sheet.

602) The PW-321(Anil Dubey) had admitted that, during their investigation, they did not find any evidence against accused Pragya Singh Thakur, Shivnarayan Kalsangra, Sham Sahu, Pravin Takkalki. Hence, they are not charge-sheeted by NIA.

603) Upon the meticulous evaluation of the aforesaid entire evidence on record, it makes clear that, the prosecution has failed to establish either ownership or the conscious possession of alleged motorcycle by adducing the cogent and reliable evidence.

Effect of Multiple Charge-sheets by Different Premier Investigating Agencies :

604) It is evident from record that, in the present matter, the investigation is carried out by LCB Nashik Gramin, Azad Nagar Police Station Malegaon, ATS Mumbai and NIA Delhi.

605) The PW-320 is the chief investigating officer of ATS, Mumbai. He has filed two charge-sheets including supplementary charge-sheet. PW-321 is the Investigating officer of NIA, Delhi and he has filed one supplementary charge-sheet. Thus, there are multiple charge-sheets on record filed by the aforesaid premier investigating agencies. The material in charge-sheet against the accused are in the form of statement of witnesses u/s 161 & 164 of Cr.P.C., gadgets recovered from accused, material which retrieved from laptop, RDX traces found at the house of A-11, transcripts of audio-video files found in laptop, intercepted conversation, SMS found in the mobile of accused, etc.

606) The filing of multiple charge-sheets are also disputed by the Ld. Advocates for accused & A-5 on the various counts like more investigating agencies are involved, without registration of offence the ATS had carried out investigation, ATS and NIA both are the prime investigating agencies but there is variance in their charge-sheet, the charge-sheet filed by ATS is tainted and defective, the supplementary charge-sheet filed by ATS is without authority / barred by law and in utter violation of section 6 of NIA act. Whereas, the prosecution has denied all aforesaid contentions.

607) Before dealing with the rival contentions, it would be apposite to mention the relevant dates in tabular format,

Sr.No.	Date	Particular
1	30/09/2008	FIR bearing crime no.130/08 registered by Azad Nagar Police Station, Malegaon, Dist. Nashik.
2	30/09/2008	IGP Rashmi Shukla issued letter cum order to transfer the investigation to ATS, Mumbai.
3	18/10/08	Provisions of UAPA are invoked / added in Crime No.130/08
4	21/10/2008	ATS, Mumbai re-registered the crime number 18/08
5	31/12/2008	NIA Act came into force.
6	20/01/2009	Charge-sheet filed by ATS.
7	01/04/2011	Order passed by Ministry of Home Affairs, New Delhi,

8	04/04/2011	Receipt of MHA order to NIA office, Delhi.
9	04/04/2011	Directed to SP Rajesh Yadav to investigate .
10	13/04/2011	Re-registered the FIR bearing crime no.05/2011 by NIA, Delhi and copies sent to concerned.
11	21/04/2011	Supplementary charge-sheet filed by ATS
12	13/05/2016	Supplementary charge-sheet filed by NIA.

608) Firstly, it is necessary to mention that, the number of allegations are leveled against accused in those charge-sheets. But evidential value of allegations in the charge-sheets cannot be considered more than that such allegations have been made. Charge-sheet is not a public document. Even for the sake of moment it is assumed that, those charge-sheets are public document, even though it does not imply that all that is stated in the charge-sheets stands proved. The fact of allegations are required to be proved by adducing the cogent and reliable evidence.

609) It is also necessary to mention that, mere filing of multiple charge-sheets in the form of supplementary charge-sheet by different investigating agencies would not affect the trial or nothing wrong in it or it is not barred by law.

610) The alleged offence under UAP Act and Explosive Substance Act are schedule offences. The order was passed on 1st April 2011 by the Ministry of Home Affairs, Govt. of India. And thus the Central Govt. by invoking the powers vested u/s 6 (5) of the Act has

entrusted over the investigation to NIA. Thereafter, NIA took over the investigation and supplementary charge-sheet has been filed in pursuant to the further investigation. Moreover, the Hon'ble High Court in writ petition no. **2136 of 2011** in case of **Prasad Purohit and others Vs. NIA** and others already held that, *"NIA Act permits new agency to take over pending investigation and NIA Act does not restrict the investigating agency to investigate or further investigate into the pending cases, it is retrospective in its application."* Therefore, the further investigation carried out by the investigating agencies cannot be said to be re-investigation. Ld. Advocates for accused failed to point out specifically how the further investigation carried out by the investigating agencies could be termed as fresh investigation or re-investigation.

611) In catena of Judgements of Hon'ble High Court and Hon'ble Apex Court it has been observed that, the police without specific order of the Court is empowered to conduct the further investigation u/s 173(8) of Cr.P.C. and file the charge-sheet in the court. Even after the charge-sheet is filed, it is the right of the investigating officer to conduct further investigation. Prior approval of the Magistrate is not required for that purpose. Only intimation to that effect would suffice the purpose.

612) No doubt, in the present matter, as per documentary evidence on record, it depicts that on 30/09/2008, on behalf of DGP Maharashtra, Addl. IG Rashmi Shukla issued the letter vide **exhibit-8784** and thereby transferred the case to ATS. On receipt of the

said letter, ATS has not re-registered the crime number immediately. The crime number was re-registered by ATS on dated 21/10/2008. It is also evident on record, that till 26/10/2008 ATS has not directly involved in the investigation. ATS has indirectly involved in the investigation till 26/10/2008. The senior officers of ATS were directing, monitoring, discussing, supervising the investigation carried out by the officer of LCB Nashik Gramin and Azad Nagar Police Station, Malegaon. Thus, it is nothing but the parallel investigation carried out by ATS, Mumbai. The Ld. Advocates for accused have not pointed out any provisions to show that, such investigation is barred by law.

613) On 26/10/2008, PW-320 (ACP Mohan Kulkarni) of ATS took over the charge of the case and carried out investigation. After completion of investigation, he has filed the charge-sheet. So nothing survives in the aforesaid point raised by Ld. Advocates for accused except the dissenting conclusion arrived by both the investigating agencies on the basis of evidence collected by them during the course of investigation. Admittedly, there is variance on material aspects in those charge-sheets.

614) The testimony of PW-321 (Anil Dubey) coupled with contents of charge-sheet itself shows that, there was time lag between the incident and investigation being handed over to NIA and hence, they could not collect the additional evidence from the scene of crime. During the course of further investigation, they have verified the evidence collected by the ATS, and also came to know

that there are material contradictions with regard to the evidence filed with charge-sheet by ATS.

615) Admittedly, the NIA has raised the question on the reliability of those evidence collected by ATS. NIA supplementary charge-sheet itself speak that, Yashpal Bhadana never attended Bhopal Meeting but ATS has recorded his statement u/s 161 & 164. In the absence of evidence, MCOCA provisions are not attracted in the present matter against the accused except the A-7 (Rakesh Dhawade). But ATS also levelled the charges of MCOCA. It was also transpired to the investigating officers of NIA that, A-1 (Pragyasing Thakur), DA-2 (Shivnaryan Kalsangra), DA-3 (Sham Shau), DA-12 (Pravin Takkalki) have no concern with the alleged offence. The evidence was scanty against them. Hence, they were exonerated by NIA.

616) The supplementary charge-sheet filed by NIA shows that, the investigating officers of NIA have also drawn conclusion on the basis of their investigation that, ATS officers had extended threats to some witnesses to falsely implicate them in this case. On the basis of threat, the statements being recorded by ATS in their favour. No doubt, the supplementary charge-sheet filed by NIA shows that it is reasoned charge-sheet. Moreover, the investigating officer of NIA specifically mentioned the reasons in the charge-sheet for arriving at certain conclusion and not agree fully on material aspects to the earlier investigation carried out by the investigating officers of ATS. PW-321 (Dy.SP Anil Dubey) has also admitted that, they found several inherent legal lacunas /

complications in the charge-sheet of ATS which they had filed on record. He also admitted that to the some extend the investigation conducted by ATS was flawed investigation. Thus, the opinion and conclusion drawn by both the investigating agencies are fairly different and dissenting on various material aspects.

617) Now coming to next contention as to whether the supplementary charge-sheet filed by ATS was in utter violation of **section 6 of NIA** Act or not.

618) Co-joint reading of section 6 (1), (2) & (3) of NIA Act makes it clear that, any FIR is registered related any scheduled offence, the officer-in-charge of the police station shall forward the report to the State Government forthwith. Thereafter, State Government shall forward the report to the Central Government expeditiously. In the present case, nothing is filed on record to show that, after registration of FIR or after NIA Act came into force (31/12/2008) the officer-in-charge has complied the aforesaid provision.

619) Admittedly, on 1st April 2011, MHA, New Delhi had suo-moto issued the directions to NIA of transfer of matter and to investigate by invoking the powers vested under sub-section 5 of section 6 r/w Section 8 of NIA Act. PW-299 (Ravi Gambhir) and PW-321 (Anil Dubey) had admitted that, the present case was transferred by the order of Central Government to investigate into the matter. PW-298 (Lhari Latoo) had testified that,the copy of the said order was received to DG, NIA Office on 04/04/2011. The directions was

given to SP Rajesh Yadav to carry out further investigation.

620) Admittedly, there were no directions to re-register the FIR. But merely re-registration of FIR would not affect the case of prosecution. The said position is very well settled in case of Pradip Ram by Hon'ble Apex Court. Admittedly, after receipt of the order from MHA, New Delhi, there could be re-registration of crime number and matter should have been taken for investigation immediately. But even after the knowledge of order on dated 04/04/2011, the FIR was re-registered on 13/04/2011. No doubt there is delay in registration of FIR but it would also not affect the case of prosecution as already the FIR was registered at Azad Nagar Police Station, Malegaon. The court had taken already cognizance of the case.

621) The order passed by MHA, New Delhi and the copy was sent to all concerned and hence, it cannot be said that ATS was unaware about the said order. Once the order is given under sub-section (4) or (5) the State Government or any police officer of the State Government investigating the offence shall not proceed with the investigation and shall transmit the relevant documents and records to NIA. In the present case, admittedly, ATS had not transferred all the relevant documents and records to NIA. Admittedly, on 05.04.2011, ATS issued letter to NIA and thereby handed over few documents only and not the complete record even after the knowledge that MHA passed an order to take-up the investigation from ATS and to carryout further investigation by

NIA. On 30/04/2011, the papers were handed over when NIA officer himself visited to ATS, Kalachowki Police Station for getting the papers. Admittedly, it was obligatory on the part of ATS to stop the investigation forthwith and forward the relevant case papers and records to the NIA as soon as they got the knowledge. It would be treated as procedural lapse but would not affect to the case of prosecution in view of saving clause given under section 10 of NIA Act makes it clear that, except to the extent of specific provision made in the NIA Act, the State Government can investigate and prosecute any schedule offence. Sub-section (7) of Section 6 of NIA Act, is very clear which protects the right to investigate by State Authority i.e. ATS till actual investigation taken up by the NIA. Hence, I am not inclined to accept the submission of Ld. Advocate for A-10 that, the supplementary charge-sheet was in utter violation of section 6 of NIA Act or any investigation carried out by ATS after 01/04/2011 was without authorization.

Charge :

622) Firstly, it is necessary to mention the undisputed position which came on record is that, my Ld. Predecessor had passed an order on discharge application dated 27/12/2017. After passing the said order, the charge came to be framed on dated 30/10/2018 under section 16 & 18 of UAPA and 120-B of IPC r/w sections 302, 307, 324, 326, 427, 153-A of the IPC r/w sections 3, 4, 5, 6 of the Explosive Substance Act. The charge was duly framed. The charge was explained to all accused. The plea of each accused was came to be recorded. All the accused pleaded not guilty and hence,

matter proceeded further. All the accused are represented by Ld. Advocates except A-5 in person. He denied to take legal aid and defended himself since beginning.

623) In the backdrop of the aforesaid facts, it is necessary to consider the contention of Ld. Advocates for accused pertaining to charge. As per Ld. Advocates the charge framed against the accused is general in nature and not specific. The role of each accused is not spelled-out specifically. Though there is charge of criminal conspiracy even-though time, date and place is not mentioned. Hence, the charge framed against the accused are faulty as the role of each accused is not mentioned with the particulars of meetings and other details.

624) After framing of charge, it was duly explained to the accused. Their plea came to be recorded. At the first instance or till final hearing the said plea or objection that charge is faulty, is never raised by the accused. Considering the entire submission, it is not their contention that any accused did not understand the contents of charge or what charges they are going to face. It is also not their contention that in the absence of any specific charge as alleged or pointed out by them, accused could not take the proper defence. During the course of entire trial, nothing is brought to my notice that they had ever challenged the charge before the Higher Forum and it was set aside. On the contrary, it is evident from record that they got the fullest opportunity to defend. They have cross examined each and every witness examined by the

prosecution. To the number of witnesses, they have extensively cross examined. So it cannot be said that they were deprived of any opportunity to defend the accused. Thus, they got fullest opportunity to raise their defence.

625) The documents filed on record by investigating agencies were duly supplied to the accused. In the charge-sheet the role of individual accused is mentioned by the investigating agencies. It is not the contention of accused that they themselves or their advocates had not gone through the charge-sheets or other documents provided by the investigating agency. Therefore, they cannot claim that, they were unaware about the alleged role of accused in the alleged offence. From those documents also they can assess the role of each accused.

626) At the first instance while framing charge or during entire trial they had not pointed out that the charge is defective and hence, they are unable to raise their defence. After lapse of several years, at the fag end of the case, the Ld. Advocates for accused alleging that the charge framed by the court is general and not specific i.e. without the individual role of accused played in the alleged offence.

627) The main object of the charge is to give the accused notice of the matter he is charged with. If the said information is conveyed to him, in no way it would cause any prejudice and would not invalidate the charge framed. There is no specific proforma of

charge(s) are given under Cr.P.C. or any other law. Considering the entire evidence, it is not the case that accused did not understand the charges or could not take the specific defense.

628) The, co-joint reading of section 215 with section 464 of Cr.P.C. makes it clear that, if the charge is defective, then remedy to the accused is to challenge it before higher forum. Admittedly, none of the accused had challenged Charge(s) before Higher forum and it is not quashed till today. Before the same forum, if it is brought to notice that, any error in framing of charge, then it could be rectified by way of alteration / modification / addition of charge at any stage.

629) It is well settled position that, no findings, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge. The defects in the charge would not invalidate the trial.

630) The section 215 of Cr.P.C. provides that, if there is any error in stating the charge or particulars required and also provides if there is omission to state the offence or those particulars, then it would not be deemed material unless the accused misled by such omission or error or there was failure of justice due to that reason. Therefore, non-mentioning of time, date or place of meetings in the charge would not affect the trial or prosecution case, unless and until it is shown that the accused was misled by such error or

omission and it has occasion a failure of justice.

631) The error or omission in charge whether caused any prejudice to the accused can be determined or evaluated by considering the two factors and those are,

i) Whether the accused was aware of the charges,

ii) Whether the error or omission impacted their ability to defend themselves.

632) In the present case, it is evident that the accused were fully aware of the charges. The alleged error or omission did not impact on their ability to defend themselves. Therefore, considering all the aforesaid aspects, I find that, the charge is not defective and no prejudice is caused to the accused only because minute details are not included in the charge heads. In-fact, the charge contains all necessary details to make the accused aware as to what are the offenses he charged with and what in the substance he has to face. Hence, I find that, the prima-facie the contention of learned advocates seems to be impressive but did not have any force in the backdrop of aforesaid facts as discussed.

Police Station ATS, Kalachowki, Mumbai:

633) Since beginning, the stand taken by A-5 and Ld. Advocate for A-10 that, ATS Kalachowki Mumbai, is not a police station within the meaning of section 2(s) of Cr.P.C. Therefore, all the arrest and detention are illegal on this count itself. Moreover, when it is not a police station, then it is not authorized to register FIR.

634) It would be apposite to mention that, as per to Section 2(s) of Cr.P.C. Police Station means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf.

635) The investigating officer PW-253 (Shashank Shelke) has stated in his cross examination that, as per section 2 (s) of Cr.P.C. ATS Mumbai is having status of police station. It is not denied by the accused while conducting his cross examination.

636) On the aforesaid point, Ld. SPP rightly pointed out the judgement of **Hon'ble Bombay High Court, Aurangabad Bench, in Criminal Appeal no.411/2023 in case of Md. Mehrajuddin Ansari and others Vs. State of Maharashtra,** in para 11 the Hon'ble High Court has observed that, *"here, the fact that is emerging is that the FIR came to be lodged with ATS Squad which has its office at Kala Chowki, Mumbai and it has been declared as Police Station by Notification dated 17th November 2004. The jurisdiction for investigation to ATS, Government of Maharashtra (of which Police Station is Kala Chowki) is entire State of Maharashtra. Reference to this can be found in the Notification issued by the Government of Maharashtra on 26th August 2016 appended with the affidavit of Mr. Panhekar, who is the Investigating Officer in this case."*

637) In the light of aforesaid Judgement of Hon'ble High Court, it can

be said that, ATS, Kalachowki is police station and the jurisdiction for investigation to ATS, Kala Chowki Mumbai, is entire State of Maharashtra. The aforesaid point is no more res-integra. Hence, I do not find any substance in the aforesaid point raised during the course of final hearing.

A-1 Arrest, detention, search and seizure of articles:

638) Before discussing the evidence on the aforesaid points, it is necessary to mention the point raised by Ld. Advocate for A-1 during the course of hearing is that, A-1 was illegally taken in custody from Surat and brought at Mumbai. She was never permitted to stay in lodge but she was in illegal custody of ATS. The fake station diaries were taken to show that, inquiry was going on. During her illegal custody, she was mercilessly beaten, tortured and ill-treated at the hands of ATS officers. Hence, she is facing the health issues till today.

639) On the other hand, the ld. SPP pointed out that, the remand papers does not reflect that, there was any complaint of ill-treatment at the hands of ATS Officers. The Criminal Appeal bearing No.1845/2011 was decided by the Hon'ble Apex Court and thereby rejected her claim pertaining to illegal custody, torture and detention. In reply, the Ld. Advocate for A-1 submitted that, the aforesaid criminal appeal was decided by Hon'ble Apex Court prior to recording of evidence of prosecution witnesses. Now, the evidence of prosecution witnesses are over and whatever incriminating evidence came against the Investigating Officers

required to be considered & assessed. The Ld. SPP has not disputed the said position.

640) Considering their rival submissions, before dealing with the evidence on record, it will be apposite to mention that, the Hon'ble Apex Court in Criminal Appeal No.1845/2011 has observed that, on 24/10/2008 she was produced before CJM, Nashik and she was remanded to PCR till 03/11/2008, but she had not made any complaint of ill-treatment. The order of remand was also not challenged. One application pertaining to her illegal detention was made before the CJM which was turned down by the CJM, Nashik. Police called her for inquiry, accordingly she went to ATS Office, Mumbai, so question of giving summon to her does not arise. Bhim Bhai Pasricha also accompanied her during the said period of inquiry. After discharge from hospital, she was handed over to police, which makes it clear that she was not arrested by the police during that period.

641) Now, pertaining to evidence on record. It emerges from the testimony of PW-274 (Arvind Sawant) that, he went to Surat during investigation to trace out the owner of LML Freedom Motorcycle bearing engine no.E-55 OK 261886. He came to know that, it belongs to A-1 (Pragya Singh Thakur). He met her and told that, the aforesaid vehicle bearing no.GJ-05-BR-1920 is registered in your name in RTO office, Surat. In reply, she stated that, she transferred her ownership to Sunil Joshi in the year 2004. She had taken Sannyas and therefore renounced the material world.

Thereafter, she was brought to Mumbai on 10/10/2008 for inquiry along with Bhim Bhai Pasricha.

642) It emerges from the testimony of prosecution witnesses that, A-1 came to be arrested after inquiry and found her involvement in the offence. On 23/10/2008, in the presence of Panch witnesses Lila PW-180 (Ashok Palve) and Nasruddin Khan, A-1 came to be arrested. In support of it the station diaries entry taken by the ATS officers shows that, she was called for inquiry since 10th October 2008. She came to be arrested on 23/10/2008 around 16.50 hours as per station diary entry no.20.

643) The arrest panchanama **(Exh.6754)** was prepared on dated 23/10/2008 in the presence of aforesaid panch witnesses. The said panchanama is combo panchanama showing arrest, search seizure of articles and physical examination of her body by lady panch witness. The panchanama was started at 15.30 hours and ended at 16.40 hours.

644) The number of articles which were lying near to her in one bag/ Pishawi (पिशवी) came to be seized and sealed as per the arrest panchanama vide **Exh.6754**. Those articles are -

(i) One Acer laptop along with Acer bag and adapter, (ii) Sony ericsson mobile bearing SIM card no.9406600004, (iii) One Nokia mobile on which in blue colour reliance is mentioned bearing mobile no.9303343231, (iv) One ring of yellow metal, (v) one chain of yellow metal, (vi) Rs.10,000/-, (vii) Telephone diary,

(viii) Sony company two CD, (ix) One book of Hindutva Savarkar (x) Classmate company's two note books, (xi) One Standard company's notebook, (xii) Printed pamphlets, (xiii) Two pages pamphlets regarding Kashmir problem, (xiv) One page of PIL, (xv) One pamphlet of Sarvabhaum Aryavart Sarkar, (xvi) One pamphlet of Manav Raksha Sangha, (xvii) One pamphlet pertaining to demand of investigation of murder of Swami Laxmanand Saraswati.

645) Now pertaining to the issue of ill-treatment and beating raised by Ld. Advocate for A-1. It is necessary to mention that, the issue pertaining ill-treatment and alleged beating should have been taken at the earliest i.e. at the time of remand itself. The remedies were available at that time to A-1. She had also availed that remedy but there was no result in her favour. Moreover, the suggestions given to the investigating officers pertaining to ill-treatment & torture had been denied / turned down by them. Therefore, except the bare contention, there is no evidence brought to my notice and hence, I am not inclined to accept the submission of Ld. Advocate for A-1 on this point.

646) During the course of evidence, police officer PW-274 (Arvind Sawant) was confronted with the station diary entries filed on record vide **exhibit-7630** colly. The testimony of PW-274 depict that, he got the knowledge that vehicle used in the bomb-blast belongs to her which is having original number as Gj-05-BR-1920. He got it confirmed by visiting at Surat RTO office. In the light of

aforesaid position, now the entry taken in station diary will have to be considered. The station diary entry dated 12.10.2008 shows that, A-1 admitted during the said course of inquiry that aforesaid motorcycle belongs to her. The offence was serious and cognizable in nature. They were having information about her involvement in the offence and which is subsequently confirmed as per station diary entry of dated 12/10/2008 taken by them. It means the person who makes the statement to the police accusing himself of committing an offence, he would be considered to have submitted to the custody of the police officer. In other words, she had admitted her guilt. In the backdrop of aforesaid facts, it is very strange that, which don't inspire the confidence that, for the period of next several days again they were calling her and making the inquiry with her about the said vehicle and her ownership, which was already concluded in their inquiry. Thus, on a single point, they were making inquiry with her for several days, without arresting her immediately even after she admitted her guilt as per entry taken by them. Moreover, the inquiry report is also not filed on record along-with charge-sheet. PW-274 though he testified that, he went for inquiry to Surat from 07/10/2008 to 22/10/2008, but he had not filed his inquiry report to Mr. Karkare. Therefore, the entries taken in station diary do not inspire the confidence and shows the correct position prevailing at the relevant time.

647) It emerges from evidence that, She had been called repeatedly from 11.10.2008 to 23.10.2008. The testimony of PW-274 (Arvind

Sawant) coupled with the entries taken in station diary during that particular period did not show that, she was carrying all those articles along with her for the purpose of inquiry. There is no evidence to show that, while bringing her from Surat to Mumbai, she had brought or carrying all the aforesaid articles with her. The station diary entry dated 11.10.2008, itself shows that, she had not carried any aforesaid articles with her. Therefore, I found substance, in the contention raised by learned advocate for A-1, that no person will carry any incriminating articles with him/her to show his/ her involvement in the alleged offence.

648) The station diary entry no.07 of dated 23.10.2008 shows that, on 10.45 a.m., she was present in Kalachowki, ATS Police Station, Mumbai. She was sent for medical examination around 11.45 a.m. and came back around 12.45 p.m. And she was arrested around 15.30 hours. Whereas, at the time of visit of Panch witness to the ATS Kalachowki, A-1 was in custody of ATS officer. The recitals of arrest panchanama itself shows that, for the purpose of arrest she was taken in police custody on 23/10/2008 between 15.30 to 16.40 hours. Whereas, PW-180 (Lila Palve) admitted that, when she reached at ATS Kalachowki police station, at that time A-1 was in custody of police. Therefore, it makes clear that A-1 was already in custody of police and lateron shown to be arrested.

649) The station diary is the mirror of day-to-day activities carried out in police station. But there is no reference in station diary regarding calling any panch witnesses on that day and their

presence.

650) A panchanama is a crucial document in criminal cases. It records the certain events that occur in the present of the Panch Witnesses and are seen and heard by them. Thus Panchanama is a written document which prepared in the presence of Panchas. The genuineness and accuracy of the investigating agency can be ascertained from panchanama which they have recorded during the course of investigation in the presence of panchas.

651) The panchanama can be used as corroborative piece of evidence. It is not substantive piece of evidence. Admittedly, PSI Suvarna Shinde had seized all the articles from one bag (पिशवी) lying near to A-1 (Pragyasing Thakur). PSI Suvarna Shinde effected search, seizure of articles and conducted her physical examination. She was material witness on the aforesaid points, but she is not examined by the prosecution. Thus, material witness is dropped by prosecution who actually carried out entire process, give rise to draw the adverse inference.

652) Nothing brought to my notice, which would show that, after the arrest of A-1, the information was given to her friend or relatives. PW-320 (ACP Mohan Kulkarni) has stated in cross examination that, he didn't remember to which relatives the information was given pertaining to arrest of A-1. Even ongoing through arrest panchanama, he could not answer the same. He admitted that, the intimation of arrest was given to friend or relatives are not

mentioned in her arrest panchanama.

653) It would be apposite to quote the judgement of Hon'ble Apex Court on the aforesaid point. Hon'ble Apex Court in case of **Joginder Kumar v. State of Uttar Pradesh [1994 SCC (4) 260]** and **D.K. Basu v. State of West Bengal [1997 (1) SCC 416]** has observed that, *"Section 50-A making it obligatory on the part of the police officer to inform the friend or relative of the arrested person about his arrest and also to make an entry in the register maintained by the police."*

654) According to section 50-A every police officer making arrest under this code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

655) Ongoing through the station diary entry of dated 23/10/2008 at serial number 18 depicts that "वरील नमूद व्यक्तींना अटक करताना मा. सर्वोच्च न्यायालयाच्या निर्देशाचे तंतोतंत पालन करण्यात आले असून त्यांच्या नातेवाईकांना कळविण्यात येत आहे". The aforesaid entry is inconclusive / indeterminate / vague not showing the particular names of relatives. Considering the aforesaid entry, it is difficult to ascertain as to whom they had informed or merely taken the station diary entry as a formality.

656) Panch witness PW-180 (Lila Ashok Palave) also stated that, all articles were in one black colour bag and apart from that bag there was no any other bag. If it is shown and written in panchanama that there was other bag apart from Laptop bag then it is incorrect. The Panchanama itself reflects that there were two bags. Thus, it falsifies the contents of panchanama pertaining the bags. Moreover, the I.O. had not filled up the printed arrest form. But the IO has prepared the handwritten Arrest Panchanama which doesn't show that the arrest intimation given to which friend or relatives of A-1 or copy of seized articles given to A-1 (Pragyasing Thakur).

657) Considering entire aspects, it clearly shows that, the seizure of articles were not done at the instance of A-1. The material witness PSI Suvarna Shinde is not examined. Moreover, a prudent man would not digest the story that, an accused would keep several articles with him / her, so as to implicate himself / herself as an accused. Therefore, seizure of alleged articles do not inspire the confidence about its reliability, credibility, in the backdrop of the aforesaid facts.

<u>Muddemal Custody & Forwarding</u> :-

658) The aforesaid articles came to be seized on 23.10.2008 including electronic devices. Those were kept in custody by ATS till 19.11.2008. Those seized articles were not sent immediately for analysis. The seized muddemal should not be kept idle for number of days but the evidence on record itself shows that, for several

days those were kept in the custody by ATS without forwarding immediately for analysis. If there are longer custody of electronic articles without any reasons, then there are more chances of manipulations and less operationability of articles.

659) Those electronic devices i.e. mobiles **(Art.134 & 135)** and Laptop **(Art.132)** were sent for analysis on dated 19/11/2008 by issuing the letter of advice vide **exhibit-6387-A**. Those articles were sent for analysis with PW-138 (Dilip Ghag). Whereas, PW-138 testified that he got 28 sealed packets from ACP Mohan Kulkarni on 19/11/2008 vide O.W.1168/2008 and one sealed parcel vide O.W.1174/2008 to deposit in FSL, Kalina Mumbai. Accordingly, he deposited those articles without verifying those articles personally.

660) Apart from the aforesaid discussion on the part of seizure of electronic articles, it is necessary to mention that there is no analysis report of mobile (Exh.2, article 135 colly) which was shown to be seized from A-1. The PW-296 (Kiran Deokate.) has testified that, he could not analyzed the said mobile phone. Moreover, he has also admitted that, the mobile phones available till 2008 were having facility of editing. He had not performed any test in order to show that, the all the mobiles phones sent for analysis were active or not. Thus, nothing incriminating is recovered from the mobile of A-1.

A-4 Arrest, Search and Seizure :-

661) A-4 (Ramesh Upadhyay) came to be arrested on 28/10/2008, around 16.30 hours. On the point of arrest, search and seizure of articles, the prosecution has examined PW-274 (Arvind Sawant), PW- 147 (Pritam Mhatre) and PW-320 (ACP Mohan Kulkarni).

662) The **PW-274 (Arvind Sawant)** has testified that, on 28/10/2008, in the presence of two panch witness namely Pritam Mhatre (PW-147) and Rajesh Thakur and ACP Mohan Kulkarni, he had arrested A-4 and prepared panchanama marked as **exhibit-6598** in the ATS Kalachowki, Mumbai.

663) He further testified that, PSI Sayyed had taken the personal search of A-4 and found two Reliance Company handsets, one Nokia Company mobile handset, one Transcend Company Pen-drive, one Moserbear Company Pen-drive, one diary having names and addresses. The diary was numbered from 1 to 335 and signed on its first and last page. The seized articles were handed over to ACP Mohan Kulkarni and entry of seized articles were taken in Muddemal Register.

664) It is necessary to mention that, whatever the articles seized should be sealed on the spot itself to dispel the doubt about any possibility of tampering, manipulation, alteration or deletion. The panchanama prepared is the mirror of process carried out by the officer at the time of preparing the panchanama. Panchanama is always stated to be a memorandum of what happens in the

presence of Panch witnesses as seen by them and what they heard.

665) Ongoing through the Panchanama, there is no reference of sealing of seized articles on the spot in the presence of Panch witnesses. Thus, it clearly indicates that the articles were not sealed immediately after alleged seizure.

666) Though, the PW-274 (Arvind Sawant) has testified that, they had sealed the articles but it is not supported with the documentary evidence prepared by them at that time. Narrating the facts after the lapse of several years contrary to documentary evidence is nothing but improvisation, in order to cover up the material fact remained to be performed immediately during carrying out the process.

667) Admittedly, the non-sealing of articles on the spot immediately certainly creates the doubt. On this point, the admission given by the Panch witness PW-147 (Pritam Pradip Mhatre) is also material. He has specifically admitted that, he had not read out the panchanama. It is not mentioned specifically in panchanama that articles were wrapped in brown paper and sealed and the labels were affixed on the brown envelope having their signatures. He did not take the articles in his hand to verify. He cannot say the about operationability of said mobile phones. In his presence the red colour diary was not wrapped in brown colour paper and no label was affixed. The said diary was neither sealed nor wrapped.

668) Ongoing through the arrest panchanama shows that, it is combined panchanama including arrest, personal search & seizure of articles. It emerges from evidence that, the personal search of A-4 was taken by PSI Sayyad. He seized the articles in ATS police Station Kalachowki. He is not examined by the prosecution to prove that, he has actually carried out search and seizure process.

669) Thus, PSI Sayyad was one of the important / material witness, who actually carried out the process of arrest, search and seizure of articles, but he is not examined by prosecution. The failure of the prosecution to examine a material witness, particularly the PSI Sayyed who conducted or directly participated in the process of search and seizure would legitimately warrant the drawing of an adverse inference against prosecution.

670) In addition to above, as per arrest panchanama, the A-4 was not arrested from his home or from his native place. As per the ATS station diary entries taken pertaining to A-4 shows that, he was called repeatedly for the inquiry since 25/10/2008 till 28/10/2008. On the day of arrest i.e 28/10/2008, he was present in police station since 10.45 am. And he was shown arrested around 16.30 hours. Apart from the aforesaid articles allegedly seized, nothing came to be seized from his custody like travelling ticket, money, etc. though he is resident of Pune, called for inquiry from Pune and he attended the said inquiry. While coming for inquiry, no accused will carry any incriminating articles with him to show his involvement in the offence. A prudent man would not

digest the story that, an accused would keep several articles with him, so as to implicate himself as an accused. Therefore, the recovery of articles as alleged is not reliable.

671) Moreover, it also came on record that, he was suspect in the alleged offence and hence, his mobile was kept under surveillance since 17/10/2008. The conversation among the accused being recorded in cassettes by technical branch of ATS. From those cassettes, the transcripts were prepared. The testimony of PW-320 (ACP Mohan Kulkarni) coupled with station diary entries depicts that, he was repeatedly called for inquiry since 25/10/2008 to 28/10/2008 but he was not arrested, even though he was suspect, his involvement was found in the offence on the basis of recorded conversation. On 28/10/2008, in the morning he had attended the ATS police station for inquiry and on the basis of aforesaid alleged conversation, he was made an accused and arrested around 16.30 hours on 28/10/2008.

672) The arrest panchanama-cum-search & seizure of articles doesn't bear the signature of accused. There is no reference of supply of copy of said panchanama to accused. There is no reference of his arrest intimation was given to his friends or relatives. Nothing brought to my notice that any station diary entry was taken regarding calling of panch and their presence are marked on that day. Considering all the aforesaid aspects, the entire arrest, search and seizure process creates the doubt.

Laptop Seizure related to A-4:-

673) As per the case of prosecution, the A-4 (Ramesh Upadhayay) came to be arrested on dated 28/10/2008. Thereafter, the laptop used by him in his office came to be seized by the investigating officer.

674) The testimony of PW-143 (Vilas Chinchavade) shows that, he was working in Lokmanya Medical college and hospital as Assistant Administrative officer. At that time, A-4 was chief administrative officer. For working in college, a laptop was handed over to A-4 and it was in his custody. On 13/11/2008, ATS officer called him telephonically in their office and he had handed over the laptop to officer Gurav in the presence of two panch witnesses. Police prepared panchanama **(Exh.6617)** and obtained his signature. In cross examination he has admitted that, he has not handed over any documents related to the said laptop nor he is aware about any data lying in the said laptop. ATS officer tried to switch on the laptop but their efforts went in-vain due to non availability of code. It means that the laptop was password protected.

675) The seizure panchanama **(Exh.6617)** shows that, it was a HP company laptop bearing product key – 3X38H-MVV-9V. It was produced by Dr. Wasant Ghanekar and Vilas Chinchawade. The panch witness **PW-155 (Ajay Jain)** has also testified that the said laptop was produced by one Chinchavade and Ghanekar to ATS office. The laptop belongs to A-4. He identified the laptop (**Art.85**), laptop bag and label (**Art. 86 colly**) and his signature of seizure panchanama (Exh. 6617).

676) In cross examination, PW-155 (Ajay Jain) has admitted that, the on the said laptop bag no identification mark was placed. In panchanama it is nowhere mentioned that the laptop was of 'Compaq' model. In panchanama, it is mentioned that the Laptop belongs to college.

677) The testimony of **PW-257 (Satish Gurav)** shows that, he was attached as API to ATS sub-unit, Pune. As per the directions of Mohan Kulkarni he had prepared the seizure panchanama vide exhibit 6617. He admitted in cross examination that, while preparing the panchanamas ACP Mohan Kulkarni was not present. He knows to arrest Ramesh Upadhyay police went to his house. There is no entry taken of message given to Vials Chinchawade and Vasant Ghanekar. He had not opened the laptop.

678) Considering the entire testimony of witnesses, it shows that, as per PW-143 (Vilas Chinchawade) the laptop was tried to open by API Satis Gurav but his efforts went invain. On the other hand, API Gurav had denied the aforesaid fact. Admittedly, the laptop was not seized from the custody of A-4.

<u>Stay of A-4 in Hotel Ship</u> :-

679) As per prosecution ATS officer Sayyed during investigation visited to Hotel Ship at Mumbai on 11/12/2008. On being inquired with PW-161 (Vijay Jha) receptionist in that Hotel about stay of A-4, one entry was found in the name of 'Ramesh' dtd.28/08/2008. He

handed over photocopy (Art.100) of their register to ATS officer. The cross examination shows that, the entry in the register showing only name as 'Ramesh'. PW-161 had not handed over the ID of customer to police. Police had not seized the documents under panchanama. The entry was not made by Ramesh in his presence. He also admitted that his statement shows that he had handed over the register to police, however, on record admittedly there is photostat copy. Neither the aforesaid document is duly proved nor it reflects that the person named as Ramesh was A-4 who stayed in that hotel. Moreover, prosecution failed to establish the nexus between the alleged stay with alleged incident. PSI Sayyed is not examined as a witness in order to prove the aforesaid entry. Therefore, nothing survives in the aforesaid entry found to ATS officer Sayyed.

House Search of A-4

680) On 09/11/2008 API Satish Gurav the ATS officer Pune had taken the house search of the house of A-4 in the presence of Panch witness PW-144 (Ajay Nisal). PW-257 (API Satish Gurav) has identified the house search panchanama vide exhibit 6590. He further stated that he had seized the article i.e. CDs, notepad (Article 57, 58, 59 and 60) during the said house search.

681) The cross examination of panch witness PW-144 (Ajay Nisal) shows that, the house search was conducted without any search warrant. At the time of house search, Mr. Vishal the son of A-4 was present in the house. He didn't know as to whether those seized

articles were objectionable or not. There is no reference of sealing in panchanama. He didn't know as to whether police had issued any receipt to Mr. Vishal or not. Police had not obtained the signature of Mr. Vishal on panchanama marked as Exh.6590. Police had not offered their personal search before entering into the house.

682) The cross examination of PW-257 (API Satish Gurav) has admitted that, he had not played the CD at home in order to confirm as to whether there was any objectionable or not. He seized one notepad but didn't know what objectionable noticed in it. He further admitted that the aforesaid articles were not sealed on the spot nor having knowledge as to whether after bringing those articles in ATS office they had sealed it or not. No entry of those seized articles were taken by ATS officer at Pune. He further admitted that he had not obtained the signature of family members of A-4 during house search and seizure panchanama.

683) Thus, the testimony of aforesaid witness itself shows that, without noticing any objectionable they had seized those articles. No signature of Mr. Vishal was obtained nor given any copy of that panchanama to him. No personal search was offered by them prior to house search. Articles those were shown to be seized not sealed on the spot. Thus, it looses its sanctity. Non-performing the aforesaid material aspects during house search do not inspire the confidence to accept the testimony of aforesaid witnesses.

A-5 Arrest, Search and Seizure of Articles :-

684) A-5 (Sameer Kulkarni) was arrested on 28/10/2008. A-5 in person had brought to the notice of the court pertaining to inquiry report submitted by Ld. Magistrate, Mumbai vide **exhibit-1998** which reflects his illegal detention. The Ld. SPP had not disputed the aforesaid position.

685) On the point of arrest, search & seizure of articles from A-5, the prosecution has examined PW-320 (ACP Mohan Kulkarni), PW-302 (Rajan Ghule), PW-146 (Mohd Irfan Sharif Meer).

686) The testimony of PW-302 (Rajan Ghule) shows that, on 24/10/2008, he and his team went to Bhopal on the instructions of ACP Mohan Kulkarni to take A-5 in custody. They went to Bhopal by seven-seater private charter flight of India Bull Aviation Pvt. Ltd. On reaching at Bhopal with the help of local police station, they had taken A-5 in their custody. Thereafter, they came back to Mumbai on 25/10/2008 by the same charter flight.

687) Whereas PW-320 (ACP Mohan Kulkarni) has testified that, A-5 was called for inquiry from 25/10/2008 to 28/10/2008. After day-to-day inquiry he was allowed to go / set free. A-5 was not taken in custody. The station diary entries are taken to that effect. On the other hand, A-5 brought to notice of the court that, he had filed one application (Cri. Application No.1868/2009) before Hon'ble High Court regarding the ill-treatment and illegal detention at the hands of ATS. In this application, the directions

were issued to concerned Magistrate to conduct inquiry and submit report. The copy of said inquiry report came to be submitted vide **exhibit-1997 and 1998**.

688) It would be apposite to quote the observations / findings given by the Ld. Magistrate Mumbai and those are, "A-5 was brought to Mumbai by Air Craft Indiabulls Aviation Limited. He was shown arrested on 28.10.2008. There is no evidence brought on record to show that, accused voluntarily accompanied with police staff for inquiry. The name and identity of A-5 was also not disclosed when he was brought to Mumbai. The information was pertaining to cognizable offence and the record reflects that accused was detained by Investigating Officer and his liberty was curtailed. There is no evidence on record to show that accused was allowed to go on the dates as shown in station diary. There is no CCTV footage made available to show that, A-5 was allowed to go. The notice was not served on A-5 to attend the police station nor his signature was obtained. And pertaining to torture or ill-treatment at the hands of ATS are after thought and there was no evidence pertaining to ill-treatment as alleged."

689) Considering the aforesaid report, the allegations of ill-treatment are struck down but the allegations of illegal detention are taken into consideration. There is nothing on record to show that, the aforesaid inquiry report had been challenged by ATS and it was set aside.

690) The PW-320 (ACP Mohan Kulkarni) in his cross examination has admitted that, on 25/10/2008 Sameer Kulkarni was arrested at Bhopal Railway Station by Rajan Ghule. He was brought by charter flight by showing a name Sangram Singh. Lateron, he had changed his answer by stating that, A-5 was called from Bhopal. No notice was given to A-5 for inquiry. Thus, PW-320 has taken two stands to justify the arrest. In addition to it, PW-302 has admitted in cross examination that, he had taken A-5 in custody with the help of Local Bhopal Police. Thus, their own admissions shows that, A-5 was arrested at Bhopal itself. Therefore, I do not find any force in the testimony of PW-320 on the point of inquiry & station diary entries taken to that effect.

691) Now, regarding the message found in the mobile message box of A-5. On this point, PW-320 (ACP Mohan Kulkarni) has testified that, one message was found in the mobile message box of A-5 sent by A-9. It was written in the message that, "he should leave Bhopal Immediately, ATS are at his house at Pune, delete all contacts." A-5 could not answer satisfactorily and hence, he was arrested.

692) On the other hand, it emerges from evidence on record that, already A-9 and his mobiles were taken in custody by Shrivastava on 23/10/2008. Even for the sake of moment, it is assumed that, A-5 was called repeatedly for inquiry till 28/10/2008, but they did not get any such message from the message box of A-5 allegedly sent by A-9. When mobiles were not in custody of A-9, even

though they found one message sent by A-9 to A-5.

693) Pertaining to alleged message found in the mobile message box of A-5, the testimony of witnesses is different than the text. As per Panch witness PW-146 (Mohd. Irfan Sharif Meer) the message in the mobile of A-5 was found as follows, "Please don't call me, यहां मेरे पुणे के घर मे एटीएस वाले आ चूके है, तुम लोग भी जल्द से जल्द जगह छोड दो." Thus, it was partly in English Language and partly in Hindi Language. Whereas the wordings of arrest panchanama pertaining to the said message shows that, it was totally in English language and it was as follows, "Please don't call me. ATS police is in my house in Pune. Delete all my Nos from your and others telephone. You leave Bhopal immediately." As per PW-320 (ACP Mohan Kulkarni), the alleged message was in English Language only. PW-320 further admitted that, only on the basis of the said alleged message A-5 was arrested by ATS. Neither the alleged message tallies with oral testimony of the witnesses nor the said message is produced on record or proved subsequently by the analyst of electronic articles / Expert of electronic evidence.

694) The arrest panchanama **(Exh.6596)** was prepared by PI Khanvilkar. The alleged carry bag was in custody of PSI Sachin Kadam. He opened the message box of the mobile. He has also seized the articles lying in one carry-bag. Both of them were the material witness but both the witnesses are not examined by the prosecution.

695) In arrest panchanama there is no reference of intimation of arrest of A-5 was given to his relative or friends. The order pertaining to arrest of A-5 in the aforesaid offence was given on the basis of the message found in the mobile of A-5. The alleged message as discussed supra is itself doubtful. The print out of said message was not taken down and annexed with charge-sheet. The said mobile is not played in the court. The expert who examined & analysed the articles had not shown particularly and proved that the said mobile was containing any such message. On the other hand, the electronic expert PW-296 (Kiran Gangadhar Deokate) has admitted that, the mobile seized alleged to be found in possession of A-5 is having facility of editing messages. Thus, finding of such message do not inspire the confidence. In the backdrop of aforesaid admissions, the possibility of bringing edited message cannot be ruled out completely.

696) On the point of arrest, the testimony of Panch witness PW-146 (Mohd. Irfan Sharif Meer) is quite different. He had been to ATS police station Kalachowki on dated 28/10/2008. He saw A-5 was in custody of ATS. ATS officers told him that, A-5 was caught & brought from Pune. It also indicates that, A-5 was already in custody and arrested by ATS. It is also not digestible to ordinary prudent man that any person while attending any inquiry in police station will carry the incriminating articles with him.

697) Considering the aforesaid entire evidence, when A-5 was already in custody and arrested, therefore nothing survives in seizure of

articles as shown from his custody lateron. The personal search and seizure panchanama should be prepared at the first instance from where the accused was taken in custody. After lapse of number of days and making such panchanama is nothing but to cover up the lapses kept during investigation. Therefore, in view of aforesaid discussion, the recovery of articles cannot be said to be at the instance of A-5.

698) Admittedly, the investigating officers of ATS or NIA had not taken the voice sample of A-5. His specimen signature was not obtained. There is no identification parade carried out. There is no confessional statement of A-5 during the entire investigation. Thus, in the aforesaid form absolutely there is no evidence on record against A-5.

Arrest of A-6, Personal search and seizure of mobiles:

699) It is necessary to mention that, the arrest of A-6, personal search and seizure are interconnected with Abhinav Bharat Trust / Abhinav Bharat Organization and hence, those points are discussed under the caption of Abhinav Bharat Trust. And hence, those are not reproduced here to seek the brevity.

Arrest of A-9, Search and Seizure of Articles :-

700) It is evident on record that, prior to arrest of A-9, he was undergoing Arabic Language course at AEC Training College and Center, Pachmarhi (M.P.). At that time, he was attached to 3 Detachment Southern Command Liaison Unit (in short 'Det

SCLU'). PW-273 (Lt. Col. G.C. Mohanta) was Adjutant (administrative and disciplinary authority) of AEC Training College and Center, Panchmarhi and Col. R.K. Shrivastava was the Director of Military Intelligence (MI-9). For moving / sending any officer of Military from one place to another place, the Movement Order is necessary.

701) The PW-273 (G.C. Mohanta) testified that, he received the orders from head office to move A-9 to Delhi. He had handed over that order to A-9. Thereafter, on 29th October, he got the fax from MI-9 to move the A-9 to SCLU instead of Delhi. Col. Shrivastava was present there since last 5 to 6 days. Col. Shriwastava had taken A-9 with him at Bhopal. Being head of AEC training college and centre, G. C. Mohanta had passed the two movement orders, first one to go at Delhi and lateron to go at Mumbai.

702) The admission given by PW-273 (G.C. Mohanta) shows that, the movement order of Mumbai was taken in custody by Col. Shrivastava which requires to be given to the concerned officer (A-9). He had also taken in custody both the mobiles of A-9. Thereafter, PW-273 received the information from SCLU that, A-9 did not reach there. Thus, his admissions clearly indicates that, since 29th October, A-9, his mobiles, movement order was in custody of Col. Shrivastava. Prosecution had not examined Col. Shrivastava to refute all those admissions. In the absence, of any contrary evidence, there is no reason to disbelieve the testimony of PW-273 on the aforesaid points.

703) On 05/11/2008, PW-266 (API Gajanan Kabdule) revisited the Military Office, Colaba to take the custody of A-9. He met Col. Jitendra Sharma and took the custody of A-9 around 12.10 a.m. Col. Jitendra Sharma had also handed over the 9 articles which were placed on table stating that those articles belong to A-9. He also handed over handing /taking over certificate **(Exh.7438)**. Those articles were, photocopy of driving license, CDS Smart Card, PAN Card, ICICI Bank two credit card, two mobile phones (Motorola, Nokia Company), one wrist watch, one wallet containing cash of Rs.5,120/-.

704) The PW-266 (Gajanan Kabdule) had taken in custody those articles and A-9. He directly went to Juhu ATS office as per the directions of superior officer. He handed over the custody of A-9 to PI Vijay Kadam around 2 a.m. (at midnight). Thereafter, PI Vijay Kadam called two panch witnesses and around 8.30 am to 9.25 am & prepared the arrest panchanama and thereby arrested the accused.

705) Considering the aforesaid evidence, it clearly shows that, A-9 was in custody of ATS since after 12.10 am. His movements were restricted and he was not allowed to go anywhere, but his arrest was shown after 8.30 am.

706) The articles which were kept on table by Col Jitendra Sharma were lying in open condition. Those were not seized from the

custody of A-9. The wording of Panchanama **(Exh.6735)** also shows that, those articles were taken in custody from Col. Jitendra Sharma by PI Kabdule and police staff. Moreover, those articles were not sealed on the spot. Those were brought in open condition at Juhu ATS office and handed over in open condition to PI Vijay Kadam. Thus, articles were lying in open condition for more than 8 hours and in the hands of various officers.

707) The PW-176 (Viren Yadav) a panch witness had testified that, the arrest panchanama **(Exh.6735)** was prepared by police. In his presence the cash of Rs.5000/- was seized whereas the panchanama shows that cash of Rs.5,120/- was seized. Thus, oral testimony of witness does not corroborate with documentary evidence.

708) The admissions given by PW-318 (Vijay Kadam) shows that the arrest information of A-9 was given to his wife is no where mentioned in the Panchanama. In the documents pertaining to order of arrest or documents collected from Army office Colaba, there is no reference about requirement of accused in crime no.18/08. There is overwriting in timing mentioned on the last page of arrest panchanama.

709) All the process of sealing of articles are seems to be done in Juhu ATS Unit after lapse of 8 to 10 hours. Till then, the articles were in open condition and in the custody of aforesaid two officers. Prior to taking into custody by the aforesaid two officers, the custody of

mobiles was passed on to Col. Shrivastava on 29th October and then on 05/11/2008 it was passed on to Col. Jitendra Sharma.

710) Admittedly, there was no identification mark or landmark symbol for the identification of those two mobiles **(Art.123 and Art-124)** which shown to be seized by PI Kadam. PW-176 (Viren Yadav) had not signed on the envelope in which those mobile phones were kept by police. As per **Exh.7438** (Handing / Taking over certificate) shows that there were two mobile phone and both were having single sim bearing mobile numbers 9422516175, 9424465041. But when the sealed items were opened in the court during evidence for identification, at that time, there were total three sim cards are found in two mobile handsets. As per panchanama **(Exh.6735)** there were total two sim cards only. Thus, one additional sim card was found in the aforesaid seized mobile, which has no reference in arrest cum seizure panchanama or handing taking over certificate. Moreover, the process of sealing was not done on the spot at the first instance till handing over to PI Kadam, to dispel the doubt regarding manipulation in those electronic evidence. In such a fashion, the chain of custody of mobile is shaky and unsealed condition for long time leaves room for doubt about manipulation. Considering all aforesaid evidence, the possibility of implanting of sim card cannot be ruled out completely.

711) Col. Shrivastava, Col. Jitendra Sharma are also not examined as a witness to corroborate the story of prosecution or to rebut the

admissions given by other witness. Constable Praful Patil is also not examined who carried the articles from Juhu ATS unit to Kalachowki ATS police station to deposit in Malkhana. Considering the entire evidence, as discussed above, neither the arrest nor the seizure inspires the confidence of the court.

Laptop seizure related to A-9:

712) A-9 came to be arrested on 05/11/2008. The laptop of A-9 came to be seized on 14th November 2008 from Army Education college, Pachmarhi, after the arrest of A-9. Accordingly, the handing and taking over certificate **(Exh.7581)** pertaining to the following laptop was prepared and the laptop was handed over to PW-292 (Santosh Girigosavi) by Col. G.C. Mohanta.

Laptop Description

A	Make	Toshiba Satellite L 30
B	Model No	PSL 30L-00M019
C	Serial No	66082696W
D	Body	Silver Colour lid
E	Cover	Leather black colour Toshiba
F	Adapter	Laptop Toshiba Power Supply Complete

713) The testimony of PW-273 (Col. G.C. Mohanta) shows that, ATS officers visited Amry Education college, Pachmarhi and asked about the Gate Register and it was handed over to them. But prior to handing over the Gate Register to ATS Officers, some CBI officers also visited to their office and obtained the mirror image /

cloning of the laptop (hard-disk) and desktop which belongs to Prasad Purohit. Admittedly, no any such panchanama was prepared by the CBI officers nor the mirror image or cloning had been obtained by ATS from CBI officers. He has admitted in cross examination that they had not maintained any record to show the visits of ATS officers and CBI officers in their office during the period of October to December,2008.

714) The testimony of PW-247 (Col. Dinesh Kumar Sharma) shows that, he signed on some documents on the say of Col. Mohanta. The some documents were handed over by Col. Mohanta to ATS officer. He also identified his signature appearing on seizure panchanama (marked as Exh.7049) of Gate entry register showing some entries of year 2008. In his cross examination, he has admitted that, he cannot read Marathi language. He didn't know the contents of panchanama which was prepared in Marathi language. He is unaware about how many pages actually handed over to officer.

715) The testimony of PW-292 (Santosh Girigosavi) shows that, he visited AEC Training College and Center Panchmarhi on dated 14/11/2008 and seized the laptop (**Art.232 Colly**) of A-9 in the presence of Panch witnesses Lt. Col. Sanjay Kumar and Capt. G. Kannan. He identified the Laptop & related articles. He identified the seizure panchanama marked as Exh.**7012**. In cross examination, he has admitted that he had not seen the ownership documents of the said laptop. He had no knowledge about use of

the said laptop by how many persons.

716) The testimony of Panch witness PW-242 (Lt.Col. Sanjay Kumar) shows that, Lt. Col. G.C. Mohanta was Adjutant at that time. Lt. Col. G.C. Mohanta was his senior officer. One laptop was handed over to ATS officer, but he was unable to identify that laptop. Except his signature on documents and label, he could not identify those seized articles. Thus, independent witness had not identified those seized articles, even after shown to him. He has also not identified the contents of Panchanama being written in Marathi language. He could not say with certainty that the said laptop was in working condition or not.

717) During cross examination, the PW-242 (Lt. Col. Sanjay Kumar) stated that, the said laptop was brought from the house of Prasad Purohit. The wife of A-9 had handed over the said laptop to him. Since then the said laptop was in their custody.

718) The testimony of **PW-288 (Col. G. Kannan)** shows that, he was also posted in computer department of AEC training college and center panchmarhi at that time. He denied the seizure of any articles / laptop by ATS officer in their presence. He was called to sign in the office of their senior officer G.C. Mohanta to sign on one paper and at that time they told that they had seized on article. Except his signatures, he had not identified anything. He had also not identified the said laptop even after shown to him. Thus, his testimony coupled with admission given by him shows

that, he had no knowledge about the said laptop. The seizure of said laptop was not carried out in his presence, except obtaining his signature. He signed on the documents on the say of his senior. Thus, the testimony of this witness is not corroborating to the case of prosecution.

719) Considering the entire aforesaid evidence, it makes clear that except the handing taking over certificate, no any other documents were prepared on the spot. Thus, the aforesaid document (handing taking certificate) shows that the custody of laptop was handed over to ATS. Admittedly, the seizure panchanama of the said laptop was not prepared on the spot by the officer PW-292 (Santosh Girigosavi), who seized the said laptop. It also shows that, firstly it was operated by CBI officers and thereafter it was lying in the house of A-9 and then in the custody of Army office till handing over to ATS. The alleged laptop are not identified by the panch witnesses nor found certainly sure about its workability / operationability.

720) The testimony of PW-315 (PSI Popat Avhad) shows that, he had prepared the seizure panchanama **(Exh-8553)** of aforesaid laptop in the police station ATS, Kalachowki, Mumbai on 19/11/2008. The said laptop was produced by ASI Dilip Bhaskar Ghag. It was in sealed condition in and wrapped in one Khadi cloth bearing signature of seizing officer and panchas. The said laptop was packed in Khaki Colour Paper in the presence of Panch witnesses Ramesh Haldankar and Ramprasad Yadav. Thereafter, the seal was

put-up over the said envelope. Admittedly, both the aforesaid panch witnesses are not examined by prosecution.

721) The PW-315 (PSI Popat Avhad) had identified the aforesaid laptop, its bag **(Art.317 colly)** and other articles. As per the evidence on record, the aforesaid laptop was wrapped in non-transparent white cloth (Khadi cloth) at the time of seizing from the office of Army at Pachmarhi. Therefore, no question of opening the seal arises till handing over to chemical analyzer. It creates a doubt, when PW-315 had identified the laptop and charger without perusal of any other documents admittedly prepared at the time of seizure of the said laptop at Army office. No any documents of laptop (handing taking over certificate) was produced before him by ASI Ghag. Therefore, it cannot be said that, he had full knowledge about the description of laptop which came to be seized from Army office. Neither he was present at Army office nor the said seizure was taken place in his presence. He had no occasion to see that laptop earlier prior to said identification during evidence. As per this witness, the A-9 was arrested in this case and the said laptop was seized from his custody during the course of investigation. Considering his testimony and admissions given by him, the possibility cannot be ruled out that, the laptop was opened during the course of investigation and resealed again in Khaki Colour Paper.

Arrest of A-10 and his personal search and seizure of articles:

722) It is necessary to mention that, the arrest of A-10, personal search

723) and seizure are interconnected with the meeting at Faridabad and hence, the aforesaid points are discussed under the caption of Faridabad meeting. Therefore, those are not reproduced here to achieve the brevity.

Arrest of A-11 and his house search and seizure of articles:

724) The arrest of A-11, his house search and seizure of alleged articles are separately discussed.

Scientific Tests of accused (Narco Analysis):

725) The Ld. Advocates for accused had pointed out during the course of final hearing that, almost all the scientific tests of accused were carried out during investigation but no reports are filed on record nor the original CD is produced on record.

726) Before discussing the point of Scientific Tests i.e. Narco Analysis, BEAP, Polygraph Test. It would be beneficial to quote the judgement of Hon'ble Apex Court in case of **Selvi Vs State of Karnataka, AIR 2010 SC 1974** the Hon'ble Apex Court has observed that, *"Administration of certain scientific techniques namely, Narco Analysis, BEAP, Polygraph Test for the purpose of improving the investigation efforts in criminal cases. The voluntary administration of such scientific techniques in the context of criminal justice may be permitted, and therefore, the same cannot be denied to the petitioners as it would amount to depriving him of the valuable right to defend himself during the trial."*

727) In para no.221 and 223 the Hon'ble Apex Court has further observed that,

> *"221. In our considered opinion, the compulsory administration of the impugned techniques violates the 'right against self-incrimination'. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence. This Court has recognised that the protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion. Article 20(3) protects an individual's choice between speaking and remaining silent, irrespective of whether the subsequent testimony proves to be inculpatory or exculpatory. Article 20(3) aims to prevent the forcible 'conveyance of personal knowledge that is relevant to the facts in issue'. The results obtained from each of the impugned tests bear a 'testimonial' character and they cannot be categorised as material evidence.*
>
> *222. .....*

223. In light of these conclusions, we hold that no individual should be forcibly subjected to any of the techniques in question, whether in the context of investigation in criminal cases or otherwise. Doing so would amount to an unwarranted intrusion into personal liberty. However, we do leave room for the voluntary administration of the impugned techniques in the context of criminal justice, provided that certain safeguards are in place. Even when the subject has given consent to undergo any of these tests, the test results by themselves cannot be admitted as evidence because the subject does not exercise conscious control over the responses during the administration of the test. However, any information or material that is subsequently discovered with the help of voluntary administered test results can be admitted, in accordance with Section 27 of the Evidence Act, 1872. The National Human Rights Commission had published 'Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused' in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the 'Narcoanalysis technique' and the 'Brain Electrical Activation Profile' test. The text of these guidelines has been reproduced below:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record."

728) In the light of aforesaid observations, in the case in hand, it is evident on record that, the accused were arrested on different dates. After their arrest, the narco analysis test of A-1, A-4, A-5, A-9, A-11 was carried out on different dates by the investigating agencies by obtaining the permission from concerned Magistrate. Those scientific tests carried out of aforesaid accused was also video-graphed. The Investigating Officer of ATS received the original CD of said scientific tests.

729) The Chief Investigating officer PW-320 (ACP Mohan Kulkarni) has admitted the aforesaid facts that the scientific tests of accused were carried out on different dates. He also admitted that he had not annexed reports of scientific tests along-with charge-sheet on the count that they do not want to rely upon it. Admittedly, the details about Narco analysis or other scientific tests carried out on different dates are not found / mentioned in charge-sheets. The statement of accused during those tests as to whether inculpatory or exculpatory are not placed on record by way of report of scientific tests.

730) Moreover, the scientific tests of A-11 was carried out in crime no.408/08 registered at Matunga Police Station. As per prosecution the said matter is unconnected with this matter. But

during his custody by Matunga Police Station, his Narco Analysis test was carried out pertaining to Malegaon Bomb-blast Case-2008 in which he was not arrested nor shown as accused during that relevant period.

731) Considering the entire evidence, from one angle, it can be said that, those tests are helpful/beneficial to the investigation agency during investigation to get it affirmed as to whether the arrested accused are involved in the crime or not. From other angle, it can be said that, the negative result of the tests would point out towards the innocence of accused.

732) No doubt, those scientific tests are not conclusive proof or primary evidence. But it doesn't mean that, it should not be considered at all. It can be considered along-with other evidence or material on record. Admittedly, the documents on which the investigating agencies had not relied upon are not filed with the list separately showing the unrelied documents list. Such list should have been prepared and annexed with the charge-sheet. Therefore, non-filing of the reports of scientific tests, non-production of original CD on record give rise to inference that those reports were favouring to accused and hence, those reports are not annexed with charge-sheet.

<u>Secondary evidence and 164 of Cr.P.C.</u>:

733) As per the case of prosecution, during the course of investigation by Ats, the statement of following witnesses were recorded under

Section 164 of Cr.P.C. by the concerned Magistrate. But, those statements are missing from record. The name of those witnesses are mentioned in tabular format as follows,

Sr. No.	Name	PW
1	Shri. Yeshpal Bhadana	308
2	Sau. Sushila Abraham Indiculla	Dead Ex.8371
3	Shri. Abraham Indiculla	Dead Ex.8373
4	Shri. Gaurav Sharma	306
5	Shri. Dilip Ramchandra Nahar	305
6	Shri. Dharmendra Bairagi	316
7	Shri. Nitin Dattatraya Joshi	309
8	Dr. R. P. Singh @ Vijay Bhahadur Singh	312
9	Shri. Ashok Chawala	311
10	Shri. Rajendra Indalkar	Not Examined
11	Shri. Milind Gajanana Natu	Not Examined
12	Sudhanwa Dewale	Not Examined
13	Shri. Chetan Matuklal Dhakan	303

734) Before dealing with this point, it would be apposite to quote the requisites to lead and prove the secondary evidence are observed by Hon'ble High Court in case of **Surinder Kaur Vs. Mehal Singh [AIR OnLine 2013 P&H 1]** those are,

i] The photostat copy of the original document can be allowed to be presented as secondary evidence only in the absence of the original document.

ii] When a Photostat copy is presented as evidence, it is

on the party producing it to prove that the original document existed and it is lost or is in possession of the opposite party who failed to produce it. Mere assertion is not sufficient to prove it.

iii] After the photocopy is produced in the court as evidence, the opposite party must raise its objection regarding the non-existence of such circumstances or foundational facts at the earliest.

iv] When any such objections are raised, the authenticity of the copy must be determined as every copy produced from the mechanical process might not be accurate.

v] Mere production of copy as the evidence does not amount to it proof. Its correctness has to be evaluated and proved independently. It has to be shown that it was made from the original document at a specific time and place.

vi] If the Photostat copies are itself suspicious, it is not to be relied upon unless the court is satisfied that it is genuine and accurate.

vii] The genuineness of copy is to be proved on oath by the person who made the copy or who can vouch for its accuracy, to be satisfaction of the Court.

735) In the light of aforesaid requisites, pertaining go secondary

evidence, the following facts came on record. It emerges from evidence on record that, the original statements (U/s 164) are missing and hence, prosecution had tendered an application below exhibit-3123 and thereby sought to produce the photostat copies in order to lead secondary evidence. My Ld. Predecessor had allowed the said application. The said order was challenged by A-5 in Criminal Appeal No.71/2017. The Hon'ble High Court stayed the order passed by my ld. Predecessor by observing that, the copies produced on record were not compared with original and there is nothing on record to show that those were prepared from originals. After moving such an application, the inquiry was necessary to verify the same. Therefore, the prosecution was permitted to file the fresh application for the same relief. Thereafter, instead of filing any sort of such application, the prosecution proceeded with the case and examined all the witnesses. Merely, it was asked to the witnesses during the course of their evidence about recording of their 164 statements. Even witnesses answered in affirmative to this question, though it would not tantamount to confirmation of contents of those statements, unless and until, those are produced on record, copies are supplied, opportunity to raise objection is given to accused, inquiry in the form of verification and admission of contents by the witnesses after confronting to them. Thus, in the present case, the aforesaid statements (recorded u/s 164 Cr.P.C.) are not confronted to the witnesses nor the concerned Magistrate were examined in such contingencies. And hence, I am not inclined to accept that, the contents of 164 statements without producing on record are

deemed to be proved.

Faridabad Meeting:

736) As per prosecution, the various meetings are held by accused at various places and those are mentioned in following tabular format for the sake of convenience:

Sr. No.	Date	Place of Meeting	Accused Present
1	In the year 2006.	Raigadh Fort	A-9, A-6, A-7
2	25 & 26 Janurary 2008	Chakreshwar Hari Parvat Mata Mandir, Anangpur, Faridabad	A-9, A-4, A-10, A-5, A-11
3	15/16 February 2008	In the house of Tapan Ghose at Kolkatta (West Bengal)	A-9, A-5
4	11 & 12 April 2008	Ram Mandir Bhopal (M.P.)	A-10, A-5, A-1, A-4, A-9, A-11
5	11th June 2008	Circuit House Indore (M.P.)	A-10, A-1, AA-1, AA-2
6	1st Week of July 2008	Circuit House Indore (M.P.)	A-10, AA-1, AA-2
7	15th and 16th September 2008	Raikar's house at Bhosala Military School, Nashik	A-9, A-11, A-4, A-6, DA-12
8	15 to 20 October 2008	Woodland Adventure Camp, Pachmarhi (M.P.)	A-9, A-11, A-5, DA-12

737) As per the case of prosecution, the larger conspiracy was cooked

up at Chakreshwar Hari Parvat Mata Mandir, Anangpur, Faridabad. The meeting was held there on 25th and 26th January 2008. The said meeting was attended by A-9, A-5, A-4, A-10, A-11. In this meeting A-9 had taken the responsibility of providing explosives and A-11 had taken the responsibility of providing manpower for committing the blast at some places as discussed. A-9 and other accused had given some inflammatory speech to disturb the communal harmony and to create a rift between the communities. A-9 specifically uttered that Jihadi Activities are increased in various parts of Maharashtra and they should not tolerate the same and to take action against it in Maharashtra. The tune and language used in the said meeting was showing the mindset of accused. The object of the said meeting was to take revenge of atrocities committed by Muslims on Hindus. The meeting discussion/ conversation had been recorded by A-10 in his laptop. It was seized. The recorded data was retrieved successfully by FSL, Mumbai. The transcripts were prepared from the files Sanatanbharat.wma, Upadhyay.wma and Purohit.wma. Yashpal Bhadana, Bapaditya Dhar, R.P. Singh, Amarnath Yadav, Kashinath Banerjee are the star witnesses who disclosed about the aforesaid meeting and discussion took place.

738) To deal with aforesaid contention, it is necessary to go through the oral and documentary evidence produced on record. On the point of aforesaid Faridabad meeting, the prosecution has examined PW-308 (Yashpal Bhadana), PW-312 (R.P.Singh), PW-303 (Chetan Dhakan), PW-243 (Bapditya Dhar), PW-275

(Amarnath Yadav), PW-276 (Kashinath Banarjee), PW-255 (Gaurav Mishra).

739) More particularly the prosecution has examined PW-243 (Bapditya Dhar) as witness on the point that A-9 was taking training of Arabic Language Course in AEC College. He knows his all activities and about all meetings. However, he has turned hostile.

740) In the year 2008, PW-243 (Bapaditya Dhar) was posted at AEC Training College at Pachmarhi (M.P.). He testified that, A-9 was temporarily residing in one block for the course program. MI Officers and ATS inquired with him like interrogation by taking him at various locations. ATS officers threaten him to oblige them else they will send him in Aurther Road Jail. He didn't know anything about any meeting. Ld. SPP Cross examined him and his attention was invited to the contents of statement. He denied the contents of his statement. Thus, nothing material elicited from his mouth which would be beneficial to the case of prosecution.

741) His cross examination shows that, the court inquiry was initiated against him and A-9 also. Their senior officer R.K. Shrivastava had pressurized him to give statement against A-9. The ATS officers also threaten him to give the statement as per their say. Thus, considering the aforesaid admissions, it cannot be said that, the contents of his statement were narrated by him voluntarily. Moreover, he has not supported to the case of prosecution that he

attended any meeting or knowing anything about any meeting. Therefore, his testimony is not helpful to the case of prosecution.

742) The PW-308 (Yashpal Bhadana) is examined by prosecution in order to prove that A-10 stayed at the guest house of Chakreshwar Hari Parvat Mata Mandir, Ananagpur, Faridabad, he has conducted various meetings with other co-accused at that place. PW-308 was vegetable and milk supplier to them. He was well acquainted with At-10 and his activities. This witness has also turned hostile.

743) The PW-308 (Yashpal Bhadana) testified that, he never met A-10 at Anangpur, Faridabad. He never supplied any vegetable or milk to them. On the other hand, he stated that, he was forcibly taken by ATS officers at Bhopal and was compelled to take the name of A-10 and others. By compelling him, they have trusted the words and extracted the statement. He had given the statement to oblige them, otherwise he would have to face the consequences as per the threat extended by ATS officers. He was in custody of ATS officers near about 4 to 5 days. He resiled/retracted from his earlier statements. NIA also recorded his statement in which also he has stated that ATS officers extended threat to him and forcefully obtained the statement. The testimony of PW-321 (DySP Dubey) also corroborates to this aspect. He has also admitted that, this witness while recording statement has narrated the aforesaid facts. So, it clearly established that, the witness had no knowledge about the incident, but his statement seems to be taken forcefully and the contents mentioned in his statement were not in his knowledge.

The witness has narrated the similar things while recording his 164 statement and deposing before the Court.

744) Ld. SPP though urged that PW-308 (Yashpal Bhadana) had not lodged the report. It is necessary to mention that, non-lodging a report against ATS officers doesn't mean that the testimony of witness requires to be disbelieved. Lot of times, a witness cannot collect the courage to lodge complaint immediately to police officer, considering the future apprehension of ill-treatment or consequences.

745) Considering his entire testimony, what is important is that, the witness has neither stated anything about the meetings, if any, held there nor he has stated that who used to visit A-10 during that period or who attended the said secret meetings. Hence, the evidence of this witness is not useful to prosecution.

746) The PW-255 (Gaurav Mishra) testified that, he is acquainted with A-10. In the year 2008, he met him at various places like Nashik, Jalandar (Punjab), Jammu, etc. Once A-10 had invited him in the meeting at Faridabad and also told him that high profile persons are going to attend the meeting. But he did not attend the meeting. On next day he went there, by that time, all the attendees left the meeting. Then, he was introduced by A-10 with Dr. Singh who was the publisher of Magazine. There was talk on terrorism and situations prevailing in India. A-10 wanted to expand Abhinav Bharat Mission. As such, he has also not supported the prosecution.

747) The witness has not stated the exact place, date and time of meeting where he was called by A-10. He went to Faridabad on next day but he has also not stated exactly at which place he met with A-10 and the publisher of Magazine. His testimony shows that, in front of Publisher of Magazine there was talk on terrorism and situation prevailing in India. It clearly reflects that it was a public meeting. There is no overheard conversation came on record. There is nothing on record to show that accused had participated in that meeting and it was held by the members of Abhinav Bharat to achieve their object.

748) The testimony of PW-255 (Gaurav Mishra) clearly shows that, A-10 used to discuss various topics which are in favour of country and interest of society. A-10 never discussed about taking any revenge against anybody or any illegal activities. He didn't know the name of attendees present in the said meeting. He never met A-1 or A-9. He never met any person whose names were displayed on television at that time. Thus, he clearly shows that, he is not knowing any accused or having knowledge that any accused attended the said meeting. Therefore, mere saying that, A-10 had called him at Faridabad to attend the meeting would not be enough to hold that as alleged the meeting and the alleged discussion took place among the A-10 and co-accused.

749) The PW-225 (Dr. Rajkumar Sharma) on the point of Anangpur (Faridabad) has testified that, first time in the year 2007 he met A-

10 at Nashik in the function organized in Hindi Vidyalaya, Nashik. Thereafter, he met him various times and got acquainted with him. When he went to Agra, at that time A-10 called him to Faridabad. PW-225 went to Faridabad and thereafter, they went to the Aashram of A-10 at Anangpur (Faridabad). Many devotees gathered there. A-10 called him in one room where the PW-225 has handed over Laptop to him.

750) Except as stated above, PW-225 (Dr. Rajkumar Sharma) has not stated that any closed door meeting was held at Chakreshwar Hari Parvat Mata Mandir, Anangpur, Faridabad. Neither he had seen the co-accused present there nor heard any discussion of that meeting. His testimony itself shows that, he met A-10 in his Aashram to hand over the Laptop. He has seen the devotees gathered there for Darshan and not seen any co-accused present there. Therefore, mere wording of Anangpur Aashram has no nexus with the alleged meeting.

751) The PW-275 (Amarnath Yadav) was serving in SOS children's Vaillage of India at Chakreshwar Hariparvat Mata Mandir as a security guard. Minu Huda was the Manager. The temple was run by SOS children's village of India. On 25th or 26th January 2008, A-10 visited there. During that period, Maturji, Vatalji and other 20 to 25 persons visited there. He used to take the entries of visitors in the entry register / visitor register. He used to write the names of all visitors in the register. He identified the photostat copies of entry register marked as Article-288 colly.

752) Admittedly, the original register is not placed on record nor the aforesaid photostat copies (Art.288 colly) were compared with original. Those are not exhibited documents and hence, cannot be looked into for the purpose of evidence. He admitted in cross examination that, "while recording his statement he has not stated to police that A-10 used to visit the temple along with his pupils. If it is written in his statement by police then it is incorrect." Thus, it points out that there were some additions in his statement without his knowledge. He used to take entries of all visitors. But neither the original register is produced on record nor true copies of the entries are produced on record which would point out that the other accused were also visited that place during the said period. His testimony shows that only A-10 visited the place along with other persons /devotees, whose names are not mentioned in the register. In the absence of positive evidence, it cannot be said that the devotees or other visitors were from co-accused. Thus, mere on assumption, presumption or guess work, it could not be said firmly that, the other persons would be co-accused who were visiting the A-10 at that place during that period.

753) The PW-276 (Kashinath Banarjee) was working as a priest at Chakreshwar Hariparvat Mata Mandir, Anangpur, Dist. Faridabad. He knows that there is Satsang Office / Bhavan at the feet of Temple and Meditation Center was on the top side. SOS center was looked after by Management. Jagad Guru Shankaracharya and A-10 used to visit the temple. Along with Shankaracharya many

people used to come but he doesn't know their names. He denied that, Sanstha had provided dining facility to them. He denied that, Shankaracharya used to sit in hall with his Laptop, on 25/01/2008 near about 20 to 25 persons had been to Satsang Bhavan to visit Shankaracharya.

754) The PW-276 (Kashinath Banarjee) admitted that his statement was recorded by ATS officer but he denied the contents of portion mark 'A' to 'D' of his statement. Though he has not assigned the reason but it could be gathered from his evidence. In examination-in-chief he specifically stated that his statement was not read over to him. His statement is in Marathi and he doesn't know Marathi Language. According to him, during inquiry only his name and nature of work was asked to him by ATS officer. Except this nothing was asked to him. Therefore, it shows that he doesn't know what ATS has written in his statement. The prosecution has also not denied the point of limited inquiry with him and he is unknown about the Marathi Language.

755) The testimony of PW-276 (Kashinath Banarjee)itself shows that, he is Pujari (priest). Except Pooja-Archa he doesn't know anything went on in Satsang Bhavan of SOS Center. This witness has totally unaware about the alleged stay, used of Laptop by A-10, names of visitors, specifically on dated 20 to 25 persons had been to Satsang Hall where A-10 was present. Therefore, nothing survives in the testimony of this witness.

756) The admission given by PW-321 (Dy.SP Anil Dubey) shows that, A-1 never attended the alleged meeting of Anangpur, Dist. Faridabad.

757) The PW-312 (Dr. R.P. Singh) was one of the star witnesses of prosecution on the point of Bhopal Meeting and Faridabad Meeting. His testimony shows that one B.L. Sharma @ Premji (then Member of Parliament) called him to attend the meeting at Anangpur Temple pertaining to Kashimiri Pandits / Migrants. He could not attend the place of meeting, as on that day the boarder was sealed. Therefore, he didn't know anything about Abhinav Bharat Meeting held on that day or who were present for the said meeting. Thus, nothing survives in the testimony of this witness pertaining to alleged meeting of Abhinav Bharat at Anangpur (Faridabad). Though, it is urged that, he had given statement before ATS pertaining to aforesaid meeting. But mere statement is not useful. Moreover, he had given different statement before NIA. He did not stick up to earlier statement due to whatever contents mentioned in his statement by ATS he was unaware about it. While recording his 164 statement before the Patiyala House Court, the same statement he had given to ATS but the ATS has mentioned additional facts which he had not stated. Considering his testimony and giving different statements cannot be said to be worthy of credence.

758) Thus, the claim of prosecution that, witnesses Yashapal Bhadana, RP Singh, Bapditya Dhar, have attended the said meeting and they

heard the discussion took place in the said meeting. But the testimony of aforesaid witnesses clearly turned down the claim of prosecution. Neither they have attended the meeting nor they have heard the discussion took place in the meeting. Therefore, they are neither the eye-witnesses of meeting nor overheard the conversation of meeting.

759) The contention of prosecution is that, A-11 had taken the responsibility in Anangpur (Faridabad) meeting to provide the manpower. On this point absolutely no evidence led by prosecution in order to show that, he had taken the responsibility of providing manpower or deputation of persons for the said work. Thus, it remained the bare allegations in the charge-sheets.

760) The star witnesses of prosecution have turned hostile. They have not supported to the case of prosecution on the material aspects. Even though, for the sake of moment, their stray admissions are considered or their statement are considered, but those would not helpful to the prosecution in the light of aforesaid evidence as discussed.

Source / Purchase / Ownership of Laptop :

761) On the point of purchasing of Laptop by A-10, the prosecution has examined PW-151 (Kishan Mansinghani), PW-174 (Nitin Kale), PW-225 (Dr. Rajkumar Sharma).

762) It emerges from the testimony of aforesaid witnesses that, A-10

told Dr. Rajkumar Sharma to purchase the HP Company Laptop for him and he will make the payment. Hence, A-10 telephonically talked with seller of HP Company Laptop. As a token / advance, the A-10 also transferred Rs.18,000/- in the account of Rajkumar Sharma. PW-225 (Rajkumar Sharma) financed the Laptop through Bajaj Finance by submitting the required documents. He purchased the HP Laptop from Intra Link Shop at Nashik for Rs.50,000/-. Nitin Kale (Owner of Intra Link) also testified that, he sold out the HP Laptop to Dr. Rajkumar Sharma. The copy of computerized bill (Art.118) and delivery challan **(Exh.6725)** is also filed on record. Whereas, Kishan Mansighani (Employee of Bajaj Finance) has testified that, Rajkumar Sharma has obtained the finance from their company (Bajaj Finance) for purchasing HP Company Laptop. He purchased the Laptop from Intra Link Shop. After purchasing the said laptop, he has handed over the said laptop and receipt to A-10. Thereafter, A-10 handed over him three cheques of Rs.10,000/-, Rs.10,000/-, Rs.13,000/- of Jammu Kashmir Bank. He deposited those cheques and en-cashed the same.

763) The cross examination of PW-225 (Rajkumar Sharma) shows that, he obtained the finance to purchase the Laptop. He had submitted his own documents and Laptop was purchased by him in his own name. It was not purchased in the name of A-10. The cost of Laptop was Rs.50,000/- which do not match with the receipt (Rs. 51,000) submitted by him. If the A-10 had transferred the amount Rs.18,000/- in his account, then no need to obtain the finance over entire cost of Laptop. Whereas Exh.7207 shows that, Rs.18,000/-

deposited by way of cash in his account. There is no any such transfer entry of Rs.18,000/-. Thus, it falsifies his own narration on the aforesaid points. Moreover, while handing over the said laptop to A-10, it was not in sealed and packed as received through seller. Therefore, it gives rise to inference that, it was used by PW-225 before handing over the said Laptop.

764) The original computerized bill of Laptop is not produced on record. The photostat copy of bill (Art.118) which is produced on record was not proved through the testimony of PW-174 (Nitin Kale). Only the delivery Challan vide exhibit 6725 came to be proved. In this challan, there is only model number of HP Laptop. Except the model number, there is no reference of serial number and product number of Laptop which are recognized as unique identification numbers to identify the particular Laptop.

Arrest of A-10, Search, Seizure and Sealing of Laptop:

765) The prosecution has filed & relied upon the transcripts of meetings in files named as sanatanbharat.wma dated 26/01/2008, purhohit.wma dated 27.01.2008 and upadhyay.wma dated 25-01-2008. As per prosecution meeting at Faridabad, Anangpur village took place on 25/01/2008 and 26/01/2008. According, to the case of prosecution, the A-10 had recorded the conversation of meeting in his laptop. After seizure of laptop from the possession of A-10, the recorded data was retrieved by FSL, Mumbai.

766) All the points of recording of data, arrest of A-10, recovery of

Laptop, Seizure of Laptop, Sending to FSL, Data retrieval is interconnected to each other's. Hence, I am considering all those points simultaneously and discussing all those points together in the light of evidence on record. The following are the list of exhibits relevant and connected to the aforesaid points and hence, those are mentioned in tabular format,

Exh. No. 6994	Letter to CJM, Nashik
Exh. No. 6579	Seizure Panchanama dated 13/11/2008
Exh. No. 6595 Colly	Fard Giraftari, Fard Baradmadgi
Exh. No. 7484	Compliance Report by PW-269 (Vivekananda Wakhare)
Exh. No. 6387	Covering Letter dtd.19/11/2008
Exh. No. 6387A	Letter of Advice dtd.19/11/2008
Exh. No. 6996	Giraftari Ka Praman Patra
Exh. No. 7487	Office Order issued by PW-320
Exh. No. 6630	Voice Recording Panchanama of A-9
Exh. No. 6613	Mirror Image Panchanama

767) On the Point of arrest, personal search & seizure of articles, the prosecution has examined witnesses namely, PW-269 (Police Inspector Vivekanand Wakhare), PW-320 (ACP Mohan Kulkarni), PW-239 (Police Inspector T.B. Singh), PW-142 (Panch witness Vilas Achrekar).

768) It emerges from the testimony of aforesaid witnesses that, A-10 was a suspect and his involvement in the said offence was disclosed. Hence, PW-320 (ACP Mohan Kulkarni) had applied

before Hon'ble CJM Nashik. The request letter-cum-order (Exh.6994) was issued to ATS Lucknow to assist ATS Mumbai for inquiry with Dayanand Pande as per rules. On the other hand, ACP Mohan Kulkarni passed an order dated 11.11.2008 vide **Exh.7487** and thereby directed to PW-269 (PI Vivekananda Wakhare) to interrogate and arrest A-10 as his involvement was disclosed in the present case.

769) Accordingly, PW-269 (PI Vivekananda Wakhare) along with API Shelke went to Lucknow by Air. As per testimony of PW-269, with the help of T.B. Singh ATS officer Lucknow, they went to the house of A-10 (Dayanand Pandey) at Kanpur. They brought A-10 (Dayanand Pandey) at Lucknow for inquiry. A-10 during inquiry, accepted his guilt and hence they arrested A-10 by preparing 'Fard Giraftari' and 'Fard Baramadgi'. The number of articles shown to be seized during Jama-Talashi of A-10. Thereafter, transit remand was obtained on 13.11.2008. And at night hours, A-10 was brought at Mumbai by Air. After bringing him at Mumbai, the panchanama of sealing of articles (Exh.6579) was prepared at ATS Office Mumbai in the presence of panch witness (Vilas Achrekar).

770) The name Dayanand Pandey and identity by such name of A-10 is seriously disputed by learned advocate for A-10. On this point, he has also cross examined the witnesses. PW-320 has stated that, he came to know on 12.11.2008 from PW-269 (PI Vivekananda Wakhare) that, Dayanand Pandey is having real name Dayanand Dhar Dwivedi. On the other hand, PW-269 (PI Vivekanand

Wakhare) has stated that, on being inquired about the name of suspect with PW-320 (ACP Mohan Kulkarni), he came to know from him that, Dayananad Pandey and Sudhakar Dwivedi is the one and same person.

771) The admissions given by the PW-269 (PI Vivekananda Wakhare) in his cross examination shows that, prior to going to the house of suspect, they had no documentary evidence regarding address of suspect. While bringing the suspect at Lucknow, they did not get any identity proof of the suspect. The mobile number which was provided by PW-269 was not verified by them as to whether it belongs to A-10 or not. They had not seen any documents to show that, A-10 was the same person (Dayanand Pandey). It also shows that, they have traced out A-10 on the basis of one photograph. Admittedly, the said photograph is not filed on record. PW-239 (T. B. Singh) has not stated that, he was having any such photograph of A-10 and on the basis of said photograph they have traced out and identified A-10. In the application placed before Hon'ble CJM, Nashik and order passed by Hon'ble CJM, Nashik, there is no reference of the name Dayanand Pandey @ Dayanand Dhar Dwivedi. They have also not taken the statement of any person residing in the vicinity of the house who knows A-10 by name Dayanand Pandey. There is no documentary evidence in the form of Adhar, PAN card to show that they have identified A-10 as Dayanand Pandey. On the contrary, it emerges from evidence that they went inside the house of A-10 and halted there for some time but they did not see or obtain any documents

showing the ownership of the house or inquired with family members showing that, it was the house of Dayanand Pandey. Thus, the testimony of witnesses is not corroborative to each other on the point of identification of accused for whom they went for inquiry or brought a person under the pretext of inquiry.

772) Admittedly, they have brought A-10 from Kanpur to Lucknow under the pretext of inquiry without issuing any notice thereby showing that, he was called at the specific time, date and place. They have searched the panch witnesses for the purpose of inquiry do not inspire the confidence, when they have specifically admitted that, A-10 was suspect at that time, his involvement was found in the aforesaid offence, they halted in the house of accused for some time, only for house search they used to call the panch witnesses. Thus, it gives rise to inference that, they had taken the house search without calling any panch witnesses under the pretext of inquiry.

773) It is obligatory that, prior to taking personal search of accused, the police officer should offer his personal search in order to dispel the doubt. The rule is meant to avoid the possibility of implanting the object which was brought out of search. On this point, it would be apposite to quote the relevant para 10 of **Rabindranath Prusty Vs. State of orissa 1984 Cr.L.J. 1392** in which Hon'ble Apex court has observed that,

"10. The next part of the prosecution case is relating to the search and recovery of Rs. 500/- from

*the accused. One of the formalities that has to be observed in searching a person in that the searching Officer and others assisting him should give their personal search to the accused before searching the person of the accused. (**See AIR 1969 SC 53: (1969 Cri LJ 279, State of Bihar v. Kapil Singh**). This rule is meant to avoid the possibility of implanting the object which was brought out by the search. There is no evidence on record whatsoever that the raiding party give their personal search to the accused before the latter's person was searched. Besides the above, it is in the evidence of P. Ws. 2 and 5 that the accused wanted to know the reason for which his person was to be searched and the reason for such search was not intimated to the accused. No independent witness had witnessed the search. In the above premises, my conclusion is that the search was illegal and consequently the conviction based thereon is also vitiated."*

774) In the case-in-hand, prior to going at Kanpur, the ATS officer took the personal search of each other without calling any independent witnesses or not in the presence of A-10. They have not offered their own personal search to A-10. Moreover, PW-239 (PI T. B. Singh) has admitted that, some luggage was carried by ATS while coming from Mumbai, but he did not know what they had carried with them. They had not taken the personal search of

A-10 on the spot i.e. at Kanpur, by calling independent witnesses, despite of the house of A-10 was admittedly situated in thickly populated locality and their unawareness about the identity of person Dayanand Pandey personally.

775) After bringing A-10 at Lucknow ATS office on dated 12.11.2008 around 14:30 hours, they have prepared Fard Giraftari (Exh.6995 colly) and Fard Baramadgi (Exh.6995 colly), around 20:30 hours. The scribe of those documents is PSI Anil Yadav. He is not examined as a witness. Those documents are prepared in Urdu mix Hindi language in the presence of all raiding team. The bare perusal of Fard Giraftari shows that, whatever the process carried out by them in their joint operation are totally mentioned in it.

776) In Fard Giraftari the word 'Jama Talashi' appears. Jama means clothes worn by the person and Talashi means personal search. As per aforesaid witnesses, during Jama Talashi, number of articles were found as mentioned in Fard Baramadgi.

777) According to PW-269 (Vivekananda Wakhare) and PW-239 (Dy.SP. Tej Bahadur Singh), A-10 has admitted his guilt / involvement in the offence and hence he was arrested. Whereas the document prepared in their presence, Fard Giraftari specifically shows that, he has not admitted his guilt or involvement in the offence, even though, he was arrested. Thus, the documentary evidence speaking contrary to the oral testimony of witnesses and not corroborating to them.

778) Though, it is mentioned in Fard Giraftari that, telephonically the intimation was given to the younger brother of A-10 about his arrest, but the admission given by the PW-239 (Dy.SP. Tej Bahadur Singh) itself shows that, they were not having any contact number of younger brother (Pushkar Dwivedi) of A-10. Considering the aforesaid submissions, it is difficult to say that, as to whether they had intimated about arrest of A-10 to his brother or not.

779) Nobody corroborated to PW-269 (Vivekananda Wakhare) on the point of bringing two bags by A-10 with him while coming for inquiry with them. Considering the entire evidence, the question arises, if really a person is called for inquiry by police, then why he would carry the incriminating articles with him. Any ordinary prudent man would not carry any incriminating articles with him to inculpate himself in any offence. Therefore, it doesn't inspire the confidence that, A-10 brought two bags full of articles with him for the purpose of inquiry.

780) In Fard Giraftari, there is no reference of starting time and ending time of said panchanama. No reason is assigned for it during the course of evidence. The suspect was residing at Kanpur at the relevant time is also not mentioned in it. T. B Singh was having one photograph is nowhere found in the said panchanama. Suspect was called for inquiry and he came with them along with two bags is nowhere reflected in the arrest panchanama / fard

Giraftari. Thus, material facts are missing in the Fard Giraftari. The witnesses have admitted that, non-mentioning those material aspects renders the document incomplete. Considering the entire admissions, it can be said that, non-mentioning the material aspects in the Fard Giraftari renders the purpose of preparation of documents frustrated.

781) During Jama Talashi, the number of articles shown to be seized from the custody of A-10. The list of those articles is prepared separately by captioned as 'Fard baramadgi'. Those articles are boarding pass, one photograph of God Nruhsinh, diesel bill voucher, bill voucher, 20 visiting cards, one cheque of PNB bank, ATM cards, two mobile phones, photographs, HP company laptop, one tourist trolley bag, leaflets of Sharda Sandesh, Marathi newspapers, 7 forms, Rs.200/-, 3 audio cassettes, 44 visiting cards. Admittedly, the personal search was not carried out at Kanpur or at the starting point in the presence of independent panch witnesses. In personal search of a person, it is highly improbable to keep all these articles in his clothes worn by him. This fact is specifically admitted by PW-320 (ACP Mohan Kulkarni) that, number of articles as mentioned in Fard Baramadgi cannot be kept in the dress worn by the person.

782) At the time of seizure of those articles at ATS Lucknow office, they have not called any independent panch witnesses. Thus, the seizure was not done in the presence of independent panch witnesses. The witnesses have admitted that, ATS office Lucknow

is situated in Gomati Nagar in thickly populated locality. Even if, it is assumed for the sake of moment that, they did not get independent witnesses at that time, but it cannot be ignored that, since morning to evening those alleged bags were lying in custody of ATS officers along with accused. It is highly improbable that, for the whole day, they did not get a single independent witness even after ATS office is located in thickly populated area. There is nothing on record to show that, they had issued any notice to any person to act as a panch or any efforts taken by them to call out independent person to act as a panch.

783) The PW-269 (Vivekanand Wakhare) has admitted that he had not put any label or seal on the articles seized under Fard baramadgi. His further admission also shows that, during the entire interrogation, custody, search and seizure, only police personnel were involved and not independent witnesses. Thus, entire Fard Giraftari and Fard Baramadgi is carried out without calling and verifying the articles in the presence of independent panch witnesses to dispel the doubt.

784) The PW-269 (Vivekananda Wakhare) has specifically admitted in his cross examination that, “during arrest, search, seizure, preparing any panchanama, the presence of independent panch witnesses are mandatory as per law. But he did not follow the aforesaid procedure, during search or taking custody of suspect from Kanpur or while preparing panchanama at Lucknow.

Despite of not following the aforesaid mandatory procedure, they have arrested the suspect". On the other hand, PW-239 (DySP Tej Bhahadur Singh) had admitted that they were in the house of A-10 near about ten minutes. During cross examination, the suggestion was given to PW-239 that, nothing was seized from the house of A-10, but he denied that suggestion. It means everything shown in Fard Baramadgi was already seized from the house of A-10 without calling independent witnesses. All the aforesaid admissions go to the root of the case. Thus, without independent witnesses admittedly available, the search and seizure operation carried out, which renders the entire process doubtful.

785) Moreover, the boarding pass, though shown to be seized is not filed on record. Some articles i.e. Pen drive, net connector are not mentioned in Fard Baramadgi, but shown to be seized from the custody of A-10 by preparing panchanama **(Exh.6579)** on dated 13.11.2008 at ATS office Mumbai. Therefore, the possibility of addition, deletion, alteration or manipulation or tampering cannot be ruled out.

786) The PW-239 (T. B. Singh) has testified that, the said laptop **(Art.48)** and the mobiles **(Art.49 and 50)** are similar in nature and hence, he left those articles to be identified by PI Wakhare. Even though, lateron he identified those articles i.e. laptop, mobiles which were shown to be seized from the custody of A-10 would not tantamount to the actual seizure at the instance of A-

10 when it was already under the cloud of doubt.

787) All those articles shown to be seized as per Fard Baramadgi were in unsealed condition till reaching to Mumbai. Those articles were not deposited in the Malkhana of ATS office Lucknow. There is no identification mark put on it at the time of actual seizure. The electronic items (Gadgets) cannot be left in open condition for longer period which could be tampered easily. But for the considerable period those were kept in open condition, unsealed condition & without depositing in Malkhana. Thus, prosecution has not brought on record whether the said articles were properly sealed on the spot and kept in safe custody.

788) On the aforesaid point, the Ld. Advocates for A-1 and A-10 has relied upon the observations made in the judgement of **Nitin Tukaram Chavan & Ors. Vs. State of Maharashtra [Criminal Appeal No.1138/2011 reported in 2018 SCC Online Bom 2867].**

> *"55. It is pertinent to note that the articles like clothes and weapons were seized soon after the incident on various dates. The letters Exhibit-191 and Exhibit-214 shows that some of the seized articles were sent to the office of the Chemical Analyzer on 12th November, 2009 for Chemical Analysis. Thus, it is clear that for considerable period the seized material was in the custody of the investigating officer. The prosecution has not brought on record whether the said articles were*

properly sealed or not and kept in safe custody. The Rajasthan High Court in the case of The State v. Motia, in para no. 8 held that:

"8. Learned counsel for Motia accused has raised a number of objections about this evidence against Motia. In the first place, he points out that there is no evidence to show that after the various articles had been recovered from the possession of Motia, they were kept sealed so that it was not possible for any one to sprinkle blood stains on them while they were in the custody of the police and before they were, sent for examination by the Chemical Examiner. We must point out that this lacuna in the prosecution evidence is there. Whenever it is desired by the prosecution that certain articles, which have been recovered from accused persons are to be identified, or are to be sent to the Chemical Examiner for analysis, it is necessary that the officer recovering the articles should immediately take steps to seal them and evidence should be produced that the seals were not tampered with till the identification is over, or till the articles are sent to the Chemical Examiner for analysis. In the absence of such precautions it would always be open to the accused to say that the police later put human

blood on the articles in order to implicate the accused. It is, therefore, necessary for the prosecution to produce evidence that steps were taken at once to seal the articles, and that from the time the articles came into possession of the police to the time they were sent for identification before a Magistrate or for examination to the chemical Examiner the seals remained intact. This evidence is missing in this case. It is, of course, not difficult to sprinkle a few human blood stains on articles recovered if somebody wants to do so. We do not say that this was done in the present case; but as precautions were not taken, the argument raised on behalf of the accused that this might have been done remains unrefuted. Under these circumstances, we find that we cannot place the same reliance on the discovery of blood stains on these various articles as we would have done if necessary precautions had been taken."

56. In the facts of the present case, we find considerable force in the argument advanced by learned counsel for the Appellants that muddemal articles were in the custody of the investigating officer for considerable period and during the said period possibility of tampering with the muddemal articles

cannot be ruled out. Considering the over all evidence and the circumstances brought on record, explicit reliance cannot be placed upon the chemical analysis report."

789) The raiding team was consisting of 10 to 11 officers who traveled by Air to Lucknow and returned by Air. No traveling details or manifesto are filed on record. In the absence of traveling tickets, boarding pass or manifesto, I found substance in the point raised by learned advocate for A-10 that, if those documents would have been filed on record, then real name of A-10 would have been reflected because bringing by Air requires a strict proof of name.

790) The panchanama which is prepared at ATS Police Station Mumbai vide **Exh.6579** shows that, sealing of articles was done at Mumbai on 13/11/2008 at night hours. The panch witness PW-142 (Vilas Achrekar) has specifically admitted that, nothing was seized in his presence but those were already seized at Lucknow. He further admitted that, similar type of Laptop, Pen drive, Charger, Hard disk are easily available in open market. It gives rise to the chances of manipulation / tampering in the gadgets. Considering the overall evidence, as discussed supra, and the circumstances brought on record, explicit reliance cannot be placed upon the examination report of expert (FSL Expert).

<u>Seizure of II Laptop of A-10</u> :

791) It emerges from evidence that, one more Laptop (HP Company)

which belongs to A-10 came to be seized on 18/11/2008 at ATS sub-unit Pune from the custody of PW-166 (Prachi Kshirsagar) in the presence of Panch Witness PW-154 (Sudheer Sarvade). The said Laptop was seized by PW-300 (API Atul Sabnis) in the presence of PW-154 and prepared the seizure panchanama vide **exhibit-6615**.

792) On this point, police officers **PW-291 (PI Peter Lobo)** had testified that Prachi Khirsagar had deposited the Laptop and it was seized by his junior officer **PW-300 (Atul Sabnis)**. Whereas, PW-300 testified that, he seized the Laptop along-with its bag, adapter at ATS unit Pune which was presented by Prachi Kshirsagar which belongs to A-10.

793) Thus, the aforesaid witnesses categorically deposed that, Prachi Khirsagar was custodian and she came in ATS Office Pune and handed over the Laptop. Whereas the PW-166 (Prachi Kshirsagar) has demolished the entire story of prosecution as narrated by the aforesaid witnesses. It came in her evidence that, she had not visited ATS office Pune along with the said Laptop on dated 18/11/2008. In the year 2008, A-10 was not using the Laptop and hence, it was handed over to her for use. She used the Laptop approximately for two months. The said Laptop was not working properly and hence, she handed over the said Laptop to her brother-in-law Atul Kukade who was working in computer field for its repairing. Hence, they asked A-10 and got permission to format the Laptop. ATS came to her house to seize the Laptop

but she told that the said Laptop was with her brother-in-law and hence, they went there and seized the said Laptop. In addition to it, the admission given by PW-154 also shows that, the Laptop was already with police and they told him they wanted to seize and seal the same. It means the Laptop was already seized from the house of Atul Kukade and thereafter the panchanama seems to be prepared in police station. Neither the seizure panchanama was prepared on the spot nor the laptop was sealed on the spot in the presence of Atul Kukade.

794) The testimony of PW-166 (Prachi Kshirsagar) clearly shows that, she was custodian and user of the said Laptop for more than two to four months prior to seizure of it. Then it was in custody of Atul Kukade for several days. Therefore, it can be said that, if there would have been any incriminating evidence in it, then it would not be handed over for her use or they would notice about it while using the said Laptop. But nothing came on record to show that they had found any incriminating things or objectionable material in the said Laptop during their use. She also admitted that there was no film, cinema (movie), photographs or any other documents in the said Laptop. She further admitted that, seizure panchanama was not prepared while seizing the Laptop from the house of Atul Kukade. In her presence no seizure panchanama was prepared. She also admitted that if seizure panchanama shown to be prepared in her presence or before her then it is false.

795) Atul Kukade is not examined as a witness. Her testimony is not disputed by prosecution during the course of her evidence. Neither she had identified the said Laptop in the court nor the Panch witness PW-154 (Sudheer Sarvade) had identified it. Thus, material witness failed to identify the alleged Laptop.

796) As per PW-166 (Prachi Kshirsagar) the Laptop was not in operational / working condition. PW-154 (Sudheer Sarvade), PW-291 (Peter Salvador Lobo) or PW-300 (Atul Achyut Sabnis) has not verified as to whether it was in operational / working condition or not by calling the expert technical team working in ATS at that time. So it can be said that the said Laptop was not in workable condition at the relevant time. Admittedly, on the other hand if it is assumed that, it was in working condition, even then they had not opened it and noticed any incriminating / objectionable material and mentioned the same in the panchanama. They had not taken its hash value before sending to Forensic Science Laboratory for analysis. All the ports/ pours of Laptop were opened as admitted by PW-154. It is nothing but leaving the device vulnerable to tampering. In other words, if the ports /pours are open the possibility of addition or deletion of data, at any time cannot be ruled out.

797) They had not seized any documents showing the ownership of the said Laptop. Though seizure panchanama and seizure process carried out in the presence and under his supervision of PW-291 (Peter Salvador Lobo), but he had not signed on seizure

panchanama or while sealing the articles. Even they had not initiated any inquiry as to whether Laptop belongs to A-10 or not.

798) Thus, considering all the aforesaid aspects, it clearly shows that, the testimony of prosecution witnesses is not cogent and reliable on the aforesaid points. There is variance in their testimony on the material aspects as discussed supra. Therefore, their inconsistent and unreliable testimony on the material aspects like seizure, feasibility / operationability, identification, incriminating data, without any hash value do not inspire the confidence of the court and even such Laptop is sent for analysis even then the explicit reliance cannot be placed upon the examination report of expert (FSL Expert).

Custody of Articles and Forwarding to FSL :

799) Even assuming, for the sake of moment, that the aforesaid evidence is kept aside, it becomes necessary to examine the subsequent procedure adopted for the deposition of the said articles, as well as the expert evidence relating thereto.

800) All the electronic articles which came to be seized from 23/10/2008 & onward were kept in custody by ATS till 19/11/2008. Those articles were not sent immediately for forensic examination or analysis. For a considerable period, those were in custody of ATS, Mumbai.

801) It is necessary to mention that, it is evident on record that, ATS

was having a separate technical branch and some officers were deputed in that branch having technical knowledge. Before sending any Laptop or at the time of seizure of any Laptop, it was not checked by any officer as to whether those are in working /operational condition or not. Admittedly, the hash value of data was also not taken before sending the laptop or other gadgets for examination or analysis.

802) On 19/11/2008, all seized the electronic articles from accused were handed over to PW-138 (ASI Dilip Ghag) by ACP Mohan Kulkarni to deposit in FSL, Mumbai for analysis / examination. He deposited those articles along with covering letter **(Exh.6387)** & letter of advice **(Exh.6387-A)** on same day.

803) The PW-296 (Kiran Deokate) testified that, he was working as Assistant chemical analyzer in FSL Mumbai on contract basis. After receipt of gadgets, he used to transfer bit-to-bit data from source hard disk to sanitized hard disk (blank hard disk). Whatever data appears in sanitized hard-disk is called as Forensic Image. The original hard disk is kept in safe custody. They work on sanitized hard disk which are provided by concerned police station. The forensic images were copied in CD and DVD. Those CD and DVD were provided to the investigating agency. He has sent his analysis report vide exhibit 8061 colly.

804) Now pertaining to Laptop (Art.48 & as per letter of advice exhibit-23) of A-10 was taken for analysis by him. The hard disk

(Art.335) of the said laptop was detached by him from Laptop. PW-296 (Analyzer / Expert) has not annexed any label while detaching the hard-disk from laptop. He attached that hard-disk to his work-station computer for bit-to-bit transfer of data in source hard disk. By using their software, he copied bit-to-bit data in sanitized hard-disk. He noticed some video files in it. He copied those files in CD marked as "Video File I" (Art.336) and DVD marked as "Video File II" (Art-337). He also noticed some audio files in it. He copied those files in DVD marked as "Annexure Audio Files" (Art.338). He noticed some documents which are copied by him in a CD "Annexure Documents". He noticed some picture images which are copied by him in CD "Annexure-Picture Images" (Art-339). Admittedly, he had not issued 65-B certificate with it or produced on record during the entire trial.

805) Since from the inception, the learned advocate for accused has disputed and raised the objection regarding admissibility of electronic evidence in the absence of 65-B certificate. Before adverting the rival submissions on the point of electronic evidence, it would be apposite to quote the citations placed on record by learned advocates for accused on the point of admissibility of electronic evidence.

806) The Hon'ble Apex Court in case of **Anvar P.V. Vs. P. K. Basheer and Ors. Reported in AIR 2015 Supreme Court 180,** has observed that,

" 7. Section 22A of the Evidence Act reads as follows:

22A. When oral admission as to contents of electronic records are relevant.-Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

8. Section 45A of the Evidence Act reads as follows:

45A. Opinion of Examiner of Electronic Evidence.-When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence referred to in Section 79A of the Information Technology Act, 2000 (21 of 2000)., is a relevant fact.

Explanation.--For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

9. Section 59 under Part II of the Evidence Act dealing with proof, reads as follows:

59. Proof of facts by oral evidence.--All facts, except the contents of documents or electronic records, may be proved by oral evidence.

10. Section 65A reads as follows:

65A. Special provisions as to evidence relating to electronic record: The contents of electronic records may be proved in accordance with the provisions of Section 65B.

11. Section 65B reads as follows:

65B. Admissibility of electronic records:

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this

section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in Sub-section (1) in respect of a computer output shall be the following, namely:

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in Clause (a) of Sub-section (2) was regularly performed

by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in Sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this Sub-section it shall be sufficient for a matter to be

stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.

These are the provisions under the Evidence Act relevant to the issue under discussion.

12. In the Statement of Objects and Reasons to the IT Act, it is stated thus:

New communication systems and digital technology have made drastic changes in the way we live. A revolution is occurring in the way people transact business.

In fact, there is a revolution in the way the evidence is

produced before the court. Properly guided, it makes the systems function faster and more effective. The guidance relevant to the issue before us is reflected in the statutory provisions extracted above.

13.Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65B(2). Following are the specified conditions under Section 65B(2) of the Evidence Act:

(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;

(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the

ordinary course of the said activity;

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and

(iv) The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.

14. Under Section 65B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the

same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

16. Only if the electronic record is duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A - Opinion of examiner of electronic evidence.

17. The Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence if requirements under Section 65B of the Evidence Act are not complied with, as the law now stands in India."

807) In case of **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Others. [(2020) 7 SCC 1]**, the Hon'ble Apex Court has observed in para nos.21 to 25 as follows:

"21. Section 65 differentiates between existence, condition and contents of a document. Whereas "existence" goes to "admissibility" of a document, "contents" of a document are to be proved after a document becomes admissible in evidence. Section 65A speaks of "contents" of electronic records being proved in accordance with the

provisions of Section 65B. Section 65B speaks of "admissibility" of electronic records which deals with "existence" and "contents" of electronic records being proved once admissible into evidence. With these prefatory observations let us have a closer look at Sections 65A and 65B.

22. It will first be noticed that the subject matter of Sections 65A and 65B of the Evidence Act is proof of information contained in electronic records. The marginal note to Section 65A indicates that "special provisions" as to evidence relating to electronic records are laid down in this provision. The marginal note to Section 65B then refers to "admissibility of electronic records".

23. Section 65B(1) opens with a non-obstante clause, and makes it clear that any information that is contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document, and shall be admissible in any proceedings without further proof of production of the original, as evidence of the contents of the original or of any facts stated therein of which direct evidence

would be admissible. The deeming fiction is for the reason that "document" as defined by Section 3 of the Evidence Act does not include electronic records.

24. Section 65B(2) then refers to the conditions that must be satisfied in respect of a computer output, and states that the test for being included in conditions 65B(2(a)) to 65(2(d)) is that the computer be regularly used to store or process information for purposes of activities regularly carried on in the period in question. The conditions mentioned in sub-sections 2(a) to 2(d) must be satisfied cumulatively.

25. Under Sub-section (4), a certificate is to be produced that identifies the electronic record containing the statement and describes the manner in which it is produced, or gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, by either a person occupying a responsible official position in relation to the operation of the relevant device; or a person who is in the management of "relevant activities" -

whichever is appropriate."

808) In the light of aforesaid judgements, it is crystal clear that, an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements u/s 65-B are satisfied. Thus, in the case of CD, VCD, DVD, Chip, Pen Drive, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible. The required certificate u/s 65-B(4) is unnecessary if the original document is itself produced and this can be done by the owner of a Laptop, Computer, Computer Tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and / or operated by him. However, where the 'Computer' happens to be a part of a Computer system or Computer network and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contain in such electronic record can be in accordance with section 65-B(1), together with requisite certificate u/s 65-B(4). The stage of admitting documentary evidence in a criminal trial is the filing of the charge-sheet and the electronic evidence i.e. Computer output, has to be furnished at the latest before the trial begins. However, depending on the facts of each case, the Court exercising discretion after seeing that the accused is not

prejudiced by the want of a fair trial, may in appropriate cases allow the prosecution to produce such certificate at a later point of time. Thus, there is no bar to produce the requisite certificate u/s 65-B, even after filing of charge-sheet i.e. during the course of entire trial.

809) It is also necessary to mention that, on 18.09.2014, in the case of **Anvar P. V. Vs. P. K. Basheer and Others**, Hon'ble Apex Court had also observed that, **State (NCT of Delhi Vs. Navjot Sandhu, 2005 (11) SCC 600)** does not lay down the correct legal position, hence it was overruled.

810) Admittedly, in the case-in-hand, the evidence of witnesses commenced from 2018 and onwards. The Nodal Officers, the Examiner of electronic devices and the witnesses related to electronic devices were examined from 2020 and onwards. Hence, I am not inclined to accept the submission of learned SPP that, the judgements rendered in **Anvar P. V. Vs. P. K. Basheer and Others** and **Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal** are not applicable to the present factual matrix.

Forensic Images of Hard Disk:-

811) The letter dtd. 24/11/2008 issued by FSL Mumbai to ATS vide **exhibit-8159** shows that, "with reference to above, the forensic images of following hard-disk are made.

Sr. No.	Details of Hard Disk
1.	Make: Hitachi Model: Hitachi HTS541680J9SA00 S/N: 5B2204KD7VZHE, 80 GB. Labeled as: Cy - 155 / 08 Ex - 3. Your marking: '3'. Forensic Image Labeled as: Image Cy - 155 / 08 Ex – 3.
2.	Make: FUJITSU, Model: FUJITSU, MHW2160BHPL S/N: K10NT782NT14, 160 GB. Labeled as: Cy - 155 / 08 Ex - 23. Your marking: '23'. Forensic Image Labeled as: Image Cy-155 / 08 Ex – 23.
3.	Make: TOSHIBA Model: TOSHIBA MK1637GSX S/N: Y7MQTRKPT, 160GB Labeled as: Cy - 155 / 08 Ex - 11. Your marking: '11'. Forensic Image Labeled as : Image Cy - 155 / 08 Ex – 11.

Kindly receive the image hard-disks."

812) The wording of the said letter itself indicates that the image hard disks were sent by the ATS, upon which forensic images were created, and thereafter, the said image hard disks were returned. However, the blank hard disks, which were purportedly sent as per the letter dated 24/11/2008, were of a different storage capacity than the hard disks received as aforesaid. The capacity of the blank hard disks also does not correspond with that of the aforementioned hard disks. Moreover, there is no documentary evidence on record to establish that the said hard disks were blank prior to being forwarded to the Forensic Science Laboratory (FSL). Therefore, it cannot be conclusively held that the aforesaid hard disks are the same as those which were allegedly sent as

blank hard disks to the FSL, Mumbai.

813) The evidence of PW-296 (Kiran Deokate) itself shows that, he had copied the data from original hard-disk to sanitized hard disk. Before copying the data, he has not taken any hash value or issued 65-B certificate. Moreover, prior to sending any gadget for analysis, the hash value was not taken and provided by ATS to the expert of each electronic data or Gadget to compare the same. While sending the aforesaid forensic images, the analyst / expert had not sent any hash value to verify the data lying in the said hard disk.

814) It would be apposite to quote the observations made by Hon'ble High Court in case of **Vaijinath Vs. State of Maharashtra [2019 SCC OnLine Bom 1357],**

> *"3. Whenever any electronic record of like nature is to be taken over, it is necessary for Police Officer to take the record under Section 65B of Evidence Act and seize it in presence of panch witnesses. The record like transcript of such record needs to be prepared by the Police Officer in presence of panch witnesses at the same time (See para 24 of the Chapter VI of Criminal Manual). If subsequently, Police Officer wants to prepare transcript, then the same panch witnesses need to be used and, in their presence,*

material can be opened and transcript of the footage can be made. Invariably, such transcript needs to be prepared on the first occasion when material is to be seized by the Police. Such material is always necessary as the Court wants to go through the contents of CCTV footage, even at the time of consideration of bail application.

4.....

5.....

6. This Court is giving directions to Investigating Agency to see that at the time of seizure of electronic material itself invariably. Copies of output material are obtained and transcript of both audio and video of the footage is prepared so that it can be made available to the Court whenever Court feels it necessary. At the time of collecting such output, first see the contents of original record in the presence of panch witnesses and prepare panchnama of that incident. This is to be done in the presence of a person having knowledge of working of computer. Then only the output as mentioned in Section 65B of Evidence Act be collected. At the time of collecting the

output, it be seen that conditions given in Section 65B(2) of Evidence Act are satisfied and certificate as mentioned in Section 65B(4) is collected from person competent to issue such certificate. This incident also be recorded in panchnama in the presence of panch witnesses. Preferably, only one panchnama be prepared containing the description of incident recorded in electronic record and taking of output of the record as provided in Section 65B of Evidence Act. Three copies of out put be taken after viewing and hearing the contents one be sent to expert. Other two copies be preserved as record collected under section 65B of Evidence Act.

7. While preparing compact disc(CD) in three copies mirror effect hash available on hard disc or hard drive as well as that on CD and pen drive be prepared so as to ruled out possibility of tampering at any stage. Whenever, the copies are required to be sent to the Court or to expert or when they are to be viewed or heard the proper procedure needs to be followed invariably and chain of

the custody of all evidence transported to each and every authority be created and such record be preserved."

Mirror Images:-

815) The aforesaid letter shows that, PW-296 (Kiran Deokate) had sent only four hard disks. Whereas the testimony of PW-182 (Nivruti Kadam) depicts that, on 25/11/2008 ACP Mohan Kulkarni by issuing letter informed him that, they had received mirror images of five hard disk sent by FSL Mumbai. Those are as follows,

Sr. No.	Details of Hard Disk
1	Exh.23 Cy-155/08
2	Exh. 03 Cy-155/08
3	Exh.11 Cy-155/08
4	Exh.28 Cy-155/08
5	Exh.01 Cy-155/08

816) As per FSL Letter only four hard-disk are sent, whereas for the officer had received five hard disk to verify the audio and video files lying in it. There is no reference of Exh.28 Cy-155/08 in Exhibit-8159. PW-320 (ACP Mohan Kulkarni) has given crucial admissions in his cross examination shows that, as per panchanama marked as Exh.6613, he had sent five hard-disks,

whereas he received only four hard-disks of mirror images from FSL. He had not given any follow-up to get fifth mirror image from FSL as stated above. Thus, it shows that, it was additional image hard-disk sent by ACP Mohan Kulkarni to PW-182 (Nivrutti Kadam) which is unaccounted and didn't tally with the image hard-disks sent by FSL.

817) Thereafter, on receipt of aforesaid five hard disks, the PW-182 (Sr.Police Inspector Nivrutti Kadam) copied the data lying in hard disk vide Exh-23 (image Cy-155/08 belongs to A-10). Firstly, he copied the data in the computer by creating a separate folder. Thereafter, the data in the form of audio and video was copied in the two separate CDs to verify the data for the purpose of further investigation. The hash value was generated by using 'md5' format. The panchanama was prepared in ATS technical department Nagpada Mumbai, on dated 25/11/2008 vide exhibit 6613. The computer was showing column / drive "C to F". The hard disk was at E column / drive which was removable drive. The files which were downloaded in the Recover Folder of computer, those are,

1) C:\All Video\ Videos \Untitled_0006.WWV
2)
   a. C:\Users\User\documents\audio\apt.wma
   b. C:\Users\User\documents\audio\dr rp singh.wma
   c. C:\Users\User\documents\audio\major upadhaya.wma
3) C:\Users\User\documents\desktop\latest\single photos swamiji \ anant bramhchari\press release on sadhvi.txt.

818) Those two CDs (Art.83) were packed in brown colour envelope bearing outward no.1967/2008 dated 25.11.2008 and it was handed over to Constable More to hand over Constable Anil Sawant. The witness constable More and Constable Anil Sawant are not examined by prosecution in order to link up the chain of custody.

819) The cross examination of PW-182 (Nivrutti Kadam) shows that, he had gone through the five-mirror image hard-disks, but after 25.11.2008 he had not seen those hard-disk. He had not taken the hash value of whole hard-disk. It is nowhere mentioned in panchanama that five mirror images were brought by police constable Anil Sawant in sealed and packed condition. In their department Nasir Kulkarni and N. K. Kulkarni are technical persons. The audio video file data whatever seen by them and stated by Nasir Kulkarni on that basis the panchanama was prepared. The technical persons Nasir Kulkarni and N. K. Kulkarni are not examined by prosecution on the aforesaid point. Whereas, as per letter given by ACP Mohan Kulkarni, he has demanded information regarding file nos.2 to 5, but PW-182 had not sent analysis report of file nos.2 to 5. He has not issued any certificate u/s 65-B annexed with panchanama Exh.6613 and 6664.

820) The Panch **PW-153 (Ajit Kavade)**, who was present at the time of preparing panchanama (Exh.6613) has admitted in cross examination that, he did not know the details functioning of

Vinex Software, which was used for retrieving data. He did not know who has brought the hard-disk and whether those hard disks were sealed condition or not. On that day, all five hard disks data were not retrieved before them. But, only one hard disk data was retrieved. He had no personal knowledge regarding preparation of CD from hard-disk. Police had not prepared any audio video cassette. During the entire process he had seen only one hard-disk and no other four hard-disks. The alphabet for removable disk appears on screen when removable drive is attached to computer, but he had not seen any new alphabet in the existing drives i.e. C, D, E and F. Police had not told him to which drive the Exh.23 was attached. During entire process, police never switched off the desktop computer and if it is mentioned in panchanama then it is incorrect. He also admitted that, if it is written in panchanama that police officer removed the hard disk and attached to another CPU while proceeding, then it is incorrect. No specification of CD is mentioned in panchanama. Police had not given any number to the CD.

821) All the aforesaid admissions and process carried out by the PW-182 (Nivrutti Kadam) shows that, without hash value the mirror image hard disk was received to them. Thus, hash value was not verified. Moreover, one extra hard disk having some data was sent to Technical Department for analysis. The hard-disk was already attached to Desk-top computer and hence, panch witness was unable to see the alphabet of removable hard-disk. The data seems to be already taken in the computer folder and only the

process of burning the CD or copying data in CD was carried out in the presence of Panch witnesses. The data lying in the hard disk are copy paste in the CDs without issuing 65-B certificate. Hence, considering the aforesaid entire aspects, it is not admissible in evidence.

822) It has come in the evidence of PW-323 (Bhimraj Ghadge), that he received one DVD (Art.338) on 17/01/2009 to prepare the transcript from file bearing name 'sanatanbharat.wma'. With the help of Constable Sharad Nanekar, they typed on computer and prepared transcript and handed over to ACP Mohan Kulkarni. Thereafter, he got another DVD (Art.336) related to data lying in laptop of A-10. From the said DVD, he prepared the transcript (Art.397/Exh.8986) on computer with the help of Constable Sharad Nanekar.

823) Both the transcript was objected by Ld. Advocates for accused and those were exhibited subject to their objection. The transcript was not saved in the computer but the computer seems to be used as a type-writer and except the aforesaid purpose, there was no storage of data and hence, in my humble view the 65-B certificate is not required.

824) PW-323 though identified the DVDs i.e. Article 338 & Art.336. On plying the DVD bearing Art.338 in open court he could not identify the voices except A-10. The quality of voice was very low. He was unable to state in what software, he opened the file

to prepare transcript.

825) Thereafter, again on 19-01-2009 another DVD (Art.336) was handed over by ACP Mohan Kulkarni to PW-323 (Bhimraj Ghadge) and asked to prepare the transcript from file located at serial no.22,30, 32 in the said DVD. He prepared three transcripts of the three files lying at serial no.22 (rpsingh.wma), 30(ayodhyaji.wma), 32 (aptripathi.wma) with the help of constable Sharad Nanekar. He identified those transcripts. Those were marked as 8987-A, 8987-B, 8987-C subject to objection.

826) The testimony of witness shows that all the aforesaid three transcript was not saved in the computer. But he used the computer only as a type-writer and except the aforesaid purpose, there was no storage of data. Hence, in my humble view the 65-B certificate is not required. Hence, I do not find any force in the aforesaid objection taken by Ld. Advocates.

827) All the aforesaid files were played in the open court. The quality of voice was very poor and low. The voice was not audible in any aforesaid file. The witness could not identify the voices. Thus, there is no identification of voices by the witness. Constable Sharad Nanekar is not examined by prosecution who prepared or typed all those transcripts. The aforesaid DVDs were in his custody of PW-323 (Bhimraj Ghadge) since 19/01/2009 to 10/04/2009. No panchanama of handing taking over was prepared nor in the presence of any panch witnesses the voices

were heard and transcript was prepared.

828) The transcripts were prepared on the basis of intercepted conversations and on the basis of data found in aforesaid CDs / DVDs / hard-disks. No transcript was called from FSL in order to show that fair and transparent procedure was carried out. The aforesaid transcripts were provided to the accused for recording their voice samples.

Voice Sample Collection :-

829) Before discussing the procedure adopted by investigating officer to collect the voice samples, it would be apposite to quote the observations made by Hon'ble Apex Court in case of **Rithesh Sinha Vs. State of Uttar Pradesh** reported in **AIR 2019 SC 3592**, the Hon'ble Apex Court has observed that, *"until explicit provisions are engrafted in the Code of Criminal Procedure by the Parliament, a Judicial Magistrate is empowered to order for collection of voice sample for the purpose of investigation of a crime. Such a directions are issued by invoking powers under Article 142 of the Constitution of India."*

830) In the light of aforesaid observations Hon'ble Apex Court, it can be said that, as per section 5 of the Identification of Prisoners Act r/w section 311-A of the Cr.P.C. do not restrict the power of a Magistrate to give directions to an accused person only. It means no directions can be issued by the Magistrate to the witnesses. In the present case, it is necessary to see as to whether voice

samples are collected by obtaining the permission from Magistrate, whether any application was moved before Magistrate and obtained such order.

Voice Sample of A-9 Dtd. 05/12/2008:-

831) The voice Sample of A-9 was taken twice by the ATS officers. Firstly, it was taken on dated 05/12/2008 and thereafter on dated 23/06/2009. On the point of first voice sample, the prosecution has examined PW-169 (Navnath Gherde), PW-202 (Sunil Jadhav) and PW-320 (ACP Mohan Kulkarni).

832) In the year 2008, PW-202 (Sunil Jadhav) was attached to ATS Kalachowki as PSI. On the directions of ACP Mohan Kulkarni, he has recorded the voice sample of A-9 in the presence of panch witnesses and with the help of PSI Vijay Vakurdekar. He has recorded the voice sample of A-9 at Bhoiwada General Kothadi. He further stated the procedure adopted by him for recording the voice sample. The blank cassette of Sony Company T-90 was shown to witnesses and confirmed that it was blank. He attached his mobile bearing no.9870420016 to tape recorder. He told Vijay Vakurdekar to take the mobile and tape in another room and he will call from land line number of Bhoiwada Kothadi. He along-with panch witnesses halted in one room and Vijay Vakurdekar along with mobile and tape in another room. He handed over type written page to A-9 to read. He called on his mobile and he spoke first and then panch witnesses and thereafter A-9 read out the page. Then cassette was kept in brown colour paper and label

of signature of panch witnesses and himself was affixed on it. On the label he jotted down 'Pradarshit PP". He accordingly prepared panchanama vide exhibit 6705. He identified panchanama, cassette (AV 18/09 Exh.4) with label (Art.114 colly). The Panch witness PW 169 (Navnath Gherde) and the chief investigating officer PW-320 (ACP Mohan Kulkarni) have also stated somewhat in similar fashion. They have identified the voices recorded in audio cassettes.

833) The cross examination of PW-202 (Sunil Jadhav) shows that, he had not mentioned in panchanama that Vijay Vakurdekar was sent to another room with tape recorder and cassette for recording voice sample. On the cassette, he had not obtained the signature of panch witnesses to identify. He has not put any identification mark on the cassettes. He didn't know the purpose of voice sample. They have not played both sides cassette after recording of the said cassette.

834) The Cross examination of PW-169 (Navnath Gherde) shows that, the landline number was of Bhoiwada Samanya Kothadi but it was not lock-up room. Lock-up room is separate In Bhoiwada Samanya Kothadi room the tape recorder and mobile handset was kept. PSI Jadhav was also present there from start to end. It is incorrectly mentioned in panchanama that "landline number was in lockup room". It is also incorrectly mentioned in panchanama that, "त्यानंतर पोलीस उपनिरीक्षक सुनिल जाधव यांनी भोईवाडा सामान्य पोलीस कोठडी येथील दूरध्वनी क्रमांक २४१५०६१० यावरून नमुद

९८७०४२००१६ या मोबाईलवर संपर्क साधला". But he had not adviced to police to correct those things in panchanama. In the lock-up room PSI Jadhav never went to give ring on the mobile from land line phone. All person voice samples were obtained in the same room. He didn't know how much time was consumed for the said process. Similar type of cassettes is available in the market. They had not put any identification or landmark on the cassette. On both sides of cassettes "ZX" is written, serial number appearing on top of cassette which has no reference in panchanama. Similar type of cassettes are available in the open market. They had not put any identification mark on the said cassette and hence, he has shown his inability about the said cassette.

835) The PW-320 (ACP Mohan Kulkarni) has admitted in his cross examination that, all the transcripts which were given to read to accused were prepared from the intercepted conversations. After recording conversations, the audio cassettes were not seized under panchanama. He had not issued any directions personally to any officer to intercept the mobile numbers or to prepare the transcripts. He had not produced any documentary evidence to show that he had personally verified the contents of recorded audio cassettes and transcripts.

836) It is already observed that the transcripts given to read were inculpatory in nature. No transcripts were obtained from experts of FSL and provided to accused to read. Attaching own mobile of PW-202 to tape recorder and sending Vijay Vakurdekar in

another room along with recording set do not inspire the confidence in the absence reference in panchanama. Moreover, PSI Vijay Vakurdekar is not examined as witness to support the said theory of prosecution. The number of things mentioned in Panchanama are incorrect as narrated by Panch witness. PW-202 (Sunil Jadhav) shown his inability to narrate the reason as to why the voice was not directly recorded on tape recorder without attaching mobile phone. Thus, the possibility cannot be ruled out that some voice already saved in mobile and those are shown to be recorded by adopting aforesaid procedure. There is variance in the testimony of panch witness and police officer on material aspects and hence, the procedure of recording alleged voice sample is not reliable.

Voice Sample of A-9 Dtd.23/06/2009:-

837) The voice sample of A-9 was taken on second time by **PW-317 (Subhash Dudhgaonkar)** at Aurthur Road Jail on 23/06/2009. He prepared panchanama in Jail vide exhibit-6630. For voice recording, he had provided transcript to A-9 to read and his voice was recorded in Sony company audio cassette. He identified panchanama, transcript and audio cassettes (Art.96). He marked audio cassette & label as “P-1” for the purpose of identification. The Panch witness PW-159 (Raghunath Vayangankar) also stated in similar fashion. In addition to it, he has identified the voices recorded in article 96. Whereas, PW-320 (ACP Mohan Kulkarni) has testified in similar fashion that, they got permission of the court on 19/06/2009 to take voice sample of A-9, A-4, A-10 who

were in MCR / JCR. On dated 23/06/2009 PI Dudhgaonkar and his team taken the voice sample of aforesaid accused by visiting Jail.

838) In cross examination, **PW-317 (Subhash Dudhgaonkar)** admitted that, DFSL had not provided any transcript to them nor they called for any transcript from them. He didn't know as to whether the purpose of visit they had already intimated to Jail Authority by issuing any notice or not. After recording of alleged voices, they had not heard completely those voices. Before recording of voice sample, he had not verified that both the sides of cassettes are blank or not or which side verified and found blank is also not mentioned in panchanama. The Jail Visit register are maintained by Jail showing entries of visit. It is authentic document regarding visit of persons. He admitted that they had not filed any copy of Jail Visit register on record. The description of taper recorder, sealing cassette by lac (लाख) is not mentioned in panchanama. On the cassette and cover there is no signature of himself or panch witnesses. DFSL had not provided any transcript to them nor they had called any transcript.

839) Whereas, **PW-159 (Raghunath Vayangankar**) has admitted in cross examination that, he does not know about the Jail visit entry taken by police or not. The room where the voice of accused was recorded was near to jail entrance. The main door noise could be clearly heard while opening and closing as well as the voice call given for attendance of accused and other persons.

There was heavy traffic on the road passing by jail and the loud noise of traffic, horns and hawkers could be heard easily. Prior to recording, on the basis of 2 to 3 minutes verification they drew the inference that the cassette was blank.

840) Considering their admissions, it clearly shows that, though it was testified that the voice recording was done in the presence of Jailor Shri. Mayank but he is not examined as a witness. There are no documents filed on record about Jail Visit on that particular date. There is no reference in panchanama in order to show that what articles were carried out by them while visiting Jail. Though stated sealing by lac (लाख) but no reference in panchanama. The voices were not identified by PW-317 (Subhash Dudhgaonkar). The voices are identified by PW-159 (Raghunath Vayangankar), but he has admitted that number of voices of outside could also be heard easily, those are not found while playing audio cassette. On playing the cassette not a single voice of outside came to be captured in the cassette while recording and therefore, it creates a reasonable doubt about recording on particular date by visiting to jail.

<u>Voice Sample of A-10 on 26/11/2008</u>:-

841) The voice sample of A-10 was also taken twice by ATS. Firstly, it was taken on dated 26/11/2008 and secondly, on dated 23/06/2009. On this point first voice sample, the prosecution has examined PW-162 (Sandeep Palve), PW-202 (Sunil Jadhav), PW-320 (ACP Mohan Kulkarni).

842) In the year 2008, **PW-202 (Sunil Jadhav)** was attached to ATS Kalachowki as PSI. On the directions of ACP Mohan Kulkarni, he has recorded the voice sample of A-10 in the presence of panch witnesses and with the help of PSI Sachin Kadam. He has recorded the voice sample of A-10 at Bhoiwada General Kothadi. He further stated the procedure adopted by him for recording the voice sample. The blank cassette of Sony Company T-90 was shown to witnesses and confirmed that it was blank. He attached his mobile bearing no.9870420016 to tape recorder. He told PSI Sachin Kadam to take the mobile and tape in another room and he will call from land line number of Bhoiwada Kothadi. He along-with panch witnesses in one room and Sachin Kadam along with mobile and tape in another room. He handed over type written Devnagari Script page to A-10 to read. He called on his mobile and he spoke firstly and then panch witnesses and thereafter A-10 read out the page. Then cassette was kept in brown colour paper and label of signature of panch witnesses and himself was affixed on it. On the label he jotted down 'Pradarshit SD". He accordingly prepared panchanama vide **exhibit 6664**. He identified panchanama, cassette (AV 18/09 Exh.4) with label (Art.101 colly). The Panch witness PW-162 (Sandeep Palve) and the chief investigating officer PW-320 (ACP Mohan Kulkarni) have also stated somewhat in similar fashion. They have identified the voices recorded in audio cassettes.

843) He admitted in cross examination that, cassette doesn't bear the

signature of panch witnesses. He doesn't know who had typewritten the panchanama. It is nowhere mentioned in panchanama that he was in one room along with staff, panch witnesses and Sachin Kadam was in another room with recording system. He didn't know for what purpose the voice samples were taken. He had not played both sides of cassette after recording.

844) Whereas the cross examination of PW-162 (Sandeep Palve) shows that, he didn't know, day or the name of another panch present on 26/11/2008. In their room, the tape recorder and landline were in one room. The mobile was in another room where the recording was going on. The volume of pitch is somewhat different than recorded at the first time. The voice was loud and clear at the time of recording but lateron it is deflated. In number of cases he acted as a panch witness and he is habitual panch. He had not seen personally who was talking on the said landline phone. He cannot say definitely second room the recording was done or not.

845) Thus, the testimony of panch witness is totally contradictory to the process of recording followed and narrated by PW-202 (Sunil Jadhav). He is not corroborating the testimony of PW-202 on material aspects. He has signed on the cassette whereas the cassette doesn't bear the signature of witnesses. Therefore, taking voice of sample of accused as per the aforesaid procedure do not inspire the confidence of the court to accept the same.

Voice Sample of A-10 dtd. 23/06/2009:-

846) The voice sample of A-10 was taken on second time by PW-317 (Subhash Dudhgaonkar) at Taloja Jail on 23/06/2009. He prepared panchanama in Jail vide **exhibit-6630**. For voice recording, he had provided transcript to A-10 to read and his voice was recorded in Sony company audio cassette. He identified panchanama, transcript and audio cassettes (Art.383 Colly). He marked audio cassette & label as "SD-1" for the purpose of identification. The Panch witnesses are not examined being reported dead. Whereas, PW-320 has testified that, they got permission of the court on 19/06/2009 to take voice sample of A-9, A-4, A-10 who were in MCR / JCR. On dated 23/06/2009 PI Dudhgaonkar and his team taken the voice sample of aforesaid accused by visiting Jail.

847) The voice recorded in the audio cassette is not identified during the course of evidence by any witness. Without identification of voice, it cannot be said that it was a voice of A-10. The voice is taken in the Jail. The Jailer is not examined as a witness. There is nothing on record to show that on particular date PW-317 (Subhash Dudhgaonkar) visited Jail along with his staff / team and recorded the voice sample. Hence, such voice sample without identified by maker would not be helpful to prosecution.

Voice Sample of A-4 dtd. 10/11/2008 :-

848) The voice sample of A-4 are also taken twice. Firstly, on dated 10/11/2008 and secondly, on dated 23/06/2009. On the first

voice sample the prosecution has examined PW-172 (Daulat Chumble), PW-293, PW-320 and on the point of second voice sample the prosecution has examined PW-317 and PW-320.

849) The first voice sample of A-4 was taken by PW-293 (Rajendra Kute) in the presence of PW-172 panch witness (Daulat Chumble), PW-320 (ACP Mohan Kulkarni) at LCB Office, Nashik on the date of remand of accused. For recording the voice sample, the two rooms were used having intercom facility. In phone room (PI LCB Room) the intercom facility having no.20 and the next adjacent room was of writer's room having intercom number 21. A-4, PI Rajendra Kute, panch witnesses, PW-320 were present in room having intercom number 21. And in intercom no.20 room the API Bagade was present. The recording device were connected to intercom no.21. A-4 was given one paper having sentences written in English Language and some words in Hindi Language. The intercom no.20 was dialled from room having intercom no.21. API Bagade picked up the phone and thereafter, the recording was commenced. The voice of A-4 was recorded in recording system. The voice sample panchanama **(Exh.6720)** was prepared. The cassette was kept in brown colour envelope and affixed the label of signature of panch witnesses and police officers. The said cassette marked as Article-116 Colly was identified by the witnesses. PW-172 and PW-320 identified the voice recorded in the cassette.

850) The **PW-293 (Rajendra Kute)** who prepared the panchanama and

who recorded the voice of A-4 has not identified the voice of accused. PW-293 has stated that panch witnesses were conversant with English Language and hence, nothing was explained to them about written contents in transcript. Whereas, the panch witnesses denied that they were conversant with English language. They had not verified in order to ensure that the cassette was empty or not. The accused read the transcript only once, where as it was observed while playing the cassette that, the recording was done in several pauses.

Voice Sample of A-4 on 23/06/2009:-

851) The voice sample of A-4 was taken on second time by PW-317 (Subhash Dudhgaonkar) at Taloja Jail on 23/06/2009. He prepared panchanama in Jail vide **exhibit-8572**. For voice recording, he had provided transcript to A-10 to read and his voice was recorded in Sony company audio cassette. He identified panchanama, transcript and audio cassettes **(Art. 385 Colly)**. He marked audio cassette & label as **"RU-1"** for the purpose of identification. The Panch witnesses are not examined being reported dead. Whereas, PW-320 (ACP Mohan Kulkarni) has testified that, they got permission of the court on 19/06/2009 to take voice sample of A-9, A-4, A-10 who were in MCR / JCR. On dated 23/06/2009 PI Subhash Dudhgaonkar and his team taken the voice sample of aforesaid accused by visiting Jail.

852) The voice recorded in the audio cassette is not identified during

the course of evidence by any witness. Without identification of voice, it cannot be said that it was a voice of A-4. The voice is taken in the Jail. The Jailor is not examined as a witness. The copy of Jail entry register is not filed on record. There are on documentary evidence on record to show that on particular date PW-317 (Subhash Dudhgaonkar) visited Jail along with his staff / team and recorded the voice sample. Hence, such voice sample would not be helpful to prosecution.

Voice Sample of A-6 dtd. 20/12/2008 :-

853) The voice sample of A-6 is taken on dated 20/12/2008. On the point of said voice sample, the prosecution has examined PW-150, PW-320.

854) The PW-150 (Vinayak Gandhi) was acted as a panch witness for the purpose of recording the voice sample of A-6 on dated 20/12/2008. He was called by police officer Ghag and requested to act as a panch. PSI Sachin Kadam has recorded the voice sample of A-6 and prepared panchanama in the presence of some police officer and panch witnesses as mentioned in Panchanama. Police recorded the voice of A-6 in two cassettes. Firstly, the telephone which was connected to recording system through that device the voice was recorded in the cassette marked as **"P-1"** by them. He identified the voice recorded in that cassette marked as **article-75 colly**. Thereafter, mike was attached to the recording system and voice of A-6 was recorded in another cassette marked as **"P-2"** by them. He identified the voice recorded in that cassette

marked as article-76 Colly. He also identified the voice sample panchanama prepared by police vide **exhibit-6608**.

855) Whereas PW-320 (ACP Mohan Kulkarni) stated that, PSI Sachin Kadam handed over recorded voice sample and panchanama to him along with cassette and he identified his signature and those handed over cassettes.

856) The cross examination of PW-150 (Vinayak Gandhi) shows that, all they were sitting in one room and cassette was recorded in another room. He didn't know the prior permission for taking voice sample was obtained by police or not. He had not identified the voice on the basis of the name which was spoken at the time of recording. But on the basis of similarity in the voice he has identified the voice. He didn't know the name of officer who prepared panchanama and description of audio recording system. He also admitted that a person can speak in the voice of another person also.

857) The police officer ASI Ghag who called him was present at the time of Panchanama. But his testimony is completely silent on the aforesaid point. He has not deposed anything about it. The PSI Sachin Kadam who has recorded the voice sample and prepared the voice sample panchanama is not examined by the prosecution. The identification of voice is not done by the maker or recorder. The panch witness also could not identify the voices with certainty. PW-320 (ACP Mohan Kulkarni) was not present at

the time of preparing panchanama or taking the alleged voice samples.

Interception of Mobile :-

858) It is evident on record that, the mobile bearing no.9326603000 which belongs to A-4 had been kept under surveillance by ATS prior to his arrest. The intercepted conversation was recorded in the audio cassettes recording system.

859) On the various dates, the conversation was heard and which found relevant came to be captured and stored in total eight separate audio cassettes bearing nos.A1 to A8. The recording was stored in the cassettes bearing nos.A1 to A3, A5, A7 by PW-322 (API Sadashiv Shelar), A4 by PW-178 (Datta Gawade), A6 and A8 by PW-240 (PSI Vinod Kadam).

860) As per prosecution witnesses, from those cassettes, one more copy of A1 to A8 cassettes were prepared and the said prepared copy (duplicate) was handed over to ATS for further investigation. The original cassettes A1 to A8 were sent to FSL for analysis.

861) It would be apposite to quote some important dates in order to understand the entire interception process carried out by ATS,

17/10/2008	Mobile No.9326603000 kept under surveillance.

25/10/2008	A-4 called for inquiry.
28/10/2008	Date of Arrest of A-4.
16th / 17th October 2008	PI Kadam issued letter to keep mobile under surveillance.

862) The PW-260 (Borunkumar Banerjee) was serving as Police inspector in Technical Section of ATS along-with Police Inspector PW-182 (Nivrutti Kadam). Being a nodal officer of the department, his nature of work includes to make correspondence with Mobile Companies and to inform immediately to Additional Chief Secretary (in short ACS) Home Department Mumbai, with request to continue the order of surveillance / interception of mobile.

863) The testimony of PW-260 (Borunkumar Banarjee) shows that, on 16th / 17th October, PI Kadam had issued one letter to him and asked to keep the aforesaid number on surveillance. Admittedly, the letter issued by PI Kadam is not filed on record.

864) Basically a letter bearing article 237, for the sake of moment if perused, it depicts that on 17/10/2008, Mr. Param Bir Singh Add. C.P. ATS, Mumbai had issued the said letter to the Nodal Officer of Reliance Company to extend the facility for monitoring telephone bearing 9326603000. Mere filing of letter (Art.237) would not be sufficient. The contents must be proved by the author of the document. The prosecution has not examined Mr.

Param Bir Singh to prove the said document and its contents. Thus, the documents remained unproved. Therefore, it cannot be considered as evidence.

865) Moreover, PW-260 (Borunkumar Banarjee) stated that he made correspondence with concerned but what exactly the correspondence was made by PW-260 not filed on record. After receipt of the order, the concerned telephone company is required to be informed. There is nothing on record to show that who conveyed the concerned telephone company from technical branch. Moreover, the Nodal officer or any other officer of the Reliance Company is also not examined in support of aforesaid correspondence or any facility provided by the company. Bare words are not sufficient. In the absence of those correspondence, order of authorized officer, it cannot be said that the Nodal Officer of Reliance Company was ever been requested to provide the facility to intercept the alleged mobile and accordingly it was provided the facility to intercept the alleged number.

866) The PW-322 (Sadashiv Shelar) and PW-178 (Datta Gawade) has testified that the mobiles numbers of suspected and wanted accused were kept under surveillance only after the receipt of order from ACS, Home Mumbai. But there is no documentary evidence on record to show that ACS, Home Mumbai had ever been passed any such order to keep the said mobiles numbers under surveillance from 17/10/2008. PW-304 (then ACS, Chitkala Zutshi) stated that, she had not passed any order to keep

the alleged mobiles on surveillance from 17/10/2008 and without her order, if any mobiles kept on surveillance and any such interception are done is void and illegal.

867) It would be apposite to quote the judgement of **People's Union for Civil Liberties (PUCL) Vs. Union of India and another [(1997) 1 Supreme Court Cases 301].** In this case, Hon'ble Apex Court observed as under:-

"35. We, therefore, order and direct as under:

1. An order for telephone-tapping in terms of Section 5(2) of the Act shall not be issued except by the Home Secretary, Government of India (Central Government) and Home Secretaries of the State Governments. In an urgent case the power may be delegated to an officer of the Home Department of the Government of India and the State Governments not below the rank of Joint Secretary. Copy of the order shall be sent to the Review Committee concerned within one week of the passing of the order.

2. The order shall require the person to whom it is addressed to intercept in the course of their transmission by means a public telecommunication system, such communications as are described in the order. The order may also require the person to whom it is addressed to disclose the intercepted material to such

persons and in such manner as are described in the order.

3. The matters to be taken into account in considering whether an order is necessary under Section 5(2) of the Act shall include whether the information which is considered necessary to acquire could reasonably be acquired by other means.

4. The interception required under Section 5(2) of the Act shall be the interception of such communications as are sent to or from one or more addresses, specified in the order, being an address or addresses likely to be used for the transmission of communications to or from, from one particular person specified or described in the order or one particular set of premises specified or described in the order.

5. The order under Section 5(2) of the Act shall, unless renewed, cease to have effect at the end of the period of two months from the date of issue. The authority which issued the order may, at any time before the end of two-month period renew the order if it considers that it is necessary to continue the order in terms of Section 5(2) of the Act. The total period for the operation of the order shall not exceed six months.

6. The authority which issued the order shall maintain the following records:

(a) the intercepted communications,

(b) the extent to which the material is disclosed,

(c) the number of persons and their identity to whom any of the material is disclosed.

(d) the extent to which the material is copied and

(e) the number of copies made of any of the material.

7. The use of the intercepted material shall be limited to the minimum that is necessary in terms of Section 5(2) of the Act.

8. Each copy made of any of the intercepted material shall be destroyed as soon as its retention is no longer necessary in terms of Section 5(2) of the Act.

9. There shall be a Review Committee consisting of Cabinet Secretary, the Law Secretary and the Secretary, Telecommunication at the level of the Central Government. The Review Committee at the State level shall consist of Chief Secretary, Law Secretary and another member, other than the Home Secretary, appointed by the State Government.

(a) The Committee shall on its own, within two

months of the passing of the order by the authority concerned, investigate whether there is or has been a relevant order under Section 5(2) of the Act. Where there is or has been an order whether there has been any contravention of the provisions of Section 5(2) of the Act.

(b) If on an investigation the Committee concludes that there has been a contravention of the provisions of Section 5(2) of the Act, it shall set aside the order under scrutiny of the Committee. It shall further direct the destruction of the copies of the intercepted material.

(c) If on investigation, the Committee comes to the conclusion that there has been no contravention of the provisions of Section 5(2) of the Act, it shall record the finding to that effect."

868) In case of **Sudhir Chaudhary and others Vs State (NCT of Delhi) [(2016) 8 Supreme Court Cases 307]** the Hon'ble Apex court has dealt with the legality and fairness of voice sampling during criminal investigation. Even if, the accused had given his consent, the procedure for taking the voice sample must be fair and reasonable to ensure the investigation is not coercive and unfair. In this case, it was observed as under:-

"12. We are of the view that the aforesaid directions which have been issued by this Court would allay

the apprehension of the Appellants in regard to the fairness of the process involved in drawing the voice sample. Our directions ensure that the text which the Appellants would be called upon to read out for the purpose of drawing their voice samples will not have sentences from the inculpatory text. Similarly, permitting the text to contain words drawn from the disputed conversation would meet the legitimate concern of the investigating authorities for making a fair comparison."

869) It would be apposite to quote the some portion of notification dated 12th March 2007 issued by Central Government by exercising the powers conferred under Section 7 of the Indian Telegraph Act, 1885, thereby amended the Indian Telegraph Rules, 1951 and inserted amended rule 419(A). As per these rules powers are also given not below the rank of Inspector General of Police at State level.

"**419A (1)** Directions for interception of any message or class of messages under sub-section (2) of Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the said Act) shall not be issued except by an order made by the Secretary to the Government of India in the Ministry of Home Affairs in the case of Government of India and by the Secretary to the State Government in-charge of the Home Department in the case of a State Government. In unavoidable

circumstances, such order may be made by an officer, not below the rank of a Joint Secretary to the Government of India, who has been duly authorized by the Union of Home Secretary or the State Home Secretary, as the case may be :

Provided that in emergent cases -

(i) In remote areas, where obtaining of prior directions for interception of messages or class of messages is not feasible; or

(ii) for operational reasons, where obtaining of prior directions for interception of messages or class of messages is not feasible;

the required interception of any message or class of messages shall be carried out with the prior approval of the Head or the second senior most officer of the authorized security i.e. Law Enforcement Agency at the Central Level and the officers authorized in this behalf, not below the rank of Inspector General of Police, at the state level but the concerned competent authority shall be informed of such interceptions by the approving authority within three working days and that such interceptions shall be got confirmed by the concerned competent authority within a period of seven working days. If the confirmation from the competent authority is not received within the stipulated seven days, such interception shall cease and the same message or class of messages shall not be intercepted thereafter without the prior approval of the Union Home

Secretary or the State Home Secretary, as the case may be."

870) For interception of mobile, every agency must follow scrupulously the rule 419 (A) given under Indian Telegraph Act,1951 which is mandatory. Under the revised guidelines, only the authorized officers of a rank not below than Inspector General of Police (IGP) / Joint Commissioner of Police can issue the interception orders at the State level. Emergency interception orders must be validated by the appropriate authority within seven working days. If the competent authority does not confirm such interception order within seven working days from the day of the order was issued in cases of emergency, the messages intercepted will not be allowed to be used for any purpose and the copy of messages will have to be destroyed within stipulated period.

871) The PW-260 (Borunkumar Banarjee) has though stated that, they had followed the rule given under 419 (A) of the said act but the record doesn't reflect the same. He admitted that they had not received any order from IGP of Maharashtra in the present case. He knows that interception of message can be carried out with prior approval of officer not below the rank of Inspector General of Police at State level. He admitted that they had not received the order from IGP of Maharashtra in this case. He also admitted that, at that time, Mr. Param Bir Singh was Addl. C.P. and not of IGP rank. Moreover, there is nothing on record to show that Joint CP of ATS had issued any such order or given prior

approval for interception of the alleged mobile or to keep the alleged mobile under surveillance. Section 5(2) of the Indian Telegraph Act permits the interception of messages in accordance with the provisions of the said section. There is nothing on record to show that what public emergency or urgent situation or emergent public safety arose at the relevant time. Occurrence of Public Emergency or in the interest of public safety are the sine-qua-non for the application of section 5 (2) of Indian Telegraph Act.

872) Even for the sake of moment, the article-237 is taken into consideration but the officer who issued the said order was not authorized as per rules. The PW-322 (Sadashiv Shelar) also admitted that, without the permission of competent authority they are not authorized to keep mobile phones on surveillance. Whereas PW-240 (PSI Vinod Kadam) on the said point has admitted that, the officer below the rank of IGP cannot give the directions regarding the interception. He had not seen any office order of the then Home Secretary for the State of Maharashtra regarding the interception of the said number. So issuance of aforesaid order (Art.237) by unauthorized officer is nothing but a futile exercise. The entire admissions, documentary evidence on record clearly indicates that, there is clear violation of interception rules and without proper authorization the mobile was kept under surveillance and intercepted the conversation. Moreover, from such intercepted conversation the transcripts were prepared.

873) The PW-322 (Sadashiv Shelar) had admitted that they used to maintain the surveillance register. Whatever is heard during interception of mobiles, it is duly noted in the register. The transcripts are prepared on the basis of those entries taken in the surveillance register. Admittedly, the surveillance register or its true copy is not filed on record. On the other hand, PW-240 (PSI Vinod Kadam) has stated that apart from the "Hajeripat" (Muster roll) they had not maintained anything in that technical department, interception branch. Thus, the testimony of both the witnesses who were working in the same department is contradictory on the point of maintenance of registers.

Audio Cassettes:-

874) On the point of Tape records of Speeches, Ld. SPP has placed his reliance on the case of **Ziyauddin Burhanuddin Bukhari Vs. Brijmohan Ramdass Mehra and Ors. [AIR 1975 SC 1788].** In this case, Hon'ble Supreme Court has observed as under:-

> *"19. We think that the High Court was quite right in holding that the tape records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:*
>
> *(a) The voice of the person alleged to be speaking must be duly identified by the maker of the*

record or by others who knew it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.

These requirements were deduced by the High Court from ***R. V. Maqsud Ali [1965] (2) All. E.R. 464****"*

875) Now, it is necessary to see the evidence adduced by prosecution on the point of preparation of audio cassettes. Firstly, PW-322 (Sadashiv Shelar), who has recorded the conversation in five audio cassettes and prepared transcript therefrom. PW-322 (Sadashiv Shelar) testified that, from 2005 to 2012 he was serving as PSI in technical department, surveillance Branch, ATS, Mumbai. His nature of work includes to hear conversation of mobile phones kept under surveillance and to inform superior officers. All the mobiles were kept under surveillance only after the written order received from Additional Chief Secretary, Home, State of Maharashtra and Additional C.P. ATS Mumbai. The mobile number 9326603000 of A-4 was kept under surveillance. On this mobile, he had noticed and recorded the following incoming calls,

i) On 18/10/2008, four incoming calls,
ii) On 19/10/2008 one incoming call,
iii) On 20/10/2008 two incoming call
iv) On 21/10/2008 two incoming calls
v) On 23/10/2008 seven incoming calls.

876) As per the directions of PI Technical Department, he recorded incoming calls by capturing conversation in five audio cassettes and also copied the captured data in other cassette (duplication). He had numbered them as A1, A2, A3, A5, A7. He handed over original audio cassettes in sealed condition and copied data audio cassette (Duplicate cassette) in unsealed condition to PI Technical Department. He identified the cassettes A1 which is marked as Art.390, A2 marked as Art.391, A3 marked as Article 392, A5 marked as Article 393 and A7 marked as article 394. He also identified the labels affixed on it marked as Exh. 8967, 8968, 8969, 8970, 8971 consecutively.

877) There is nothing on record to show that, the aforesaid cassettes were sealed immediately on the spot after hearing the conversation in the presence of Panch Witnesses by preparing the Panchanama. PW-322 (Sadashiv Shelar) has admitted that, he had not prepared the panchanama while sealing those cassettes. He also admitted that the duplication work of cassette is not done by him. Their technical team had done the work of duplication of audio cassette by using computer.

878) The audio cassettes were played in the open court. The witness had not identified the voice of caller or receiver. Moreover, in some cassettes song “Mata Sherawaliye” and voice of lady was found to be recorded. Although, the voice recorded in cassette A-7 (article 394) was identified by PW-322, but it was on the basis of transcript which was confronted to him before playing the audio cassette. It was not identified after hearing the cassette. Thus, his testimony shows that, he neither identified any voice nor heard any voice while recording or storing in audio cassettes. In short, absolutely there is no voice identification by a person claiming to be heard and recorded the voice.

879) The PW-240 (PSI Vinod Kadam) has testified that, in the year 2008, he was PSI and attached to ATS in technical division, interception branch. His senior officer directed him to listen the conversation of mobile number 9326603000 and to prepare the cassette and transcript and to hand over the same. He prepared two audio cassettes of each heard & recorded conversation dated 22/10/2008 and 23/10/2008. One is original and other is second copy. He marked those cassettes as A6 (dtd. 22/10/2008) and A8 (dtd. 23/10/2008). He handed over all those cassettes with transcript to PW-182 (Nivrutti Kadam). He identified the cassette A-6 marked as Article-204 and cassette A-8 marked as Article-205. On the other hand, testimony of PW-182 do not support to the aforesaid witness on the point of preparation and handing over and lateron taking back those audio cassettes. His testimony

is completely silent on this point.

880) The PW-240 (PSI Vinod Kadam) who claims that, he prepared the audio cassette A6 (Article-204) had not identified the voice. Prosecution had not shown to him the aforesaid cassette during the course of his evidence. So it cannot be said that, the voice recorded in the said cassette was of any accused and it was duly identified by the maker (witness). The witness has also admitted that with certainty he cannot say a to whether the cassettes produced before the court are first set of cassette or not. Admittedly, as per his testimony the first set of cassette was original and second set was copy of it. He has also not made any marking as first copy or second copy.

881) The voice appearing in audio cassette (Art-205) although identified by PW-240 (Vinod Kadam) but do not inspire the confidence. The admissions given by him in cross examination itself shows that, he had not heard the voice of accused prior to recording of audio cassettes. He didn't know the name of other person with whom the caller was talking at the relevant time. He came to know the name of Prasad Purohit as the department told him and hence, the said name he had mentioned in the transcript (Art.206) also. On the basis of guessing, he identified the voice of Prasad Purohit. He didn't know any person whose conversation is recorded in the cassette. He could not identify the voices as those were common voices. He didn't know as to A-4 spoke with any other person or not.

882) The PW-240 (Vinod Kadam) who claims that, he prepared two audio cassettes of recording of dated 22/10/2008 and 23/10/2008 but in cross examination his admission shows that, he didn't know from 18/10/2008 till which date the said number was kept under surveillance. Thus, the dates stated by him seems to be tentative. The recognition /identification of voice is based on guessing.

883) The PW-178 (Datta Gawade) testified that in the year 2008, he was attached to ATS, technical division, interception branch Mumbai. He was on alternate shift i.e. if first day is day-shift then next day on night-shift. On 21/10/2008, there were six calls received on the aforesaid mobile number. Those calls were automatically recorded in system and he prepared cassette (Art.129) of recorded calls and also prepared one duplicate cassette from original cassette. He packed and sealed those cassettes and handed over to PI Banarjee and it was in custody of Banarjee till 24/12/2008. On 24/12/2008, PW-178 again handed over those cassettes to ACP Mohan Kulkarni. It clearly shows that for more than two months those cassettes were lying idle in custody of police and it was not sent for analysis immediately.

884) The PW-178 (PSI Datta Gawade) was watching the number since 18/10/2008 but he had recorded the calls of 21/10/2008. In his presence no incoming or outgoing calls on the said mobile number on 28/10/2008. PSI Kasare and PSI Chavan were on

alternate duty with him but they had also not stated regarding any calls on the said number. He had not taken any entry in the register maintained in the office. He admitted that, the accused if in custody of police then no chance of incoming and outgoing calls.

885) The A-4 was shown arrested on dated 28/10/2008 and prior to it, till 28/10/2008, he was repeatedly called for inquiry. PW-320 (Mohan Kulkarni) chief investigating officer has admitted that, even after hearing the conversation recorded in those cassettes, he did not find any incriminating evidence against A-4. Hence, they used to allow him to go at home after inquiry. At the one hand, their own evidence shows that, A-4 was suspect in the said offence, his mobile was kept under surveillance, they intercepted the conversations, prepared cassettes, transcripts and reported authority that the mobile user is one of the suspects of terrorist group. Even after that, on the other hand, the chief investigating officer PW-320 (ACP Mohan Kulkarni) testified that, they did not find any incriminating material or his involvement in the offence and hence, he was allowed to go at home after inquiry. Considering the aforesaid entire facts and evidence, it is not digestible to ordinary prudent man also that they would have released the suspect / accused after day-to-day inquiry.

886) Ld. SPP though pointed out that, the order of interception (Exh.8380) dtd. 23/10/2008 was issued by then Additional Chief Secretary (Home), Mumbai which clearly shows that, Add.C.P.

Mumbai had sent the confidential report. She had gone through that report. It is mentioned in it that, ongoing through the said report, ACS being satisfied that, one suspected operative of Terrorist group is using reliance communication Ltd. Mumbai Circle, roaming mobile phone number 9326603000 for the said purpose. Hence for interception, she accorded permission on 23/10/2008. In the present matter, it was the first interception order by competent authority and not prior to it. Thus, it can be said that, legally interception was permitted from 23/10/2008 and not prior to it. The order passed by then Additional Chief Secretary, was not in continuation of any earlier order. Therefore, whatever intercepted prior to 23/10/2008 was not permissible and unauthorized.

Transcripts and Voice Samples :-

887) Admittedly, all the aforesaid transcripts are prepared from the conversation available in audio cassettes. The said transcripts were exhibited subject to objection during the recording of evidence. The conversation was heard while preparing the transcript and dictated on computer. The computer was used as typewriter and not used for the purpose of storage and hence, certificate u/s 65(B) is not required.

888) It came in the evidence of PW-240 (Vinod Kadam) and PW-322 (Sadashiv Shelar) that, the transcripts were prepared from cassette bearing number A2, A6, A7 and A8. And transcript was not prepared from the conversation stored in cassettes No. A1,

A3, A4, A5. It is well settled position that, the transcript should not be inculpatory. The Investigating officer had not obtained the set of transcripts from FSL or never requested them to provide the set of transcripts for the purpose of voice sample. Thus, from the recorded conversation the transcript was prepared. Bare perusal of the transcript shows that the sentences in the transcript are inculpatory and hence, such transcript could not be used for the purpose of taking voice sample of accused. But those were given to the accused to read and their voices were again recorded in a separate cassettes and sent for audio-metric test.

Audio-metric Analysis Report / Voice Analysis Report :-

889) The voice analysis was done by the expert Hina Dodia. She had issued total three examination reports. PW-320 (ACP Mohan Kulkarni) had filed her Voice Spectrum Analysis report on record. In the evidence of PW-320 (ACP Mohan Kulkarni), only one report was shown to him and it was tentatively marked as **Exh.8763** subject to objection. It seems to be computerized report without 65-B Certificate.

890) Though, it is contended by SPP that, her report is admissible and can be read in evidence as per provision incorporated under section 293 of Cr.P.C. On the other hand, the objection taken during evidence shows that, she was dropped as witness prior to examination of PW-320. Her report is not admitted by the accused and they did not get opportunity to cross examine her.

891) In the backdrop of the aforesaid facts, it is necessary to mention that, the said witness was repeatedly summoned by the court. The prosecution could not secure her presence during entire trial. The prosecution had filed a pursis and thereby dropped the present witness. Thus, she is not examined in support of her reports. Mere production of reports on record would not be enough, when it is disputed by the accused. The contents must be proved and accused should get an opportunity to cross examine to prove their defense.

892) A scientific expert's report is not admissible per-se under Section 293 of the Code of Criminal Procedure, 1973, where the expert has been expressly summoned by the court. Failure on the part of such expert to comply with the court's summons and appear in person may warrant an adverse inference against them, as it amounts to a denial of the right of cross-examination to the defense. Consequently, the report submitted by the expert cannot be treated as substantive evidence unless the expert presents themselves before the court and affords the defense an opportunity for cross-examination. Therefore, I am inclined to draw the adverse inference against prosecution. Consequently, I hold that, in the absence of opportunity to accused to exercise their valuable right, the reports would neither be inadmissible nor helpful to the prosecution.

893) As discussed earlier that Assistant Chemical Analyzer Hina Dodia

is not examined by prosecution even after summoned. But the prosecution has examined Assistant Chemical Analyzer PW-284 (Sunil Koli) on his audio-metric / voice analysis report vide exhibit-7888.

894) The chief investigating officer PW-320 (ACP Mohan Kulkarni) has testified that, he sent the cassettes, CD and DVD as mentioned in letter dated 25/06/2009 vide **exhibit-8765** to the director of FSL for voice spectrum analysis. It would be beneficial to mention those articles in tabular form which are connected with issue of aforesaid voice analysis.

04/01/2009	Audio Cassette Marked as “RPS”	Voice Sample of R.P. Singh (PW- 312)
26/11/2008	Audio Cassette marked as “SD”	Voice Sample of Accused no. A-10
17/01/2009	Annexure Audio Files “Exhibit Q-Audio”	Related to All accused
17/01/2009	Annexure Video Files I “Exhibit Q Video”	Related to all accused
17/01/2009	Annexure Video Files II “Exhibit Q Video”	Related to all accused
19/06/2009	Audio Cassette “RU-1”	Voice Sample of Ramesh Upadhayay
19/06/2009	Audio Cassette “P-1”	Voice Sample of Prasad Purohit
19/06/2009	Audio Cassette “SD-1”	Voice Sample of Sudhakar Dhar Dwivedi.

895) The assistant Chemical analyzer / Scientific officer PW-284 (Sunil

Koli) testified that, he was on contract basis in FSL, Mumbai. He received the articles as mentioned in the letter dated 25/06/2009 issued by ATS, Mumbai. He examined those articles by conducting analysis. After examination, he issued his report vide exhibit-7888. He has opined as follows :-

As per the examination report, he had compared Ex1/2 with Ex1/4. And opined that the voice of same person is found in it.
Similarly, Ex1/2 was compared with Exh.3 and he had opined that the voice of same person is found in it.
Similarly, he had compared Ex1/2 with Ex4. And he had opined that the voice of same person is found in it.
He had compared Ex1/2 with Ex5 and opined that the voice of same person is found in it.
Also he had compared Ex1/2 with Ex1/3 and it revealed that Ex1/3 containing different text as compared with Ex1/2. Also the specimen voice sample was not provided for Ex1/1 and Ex2. Hence, these exhibits were not considered for analysis.

896) The admissions given by the expert in his cross examination shows that, he has no documentary evidence to show that, at the relevant time he was working as Assistant Chemical Analyzer or Scientific Officer in FSL, Mumbai. He had undergone the training of Speaker Identification from All India Institute of Speech and Hearing Mysore. The duration of course was 5 days only. Apart from this course, he had not done any other course or undergone any other training. In his curriculum, he had no subject of voice identification. First time he came across with voice identification

when he joined DFSL. When he joined DFSL, there were other senior expert namely Hina Dodia and Amey Nyaydish in voice identification. All these admissions shows that, there is lack of qualification, training and skill required for the purpose of audiometric analysis.

897) It would be apposite to quote the observations made by Hon'ble Apex Court in para nos.17 to 19 in case of **State of Himachal Pradesh Vs. Jai Lal and others [(1999) ALL MR (Cri) 1790],**

> *"17. Section 45 of the Evidence Act which makes opinion of experts admissible lays down that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identify of handwriting, or finger impressions are relevant facts. Therefore, in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.*

18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of Hazi Mohammed Ikramul Hague v. State of West Bengal concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert

witness on the ground that his evidence was merely an opinion unsupported by any reasons."

898) The PW-284 (Sunil Koli) further admitted that, when he received the articles for examination, those were already opened by his colleagues. He received those articles in open condition even though he had not taken any objection. The cassette is having four screws which are detachable and ribbon can be placed in another cassette also. The cassette is easily available in the market. The side notch of the cassette was already removed when he received cassette. For removing the side notch / safety tabs, it requires to be broken. He also admitted that, there are several artists available who can make the identical voice of any person. The aforesaid admissions clearly indicates that while receiving crucial evidence in open condition without any objection would be in compromised state of the cassettes. He knew that removing safety notch means cassette tape could be altered and voice can be mimic. The cassette which is produced before the court is not in same physical condition while recording (due to removal of safety notch). In such circumstances, it raises the question on integrity of the evidence.

899) His examination report vide **Exh.7888** is computer generated. He had taken the feedback from computer. The data was stored in computer. He has not attached 65-B certificate along with his

report. The oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced in question. Any documentary evidence by way of an electronic record under the Evidence Act, in view of section 59 & 65-A can be proved only in accordance with the procedure prescribed u/s 65-B. The section 65-B deals with the admissibility of electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by computer. Moreover, the section starts with non-obstante clause. Thus, 65-B compliance is mandatory and without mandatory compliance the document cannot be read in evidence.

900) Prior to his analysis, the articles were analyzed by Hina Dodia who is not examined by prosecution as a witness. The PW-284 (Sunil Koli) had commenced analysis on dated 02/08/2011 and completed on 12/09/2011. The admission given by him shows that, from June 2009 to September 2011, the cassettes were not in his custody. It has not come in his evidence to show that, for the period of August 2011 to September 2011 in whose custody those articles were lying. His own admissions shows that, for the considerable period i.e. two months, the articles were not lying in his custody but in the custody of others. It is not the contention of the prosecution or witness that, he had handed over any custody of those articles to any other expert or person for the period of two months. It is incumbent upon prosecution to prove in whose custody those articles were lying for the considerable period of two months. In the absence of any explanation, it give rise to

inference that the articles were not in safe custody for the period of two months.

901) He has further admitted that, there can be difference in the voice of same person on land-line, on mobile, on computer, on tape-recorder, video recorder and actual voice. If a person is unwell or just woke up from sleep or is happy or is sad or old age, his voice may differ. There is difference between probable identification and confirmed identification. The confirmed identification has 100% certainty, whereas probable have 80 to 90% certainty. The finding of analysis given in his report are probable identification. His report is bereft of reasoning to arrive at certain conclusion. Thus, the result is uncertain, without any reasoning in the report, without 65-B certificate , with safe custody, makes it unreliable to accept the forensic voice analysis report.

902) Considering the entire evidence on the point of voice sample, it can be said that the prosecution has failed to establish that the seized articles were not or could not be tampered with before it reached to DFSL for examination. Apart from the above said missing link and the suspicious circumstances surrounding the same, there is another circumstance which also cast a serious mistrust as to genuineness of the evidence. Even though the specimen voice samples of accused had been taken on the number of occasions at the behest of ATS, they never taken before or under the order of a Magistrate, except the voice sample as per order dated 19/06/2009, in accordance with

section 5 of Identification of Prisoners Act. Even for the sake of moment, if it is assumed that, the accused who were in custody of ATS did not raise objection or disputed to give voice sample and in such circumstances the police are competent to take the samples but to dispel any suspicion as to its bonafides or to eliminate the possibility of fabrication of evidence, it was eminently desirable that they were taken before or under the order of Magistrate.

Calcutta Meeting :-

903) As per prosecution, the meeting at Culcutta /Kolkatta (West Bengal) was held in the house of Tapan Ghosh. The relevant information about the alleged meeting is mentioned in following tabular format,

Date	Place	Present	Discussion
15/16 February 2008	In the house of Tapan Ghosh, Kolkatta.	A-9 A-5	On the point of the plight of Hindus in Bangladesh, Infiltration of Bangladeshi, Arms training to Youth by A-9, declaration of Hindu Rashtra by changing its constitution.

904) On the point of Calcutta meeting, the star witnesses of prosecution are Col. Raikar, Tapan Kumar Ghosh, Bapaditya Dhar, Gaurav Mishra, Himani Savarkar.

905) The testimony of PW-243 (Bapaditya Dhar) shows that, in the year 2008, he was posted at AEC College at Pachmarhi. A-9 was undergoing the course of Arabic Language. He was interrogated by ATS officers. ATS officers took him at various different locations / places and during interrogation pressurized him either to oblige them or to go to Jail.

906) The PW-243 (Bapaditya Dhar) had not supported to the story of prosecution. Nothing came on record through the testimony of this witness that, A-9 attended the Calcutta meeting or there was discussion about plight of Hindus in Bangladesh and infiltration of Bangla-deshies, arms training to youth.

907) The learned Special Public Prosecutor (SPP) cross-examined PW-243 (Bapaditya Dhar) with permission; however, nothing significant was elicited that supported the prosecution's case. Mere recording of statement u/s 161 is not enough. There must be corroborative evidence of the witness in whose name the statement is recorded. PW-243's own testimony suggests that his statement was obtained under duress, including intimidation and threats of being falsely implicated. Therefore, it is possible that he temporarily complied with investigators and gave statement as dictated by them. Even assuming, for the sake of moment that, the contents of the statement were proved, it remains an involuntary statement and hence cannot be relied upon merely because it was recorded by the investigating officer.

908) Furthermore, his evidence clearly demonstrates that he did not hear any discussion related to the alleged meeting, nor did he meet anyone in Calcutta. He was unaware of who attended the meeting and confirmed he never participated in any such gathering / meeting. Accordingly, the testimony of this witness is not useful to the prosecution in proving the occurrence of the Calcutta meeting.

909) The PW-255 (Gaurav Mishra) testified that, he was acquainted with Shankaracharya (A-10). He was impressed by his work. In the year 2008, he met him at various places like Nashik, Jalandar (Punjab), Jammu, etc. Once, he was at Calcutta. At that time, he got a call from Shankaracharya and told that, one Colonel will speak with you. He got call from Colonel Purohit. Col. Purohit demanded donation of Rs. Ten lakhs. On hearing it, he told him that, he is busy and called you later. Thereafter, he didn't receive any call. Thus, this witness is on the point of demand of donation.

910) The witness had not stated anything about the Calcutta meeting or participants name or any discussion in the said meeting. On the other hand, it only came in his evidence that, one person called him, identifying themselves as Purohit.

911) The admissions given by him in his cross examination depicts that, he never met Colonel Purohit. He didn't know the number of caller. He has not noted down that number. He has not given

the said number to ATS. He has no recording of the said conversation. ATS did not ask him about the number nor checked the details from his mobile. He cannot say certainly the caller was Purohit or not. However, without verification of the caller's number, voice identification, authentication of a call recording, or any confirmation of the individual's identity, it cannot be conclusively established that A-9 made the call or demanded the donation. Thus, the testimony of this witness does not support the prosecution's case in proving the occurrence of the Calcutta meeting.

912) In the year 2008, PW-208 (Colonel Raikar) was serving in Army. He left the service in the month of March 2008 and joined Bhonsala Military School as Commandant. About Calcutta meeting he has not stated any single word in his examination-in-chief or cross examination conducted by Ld. SPP.

913) The Ld. SPP had pointed out that, in the cross examination of advocates for accused, PW-208 (Colonel Raikar) had admitted that, he was acquainted with A-9 as he was working with him. A-9 used to take aid of various organization including Abhinav Bharat to collect the information against anti-national elements. He used to provide the information collected through Abhinav Bharat. A-9 telephonically informed him about the meeting at Calcutta held in 2008.

914) Firstly, it is necessary to mention that, the admissions given in

cross examination shows that, he is hearsay witness about the Calcutta meeting. There is no record maintained by him about the meeting. Except the words meeting held at Calcutta in 2008, he didn't know anything particularly about the attendees or participants, discussion took place, or any other details. Prosecution cannot take the resort or support of admissions given in cross examination. Prosecution should have to prove their own case. The prosecution should stand upon their own legs. They cannot take the benefits of cross examination taken on behalf of accused. Therefore, nothing survives in the testimony of this witness. Accordingly, the testimony of this witness lacks probative value and does not advance the prosecution's case in any meaningful way.

915) As per the case of prosecution, the meeting was held in the house of Tapan Ghosh but being reported dead he is not examined, Himani Savarkar was also present there, but she is also not examined. Considering the entire testimony of the aforesaid witnesses, they have not stated anything about the Calcutta (Kolkatta) meeting as discussed supra. There is no evidence at all to show that, at particular place, time or date the meeting was held in which A-9 and A-5 were allegedly present. Mere allegations in the absence of any positive evidence doesn't inspire the confidence that, any such meeting was held or any alleged discussion took place.

Bhopal meeting:-

916) As per the prosecution, the largest part of conspiracy was cooked in the meeting at Bhopal. A-5 issued the letter to book the hall for the said meeting. Accordingly, the hall was booked for the secret meeting. Then the closed-door meeting / secret meeting took place at Bhopal in the month of April 2008. The details of meeting are as follows :-

Date / month / year	Presence of Accused	Place of Meeting	Discussion
11th and 12th April 2008	A-1, A-5, A-9, A-10, A-11	Ram Mandir, Bhopal	To take revenge against Muslim by exploding the bomb in thick populated area at Malegaon. A-9 took the responsibility to provide explosives and to provide the men for explosion.

917) In order to prove the Bhopal Meeting, the prosecution has examined PW-190 (Santosh Mishra), PW-194 (Nathilal Azad), PW-203 (Shobhraj Sukhawani), PW-234 (Rohit Bansal), PW-243 (Bapaditya Dhar), PW-248 (Anurag Upadhyay), PW-303 (Chetan Dhakan), PW-308 (Yashpal Bhadana), PW-312 (Dr. R.P. Singh), PW-320 (Mohan Kulkarni) and PW-321 (Anil Kumar Dubey). All these witnesses are examined by the prosecution on various points which such as booking of hall for meeting, stay at Bhopal,

presence in meeting, discussion in meeting, role played by accused, seizure panchanama, recording of meeting and telecast of Meeting on India TV, etc.

Booking of Ram-Mandir Hall :-

918) As per prosecution, the hall of Ram Mandir was booked by A-5. On the letter head of Abhinav Bharat, he had requested to book the hall for meeting going to be held on 11/04/2008 and 12/04/2008. The alleged letter was taken in custody by PW-294 (Police Inspector Purushottam Choudhari) from PW-194 (Nathilal Azad) in the presence of Panch witness PW-203 (Shobraj Sukhawani). The seizure memo (**Exh-6819**) was prepared by PW 294, in the presence of panch witnesses. The said letter is marked as **Article-166**.

919) The PW-194 (Natthilal Azad) was working as Manager at Shri Ram Mandir, Bhopal. He further testified that, the trust was having its own hall and Sant Niwas. The committee used to provide the hall for marriage function or religious functions. They also used to maintain register. On 25/02/2008, A-5 visited to their office with a request to allot the hall for one religious function. It was allotted for religious program going to be held on 11th and 12/04/2008. Accordingly, the said religious function was held. PW-194 has identified the Photostat copy of first page of Shadi Hall Register **(Exh.6794)** and entries appearing on Photostat copy (Exh.6795) which were verified from their original register i.e. Shadi-Hall-Register.

920) Now pertaining to the alleged letter (Art.-166) issued by A-5 under his signature. Its contents are not duly proved. It was marked as article-166. The prosecution had not led any evidence in order to prove the signature appearing on the letter is of A-5. Although the prosecution has examined the number of witnesses of Abhinav Bharat Trust and relevant witnesses connected to Abhinav Bharat but not a single witness has narrated about the issuance of said letter by A-5 on their letter head or they could identify the same. There is no whisper about the alleged letter. The alleged handwriting was not sent to handwriting expert during the course of investigation.

921) The PW-194 (Natthilal Azad) had seen one person by named as "Sameer" only once at the time of accepting the alleged request letter. Admittedly, he has not identified A-5 in the court. He also admitted that, police had not conducted the identification parade and called him for identification parade of Sameer Kulkarni. In the absence of a proper identification procedure and the witness's failure to identify the accused during trial, it becomes difficult to conclusively establish or hold that A-5 was the individual who submitted the said letter to the trust for booking the hall.

922) Police Inspector PW-294 (Purshottam Choudhari) was attached to ATS, Nagpur. He recorded the statement of PW-194 (Nathilal Azad). He seized the document i.e. Art-166 in the presence of two panch witnesses. He identified the seizure panchanama vide

exhibit 6819.

923) The panch witness PW-203 (Shobraj Sukhawani) has testified that, on 10.08.2008, police called him at Shri Ram Mandir Trust. He was present there and in his presence one letter of Abhinav Bharat was taken in custody by police from PW-194 (Nathilal Azad) and it was seized by police by preparing the Seizure Memo **(Exh.6819)**. He identified his signature over the panchanama.

924) The PW-203 (Shobraj Sukhawani) has admitted that, in his presence, the seizure panchanama was prepared in Hindi, whereas its wording is appearing in Marathi. His signature was not obtained on article-166 (alleged letter) while taking it in custody or preparing seizure memo. No receipt was handed over to him or Mr. Nathilal by police at the time of alleged seizure of article-166. Therefore, he has shown his inability to identify the said letter. He was not 100% sure as to whether it is same document or not which was seized by police in his presence. Thus, he is hearsay about that letter which he had not seen personally nor signed on it. Therefore, mere seizure of one letter of Abhinav Bharat would not attribute role of A-5 towards the issuance of the letter.

925) The witnesses have admitted that, after booking of the hall, the receipt is issued to that effect. But, there is neither booking receipt nor it was handed over to Police by PW-194 (Natthilal Azad). It was never seen by PW-203 (Shobraj Sukhawani) while

handing over to police. The Police officer had also not seized the said booking receipt of hall.

926) After visit to Ram Mandir Trust, Bhopal the Investigating officer PW-294 (Purushottam Chaudhari) had gone through the entry register. After going through the entry register he had returned that register to the office immediately. The Japti Patra (Seizure Memo Exh-6819) has no reference of seizure of Entry register or photostat copies of those register. PW-294 has admitted in his cross examination that, it is not mentioned in seizure memo (Japti Patra) and statement of witness Nathilal Azad regarding handing over copies of register.

927) The investigating officer PW-294 (Purushottam Chaudhari) has further admitted that, when he went to Bhopal, the names or address of witnesses had not been provided to him in order to record their statements. Mr. Raghuvanshi and Mr. Karkare directed him to inquire about who stayed at Ram Mandir Bhopal. He had no knowledge as to who stayed at Bhopal. Thus, it can be said that neither he had collected any information about the stay of accused and other witnesses nor seized any register under under panchanama.

928) The panch witness PW-203 (Shobhraj Sukhwani) has admitted in cross examination that, the photocopies of said register in which the entries are made was not seized by police before him. At the time of panchanama, the office bearer of Mandir Trust shown the

said register to police. Police had not seized the said register, but they handed over the same to the staff of trust after going through the entries of the said register. It clearly indicates that, at the relevant time, the investigating officer did not find any relevant entry pertaining to the booking of hall by A-5 as alleged and hence, he had not seized that register or taken the photostat copies in his custody by preparing panchanama.

929) The Manager PW-194 (Natthilal Azad) has admitted in cross examination that, in his statement there was no specific reference showing that he had handed over the copy of entry register to police. In Japti Patra, there is no reference of seizure of two pages of copies of entry register. In entry register, some entries are missing specifically for the periods 01/04/2008 to 05/04/2008, 07/04/2008 to 10/04/2008, and 16/04/2008. In the register, no entry is taken prior to the date 11/04/2008 and 12/04/2008, despite the assertion that documents were maintained during this period. Furthermore, there is no explanation as to why those entries are missing when those were taken down by them. In view of these discrepancies, the Entry Register as presented does not inspire confidence, particularly in the light of the missing entries and the absence of any justification thereof. Such irregularities cast serious doubt on the authenticity and credibility of the documents purported to have been seized.

930) In sum and substance of evidence of PW-194 (Natthilal Azad)

clearly points out that, though he has not attended the meeting but the meeting held in the hall of Ram Mandir Bhopal was public meeting. For the said meeting near about 100 persons gathered in the hall of temple. The said function was conducted in marriage hall only. The said marriage hall is beneath the temple. There are two entry doors for the hall and those were open at the time of function. He has not personally attended the function. The Shri Ram Mandir is lying in the middle of city and it is surrounded by crowded area. The number of persons were present there. The doors of hall were kept open for all. The layout of the Mandir is stated by PW-194. There is Hall on ground floor and above the hall, the Mandir having statues of Gods. Except this there are no other rooms. He has also stated to A-5 at that time that there is no rooms and hence, they cannot book any rooms. In the absence of any room and when public at large had attended the meeting, then it cannot be said that it was a closed door meeting in one room as alleged.

931) The aforesaid witnesses had not attended the meeting nor overheard any conversation of the meeting. The investigating officer had not drawn any spot panchanama. He has also not prepared the spot map of the said Ram Mandir in order to show the exact place of alleged meeting. Considering, the entire aspects, the testimony of witnesses are not cogent and reliable. Those are not inspiring the confidence of the court. The prosecution has failed to prove beyond reasonable doubt about stay, attendance / presence of accused, closed door meeting,

issuance of letter by A-5 to book the hall, seizure of alleged documents, etc. through the testimony of those witnesses.

Evidence on the Point of Stay at Tulsi Hotel Bhopal:-

932) In the year 2008, PW-190 (Santosh Mishra) was working as receptionist at Hotel Tulsi, Bhopal. He was examined by prosecution on the point of stay of accused at Bhopal during particular period. He testified that they used to take entries of customers in their entry register of Hotel. He has identified the entry bearing no.76 marked as Exhibit 6786 and entry bearing serial number 82 marked as Exh.6787 on being shown to him. The entry at serial no.76 pertains to A-1 showing her arrival date 10/04/2008 and departure date 12/04/2008. The entry at serial no. 82 pertains to witness Dr. R.P. Singh showing his arrival date 11/04/2008 and departure date 12/04/2008.

933) The admissions given by PW-190 (Santosh Mishra) in his cross examination shows that, he had not taken those entries in the said booking register. Those entries are made by customers. If a person wants to book the room in the name of other person, then the said person may book the room in the name of other person also. On 10/04/2008, A-1 had not booked the room in her name. He also admitted that, one person book the four room including above rooms.

934) Considering the aforesaid admissions, firstly, it can be said that, absolutely there is no evidence to show that, who has taken those

entries in the booking-register, secondly, exactly who booked the four rooms including aforesaid rooms in the name of different persons, thirdly any person can book the room in the name of other persons. So possibility of giving any four fictitious names cannot be ruled out in the absence of any ID proof or other documentary evidence identifying the person. Even for the sake of moment, it is assumed that A-1 stayed there during the said period, but absolutely there is no evidence as to which customer have jotted down those entries. Those entries are not verified from expert with admitted documents. Absolutely there is no evidence to show who stayed in four rooms. Four rooms were booked by unknown person.

935) Prior to 10/04/2008, PW-190 (Santosh Mishra) never met A-1. Only on the basis of entry found in the register, he stated that, A-1 stayed in particular room. There is absolutely no any other witness or evidence to show as to whether they had seen A-1 from 10/04/2008 to 12/04/2008 while coming and going out of the hotel.

936) Moreover, prosecution had also examined PW-312 (R.P. Singh). But nothing was elicited from his mouth pertaining to his stay and stay of A-1 at the Hotel Tulshi, during the said period. He had also not seen the A-1 while staying in the Hotel during the said period.

937) The PW-294 (Purushottam Choudhari) made inquiry at Hotel

Tulsi. He also inquired with PW-190 (Santosh Mishra). He has also recorded his statement. Even after that, on the aforesaid point PW-294 has admitted that, "he could not state in whose handwriting the entries were taken down. PW-190 had not stated while recording his statement that, the entries in booking register were made by the persons who stayed in the Hotel Tulsi at the relevant time. He has not seized any receipt of payment done while booking the rooms." Whereas, the investigating officer PW-294 has admitted that, when he visited Bhopal he didn't know the name and address of witnesses with whom the inquiry to be made. He had no knowledge who stayed at Bhopal at aforesaid places i.e. in Ram Mandir and Hotel Tulsi at the relevant time.

938) Though, the entries taken in booking register are pointing out the aforesaid names but evidence on record, as discussed supra, creates the cloud of doubt regarding the entries taken in the register, actual presence during the relevant period. Therefore, in the absence of positive evidence about actual stay, verification of entries, identification, conformity with other documents, etc., I am not inclined to accept the submission that mere entries in those register is conclusive proof of stay during the relevant period.

Recording and Telecast of Meeting on India TV:

939) The PW-248 (Anurag Upadhayay) testified that, in the year 2008, he was working as Special Correspondent for India TV. His nature of work to gather the information and to send the said

gathered information to Noida Office. He knew that, on 19/11/2008, at about 9.00 pm to 10 pm India TV telecasted one program related to Malegaon Bomb Blast Case. One unknown person had dropped one CD in the letterbox of his house. He saw / watch the contents of CD in which he saw A-1, A-4, A-5. He converted CD into tape. He sent tape to head office Noida. He also came to know from his sources that, a meeting was organized at Gurubaksh Ki Talaiya, Ram Mandir, Bhopal.

940) The admissions given by PW-248 (Anurag Upadhyay) in his cross examination shows that, while recording his statement by police he had not stated that the alleged program / function was telecasted on India TV on 19/11/2008 around 9 pm to 10 pm. He has also not stated to police that he had sent the CD to Noida office. He had not put any identification mark on the CD found in his letter box. He is unaware as to whether the text appeared in CD was edited or unedited. He was not having any instrument of converting CD into tape at his home. He has not verified the genuineness of tape. The tape which he had sent to Noida office is not presented in the court. His letter-cum-statement (Exh. 6979) was sent to Rohit Bansal and Mr. Tandon at Noida Office. The said statement being demanded by Rohit Bansal and hence, he sent it through email.

941) The PW-248 (Anurag Upadhaya) has further admitted that, he had not seen the meeting held at Bhopal. He was not present at Bhopal at the relevant time as a media person. He has not heard

the address of said meeting at that time. He got the knowledge from his sources about the meeting held on 11/04/2008. Thus, he is hearsay witness about the meeting. He had not seen the meeting nor overheard the conversation of meeting. Whatever he had deposed was based upon one unknown CD found in his letter box which is never produced before the court. He admitted that he had not stated to police that he saw the CD nor police asked him about the same. This fact he deposed before the court for the first time. It is nothing but exaggeration of the facts. Therefore, do not inspire the confidence of the court.

942) The PW-234 (Rohit Bansal) testified that, he was Chief Operating Officer of India TV. His office had received letters from ACP, ATS, Mumbai on dated 04/12/2008 (Art.190) & 15/01/2009 (Art.191). He replied to first letter on 12/12/2008. Along-with the said letter (Exh.6977), he also sent one CD to the ATS, Mumbai. He has given reply (Exh.6978) on dated 16/01/2009 to the second letter of ATS. He has also identified the CD (Art.193). The CD may be comprised of original footage shared by the reporter Anurag Upadhyay. It also contains the interview of Home Minister of the State for Home Affairs Mr. Shakil Ahmad and it may contain the comments of the then anchor.

943) In cross examination, PW-234 (Rohit Bansal) has admitted that, the telecast is based upon news judgements, expert opinions, and relevant additional intellectual property as decided by Editor-in-Chief. The CD was prepared by Mr. Prasad, Prashant Tandon

(Executive Editor) and Editor-in-chief. He is not knowing Anurag Upadhyay. He doesn't know as to whether the CD was edited or unedited before dispatch. He had not gone through the contents of that CD. He had not gone through the contents of tape. He didn't know as to whether Anurag Upadhyay had sent the said tape to Noida office or not.

944) The PW-320 (ACP Mohan Kulkarni) testified that, Mr. Khanvilkar (police Inspector) under his instructions issued the letter to Esha News Monitoring Agency. He identified his signature appearing on letter dtd. 21/11/2008. The CD was provided by Esha News Monitoring Agency to ATS. India TV also provided the CD (Art. 193) of news item as per their demand made by them in the letter. On the instruction of Add. C.P. Sukhvindar Singh, PSI Honrao went to Indore and recorded the statement of Anurag Upadhyay of India TV.

945) In cross examination, he has admitted that, "Esha News Monitoring Agency is not broadcasting agency like India TV. Esha News Agency collecting the news which are broadcasted by the broadcasting agencies. Esha News Agency is not the original source of information / news."

946) It is evident that, PW-248 (Anurag Upadhyay) received one CD in his letter box. The source of CD or source of data found in CD, is not known to anybody. The CD found in the letter box claimed to be seen by PW-248 and converted into tape. But without any

evidence on record, it is difficult to say that, exactly who recorded or transferred the data in that CD. It is also difficult to say as to whether it is actual copy of original stored data or not, whether it is edited or not, whether any recording was actually done at Ram Mandir Hall and stored in original form or not. In the absence of evidence on aforesaid points, it is difficult to accept that, it is actual copy of original data and actual recording of the said meeting without any editing. The author of CD is also unknown. PW-248 is hearsay witness. He never attended the meeting. He had not put any identification mark on that CD after receipt of it. He has not verified the authenticity or genuineness of that CD. The said CD was not handed over to ATS or Police to send to Expert and obtain the opinion about the authenticity or genuineness of data.

947) It is also evident that, the data found in CD was converted into tape. It means, the CD was not sent in its original form directly to the India TV Office at Noida. But the converted form i.e. tape seems to be sent to Noida Office. Thus, it is a copy of copy. The CD found by PW-248 (Anurag Upadhyay) was also not available with him. He has admitted that, while recording his statement by police, he has stated to them that, the original CD is somewhere misplaced but the tape is available with him. In his statement there is nothing to show that, he had sent the CD to Noida Office. PW-234 (Rohit Bansal) stated that handling of all transfer of digital assets was done by Mr. Prasad of their office. The CD was prepared by Mr. Prasad, Prashant Tandon and Editor-in-chief

which may be comprised of footage shared by the reporter Anurag Upadhyay and contents of this CD was telecasted. Moreover, the telecast was based upon News judgements, Expert Opinions, relevant additional intellectual property. Thus, the possibility of addition and deletion cannot be ruled out.

948) The admissions given by PW-320 (ACP Mohan Kulkarni), itself shows that they got the two CDs. One CD from Esha News Monitoring Agency and next CD (Art.193) from India TV. Esha News Agency is not the original source of information / news. Esha News Agency is not broadcasting agency but only collecting the news which are broadcasted by other agencies. The Tape is not produced in the court. The CD (Art.193) which is produced in the court is in broken condition and could not be played. The data in CD is neither identified nor displayed. Moreover, the witnesses are hearsay about the information received by them. The CD is copy of copy. No original data is produced on record. Neither the contents of CD are proved nor it is original data. Therefore, it is not strengthening the case of prosecution.

<u>Presence, Discussion, Role of each accused in close-door meeting</u>:-

949) As per prosecution a closed door meeting / secret meeting was held at Ram Mandi Bhopal. In that closed door meeting, the witnesses Yashpal Bhadana, R.P. Singh, Himani Savarkar, Tapan Ghose also participated and overheard the conversation took place among the accused. On the strength of statement of those witnesses, the prosecution had claimed that there was a closed

door / secret meeting at Ram Mandir Bhopal.

950) The prosecution witnesses Himani Savarkar, Tapan Ghosh are not examined. Tapan Ghosh being reported dead.

951) The PW-308 (Yashpal Bhadana) is one of the star witness of prosecution on the point of Bhopal Meeting. He was resident of Anangpur, Faridabad. He testified that except the Goddess Temple at Faridabad, he didn't know anything about any meetings. He denied all the contents of portion mark 'A' to 'K' of his statement recorded by ATS. The star witness was retracted from his earlier statement recorded by police and hence, Ld. SPP cross examined him at length. But nothing was elicited from his mouth regarding the meetings and role played by accused which would be beneficial to prosecution. In cross examination of Ld. SPP, the witness has categorically stated that, "he never went for Bhopal Meeting. He didn't know as to whether A-1, A-9, A-4, A-5 and witness R.P. Singh were present there. ATS produced him before the Magistrate at Dadar and his signature was obtained before writing anything on paper. NIA called him at Delhi and recorded his statement which is correct. NIA also produced him before Delhi Magistrate where he had given his statement in writing."

952) Thus, his entire testimony shows that, his statements were recorded by ATS and NIA. His 164 statement was also recorded twice i.e. on the request of ATS and NIA. His 164 statement

recorded at Dadar is not on record. But, the admissions given by him pertaining to 164 statement recorded before Ld. Magistrate of Dadar shows that he was under pressure of ATS and to oblige them and to save himself from the clutches of ATS, he narrated as stated to him by ATS officers. So even for the sake of moment it is assumed that, he had given his 164 statement favouring to prosecution but neither it is on record nor it was given voluntarily. His evidence itself shows that due to threats, he was scared. Due to pressure / duress, he had given the statement to ATS and before the Ld. Magistrate, Dadar. His statement was involuntary and without the knowledge of facts. In rebuttal, the prosecution has not examined any witness. Therefore, such statement do not inspire the confidence.

953) The statement of PW-308 (Yashpal Bhadana) was recorded by NIA and also by the Ld. Magistrate of Delhi. He admitted that during the said recording of his statement by NIA, there were no pressure or threat was extended to him by the investigating officer of NIA. He had voluntarily given the statement before NIA and Delhi Court.

954) On confrontation of his 164 statement (**Exh.8418)** given before Magistrate of Delhi, he has admitted the contents of the said statement. In this 164 statement, he has stated before the Magistrate of Delhi that, he came to know from SSP Crime that his name was also emerging in this case. ATS called him in their office at Mumbai. He came to ATS office Mumbai, with his

brother. But ATS officer sent back his brother and inquired with him for the period of five days from morning to evening. ATS forced him to tell, *"तुम कोर्ट में बयान दो कि शंकराचार्य हिन्दुओ को मुसलमानों के प्रति भडकाता था और विडियो दिखाता था, और कहा की अगर नही दोगे तो तुम केस मे संम्मलित हो जाओ गे। फिर कोर्ट में सब बयान हो गए थे उन लोगों के मुताबक फिर मै घर आ गया था।" "मुझे दिल्ली आने को कहा। मै आया और रात भर इनके साथ रहा और सुबह मुझे ट्रेन से भोपाल ले गए। वहॉ रेल्वे स्टेशन इन्होने कहा कि उस मन्दिर पर लेकर चलो जहॉ पर शंकराचार्य रूका था। मैने मना किया तो वे मुझे ले गए उस मन्दिर पर। और मेरे से यह कहा गया कि जब भी तुम्हारे बयान हों तो यह कहना कि राम मन्दिर पर शंकराचार्य रूका था। सब उन्होने ही लिखा था। मुझे तो कॉपी भी नही दी थी। अब NIA वालों ने मुझे मेरा पहला बयान पढवाया, जो पहले बयान हुआ वह सब निराधार है। मैं कभी भोपाल नही गया। मैने कोई मीटिंग अटेन्ड नही की।"*

955) Thus, the contents of aforesaid 164 statement are duly proved. The witness has also admitted the contents. It seems to be voluntary statement. No contrary evidence is led to disbelieve the contents of the said statement which is recorded u/s 164 of Cr.P.C. by Magistrate of Delhi. Hence, there is no reason to disbelieve the contents of aforesaid statement. Therefore, only on the basis of this sole statement it can be said that, whatever shown to be recorded by ATS in the name of the aforesaid witness was involuntary and by browbeating. The testimony of this witness falsifies the case & claim of prosecution on the point that, he had seen the meeting, knows about stay and overheard the discussion.

956) The next star witness of prosecution is PW 312 (Dr. R.P. Singh) on the point of meeting and discussion in the meeting. He was doctor by profession. He had fond of social work. During the period of treatments to victims of Bhopal Gas Tragedy, he has attended the Bhopal Meeting on the say of Mr. B.L. Sharma. Number of Saint attended this meeting. The points /agenda of meeting was about Maharashtra Problems and other problems. But in this meeting the discussion regarding refuges took place which was not in their agenda. Hence, he returned back. Except this, the witness had not deposed anything and hence, he was cross examined by Ld. SPP with permission. He denied the contents of his statement recorded by ATS. Thus, nothing material was elicited from his mouth. On the contrary, in cross examination conducted by Ld. SPP he stated that, NIA recorded his statement and he told to NIA officer while recording his statement that ATS had incorrectly recorded his statement. He stated that the aforesaid things are incorrectly recorded by ATS officer in his statement those are, "in Bhopal Meeting Yashpal Bhadana was introduced by Shri. Amritanand Saraswati and he was supplying the refreshment during the meeting. Prasad Purohit discussed about Gorilla war and to take action against Muslim. Pragya Singh Thakur told that they are ready for work."

957) The PW-312 (Dr. R. P. Singh) was confronted his 164 statement (**Exh.8514**) recorded by Magistrate of Patiyala House Court, at New Delhi. He admitted its contents except the contents regarding Bhopal and Faridabad Meeting. In cross examination,

he admitted that, “Magistrate of Patiyala House Court was asking the questions and he was answering to it and accordingly his answers were recorded. Though, he had stated that there was discussion in one room about Jehadi Terrorism but the other witnesses had not supported to his testimony on the point of any such room was available there. Moreover, the meeting was general meeting and public at large attended the said meeting. He himself stated that, he left the meeting as the discussion regarding refugees was going on which was not in agenda. It means he had nothing overheard anything more except discussion regarding refugees. He is hearsay on the point of meeting in alleged secret room and discussion about Jehadi Terrorism.

958) Though, it came on record from his testimony that, there was a public meeting at Bhopal and he attended the said meeting but nothing came on record showing the actual utterances of A-9 and A-1 regarding their participation and causing of Bomb-blast at Malegaon and readiness of shouldering the responsibility to provide manpower respectively. His 164 statement was also recorded before the Magistrate of Patiyala House Court, New Delhi wherein he refuted all the contents of statement recorded by ATS.

959) Moreover, PW-312 (Dr. R. P. Singh) had admitted that the introduction of invitee from the Dias was public in general and not personal introduction of invitee. He is totally unaware about

the contents of his statement recorded by ATS officer. He had given the reason for not making the complaint of ATS officer due to his personal difficulties and lack of knowledge.

960) Considering his entire testimony neither it is inspiring confidence to accept the same due to his multiple contradictory answers and variance on the material points. It is also settled position that, if the witness makes the two inconsistent statement in his evidence with regard to a material fact and circumstances, the testimony of such witness becomes unreliable and unworthy of credence.

961) The testimony of PW-243 (Bapditya Dhar) shows that he was serving in Army and posted at AEC College, Pachmarhi and in that college A-9 was undergoing the training of Arabic Language course. The ATS officers inquired with him for number of days pertaining to Bhopal Meeting and A-9. While making inquiry, they were threatening him to oblige them, otherwise to face the consequences. He had not stated anything about Abhinav Bharat or its activities. The Ld. SPP Cross examined him with permission but nothing was elicited from his mouth. He denied the contents of his statement. On the other hand, in cross examination conducted on behalf of accused, he acknowledged the pressure given by their own Army officer R.K. Shrivastav to give statement against A-9. Thus, he was under the threat extended by ATS officer as well as pressurize by their own officer. The contents of statement would not be helpful to prosecution as it clearly indicates that under pressure and threat he had given his

statement which was involuntary. Therefore, neither the said statement is useful to prosecution nor anything survives in his evidence.

962) The PW-303 (Chetan Dhakan) had not supported to the case of prosecution. According to his testimony, he was also the source person of Army. The ID card was issued to him by Army which was forcibly taken by ATS officers without preparing any panchanama. In cross examination the admissions given by him shows that, due to source person of Army and acquainted with A-9, ATS harassed him, kept him in custody for the period of seven days. They were compelling him to narrate as per their say. Considering those admissions it cannot be said that his statement was voluntary and he was aware about the facts noted down in his statement.

963) The admissions given by Chief Investigating officer of ATS PW-320 (Mohan Kulkarni) itself shows that, number of people / public had attended the Bhopal Meeting. He had no knowledge as to whether in the attendees, the members of Abhinav Bharat sanstha or not. The meeting was held in large hall having capacity of accommodation near about 400 people. According to him the said hall is at first floor and temple is also at first floor. He didn't know as to whether there are any room or not.

964) Although PW-320 (ACP Mohan Kulkarni) testified that, he had visited the location of the alleged meeting. However, he neither

prepared a panchanama nor provided any details regarding the existence of rooms other than the hall and temple. According to his testimony, both the hall and the temple (Mandir) are situated on the first floor of the premises. Whereas, the PW-194 (Natthilal Azad) who was the manager of temple testified that, on first floor there is Mandir / Statue of Ram and on ground floor there is hall. He is the best witness who possesses thorough knowledge of the topography of the premises in question, including the number of rooms and the presence of a hall within the temple complex. However, no rough sketch, site map, or panchanama has been prepared to illustrate the positioning, location, or layout of the available rooms. Furthermore, the testimony of both witnesses diverges significantly with respect to the precise location of the hall and the Mandir, thereby creating inconsistencies in the factual narrative. In the absence of any panchanama, station diary entry of visit to Bhopal, corroboration by other witness, or any other documentary evidence, it doesn't inspire the confidence about the visit of PW-320 (ACP Mohan Kulkarni) to Shriram Mandir Bhopal.

965) The evidence of PW-320 (ACP Mohan Kulkarni) also shows that, the accused are implicated in this case are not solely based upon the statements of Yashpal Bhadana, R.P. Singh but also based on the statement of Himani Savarkar and Tapan Ghose. As discussed above, Yashpal Bhadana and R.P. Singh have retracted from their statement. Nothing came out on record from their mouth against the accused. The rest of two witnesses namely Himani Savarkar

and Tapan Ghose are not examined being reported dead.

966) In the backdrop of aforesaid facts, it is also necessary to consider the testimony of investigating officer of NIA PW-321 (Anil Dubey). He admitted in cross examination that, R.P. Singh had narrated that there was no discussion in alleged Bhopal meeting to carry-out bomb-blast at Malegaon. It was also transpired in their investigation that number of witnesses were complaint about torture at the hands of ATS including Yashpal Bhadana.

967) Considering the entire testimony of witnesses it makes clear that, whatever the meeting held at Bhopal was public meeting. There were no any such alleged discussion took place on the point of causing Bomb-blast at Malegaon. Prosecution could not prove by cogent and reliable evidence that there was any closed door meeting as alleged and witnesses were present in the said closed door meeting. There is nothing on record which will show the tone of discussion, names of the accused present for closed door meeting, any closed-door meeting, topic discussed, role played by each accused, views expressed by the accused, etc. Without the aforesaid aspects, it could not be said that, the accused were having mind-set to cause Bomb-blast at Malegaon. Mere allegations are not sufficient. Mere recording number of things in the statement of witness without their knowledge or any corroboration is also not sufficient to prove the charges. There must be a reasonable proof. The evidence must be cogent and convincing.

Meeting at Circuit House Indore :-

968) According to prosecution, twice the secret meeting was held at Circuit House Indore (M.P.). First meeting on 11th June and second meeting around 1st Week of July-2008. The details of meeting are mentioned in the following tabular format,

Date	Place	Accused Present	Discussion
11th June 2008	Circuit House Indore	A-10, A-1, AA-1 and AA-2	A-1 introduced AA-1 and AA-2 are her reliable persons
1st week of July 2008	Circuit House Indore	A-10, AA-1 and AA-2	A-1 instructed A-10 to inform A-9 to supply RDX to them. Accordingly, A-10 contacted A-9 on his mobile phone and requested him to provide RDX.

969) In order to prove the aforesaid meetings, the prosecution has examined PW-226 (Raju Devkar) , PW-316 (Dharmendra Bairagi), PW-321 (Anil Dubey).

970) The **PW-226 (Raju Devkar)** was examined on the point that, he was familiar with absconding accused AA-1 (Ramji Kalsangra).

And there were telephonic talks between them and visit in one program at Eknath Ekal Vidyalaya Indore. The witness has not supported to the case of prosecution. He testified that, he never attended any such program nor he visited or had telephonic talk with Ramji Kalsangra. He was cross examined by Ld. SPP but nothing material came on record. On the contrary, his admissions show that, ATS tortured him and wanted to jot down the particular number and name of person in which they were interested. ATS were forcing him to take the name of particular organization. Thus, his statement cannot be said to be voluntary. Not lodging a complaint by a witness immediately doesn't mean that whatever he had deposed before the court should be disbelieved. Not everyone dares to lodge a complaint about police torture. There may be a number of reasons, such as the lasting impact of the torture, abuse, threat or a lack of courage to come forward.

971) The PW-316 (Dharmendra Bairagi) is examined on the point that he was in contact with absconding accused and met them in various programs. But the witness has not supported to the case of prosecution. Ld. SPP cross examined him but nothing material admissions came on record. On the contrary, the admissions given by him shows that, he was forcefully taken by ATS on 14/10/2008 in Bolero Jeep. ATS officers assaulted him, extended the threat of encounter. They were compelling him to take the name of Pragyasing Thakur and Ramji Kalsangra. On his denial, they tortured him. In the backdrop of aforesaid admissions, it

cannot be said that the witness had given any voluntary statement before ATS.

972) Moreover, the investigating officer PW-321 (Anil Dubey) of NIA has supported to the theory of harassment, torture, ill-treatment to witnesses at the hands of ATS. The PW-321 has admitted in his cross examination which clearly shows that, during their investigation of NIA, it was transpired that statement of several witnesses is recorded by ATS by using force. They were illegally detained and tortured by ATS. And hence, it is one of the reasons to record their voluntary statement by NIA.

973) Considering the entire evidence, it shows that, aforesaid witnesses had not stated anything on the alleged meeting held at Circuit house, Indore on particular date, time. Moreover, the prosecution had not produced the copy of register showing the relevant entries or name of attendees present or any one overheard any discussion. They had also not examined any person serving / working in the circuit house, at the relevant time. Therefore, except the bare allegations in the charge-sheet about the aforesaid meeting, there is no evidence at all.

<u>Ujjain Meeting</u> :-

974) As per prosecution, A-9 and A-6 were stayed at Hotel Sayaji, Indore on 1st and 2nd August. Thereafter, they went to Ujjain to attend the meeting of dated 03/08/2008 at Mahakaleshwar Temple Dharmashala, Ujjain. In this secret meeting, the A-9, A-6,

A-7 and absconding accused AA-1(Ramji Kalsangra) and AA-2 (Sandeep Dange) were present. In this meeting, A-9 asked to A-7, who was an expert & trained in committing explosions and assembling improvised explosive devices (IED), to provide the explosives to AA-1 (Ramji Kalsangra) and AA-2 (Sandeep Dange) at Pune. Accordingly, to take in custody the explosives AA-1 and AA-2 went to Pune. They stayed there from 09/08/2008 to 11/08/2008 to procure the RDX / IED. On the aforesaid points, the star witness of prosecution was Hari Apte. During course of trial, he was summoned, but being reported dead, he was not examined as witness.

Stay at Hotel Sayaji :-

975) In order to prove that, A-9 and A-6 stayed at Hotel Sayaji Indore on 1st and 2nd August, the prosecution has relied upon and examined PW-268 (Pradeepkumar Mukherjee), PW-272 (Pravir Hazra), PW-306 (Gaurav Sharma), PW-235 (Ramchandra Bose) and PW-294 (Purushottam Chaudhari). The relevant documents are mentioned in the following tabular format,

Date	Document particulars	Exhibit No.
13/12/2008	Letter to Hotel Sayaji	7472
13/12/2008	Reply Letter from Hotel Sayaji	7473
-------	In-house Register /Booking Register of Hotel Sayaji	Art.319
13/12/2008	Photostat copies of computer generated list / pages (101 to 109)	Art.286

13/12/2008	Signatures of PW-268 on page No.102, 107, 108, 109	7474 colly
13/12/2008	Register Seizure Panchanama	7475-A

976) The investigating officer PW-294 (Purshottam Choudhari) had issued a letter **(Exh.7472)** to Hotel Sayaji and thereby called the information related to booking and stay of A-10 and A-9 in their Hotel. The carbon copy of the said letter is produced on record which was objected by the learned advocates for accused. Being a carbon copy which was prepared from original in the same mechanical process is always treated as primary evidence. Hence, the objection taken by learned advocates stands rejected.

977) The reply letter **(Exh.7473)** to the aforesaid letter was sent by Front Office Assistant Manager PW-268 (Pradeepkumar Mukharjee) along-with screen shot copies of page nos.101 to 109 based upon the information provided by the reservation department of their hotel.

978) The PW-235 (Ramchandra Bose) running a company by name Agape Business Corporation. His two friends were coming from U.S. and hence he booked the two rooms in Hotel Sayaji on 1st August 2008 in the name of Mr and Mrs. David Carlson. In the register pertaining to room nos.433 and 435 the entries are taken mistakenly in the name of Agape Business Corporation. His guest were stayed in other room.

979) The testimony of PW-268 (Pradeepkumar Mukharjee) shows that, his duty includes to receive the guests and shift the guests, to attend phone calls, etc. At that time, Gaurav Sharma was the Reservation manager. Police inquired with them, at that time they had provided the in-house reservation register of red-colour. In this register the call details, booking details are mentioned. Police prepared some documents. Police seized the booking register under the seizure panchanama (Exh.7475-A) which also bears the signature of Gaurav Mishra and Pravin Hazra.

980) The entries taken in the register (Art.319) at page no.50 shows that, the two rooms were booked and the guest name was Ajay Rahagirkar, H.V. Apte, Col. P. S. Rao Balwant. The name of Purohit is struck down / scored in the register.

981) The admissions given by PW-268 (Pradeepkumar Mukharjee) shows that, at the behest of the police, he signed the documents. The document marked as **Exhibit 7472**, which is a carbon copy, contains two additional lines written in black ink. These lines were added without his knowledge, indicating that interpolation or unauthorized additions were made to the document without the author's consent. It creates the doubt about the integrity of document.

982) The testimony of PW-272 (Pravin Hazra) shows that, he was accommodation manager at Hotel Sayaji at the relevant time. His

duty includes to take report from housekeeping, reception, front office, sales and marketing and reservation. ATS inquired with them about the stay of A-9. Nobody was staying in their Hotel by such name. On checking register, police found the name of A-9 was written and scored / cancelled and another person's name was written. They told police that as per the information given by caller they entered the name. He also identified the seizure memo / panchanama.

983) The testimony of PW-306 (Guarav Sharma) shows that, he was working as Reservation manager at Sayaji Hotel Indore. He used to mention the name of person who booked the room. On showing the reservation register, he admitted the entries are mentioned in his handwriting. But he could not identify the caller nor he had seen him in the hotel.

984) Ongoing through the entries taken in register shows that, the room was booked in the name of Ajay Rahgirkar and H.V. Apte, Col. P.S. Rao Balwant. The PW-268 (Pradeep Mukharjee) had admitted that, he was not handling the reservation department. He had not attended the phone booking dated 31/07/2008. He provided the information to ATS, whatever information provided by reservation department. He was hearsay witness about the said information. Neither he is witness of booking nor alleged entries.

985) Whereas, PW-272 (Praveen Hazra) has admitted that, they used

to note down the name as told by caller. They used to take ID proof of guest/ customer on their arrival in the hotel. Police also obtained the photocopies of the registration IDs apart from the documents mentioned in seizure Panchanama. He had not identified handwriting of Gaurav Sharma pertaining to entries taken in the register. He is also hearsay witness about the alleged entries and booking.

986) Whereas, PW-306 (Guarav Sharma) had admitted that, he had no knowledge as to whether the person in whose name the room was booked came for stay or not. He had no knowledge about the allotment of rooms. This information remains with Front Office Manager, who had stated that A-9 had not stayed in the hotel.

987) Though, the names of the three individuals mentioned above, the investigating officer had collected photocopies of their ID cards deposited at the hotel. However, these documents were neither shown to be seized under seizure panchanama nor those are produced before the court. Therefore, even for the sake of moment it is assumed that, prosecution had proved the existence of those entries but those are not sufficient to show or to prove those individual actually stayed at the hotel during that period in the absence of their ID Cards which were collected by Investigating officer and not produced on record. Neither their stay is proved through the oral testimony of hotel staff by identifying them before the court. Even if, for the sake of

argument, one assumes that the accused stayed in hotel, but there is absolutely no convincing, cogent, or reliable evidence demonstrating that they attended the meeting at Ujjain on the following day, i.e. 3rd August. Mere stay in the hotel would not be sufficient to connect to them with the alleged meeting held at Ujjain on 3rd August.

988) In order to prove the Ujjain Meeting, discussion among the accused, presence of accused, the prosecution has relied upon PW-191 (Sunil Varde), PW-193 (Sachin Soni), PW-221 (Mohit Thakur), PW-243 (Bapditya Dhar), PW-255 (Gaurav Mishra), PW-281 (Mahendra Bhatnagar), PW-316 (Dharmendra Bairagi), PW-294 (Puroshottam Chaudhari) and examined them as a prosecution witnesses.

989) In the year 2008, PW-191 (Sunil Varde) was the receptionist at Mahakaleshwar Dharmashala Ujjain. His testimony shows that, he knows A-10, who stayed in their Dharmashala with his pupils / disciples after booking on 10/07/2008 till September 2008. They came there for religious function and to perform pooja-archa.

990) The admissions given by him in cross examination shows that, they used to maintain the entry register at Dharmashala. ATS officer had not seized the said entry register. He also not handed over entry register to ATS while recording his statement. The entry register specifically shows who booked the room, for whom

it was booked or in whose name it was booked & who occupied the respective rooms. Due to non-seizure of said booking register and without confirmation of entries, he could not state with certainty about the stay or accommodation of respective room or name of person. Thus, testimony of witness is not corroborated with documentary evidence which was admittedly available at the Dharmashala.

991) In the year 2008, PW-193 (Sachin Soni) was working in a shop of Imitation Jewellery. He has attended the Sinhastha Kumbh Mela of Ujjain in 2004. There was one camp of A-1 namely "Jay Vande Mataram' was organized by her. He provided seva (service) to Sadhu-Sant in the Kumbha Mela. Thereafter, in the year 2006, he has provided seva (service) in Shabri Kumbha of Gujrat. In the year 2007, he has provided seva in one Koti Chandi Yagnya at Indore. In the year 2008, A-1 offered him Disksha at his house Devas. His testimony indicates that, he was familiar with A-1 who offered him Disksha. Learned SPP cross examined him but nothing material was elicited from his mouth. The suggestions regarding mobile numbers and purchase of sim card for her was given but he had categorically denied those suggestions.

992) He was cross examined on behalf of accused, which shows that, he offered seva (service) to Sandhu-Sant (Saint) like providing food, clothes and related services. A-1 was not having any phone. So, question of purchasing sim card and providing to her doesn't arise. Hence, he had not handed over any documents related to

purchase of any such SIM card to police. He is totally unaware about the contents of statement recorded by police. It was neither read over to him nor written in his language i.e. Hindi.

993) In the year 2008, PW-221 (Mohit Thakur) was serving at Mahakal Temple, Ujjain. He was receptionist at Mahakal Temple. He used to take entries of customer in the register visiting / staying to Dharmashala on telephonic booking also. He did not recollect as to whether any Sadhvi had stayed there or not during the relevant period.

994) The witness has stated that, police inquired with him but nothing was jotted down by police before him in Marathi. Learned SPP cross examined the witness by inviting his attention towards the contents of portion mark 'A' of his statement. He denied all the contents of portion mark 'A'. Thus, nothing was elicited from this witness which would be beneficial to the case of prosecution.

995) The admissions given by the witness in his cross examination itself shows that, the permission is required for the stranger or outsiders to meet the person staying in Dharmashala. Till his tenure and presence, no outsider came there to visit or meet the occupants of the rooms. Even for the sake of moment assumed that, A-1 stayed there during the relevant period but no outsider came there to visit them. Without permission no outsider was allowed to go inside. So the question of meeting among the accused or discussion among them or their presence at

Dharmashala do not inspire the confidence.

996) The PW-243 (Bapditya Dhar) is examined on various points, including the Ujjain meeting but he has not stated anything about those meetings or the contents of his statement. The witness has not supported to the case of prosecution and hence, the Ld. SPP cross examined him. The suggestions was given that, A-9 told him that he is going to Ujjain to meet Shankaracharya and also requested him to accompany. But he has categorically denied those suggestion. Thus, nothing relevant or material is elicited from the mouth of this witness also pertaining to Ujjain Meeting among the accused.

997) The PW-255 (Gaurav Mishra) is examined by prosecution on the point that, at the relevant time Guarav Mishra met Shankaracharya (A-10) at Ujjain, which shows that A-10 was present at Ujjain. It has came in the evidence of PW-255 that, he met A-10 at various places. Due to various visits he became familier with him. A-10 was working for Hindutva and Bhartiya Sanskriti. He delivered various speech at various places. He performed Trayodasha Sanskar and hence, PW-255 was impressed by his work. He met Shanakaracharya, Sham Apte and one BSF Commandant Dubey at Ujjain and took darshan of Ujjain Mahakal in their company and under the guidance of Shankaracharya (A-10). As per case of prosecution the meeting was conducted in Dharmashala of Ujjain and not in temple. The testimony of witness is neither pointing out any particular date,

year of visit nor pertaining to the visit of other accused in his presence or any meeting was going on in his presence. He has simply stated that, he took darshan in his guidance and except this nothing was discussed among them or in his presence. Therefore, testimony of witness is not useful to prosecution on the aforesaid point.

998) The PW-281 (Mahendra Bhatnagar) is examined by prosecution on the point that, he was working as Manager and looking after the Mandir and Dharmashala, he had knowledge that, A-1 stayed there and other accused visited there. The witness has testified that, once police visited Mahakaleshwar Temple Ujjain. He did not recollect that as to whether A-1 stayed in Dharmashala (Inn) during that period. Learned SPP Cross examined him but nothing material points was elicited from his mouth except that one Shankaracharya stayed in the room no.1 at Mahakaleshwar Mandir Dharmashala, Ujjain.

999) The PW-316 (Dharmendra Bairagi) is one of the star witness of prosecution on the aforesaid meeting. As per prosecution, he was present at Ujjain and heard the secret discussion took place between A-1 and AA-1 (Ramji Kalsangra) regarding Bomb-blast, seizure of vehicle by police and chalked out the strategy about answers to be given to ATS in case of inquiry.

1000) The star witness PW-316 (Dharmendra Bairagi) has not supported to the case of prosecution. He was cross examined by

Ld. SPP. He had categorically denied the suggestions given to him regarding his presence, secret meeting of A-1 with AA-1 (Ramji Kalsangra), overheard the discussion, secret discussion regarding Bomb-blast, seizure of vehicle by police and what to be answered to ATS / police in inquiry. Moreover, he has not identified the A-1 in the court.

1001) During cross examination, learned SPP suggested him that, his statement u/s 164 of Cr.P.C. was recorded before Magistrate. He has admitted the said position but voluntarily stated that, he has narrated before Magistrate whatever stated by ATS. His statement was taken down on one plain paper (Parchi). He had also lodged the complaint at Indore on 26/11/2008 pertaining to Parchi given to Magistrate by ATS and recording his statement. In this regard his complaint is still pending. He had also lodged the complaint against ATS police for ill-treatment and forcefully compelling him for recording his statement.

1002) Considering the entire evidence of the witness, it makes clear that, he had lodged the complaints and those are not denied by the prosecution. Recording of his statement was not voluntary and hence, the statement recorded by ATS would not come to an aid to prosecution.

1003) The PW-294 (Purshottam Choudhari) was the investigating officer, who had been to Ujjain for investigation as per the order of Mr. Raghuvanshi (Chief of ATS). As per the directions, he is

supposed to record the statement of witnesses and to visit the Ujjain Mahakal Dharmashala to collect the details about stay of accused and others. In cross examination, he has admitted that, he did not obtained or seized any entry register showing the stay of A-10 at Dharmashala Mahakal Temple, Ujjain during the course of investigation at Ujjain.

1004) It is admitted position that, the entry register was maintained. All the persons staying in Mahakaleshwar Mandir Dharmashala, Ujjain, their entries are taken in the register. Outsiders were not allowed to visit except the permission. The original register is not seized. Not the true copies of the said register was obtained or seized by preparing the seizure panchanama by the investigating officer. The photostat copy of one letter (Art. 310) which are placed on record and those are not admissible as evidence.

1005) The charge-sheet of ATS shows that, after meeting at Ujjain on 03/08/2008, AA-1 (Ramji Kalsangra) and AA-2 (Sandeep Dange) went to Pune and stayed there from 09/08/2008 to 11/08/2008 to procure IED / RDX. The prosecution has not examined any witness on the point of stay of AA-1 and AA-2 at Pune during the particular period or at particular place. Regarding visit of AA-1 and AA-2 at Pune there is also no cogent and reliable evidence as discussed earlier.

1006) Thus, the evidence of prosecution witnesses on the point of

alleged meeting at Ujjain is scanty, inconsistent and not worthy of credence.

Nashik Meetings (Raikar's House & Bhonsala Military School):

1007) As per prosecution, the next meeting was held at Nashik among the accused. The information about the Nashik Meeting, presence of accused and their discussion on the topic is mentioned in following tabular format:

Date	Place	Accused/Attendees	Discussion
15th & 16th Sept. 2008	Raikar's House & Bhosala Military School, Nashik	A-9, A-11, A-4, A-6, DA-12	Discussion on arrangement of proposed training camp of Abhinav Bharat at Pachmarhi, between 15th to 20 October 2008 and to take back the weapons from the custody of A-10 to avoid its misuse.

1008) First meeting was held at the house of Raikar and second meeting was held at Bhosala Military School. On this point the prosecution has examined PW-170 (Harshal Pol), PW-208 (Col.

Raikar), PW-224 (Amol Thorat), PW-231 (Ramkrishna Kute), PW-233 (Jayant Pradhan), PW-303 (Chetan Dhakan), PW-309 (Nitin Joshi), PW-244 (Ashok Bhuyan),

1009) In the year 2008, PW-208 (Colonel Raikar) was serving in Army. He left the service in the month of March 2008 and joined Bhonsla Military School as Commandant. He knows A-9 who was working with him in Military. Capt. Nitin Joshi was Administrative Officer at Bhonsla Military School. He came to know about Abhinav Bharat is registered trust from ATS officers. Some members of Abhinav Bharat Trust came to Bhonsla Military School for meeting. Except this he didn't know anything about meeting and its purpose. The Ld. SPP cross examined the witness with permission but nothing material elicited from his mouth which would be beneficial to the case of prosecution. All the suggestions given to him pertaining to meeting, stay are denied by him. Pertaining to his statement recorded by police, he had stated that an ATS officer threatened him to give a statement as per their instructions, otherwise he would be entangled in the case. Therefore, the statement recorded by the ATS officer in his name does not reflect his actual account / correct position.

1010) It emerges from the entire testimony & admissions given in cross examination by **PW-208 (Col. Raikar)** that, there was meeting of Abhinav Bharat Trust at Nashik. But in the meeting, there was casual discussion. The persons who attended that meeting were never shown to him by police. Nothing discussed about the

proposed training camp at Parchmarhi or any strategic decision taken place. Moreover, according to him, Abhinav Bharat Trust and Abhinav Bharat are two different entities and the meeting which taken place was of Abhinav Bharat Trust and not Abhinav Bharat.

1011) Now, pertaining to the meeting at Raikar's house. If any such meeting was held in his house, he is the best witnesses on this point. But nothing came from his mouth that any such meeting was held at his house or he had knowledge about any such meeting was held at his home. On this point, nothing was elicited from the mouth of this witness. Thus, nothing came on record to show that any such meeting was held at the house of Col. Raikar.

1012) The PW-231 (Ramkrishna Kute) was the principal of Bhosala Military School, Nashik, in the year 2008. It was run by Society. Colonel Raikar was the commandant of the school at that time. He testified that, Principal was concerned only with school time, appointment of staff and teachers and except this, he had no concern. Commandant was handling the work of Society round the clock. When Raikar was on leave, the concerned clerk of the office had handed over two documents to police. The first document was letter **(Exh.6965)** issued under the signature of Captain Nitin Joshi (Chief Training Officer) and second letter (Art.186) is of Abhinav Bharat.

1013) Being principal, he was not holding the authority to allot guest

house to anybody. He has not allotted the guest house to anybody. The letter Exh.6965 was not prepared by him. He didn't know whose signature was appearing on left side of Exh.6965. He didn't know as to whether the guest house was allotted on the basis of the said letter or not. He also admitted that it is incorrectly mentioned in his statement by ATS that he has handed over the said letter.

1014) Thus, Principal is neither author of document nor handed over the document to ATS. He is also not aware as to whether the guest house was allotted on the basis of that letter or not. Thus, his testimony is restricted only up to the signature of Capt. Nitin Joshi appearing on the said letter, except this he didn't know anything. The concerned clerk who handed over the document is not examined by prosecution. Another letter is of Abhinav Bharat but its contents are not proved even-though the witnesses on the point of Abhinav Bharat are examined. For the sake of moment, if the letters are considered, then those are only pointing that, the allotment of guest house should be done. It is difficult to say without any other supporting documents and evidence on that point as to whether accused alleged participated in meeting stayed there or it was allotted to them or meeting was held or discussion as alleged took place.

1015) It has came in the evidence of PW-233 (Jayant Pradhan) that, he had a business of Tourist Taxi. A-9 is his relative, who used to book the taxi for himself and his family members. The trip entries

are taken in the register maintained in his office. The entries pertaining to booking of taxi by A-9 are taken by his office staff member Subhash Yadav.

1016) The admissions given by him in his cross examination shows that, his statement was not recorded by ATS. He was compelled by ATS to attend the ATS office. Due to the persistent pressure of ATS he was hospitalized and behind his back the said register (Art.115) was seized by police.

1017) The objection was kept open to mark exhibit to register (Art.115). The witness had identified the register and it is not denied that , the said register is not maintained by their office staff member. Therefore, I do not find any substance in the objection raised by Ld. Advocate for accused.

1018) Now, considering the entire testimony of PW-233 (Jayant Pradhan), it can be said that, the A-9 used to avail the taxi service to go from one place to another. He could not certify the correctness of entries which are taken in the register vide exhibit Nos.6714 dated 01/01/2008, 6715 dated 13/03/2008, 6710 dated 13/05/2008 and 14/05/2008, 6711 dated 10/09/2008, 6712 dated 15/09/2008 and 16/09/2008, 6713 dated 22/09/2008. Those entries were taken by Subhash Yadav, who is no more.

1019) The PW-224 (Amol Thorat) was a Driver. On 08/10/2008, on

the say of his employer Nana Ghuge he dropped four persons in Indigo Car from Nal Stop Pune to Military rest house Nashik. On the next day he again brought them in the said car from Nashik to Pune. Except this, nothing material came in his evidence. The name of those four persons had not stated by him. He had not identified any accused. His employer Nana Ghuge is not examined by prosecution. Thus, actually who booked the badali-driver is not came on record. Thus, his evidence is not helpful to the prosecution in any way.

1020) The testimony of PW-244 (Ashok Bhuyan) shows that, they received the letter from court of inquiry pertaining to stay of A-9 in the room of School of Artillery or in the guest house. A-9 stayed in their guest room of Sarvatra Officer's Mess from 10/09/2008 to 11/09/2008. The admissions given by him in his cross examination shows that the said guest room was in the located in Army Head Quarter which is secured place and civilians are not allowed to enter in that area. There is security check prior to entry of any vehicle or other person and such details are noted down in their entry register. The said entry register is neither seized nor filed on record to show there was visit of outsider or co-accused.

1021) The testimony of PW-245 (Dattatray Pawar) shows that in the year 2007 he was posted as Lance Naik at Devlali Camp, Nashik. Once A-9 and his family came by car and stayed in guest house. He provided tea to them and meal to driver. He admitted in his

cross examination that though police inquired with him but nothing was jotted down in his presence. His statement was not recorded. Thus, he didn't know the date of visit or visit of other co-accused with A-9. Therefore, nothing survives in his testimony.

1022) The PW-303 (Chetan Dhakan) is one of the source person of army. He was also holding the ID-card of Army. Police inquired with him only about his ID card. He testified that, he has no concern with Abhinav Bharat. Thus, he has not supported to the case of prosecution. Ld. SPP cross examined him. He stated that only once he met Prasad Purohit at Bhonsala Military School regarding the admission of his son. Purohit might have telephonically informed him about the meeting of Abhinav Bharat at Nashik. He is the hearsay person. He had not attended that meeting. He doesn't know anything about the meeting and discussion took place in that meeting. Therefore, the evidence of this witness is also not helpful to the prosecution pertaining to meeting at Bhonsala Military School.

1023) In the year 2008, PW-309 (Capt. Nitin Joshi) was serving as Chief Administrative and Training Officer at Bhonsala Military School Nashik. He testified that, under the pretext of inquiry, he had been taken to ATS Office, Mumbai. ATS Officer Bagade, Shrirao and Mohan Kulkarni threatened him. They forced him to narrate the contents of his statement as per their say else face the consequences. Due to continuous pressure, hammering and threats, he had given a statement as per their dictation. He was

cross examined by Ld. SPP with permission. Nothing material was elicited from the mouth of this witness which would be beneficial to the case of prosecution.

1024) On the contrary, the admissions given by the witness in his cross examination shows that, he had lodged the complaint before Human Rights Commission against ATS Officer Bagade. He had also narrated those facts in the court of inquiry conducted by Army. Considering evidence, it clearly shows that, voluntarily he had not given any statement. But only succumbed to pressure and ill-treatment, he had given this statement to oblige the ATS Officers. There's nothing came on record from the mouth of this witness pertaining to any meeting at Bhonsala Military School, Presence of any accused or any discussion took place as alleged.

1025) The **PW-170 (Harshal Pol)** is examined by prosecution on the point of seizure of one vehicle-rent-register showing the entries of providing vehicle to customer on rent. Jayant Pradhan had produced that register in the office of ATS. The ATS officer encircled the entries appearing on page nos.60, 76, 77 by red ink. The panchanama was prepared by police vide **exhibit-6707**.

1026) In the cross examination, he has admitted that, police had not handed over any receipt to the Pradhan after handing over the said register. They had also not obtained the signature of Pradhan on panchanama. Considering the aforesaid entries taken in register are nothing but the A-9 had availed the taxi service to

travel from one location to another. It merely shows that he is taxi user and there is nothing suspicious activity tied to that record which would suggest any irregular or unlawful activity.

1027) Considering the entire evidence as discussed supra, I hold that prosecution failed to prove the alleged discussion took place in the meeting or presence of accused as alleged in the charge-sheet.

Meeting at Farm House, Nashik :-

1028) According to prosecution, on 21st September 2007, the meeting among the A-9, A-10, A-11 took place at the farm house of Ajay Thapar, Deolali, Nashik. One CD containing inhuman activities i.e. Muslim people abusing Hindu People was shown. On 'Hindutva', Prasad Purohit delivered the speech. On this point, the prosecution has examined PW-210 (Ajay Thapar), PW-206 (Amod Damle), PW-218 (Somnath Gunjal), PW-219 (Ramesh Surve), PW-255 (Gaurav Mishra), PW-308 (Yashpal Bhadana), PW-317 (Subhash Dudhgaonkar), PW-320 (ACP Mohan Kulkarni), PW-319 (Shekhar Bagade).

1029) The PW-317 (Subhash Dudhgaonkar) has recorded the statement of Somnath Gunjal, Ramesh Surve and Gaurav Mishra. PW-319 (Shekhar Bagade) has recorded the statement of Rajan Gaydhani, who is not examined as a witness being reported dead. PW-319 also recorded the statement of Ajay Thapar. PW-320 (ACP Mohan Kulkarni) has recorded the statement of Amod Damle.

1030) The testimony of PW-218 (Somnath Gunjal) shows that, he was acquainted with A-9 as he met him in one Vyakhyan through Ninad Bedekar. Except this occasion, he never met to A-9. He had not supported to the case of prosecution. The Ld. SPP cross examined him with permission. All the suggestions given to him are categorically denied by him. Nothing material was elicited from this witness which would show that, he along-with Ramesh Surve went to meet A-10 at the farm house, A-9 was present there who delivered the speech on Hindutva, A-10 had shown one CD containing inhuman activities. Thus, nothing survives in his testimony.

1031) The PW-219 (Ramesh Surve) testified that ATS made inquiry with him about his business and A-9. Nothing was jotted down in his presence. He is not knowing A-9 and A-10. He never went to Nashik Farm house for taking Darshan of A-10 with Somanath Gunjal. Ld. SPP cross examined him with permission. No admissions came on record during cross examination of this witness. On the other hand, he specifically stated in cross examination that, any CD containing inhuman activities was never shown to him or played before him. He never attended any program of A-10. Thus, in the absence of any positive evidence, his testimony not helpful to prosecution mere on the basis of recording of statement.

1032) The PW-210 (Ajay Thapar) has testified that, the farm house at

Devlali Camp Nashik belongs to his sister. He met twice to Shankaracharya at Nashik to take his Darshan. At that time, he was surrounded by number of devotees. He had provided his farm house to A-10 for Pooja-Archa and stay. A-10 stayed there for the period of two months and doing home-havan and number of people used to come to take Darshan. He was also using the Laptop during that period.

1033) The admissions given in cross examination by the witness shows that, only the Pooja Archa / Home Havan was going on there. He did not find any antisocial or anti-religious activity during that period. He never met A-11. Considering his testimony and admissions given in cross examination shows that, the farm house was given to A-10 and he stayed there for the period of two months. But, he has not seen any other accused there nor heard any discussion or never came across any anti-religious or anti-social activities. He never heard that any CD was shown containing inhuman activities.

1034) The PW-206 (Amod Damle) testified that, ATS Officer inquired with him about late Ninad Bedekar and A-9. Apart from this, police had not made any inquiry nor jotted down his statement in his presence. If anything written by the police in his name, it was never read over to him. Due to non supporting of the aforesaid witness, the Ld. SPP cross examined him with permission, but he has denied the contents of the statement recorded by the police. Except this, nothing was elicited from his mouth which would be

beneficial to the case of prosecution. Considering the testimony of aforesaid witness, it shows that, he is neither aware about the contents of his statement nor knowing any accused. Hence, the testimony of this witness is not helpful to the prosecution to prove its case.

1035) The PW-255 (Gaurav Mishra) has testified that, he knows A-10, as he met to A-10 on number of occasion. He had taken the darshan of A-10 during Chaturmas at Nashik. Except this, he has not stated anything about the alleged CD or presence of other accused at the Farm house or delivery of speech by A-9 at the Farm house.

1036) The PW-308 (Yashpal Bhadana) has not supported to the case of prosecution. Ld. SPP cross examined him with permission. He categorically stated that, A-10 never called him at Nashik and he never met A-10, A-9 and A-11 at Nashik. He denied the contents of his statement. He stated that his statement was never read over to him. His statement **(Exh.8418)** was recorded u/s 164 of Cr.P.C. before the Magistrate of Patiyala House Court, New Delhi. On going through the his 164 statement it depicts that, he has narrated before the Magistrate that, ATS forced him to give the statement that A-10 was instigating the Hindus against Muslim and showing the videos of atrocities on Hindus. Considering his entire testimony, it shows that, his statement recorded by ATS was not voluntary and forced to narrate the number of things which he had no knowledge. Therefore, the testimony of present

witness is not helpful to the prosecution in any way.

1037) Taking into consideration the testimony of aforesaid witnesses, it can be said that there is no iota of evidence which would reflect that any such alleged meeting took place with alleged discussion.

Panchmarhi Meeting (Woodland Adventure Camp):-

1038) As per prosecution, the accused are the members of Abhinav Bharat organization. The meetings are held at various places. Out of those places, one of the meetings was conducted at Woodland Adventure Camp, Pachmarhi (M.P.). The relevant details of said meeting as mentioned in the following tabular format,

Date	Place	Presence of Accused	Discussion
15th to 20th October 2008	Woodland Adventure Camp, Pachmarhi (M.P.)	A-9, A-4, A-5, DA-12	Under the banner of Abhinav Bharat, the training camp was conducted regarding the present situation of Hinduism and Muslim Militancy, Maoist, Marshal Arts, etc. (More than 45 trainees attended the camp)

1039) On the point of aforesaid meeting, the prosecution has examined

PW-188 (Sanjeet Pandharkar), PW-211 (Jagdish Jatav), PW-212 (Arvind Pateria), PW-213 (Moh. Mustakim Sk. Mohd. Kasam Shaikh), PW-214 (Shashank Sahu), PW-232 (Chanakya Bakshi), PW-160 (C.B.Sawant), PW-309 (Nitin Joshi) & PW-146 (Irfan Mirr).

1040) The statement of aforesaid witnesses came to be recorded by the investigating officers PW-287 (Vijendra Singh), PW-290 (Dhananjay Dhumal), PW-291 (Peter Lobo), PW-299 (Ravi Gambhir), PW-295 (Liladhar Kanade), PW-300 (Atul Sabnis).

1041) The PW-212 (Arvind Pateria) is examined by prosecution, in order to prove that, A-9 arranged & participated in the camp and meeting at Pachmarhi. For attending the camp, A-9 had travelled from Pipriya Railway Station to Pachmarhi in his taxi.

1042) The testimony of PW-212 (Arvind Pateria) shows that, being taxi driver, he was inquired by NIA officer about pick-up and drop facility. He had not provided any such pick-up and drop facility or taxi facility to Purohit (A-9). He never collected any such passenger in his taxi. He didn't know about woodland adventure camp, Pachmarhi. Ld. SPP cross examined the witness with permission, but nothing material elicited from his mouth which would be beneficial to the case of prosecution. Therefore, nothing survives in the testimony of this witness.

1043) The PW-188 (Sanjit Pendharkar) is examined by prosecution in

order to show that he was close to A-9. On the say of A-9, he had collected the alleged bag from A-6 and handed over to A-11. On the say of A-9, he had carried 3 rifles at Panchmarhi camp.

1044) Whereas, the testimony of PW-188 (Sanjit Pendharkar) shows that, at the relevant time, he was preparing for examination of CDSC and Military. A-9 being military officer guided him to refer the book Chandresh Agarwal. Except the examination purpose, he never met A-9. He is totally unaware about any Camp or any bag having rifles. He had no knowledge about any alleged discussion took place in that Camp. He is not acquainted with A-5, A-6, A-11, DA-7 & DA-12. Ld. SPP though cross examined him but nothing material elicited which would be beneficial to the case of prosecution. Considering his entire testimony, which itself shows that, he was not knowing anything about aforesaid activities nor performed any work as mentioned in his statement by police.

1045) In the year 2008, the PW-211 (Jagdish Jatav) was running the restaurant dinning in hotel Misty Meadows at Pachmarhi. ATS and NIA has inquired with him. His testimony indicates that, he had no knowledge about the organizer of the camp held at Pachmarhi, nor did he provide any meals for that camp. He was cross examined by Ld. SPP with permission, but denied that A-9 had organized the camp between 16/10/2008 and 21/10/2008. He also denied that A-9 had requested air rifles for the camp. Photographs of suspected individuals who allegedly assisted A-9

during the camp were shown to him, but he denied their involvement and did not identify any of them. On the contrary it came on record that, his signature had been obtained on blank papers. At that time, no photographs of suspected persons were attached or visible on those papers. He categorically denied the contents of his statement. Thus, no substantial evidence was extracted from this witness during his cross-examination by the prosecution.

1046) The PW-295 (API Liladhar Kanade) went to Pachmarhi on 08/02/2011 and he seized the entry register of Hotel Payal Cottage showing the entries from July 2008 to October 2008, in the presence of Panchas and owner of the hotel. The entries bearing nos.172, 252 and 220 were encircled. The entry number 172 and 252 shows that A-5 stayed there. And entry no.220 shows that, DA-12 stayed there. The register came to be seized under seizure panchanama **(Exh.8032)**. In cross examination, he has admitted that he had not interrogated any accused and entries appearing in register were never taken before him.

1047) The panch witness PW-213 (Mohd. Mustakim Sk. Mohd. Kasam Shaikh) had testified that, his signature around encircled portion was obtained but nothing was jotted down in his presence. Ld. SPP cross examined him with permission, but nothing material was elicited which would be beneficial to the case of prosecution. The suggestions were given by Ld. SPP to him to which he has categorically denied. He denied that police

called them for panchanama and appraised them about the facts of the case. He denied that, the owner of Hotel Shahank Shahu was present at that time and police told him to produce the register having entries from July-2008 to October 2008 and he has produced the said register. He further denied that, API Kanade inspected the said register found entries nos.172, 220, 252 pertaining to A-5 and Pradeep Naik (Praveen Takkalki). He denied preparation of any seizure panchanama in his presence except his signatures. Thus, independent panch witness had not identified the seizure panchanama nor aware about the contents of said panchanama. Moreover, he denied the presence of API Kanade at the relevant time.

1048) The testimony of panch witness PW-213 (Mohd. Mustakim Sk. Mohd. Kasam Shaikh) shows that, he didn't know what is marked or encircled by police. The admissions given by him in cross examination shows that, already the seizure panchanama was prepared by police and on ready-made panchanama the police had obtained his signature. Panchanama was in Marathi and not read over to them. The three entries are encircled by red ink but it was not done before him. On the say of police, he merely signed over the documents as directed. Thus, encircling entries, seizure, preparation of panchanama was not done before the said independent witness. His testimony is not corroborating to the material aspects.

1049) The PW-214 (Shashank Sahu) is the owner of Hotel Payal

Cottage Pachamarhi. In the year 2011, police came for inquiry. The register which police had taken was March to March entries. He was cross examined by Ld. SPP with permission, which shows that, what was jotted down by police at that time he was unaware about those contents mentioned in it. Police (API Kanade) had not inspected the register in his presence or presence of panch witnesses. In his presence API Kanade did not find the alleged entries nos.172, 220, 252. He admitted his signatures but also stated that he signed only on the say of police without verifying the contents.

1050) Now, pertaining to the alleged entries. Admittedly, they had not taken any photo ID of customers to verify he is the same person or not. He also admitted in cross examination which shows that, if customer takes the entry in wrong name, even after that it was not possible for them to verify or find out his original name. They were treating customer by mentioning entries. There are number of persons having similar name. Being tourist place number of similar name person used to stay. Thus, aforesaid admissions give rise to inference that, there was no system of verification of names of tourist or guest stayed in their hotel. The possibility of using the names of other person cannot be ruled out in the absence of Photo ID. Being a tourist place many visitors use to share similar or identical names. In the backdrop of aforesaid admissions, certainly it cannot be said that A-5 or DA-12 stayed there.

1051) Moreover, those witnesses had not identified the accused during the course of their evidence. The alleged entries were not sent for handwriting opinion. There is no handwriting expert opinion on this point. In the absence of it, it can be difficult to say that, the particular accused had marked those entries in the register. In addition to it, both the independent witnesses have categorically denied inspection of alleged register, seizure of register & preparation of panchanama. In the absence of any independent corroboration, the alleged seizure does not inspire the confidence.

1052) Prosecution has examined PW-232 (Chanakya Bakshi), who was the owner of Hotel Misty Meadows at Pachamarhi. This witness on the point of supply food, meal in the Woodland Adventure Camp and for that purpose amount of Rs.25,000/- on 10/10/2008, Rs.44,150/- on 23/10/2008 and Rs.35,000/- on 24/10/2008 had been transferred to his account.

1053) It is necessary to mention that, the alleged camp was held between 15th October to 20th October 2008. It was not held on 10th October, 23rd October or 24th October 2008. As per prosecution, Jagdish Jatav was the catering incharge and provided the food in the alleged camp, whereas he had categorically denied the claim of prosecution.

1054) The PW-232 (Chanakya Bakshi) testified that, he did not supply any food in the Camp. He didn't know as to whether the

aforesaid amount was transferred in his account. The witness has not supported to the case of prosecution and hence, Ld. SPP cross examined him with permission, but he denied the contents of his statement recorded by police. Nothing material was elicited from his mouth. He had not identified A-9, A-6, A-5 or any other suspected persons whose photographs were shown to him.

1055) The cross examination of PW-232 (Chanakya Bakshi) shows that, booking and receipt of amount is done by Manager who looks after the day-to-day affairs of hotel. The number of functions is organized in the Hotel and hence, they cannot tell each and every detail of function and amount received for the said function. He didn't know who has deposited amount, he never met A-9 or A-6. The contents of his statement neither stated by him nor read over to him.

1056) The prosecution has examined PW-160 (Chnadrashekhar Sawant) branch manager SBI, Erandavana branch, Pune. In their branch there was an account of Abhinav Bharat and for opening the account they had taken KYC details & documents. One cheque of Rs.44,150/- (Exh.6638) was issued by Abhinav Bharat in the name of Misty Meadows Resort. Another cheque (Exh.6639) of Rs.35,000/- was issued by Abhinav Bharat in the name of Chanakya Bakshi.

1057) The cross examination of the witness shows that, till the date of

his statement (03/01/2009), he had not provided account opening form, other documents to ATS as those were lying with AGM Liability Central Processing Cell, Mumbai and it was informed to ATS. Whereas the AGM Liability Central Processing Cell, Mumbai issued dated 22/12/2008 endorsing that the documents regarding the said account had not been delivered to them by the concerned branch. It clearly indicates that the concerned documents were not provided till 03/01/2009.

1058) Bank account statement can be proved in two ways. As per the Bankers Books of Evidence Act, the statement of account must bear the certificate either showing it as certified copy or true copy of original. If the said certificate is attached to the statement, then per-se it is admissible in evidence on the basis of the said certificate appended thereto. The other way is when statement is computer extract showing any bank account statement requires a certificate u/s 65B of Indian Evidence Act to be admissible as evidence in the court. This certificate is mandatory requirement for electronic records, including bank statement or extract. The certificate ensures the authenticity and reliability of electronic record. As per Indian Evidence Act a certificate u/s 65(B)(4) is mandatory when secondary copies of electronic records are produced in the court. This includes the printed bank statements that are not original electronic records. The original electronic record is saved in the computer and if the original electronic record is produced then a certificate is not required. Admittedly, in the present case neither there is any

certificate as per Banker Books of Evidence nor according to section 65-B of Evidence Act and hence, the copy of account extract filed on record is not admissible.

1059) The PW-309 (Capt. Nitin Joshi) had not supported to the case of prosecution. Ld. SPP cross examined him with permission, but nothing material was elicited from him. He testified that no any such training camp was arranged between 16th October to 20th October at Panchmarhi. He never went to the house of A-9 at Panchmarhi. A-11 had not participated in the Camp and guided to the student of Camp about the ideology of Abhinav Bharat.

1060) The prosecution has examined the Panch witness PW-146 (Moh. Mir) on the point of arrest and seizure of articles from the custody of A-5. As per prosecution during search and seizure some leaflets of Abhinav Bharat was found, which came to be seized under panchanama. I had already discussed that, A-5 was arrested and taken in custody from Bhopal Railway station with the help of local police. It was a public place. No personal search was carried out on the spot. No notice was issued to him to attend the police station. While bringing him from Bhopal, nowhere it came on record that he was holding / possessing one carry-bag with him in which those alleged articles were kept. Moreover, his detention was found not legal as per the inquiry report filed by Ld. Magistrate. Therefore, nothing survives in the alleged leaflets found in the custody of A-5.

1061) The PW-265 (Prasad Deosthali) had not supported to the case of prosecution. He was examined on the point that he had seen A-9 with his family at Pachmarhi during that relevant period and visited to the house of A-9 at Pachmarhi. But the witness had categorically denied those facts. He was cross examined by Ld. SPP with permission, but nothing material came on record. On the contrary, the admissions given by him shows that, his senior officer Shrivastava were pressurizing him and tried to involve him in this case. Due to their false narration and accusations, he faced the court of inquiry.

1062) Thus, considering the entire testimony of aforesaid witnesses, there is nothing on record to show that during said period at Pachmarhi Camp the accused were present or participated or discussed anything about ideology of Abhinav Bharat. Nobody had overheard any conversation took place among the accused. Even for the sake of moment it is assumed that, there was supply of food in the Camp but without aforesaid linking evidence or without showing the nexus of accused, would not connect to them with alleged camp meeting nor it would be helpful to prosecution.

<u>Jabalpur Meeting</u>:-

1063) As per the prosecution, the meeting was held at Jabalpur (MP). On this point the prosecution has examined PW-208 (Shailesh Raikar), PW-212 (Arvind Pateria), PW-243 (Bapaditya Dhar), PW-265 (Prasad Devasthali), PW-311 (Ashok Chawla).

1064) The **PW-208 (Shailesh Raikar)** was Army Officer. He had not supported to the case of prosecution. He had denied that he knows any activists of Abhinav Bharat Trust. He denied that, Mayaram Jaswani from Jabalpur occasionally used to meet him as his son was taking education in Bhonsala Military School. Except this nothing came in the evidence of aforesaid witness on the point of Jabalpur meeting, if any, held or attended by any accused.

1065) The **PW-212 (Arvind Pateria)** was Taxi driver at the relevant time. He was providing Taxi facility to the passengers from Pipariya Railway Station to Panchmarahi and vice-versa. He did not know any passenger was Colonel or Prasad Purohit traveled from Pipariya Railway Station to Panchmarahi in his Taxi. The witness has specifically denied that he has provide Taxi facility to Col. Purohit from Panchmarahi to Jabalpur Airport by taking fare of Rs.3500/-. The witness has not stated anything on the point of Jabalpur meeting, discussion in the meeting, attendees in the said meeting. Therefore, nothing survives in the testimony of the said witness.

1066) The **PW-243 (Bapaditya Dhar)** was posted at AEC College at Panchmarahi in the year 2008. At that time Prasad Purohit was his student and temporarily residing in one block. The witness has specifically denied that in the first week of October, A-9 requested him to accompany him to Jabalpur. Thus, he is also

not supported to the case of prosecution on the point of Jabalpur Meeting.

1067) The **PW-265 (Prasad Devasthali)** had denied that, on 03.10.2008, A-9 had asked him to accompany him to Jabalpur on 04.10.2008 and 05.10.2008 to which he had refused and hence, A-9 on 04.10.2008 went to Jabalpur and he returned to late night on 05.10.2008 at Panchmarahi.

1068) The **PW-274 (Arvind Bapu Sawant)** has testified that, he has no knowledge as to whether A-1 was residing in her Ashram at Jabalpur at the relevant time or not. A-1 has not telephonically informed him that she is at Jabalpur, when he had been to Indore for inquiry. He did not know as to whether for inquiry Pragyasingh Thakur traveled from Jabalpur to Surat by train.

1069) The testimony of **PW-311 (Ashok Chawala)** shows that, he was resident of Jabalpur and he had profession to make GST Accounts. Two unknown persons sent donation in his account. He withdrew that amount and handed over to Mayaram Jaiswani, who used to help the handicapped people through Sindhu Shakti Parishad. Thus, nothing came in his evidence which would show that accused had sent the amount and after withdrawal of amount it was handed over to accused for the purpose of incurring the expenses of meeting or Mayaram Jaiswani had handed over that amount to accused. Moreover, Mayaram Jaiswani is not examined by prosecution to

corroborate the story of prosecution.

1070) The testimony of chief investigating officer **PW-320 (Mohan Kulkarni)** shows that, he had knowledge that A-1 was having Aashram at Jabalpur. The police officer Arvind Sawant during the course of investigation called her at Surat and brought her at Mumbai.

1071) Taking into consideration the entire testimony of aforesaid witnesses, there is nothing on record to show positively the meeting was held at Jabalpur and any accused were present in that meeting. The stray link of going or coming or having Aashram would not be enough in the absence of any evidence on the point of meeting.

Pune Meeting :-

1072) As per the case of prosecution, the accused had held two meetings at Pune. The first meeting was held at S.P. College Pune and the second meeting was held at BMCC College, Pune. On this point, the prosecution has examined PW-206 (Amod Damale), PW-220 (Milind Joshirao), PW-259 (Shirish Date), PW-303 (Chetan Dhakan), PW-320 (ACP Mohan Kulkarni), PW-300 (Atul Sabnis).

1073) The statement of PW-206 (Amod Damale) was recorded by PW-320 (ACP Mohan Kulkarni). The statement of PW-259 (Shirish Date) and PW-220 (Milind Joshirao) was recorded by PW-300

(Atul Sabnis). The statement of PW-303 was recorded by PSI Sunil Mane, who was not examined before this Court.

1074) It has come in the evidence of **PW-220 (Milind Joshirao)** that, he was resident of Pune having business of lifts. He was forcibly taken by ATS from 28/10/2008 to 07/11/2008 under the pretext of inquiry and they inquired with him about Abhinav Bharat Trust. He was acquainted with Ninad Bedekar and Arun Datar and there was one formal meet in the house of Ninad Bedekar to provide the training to youngsters for defense service. Therefore, in that meet, the proposal and suggestions were given to form a trust. Abhinav Bharat Trust was formed in the year 2007. The witness has not stated anything about the meetings and hence, he was cross examined by Ld. SPP. Nothing material elicited from his mouth which would show that, he had attended any such meeting organized in the S.P. college or BMCC College or participated in that meeting or overheard any conversation took place in that meeting or he met any accused in those meetings.

1075) Although, his statement was recorded by police officer but the admissions given by him in cross examination itself shows that, he was tortured, kept in custody. Due to fear of further future torture, he had not lodged any complaint against the police officer. It would be possible that, the impact of threat may be lasted in the mind of the person which do not give him courage to lodge the complaint. It depends upon person to person, his

ideology, mentality, thinking power, perception, etc. Thus, nothing came on record which would show that, he had knowledge about the any such alleged meetings or attended those meetings where A-9 introduced himself as a Randive.

1076) The **PW-206 (Amod Damle), PW-259 (Shirish Date)** are also examined by prosecution on the point of Pune meeting as they were also connected with Abhinav Bharat Trust and familiar with A-9 and also late Ninad Bedekar. They had not supported to the case of prosecution. They were cross examined by Ld. SPP, but nothing material was elicited from them which would be supporting to the case of prosecution. They had not stated anything about aforesaid meetings. Therefore, nothing survives in the testimony of those witnesses pertaining to aforesaid alleged meetings and participation of accused in the aforesaid meetings.

1077) The testimony of PW-303 (Chetan Dhakan) shows that, A-9 was his friend. He was the source person of Army and hence holding the I-card issued by Army. During inquiry he narrated those facts to the ATS/police, but they had seized his I-card without preparing any panchanama. This witness has also not supported to the case of prosecution and hence Ld. SPP cross examined him. He has admitted that, A-9 might have called him and informed telephonically in the year 2007 about the assembly of members of Abhinav Bharat at Pune. Except this, he has not admitted anything. His admission did not show that he had

attended any aforesaid alleged meetings or overheard any conversation among the accused or met A-9 and other members in the alleged meetings. Whatever, the information he got from A-9 on that point he is a hearsay witness and not sure about the said information. Thus, nothing survives in his evidence about the aforesaid alleged meetings.

1078) Though, his statement was recorded by the police officer but the admissions given by him in cross examination shows that, he was kept in custody for the period of 7 days at Juhu ATS Chowki and later on sent him at unknown place. Due to consistent mental torture and to save himself from any future action against himself, he had given the statement to ATS as dictated by them. In the backdrop of aforesaid admissions, it cannot be said that his statement was voluntary and he had knowledge about the facts mentioned in the statement.

Abhinav Bharat Trust / Abhinav Bharat Organization:

1079) It emerges from the evidence on record that the term Abhinav Bharat/Abhinav Bharat Organization/Abhinav Bharat Sanstha/ Abhinav Bharat Trust has been consistently used by prosecuting agencies and witnesses, from the stage of remand through the final hearing, as a common reference/ in common parlance.

Raigad Fort Meeting :-

1080) As per prosecution, in June 2006, a meeting held at Raigad Fort

attended by A-9, A-6, A-7, witnesses Amod Damle, Milind Date, Milind Joshirao, Milind Natu, Ninad Bedekar. The idea of formation of Abhinav Bharat is originated in the mind of A-9. The concept & proposal regarding formation of Abhinav Bharat was presented and discussed among the attendees. All of them unanimously agreed with the said proposal. Accordingly, they took oath at Raigadh Fort to form Abhinav Bharat and work towards achieving its objects.

1081) Thereafter, the Abhinav Bharat Trust was formed in the year 2007. A-9 was the founder member of Abhinav Bharat. He floated the organization called Abhinav Bharat. A-6 was the treasurer of Abhinav Bharat. A-4, A-10, A-11 and other were members of Abhinav Bharat. The object of accused persons was to turn India into 'Hindu Rashtra' Called "Aryavart". They wanted to form government in exile. They were dis-satisfied with the constitution of India. They wanted to prepare their own constitution. They have planned to train the persons in 'guerrilla war'. They had decided to eliminate the persons opposing their object of formation of 'Hindu Rashtra.' To achieve the aforesaid object, A-9 have collected the funds to the tune of Rs.21,00,000 (Twenty-one Lakhs) for himself and for organization. The amount collected was handed over to A-6, who was treasurer at the relevant time. He used to disburse the amount to other co-accused for procuring hand-grenades, arms, ammunition to commit unlawful activities. The most of the so collected funds of trust had been utilized by A-6, A-9 and A-5 to meet their

expenses and to carry-out the illegal activities relating to the crime.

1082) It is necessary to mention that, the accused Rakesh Dhawade was already discharged by my Ld. Predecessor from all the charges levied against him except the Arms Act charges as discussed earlier.

1083) The prosecution had not examined the witnesses namely Milind Natu and Ninad Bedekar. In order to prove the Raigad Meeting, the prosecution had placed their reliance and examined PW-206 (Amod Damle), PW-220 (Milind Joshirao), PW-259 (Shirish Date), PW-320 (ACP Mohan Kulkarni).

1084) The testimony of PW-206 (Amod Damle) shows that, police inquired with him. He was working with late Bedekar. He had not supported to the case of prosecution and hence, Ld. SPP cross examined him at length. Nothing material was elicited by the Ld. SPP in support of the prosecution's case. On the contrary, the suggestions put forth by the Ld. SPP were categorically denied by the witness. The witness had denied that A-9 expressed his thoughts in the meeting and decided to form a trust. He also denied that he attended the meeting with other members and they had prayed for the success of Abhinav Bharat Trust. Thus, non-supporting to the case of prosecution and not extracting substantive material from such witness in order to support the case would certainly weaken the case of

prosecution.

1085) Though, the prosecution emphasized that the PW-206 (Amod Damle) statement was recorded under Section 161 of the Cr.P.C by the investigating officer. But mere recording of statement is not sufficient. It must be supported by the witness. His testimony clearly indicates that nothing was written down in his presence, nor was the statement read out to him. This naturally raises doubts about the manner in which the statement was recorded. Since the witness himself denies that any statement was recorded or read over to him, the contents of the alleged statement cannot be said to be within his knowledge.

1086) The testimony of PW-220 (Milind Joshirao) shows that, police also inquired with him about his business and Abhinav Bharat. He was taken by ATS from 28/10/2008 to 07/11/2008 and kept at ATS office in their custody more than seven days. Except this nothing came on record about Raigad Meeting. Therefore, Ld. SPP cross examined him with permission. But nothing material was elicited from his mouth which would be supporting to the case of prosecution. He specifically denied that, he attended any such meeting or the alleged meeting took place at Raigadh Fort or they had taken the oath to create the separate 'Hindutva Vadi Rashtra'. On the other hand, he stated that ATS treated him like accused and kept for seven days at ATS office. ATS officers were compelling him to take the name of five RSS persons. They were telling him to take the names of Yogi Adityanath, Asimanand,

Indreshkumar, Pro. Devdhar, Sadhavi, and Kakaji in his statement. They also assured him that if he takes their name then they would let him free. But he denied to do so and hence DCP Shrirao and ACP Param Bir Singh had shown the fear of torture to him, extended threats to him. The contents of portion marked of his statement is never stated by him. It was written down / recorded solely by ATS officer. Considering his testimony, it clearly indicates that the statement was involuntary. Even though the contents of such a statement are proved by the investigating officer, it may still be insufficient, as it raises doubts regarding its admissibility and authenticity of such involuntary statement.

1087) The testimony of PW-259 (Shirish Date) depicts that, Police Officer had taken him to ATS office on 30/10/2008 in connection to Malegaon Bomb-blast case-2008. They inquired with him by way of questioning. He was in their custody till 28/11/2008. They tortured him to show his involvement in the present case. Police had not recorded his statement. Thus, this witness also not supported to the case of prosecution and hence, he was cross examined by Ld. SPP with permission, but nothing material was elicited from his mouth which would support to the case of prosecution. On the contrary, the admissions given by him in cross examination itself shows that, his statement never recorded by ATS / Police. He was put under the fear of torture. The threats were extended to him and hence, he had not lodged the report against the ATS/police. Thus, he is unaware

about the contents of statement, recording of statement by police.

1088) No doubt, the witnesses on Raigad Fort Meeting had not supported to the case of prosecution. On the contrary, it came on record that, their statement is recorded by keeping them in custody, threatening, pressurizing and browbeating them. Though, the contents of portion marked of their statement being recorded u/s 161 of Cr.P.C. are proved through the testimony of concerned investigating officers, even after that, it cannot be used as evidence. Firstly, it is not a substantive piece of evidence. Secondly, statement is used only for the purpose of omission, contradiction and not for corroboration. Thirdly, it raises a cloud of doubt regarding recording the contents of statement as per the narration of witnesses and those contents were within their knowledge at the relevant time.

1089) Absolutely there is no evidence on the point of attendance of A-6, A-9 and others at Raigadh fort or there was any discussion among them as alleged or they had taken oath and actively participated in the said meeting. Therefore, the question of any utterance and chalking out any plan as alleged also doesn't arise, in the absence of any positive evidence.

<u>Camp At Bhagur, Nashik and S.P. College, Pune</u>:-

1090) According to prosecution, two days camp was organized at Bhagur, Nashik in which the name of Abhinav Bharat Trust was

suggested by A-9 and witness Ninad Bedekar. In this meeting A-9, DA-7 and A-6 were present. At S. P. College Pune, there was opening ceremony of Abhinav Bharat & it's branches. The Campaign of membership was carried out at S.P. College, Pune and BMCC, College Pune. In order to prove both aforesaid ceremony, meeting, Campaign the prosecution has examined PW-220 (Milind Joshirao) and PW-259 (Shirish Date).

1091) The PW-220 (Milind Joshirao) as discussed above the witness though knows about formation of Abhinav Bharat Trust and about trustees, he had no knowledge about any meetings or donations or Campaign or functions held at colleges as alleged by prosecution. In the similar way the PW-259 (Shirish Date) had also testified that he didn't know about any inauguration functions held at any colleges or campaign of membership. Mere recording the statement of person by police is not enough. The statement must be made voluntarily; it should not be involuntary or obtained through browbeating, threats, or coercion, otherwise it loses its sanctity. Thus, absolutely there is no convincing and cogent evidence on the point of camp at Bhagur or inaugural function at colleges or membership campaign.

1092) The PW-177 (Shobhana Vaidya) is examined on the point of booking of Natyagruha by A-11. She testified that, she was working at Sarvajanik Vachanalya, Nashik. Parshuram Sahikhedekar Natyagruha was attached to Sarvajanik

Vachanalaya. In the year, 2007 A-11 came to the office and booked the said Natyagruha for organizing one function of Abhinav Bharat on 12/10/2007. He filled up requisite form and paid the charges. And hence, the Natyagruha was allotted to him for the schedule program. Her testimony only shows that, the Natrygruha was booked for one function. But neither the details of said functions nor the visitors' names are known to her. She had also not attended the said function. Therefore, she is not an eye-witness of the said program. She is only hearsay witness about the said program. In cross examination, she has also admitted that, as the Natyagruha is away from the office and hence she doesn't know as to whether any function was organized on 12/10/2007 or not. In their office, the other persons looked after the Natyagruha and its affairs. Thus, in the absence of actual discussion, attendance of accused, purpose of booking is not on record. Therefore, mere booking without presence of any accused for the said program would not be an incriminating circumstance to draw the inference that, it was booked for any meeting amongst the accused and they conspired in that program also or they have taken that program to open the branch of Abhinav Bharat. Hence, the evidence of this witness would not be helpful to prosecution in the absence of specific details.

Section 3 of UAPA :-

1093) It is necessary to mention that, Abhinav Bharat Abhinav Bharat / Abhinav Bharat Organization (Sanstha) / Abhinav Bharat Trust,

is not a banned organization. The PW-320 has admitted in his cross examination that, till today it is not a banned organization. No doubt, the powers to declare any organization as banned organization lies with the Central Government under section 3 of UAPA. If Central Government is of opinion that, any association is or has become, an unlawful association, then by way of notification it may be declared as unlawful. But nothing is brought on record till date to show that Abhinav Bharat Trust or Abhinav Bharat or Abhinav Bharat Organization is banned or declared unlawful by Central Government by way of any notification. On the other hand, it emerges from evidence on record that, in the year 2007, Abhinav Bharat Trust was constituted and registered at Charity office, Pune bearing registration number E-4767 / Pune and office was located at Model Colony, Pune.

Arrest of A-6, Personal Search and Seizure of Mobiles:-

1094) As per prosecution, A-6 was the treasurer of Abhinav Bharat Trust, Pune. The documentary evidence about the Abhinav Bharat Trust and other incriminating articles found in the house of A-6. On the point of arrest, search and seizure of articles from the house of A-6, the prosecution has examined two witnesses, PW-141 (Ashish Palkar) and PW-257 (PI Satish Gurav).

1095) It emerges from the evidence of PW-141 (Ashish Palkar) and PW-257 (PI Satish Gurav) that, on 02/11/2008, A-6 came to be

arrested by Police Inspector Satish Gurav at ATS Kalachowki Police Station, Mumbai. In the presence of Panch witness Ashish Palkar the arrest panchanama **(Exh.6574)** was prepared. During the said arrest, the personal search of A-6 was carried out. In that personal search, two mobile handsets came to be seized. The details of those mobiles are mentioned as follows,

Nokia Mobile handset Airtel Sim Card Mobile No. 9766631435 (Art.45)	Nokia Mobile Handset Idea Sim Card Mobile No. 9850825082 (Art.46)

1096) It emerges from the evidence on record that, before reaching of PW-141 (Ashish Palkar) at ATS Kalachowki Police Station, the A-6 was in custody of API Gurav. The accused was present for inquiry since morning. He was shown to be arrested after 14.00 hours at ATS Kalachowki Police Station. He was already in custody of police. Admittedly, no personal search was offered by police to him before taking the personal search of accused. It is nowhere mentioned either in pachanama or station diary. The police had offered the personal search is also not came in the testimony of witnesses.

1097) The PW-141 (Ashish Palkar) had shown his inability to identify the phones, if similar types of phones are kept in a row. Both the aforesaid witnesses had testified that, on that day A-6 came from Pune. But, apart from two mobile handsets nothing came to be seized from A-6. Considering the aforesaid facts &

evidence, I found substance in the point raised by Ld. Advocate for A-6 that, it is not digestible story that even to ordinary prudent man that, if any suspect came from Pune but not having any ticket or some money with him for return journey or daily expenses. Moreover, API Gurav who was attached to Pune ATS Unit, at that time, specifically came to prepare the arrest panchanama of A-6 at ATS Kalachowki Police Station, Mumbai. Admittedly, there is no station diary entry taken at Pune or at ATS Kalachowki Police Station Mumbai pertaining to his visit for the aforesaid Purpose. On the contrary, the record shows that, ATS Sub-unit Pune is not maintaining any station diary. In the absence of Station diary, Movement register, if any, creates a doubt about calling a particular officer from Pune to prepare arrest panchanama only. Thus, the presence of API Gurav from Pune to Mumbai for the purpose of arrest panchanama only is not supported by other documentary evidence. When several officers were involved in the case and present at Kalachowki ATS Police Station, even though API Gurav had been to Kalachowki Police Station from Pune ATS Sub-unit to prepare arrest panchanama doesn't seems to be probable. Considering aforesaid evidence, the possibility cannot be ruled out that A-6 was arrested at Pune and brought by API Gurav at Mumbai and the rest of the formalities had been completed at Kalachowki ATS Police Station Mumbai.

<u>House Search of A-6</u>:-

1098) As per prosecution, the documents relating to Abhinav Bharat

Trust was found in the house of A-6. The ATS officer seized those documents in the house search. Thus, those documents are interconnected with the house search of A-6. Therefore, it requires to be dealt with firstly.

1099) Ld. SPP submitted that, on 02/11/2008, A-6 was arrested. On 04/11/2008, ATS had conducted the house search. The number of articles were seized from his house. Particularly, the diary which was seized showing the number of entries of transfer of several amount to A-5, A-9 & A-11 before the meetings. As per prosecution, it should be construed as amount provided to them to meet the expenses of meetings.

1100) In order to prove, the search and seizure panchanama carried out in the house of A-6, in the presence of independent panch witnesses, the prosecution has relied upon and examined police officer PW-300 (Atul Sabnis) and panch witness PW-165 (Prashant Kharadkar).

1101) The PW-300 (Atul Sabnis) has testified that, at the relevant time, he was serving in ATS, Pune Unit and working under the directions of ACP Mohan Kulkarni. On 04/11/2008, he had been to the house of A-6 for house search panchanama along-with Police Inspector Lobo, ASI Thorve, PH Bothare, PC Tembgude. They had called two independent persons to act as a panch witness namely Vitthal Nimbalkar and Prashant Kharadkar. They went to the house of A-6 and his father Eknath Rahikar was

present in the house, at that time. They had carried out the search and seizure panchanama and following articles were seized by them in the presence of Panch witnesses,

i) 100 Rs. Stamp Paper showing the name of Abhinav Bharat Trust (running into nine pages) (marked as article-360),

ii) Registration Certificate of Abhinav Bharat (marked as article-361),

iii) PAN Card of Abhinav Bharat (marked as article-362)

iv) Passbook of Abhinav Bharat issued by SBI, Karve Road, Pune (marked as article-363)

v) Cheque Book including 18 blank cheques issued by SBI (Art.-364)

vi) One old diary having blue colour rexine cover, (Art.-365)

vii) One application booklet of Abhinav Bharat (Art.366),

viii) 10 letterheads of Abhinav Bharat (Art.367),

ix) Donation receipt (Art.368)

x) 8 rubber stamps (Art.369).

He identified those articles during the course of evidence and hence, those are marked as above. He also identified the search and seizure panchanama vide **Exhibit-8274.**

1102) The bare perusal of Panchanama (Exh.8274) itself shows that, he has not obtained the signature of Eknath Rahikar (father of A-6) who was admittedly present there nor provided copy to them of the said panchanama. In cross examination the aforesaid facts are admitted by PW-300 (Atul Sabnis). He also admitted that,

he has not even recorded the statement of Eknath Rahikar. It is obligatory to supply the copy of panchanama or list of seized articles to dispel the doubt. But, non supply of copy, not obtaining the signature of person admittedly present, creates the doubt as to whether he had really visited to the house of A-6 & seized those alleged articles in the presence of his father or not.

1103) Moreover, PW-300 (Atul Sabnis) has admitted that, they have not maintained the station diary at ATS, Sub-unit Pune. He has no documentary evidence to show that, he was authorized at the relevant time. According to instructions given by ACP Mohan Kulkarni, he went to carry out search and seizure. On the other hand, he has stated that, he informed ACP Mohan Kulkarni in writing by submitting the written report. He was confronted with his written report vide **Exhibit-8288** in which he has stated that he has taken the statement of eight witnesses only. Except this nothing is mentioned. Thus, it falsifies his own testimony on aforesaid point and do not inspire the confidence about his testimony.

1104) In addition to it, the PW-165 (Prashant Kharadkar) Panch witness demolished the entire testimony of PW-300 (Atul Sabnis) as well as the theory of house search and seizure process. He testified that, he never been called by ATS officer Pune to act as a panch witness. He never went with ATS Officers Pune Unit to carry out any search and seizure Panchanama. He never visited along-with police to the house of

A-6 for the said purpose. On 04/11/2008, house search was not conducted. The house search panchanama was not prepared in his presence. Nothing was seized in his presence. Though the Ld. SPP cross examined the PW-165 with permission. But nothing material was elicited from his mouth except his signatures appearing on seized articles.

1105) Mere proving the signatures would not be enough. If the testimony of witness is considered at all, it makes clear that, he has given the explanation about his signatures appearing on seized articles. He stated that Police officer Uday More was his friend, since last 20 years. He had been to his house and obtained his signatures at his home. Being a friend, he has not asked any question to ATS officers as to why they are obtaining his signatures. Thus, it clearly indicates that, nothing was seized in his presence. Merely his signatures were obtained at home. In the backdrop of this facts, neither his testimony is corroborated to prosecution case nor helpful to prosecution. On the other hand, he demolished the entire theory of alleged search and seizure.

1106) Moreover, the testimony of Police Inspector PW-291 (Peter Lobo) is also examined as a witness. But, he is completely silent on the aspect of search and seizure. He has not stated anything about the said search and seizure operation. According to this witness, he has recorded the statements of some witnesses and in his presence, Prachi Kshirsagar had deposited the laptop of A-10.

Apart from this, he has not done any further investigation in the present case. Thus, the testimony of this witness is also not corroborating to the testimony of PW-300 (Atul Sabnis).

1107) Considering the entire testimony of aforesaid witnesses including the panch witness, it clearly shows that nothing is searched or seized in the presence of panch witness. Merely his signatures were obtained at his home. He never accompanied ATS officers for the alleged search and seizure operation. While carrying out the house search and effective recovery provision of Section 100 (4) of Cr.P.C. is mandatory to be followed by the concerned police officers by calling and joining at least two respectable persons of the locality before effecting search in that house. The panch witness himself stating that neither he was called nor seized anything. The another panch witness Vitthal Nimbalkar is not examined by prosecution. He was dropped by prosecution. Admittedly, they had not taken A-6 with them before house search or prepared any memorandum panchanama. The house search is carried out in his absence. Shri. Eknath Rahirkar (father of A-6) was admittedly present in the house at that time. Neither his signature was obtained nor copy of panchanama was provided to him. Thus, the investigating officer has not cared to keep in view the requirement of law in this connection. For all the aforesaid reasons, I am inclined to draw conclusion that, all the recoveries are doubtful & without compliance of provisions of law. The alleged search and seizure cannot be stated to have been effected from the house of A-6.

1108) Even for the sake of moment, the trust deed is considered, in its object there is nothing wrong or illegal. The objects mentioned in it are legal. Moreover, there is no evidence to show that, A-1, A-5 or A-11 were the members of Abhinav Bharat Trust.

Branches, Donation, Funds Collection & Transfer:

1109) On the point of opening of various branches by Abhinav Bharat Trust in Maharashtra and other State, operation of accounts, collection money (donations / funds) and transfer of money, utilization of money for private purpose the prosecution has examined PW-201 (Dr. Arun Datar), PW-207 (Sunita Jadhav), PW-206 (Amod Damle), PW-200 (Varsha Rakesh Dhawade), PW-220 (Milind Joshirao), PW-255 (Gaurav Mishra), PW-259 (Shirish Date), PW-300 (Atul Achyut Sabnis), PW-303 (Chetan Dhakan), PW-171 (Dnyaneshwar Jachak), PW-173 (Madhav Talkeri), PW-208 (Shailesh Raikar), PW-320 (ACP Mohan Kulkarni), PW-321 (Anil Dubey)and PW-311 (Ashok Chawala).

1110) The PW-320 (ACP Mohan Kulkarni) is the chief investigating officer of ATS. He testified that, he has gone through the trust deed of Abhinav Bharat Sanstha and found that the object was legal. Its object was to create patriotism and religious activities. He also admitted that, the allegations of ATS are that, the alleged incident has been committed by members of Abhinav Bharat. But they have no documentary evidence to show that A-1 (Pragya Singh Thakur) was the member of Abhinav Bharat

Sanstha.

1111) The PW-201 (Dr. Arun Datar) testified that, he was running Surya Gym in the year 2008. He knows Sunita Jadhav and Suchita Shrungarpure, being lady instructor working in his gym. He knows Prasad Purohit and Ninad Bedekar. Prasad Purohit was member and Ninad Bedekar was president of Abhinav Bharat Trust. He became member of that Sanstha on the say of Niand Bedekar. He didn't know as to who was looking the monetary transactions of that Sanstha. He didn't know anything about the donation received by Abhinav Bharat Sanstha or donated by Abhinav Bharat Sanstha. He was cross examined by Ld. SPP with permission. Nothing material elicited from his mouth which would be beneficial to the case of prosecution. Thus, he didn't know about any donation received or given, actual management and functioning area of Abhinav Bharat. Mere recording his statement u/s 161 of Cr.P.C. favouring to prosecution would not be enough, when he has admitted in cross examination that, Param Bir Singh has extended threat and forced him to give the statement as per their dictation else he would be implicated in this case. Due to persistent calling, abusing & pressurizing, he had given his statement to police, so it cannot be said to be a voluntary statement.

1112) At the relevant time, PW-207 (Sunita Jadhav) was working as an Instructor for Ladies at Surya Gym, Pune. The owner of said Gym was Shri. Datar. ATS officer at ATS Unit Pune inquired

with her about Abhinav Bharat. She didn't know anything about any donation received by Abhinav Bharat Trust to the tune of Rs.4,50,000/- She denied that, A-9 was founder member of Trust, whereas A-6 was operating the Bank Account. She also admitted that, she didn't know anything about the constitution of Abhinav Bharat Trust, its documents, body of members, functioning area, programs, etc. Neither she knew anything about Abhinav Bharat Trust nor about its any branches. Moreover, it cannot be said that any monetary transactions or operation of account or programs or donations received by Trust are taken place in her presence or it was within her knowledge. Hence, her testimony is not useful to prosecution in any way.

1113) The PW-206 (Amod Damle) has testified that, he was called by ATS and formal inquiry was made with him about his name, address, occupation, acquaintance with A-9 and late Ninad Bedekar. Nothing was jotted down in his presence. He knows Niand Bedekar who was the President of Abhinav Bharat at the relevant time. He was cross examined by Ld. SPP with permission. Nothing material came on record which would suggest that, at the relevant time, A-6 (Ajay Rahikar) was treasurer and maintaining the account of Abhinav Bharat Trust, or he had misappropriated the amount / funds or mis-utilized those funds by handing over to co-accused in order to carry out illegal activities or A-6 was handing over those alleged funds without the consent of members of body. Mere recording of his statement u/s 161 of Cr.P.C. would not be enough when he had

categorically stated that only formal inquiry was made with him and nothing was jotted down in his presence and he was allowed to go. In the backdrop of facts, it cannot be said that he had any knowledge about the contents of statement being recorded.

1114) The PW-208 [Shailesh Raikar] has admitted that, he used to talk with A-9 on the topic of Abhinav Bharat. The discussion was very casual. He didn't know any other members of Abhinav Bharat Trust apart from A-9. The police never shown him those members who allegedly attended the meeting at Nashik. Thus, his testimony depicts that, he didn't know much more about the members of Abhinav Bharat Trust, donations received or given, its branches or transfer of funds or any material discussion pertaining to conspiracy or to carry out any illegal activity. Therefore, the testimony of this witness is also not helpful for prosecution.

1115) The PW-220 (Milind Joshirao) has testified that, ATS inquired with him about Abhinav Bharat Trust. It was formed in the year 2007 bearing registration number 4767. Ninad Bedekar was life time Chairman or President, he himself and Mr. Datar was the trustee. From the news displayed in TV channels, he came to know that, A-9, A-6, Date and Jadhav Madam were also trustees. He didn't know the Bank Account & banking transactions of Abhinav Bharat Trust or any information about IRDOS institution to whom the donation was given or any

meetings of Abhinav Bharat among the accused or any opening ceremony or membership campaign. He was cross examined by Ld. SPP with permission, but nothing material was elicited from his mouth which would be beneficial to the case of prosecution. On the other hand, during cross examination of SPP, he has stated that, he was interrogated by ATS for 21 days. His statement was never recorded on 08/11/2008. It was not read over to him at that time. But prior to entering into the court hall copy of his statement was shown to him on ground floor. His admission given in cross examination conducted on behalf of accused itself shows that, he was detained for several days. He was forced to take the names of five RSS persons including the names of Yogi Adityanath, Asimanand, Indreshkumar, Prof. Devdhar and Kakaji. Due to fear of torture, he could not collect the courage to lodge the complaint. When the statement is given involuntary without actual knowledge of facts mentioned in the statement recorded by police, then nothing survives in such a statement. The contents of such statement cannot be relied upon even-though are being proved.

1116) The PW-259 (Shrirish Date) testified that, ATS inquired with him by keeping him in custody till 28/11/2008. Police tortured him to confess about his involvement in the offence. His statement was not recorded in his presence. He denied that police inquired about Col. Purohit. Ld. SPP cross examined him with permission, but nothing material was elicited which would be beneficial to the case of prosecution. Ld. SPP asked the reason for not lodging

the complaint for ill-treatment or torture as alleged. The witness has replied that, he had not lodged any complaint as the threat of encounter was extended to him. It clearly shows that, whatever mentioned in his statement is neither known to him nor stated by him. Therefore, such statement has no evidential value.

1117) The PW-311 (Ashok Chawala) had testified that, he was resident of Jabalpur (M.P.) and having profession to make GST Accounts. In the year 2008, he was treasurer and Mayaram Jaiswani was the president of 'Sindhu Shakti Parishad, Jabalpur'. Number of persons used to send the donations in their account. In the year 2008, two persons had sent donation in their account. He withdrew the amount and handed over the same to Mayaram Jaiswani without asking the purpose. The admissions given by him in cross examination makes it clear that, they used to help handicapped people. They used to distribute bicycles to handicapped people through Sindu Shakti Partishad. Thus, the donation amount was utilized to help the needy and poor people. ATS had not proved any account statement of the aforesaid witness showing that any accused transferred the amount in his account and it was utilized for illegal activities related to this crime. Therefore, nothing survives in the testimony of this witness nor it is beneficial to prosecution in any way.

1118) It is already observed that, the seizure of documents including

trust deed from the house of A-6 as alleged is under cloud of doubt and not reliable. Even though for the sake of Moment, if gone through the Trust Deed, there is nothing wrong in the object mentioned in the Trust Deed of Abhinav Bharat Trust. In Trust Deed the names of A-1, A-5 & A-11 are not found even as a member. There is nothing in the form of documentary evidence on record to show that A-1, A-5 or A-11 were the members of Abhinav Bharat Trust. Moreover, the admissions given by PW-320 (ACP Mohan Kulkarni) goes to the root of the case. He has admitted that due to treasurer-ship of A-6 and transfer of funds by him, he is made accused in this case. On the other hand, the admissions given by PW-320 & PW-321 itself shows that, the funds as alleged were transferred without knowing the purpose and without asking the question on the decision taken by committee in their own meeting. Thus, it shows that whatever the funds transferred that was as per the decision of committee.

1119) The PW-320 (ACP Mohan Kulkarni) has further admitted in his cross examination that, “it is the job of any treasurer of any institution is to receive the money and to maintain the account and to incur the expenses as per the decision of committee. It is the allegation of ATS that, the alleged incident has been committed by members of Abhinav Bharat. But all members of Abhinav Bharat Trust are not made an accused.” Whereas, PW-321 (Anil Dubey) has also admitted in his cross examination that, “It is correct to say that, it is the duty of treasurer of any

organization to collect the money on behalf of organization, to maintain the account and to remit the amount as per the instructions of chairman and committee. It is not the duty of treasurer to inquire as to how the donor has received the money." Thus, the admission given by both the investigating officers itself shows that, treasurer is responsible only for maintaining the account and he has no business with the transfer of funds when the decision is taken by the committee.

1120) The PW-220 (Milind Joshirao) and PW-200 (Smt. Varsha Dhawade) are also examined on the point of receipt of donation to Abhinav Bharat and transfer of Donation to IRDOS. As per prosecution, one lady by name Mangal Kulkarni who was acquainted with Ninad Bedekar donated the amount of Rs.4,50,000/- to Abhinav Bharat Trust by executing Will and after her death this amount was transferred in the name of Trust in the Bank. The PW-220 as discussed above has already denied those facts. Whereas PW-200 (Smt. Varsha Dhawade) has testified that DA-7 was a Museumologist. DA-7 (Discharged Accused Rakesh Dhawade) is her husband. They were running the institute by name "The Institute of Research and Development in Oriental Studies in Arms and Armour (IRDOS)." This is a registered institution having a bank account. Her husband used to help her in the work of institution. She didn't speak anything about receipt of donation as she had no knowledge about the donation received to their institution from Abhinav Bharat Trust. Thus, both the witnesses have denied the

inter-se transactions.

1121) On the point of Bank account showing the entry of receipt of donation of Rs.4,50,000/- and transfer of amount as donation Rs.2,25,000/- to IRDOS, the prosecution has examined PW-160 (Chandrashekhar Sawant). In the year 2009, he was serving as Asst. General Manager in State Bank of India, Erandawane branch, Pune. Abhinav Bharat Sanstha was having account in their branch. He has handed over one account statement, few slips and some cheques. He was not confronted with the account statement given by him. Thus, there is no witness on actual receipt of donation to the tune of Rs.4,50,000/- and transfer of Rs.2,25,000/- to IRDOS. Even though for the sake of moment it is assumed that, there was transfer of donation from one institution to another through bank account then it is their internal transaction. The adverse inference or conclusion cannot be drawn in the absence of any evidence.

1122) The PW-255 (Gaurav Mishra) has testified that, he was acquainted with A-10. When he was at Calcutta, he got a call from A-10 and told him that one Colonel will phone-up him. He received the call of A-9 and thereby demanded Rs.10 Lakhs as donation. PW-255 ignored the said demand by telling him that he is busy and will call later. Thereafter, he never received any call from him. Thus, his testimony shows that there was oral demand of donation by A-9. But, he has not provided any call details to the ATS officers or ATS never demanded those call

details. They had not verified his phone as to whether there was any such incoming call he had received or not. He never met A-9 or never heard his voice. He had not taken any noting of the caller number. Thus, without details or particulars of said caller, number and discussion, it does not inspire the confidence to accept the same as stated by the witness. The witness never heard the voice of A-9 or never met him or he didn't know the purpose of demand or provided the details to ATS immediately or during his statement. No objection or any grievance raised by him. Thereafter also he met 3 to 4 times to A-10 but there was no discussion on this topic. Therefore, the testimony of this witness does not inspire the confidence on the point of call and demand of Rs.10 Lakhs by A-9 in the absence of supporting call details or documents and other particulars. The testimony of witness on the point of demand of donation seems to be afterthought.

1123) During cross examination of PW-255 (Guarav Mishra) it came on record that, he had not stated to Police that Shankaracharya (A-10) told him to donate Rs.51,000/- to Vaidik Vishwakalyan Trust which belongs to A-10 & due to non-payment, he got disappointed and denied to explain him the concept of 'Nakshatra Vatika'. He could not assign any reason as to why it is mentioned in his statement. The aforesaid portion marked contents were proved through Investigating officer PW-317 (Subhash Dudhgaonkar) during the course of his evidence. Considering the testimony of witness on the point of donation of

Rs.51,000/- is not reliable and cogent. Moreover, his testimony tilt towards the exaggerating the facts. Even for the sake of moment, it is assumed that he donated Rs.51,000/- to the Vaidik Vishwakalyan Trust, but it was a voluntary donation. Nothing came on record to show that the amount of said trust was also used for the illegal activities of Abhinav Bharat.

1124) Considering the entire testimony of aforesaid witnesses, there is no documentary evidence on record to show that, funds to the tune of Rs.21 Lakhs had been collected by A-9 for himself or Abhinav Bharat Trust or on behalf of them. In addition to it, the investigating officer PW-321 (Dy.SP Anil Dubey) of NIA has admitted that, A-9 (Prasad Purohit) had not collected personally the huge funds.

Transfer of cash through Courier service / Angadiya Service:

1125) It is contention of prosecution that, the PW-303 (Chetan Dhakan) had transferred the huge amount i.e. Rs.4,00,000/-, Rs.1,99,200/-, Rs.4,75,000/- from Mumbai through Angdiaya /courier service to A-6. Firstly, in order to prove the two chits which were written in Gujrathi Language showing some words as “199/200 Rahikar”, “400 Rahirkar”, the prosecution has examined PW-156 (Vinamra Mokashi), PW-199 (Chetankumar Patel), PW-157 (Sandip Kalekar), PW-303 (Chetan Dhakan).

1126) On 30/12/2008, PW-156 (Vinamra Mokashi) had been to ATS office Pune being called to act as a Panch witness. One Chetan

Patel, Manager of Bhavani Express Courier Company Pune, produced two small chits. On those chits he came to know that something was written in Gujrathi Language. Apart from other writing, on first chit he found “199/200 Rahikar” and on the second paper, “400 Rahirkar” is written. API Gurav encircled those words and seized those chits under panchanama (Exh.6619) by obtaining their signatures. He identified the chits on which something written by pencil. The chits were marked as article 87 (Exh.6811) and Article-88 (Exh.6812).

1127) In cross examination, PW-156 (Vinamra Mokashi) admitted that, he had stated all the facts in examination-in-chief as police told him the facts about the incident. Thus, by recollecting the facts he had not stated anything. His memory was refreshed by narrating entire facts to him by police prior to entering into witness box. He didn’t know Gujrathi Language and whatever written in chits are told by police to him. Hence, he came to know that those wordings are in Gujrathi language. He had not identified the contents. He is hearsay about the contents.

1128) Whereas PW-199 (Chetankumar Patel) has stated that, the contents in those chits are in his handwriting. The admission given by him clearly shows that, the chits bearing exhibits-6811 and 6812 were handed over by him in his courier office to police. At that time, panch witnesses were not present. He never went to police station to hand over those chits. Thus, it is evident on record that, neither he was called at ATS Sub-unit

Pune not they had prepared any panchanama in his presence by calling any panch witness.

1129) In addition to aforesaid facts, on those chits and the panchanama, there is no signature of PW-199 (Chetankumar Patel), in order to show that he was present in police station or it was prepared in his presence. Thus, it falsifies the story of ATS of handing over chits in police station by PW-199, preparing panchanama in the presence of panch witnesses. Moreover, as per the admissions given by PW-156 itself shows that, he was tutored by police before his evidence. He came to know about the contents of panchanama and other facts due to narration by police. Hence, his testimony is found in the same line.

1130) It emerges from evidence on record that, the chits were handed over by PW-199 (Chetankumar Patel) in his courier office. At the time of handing over, those were not sealed in his presence. Non sealing of articles on the spot without any explanation and bringing different story on record certainly give rise to suspicion regarding happening of events in police station as narrated by witnesses. Admittedly, the record maintained showing inward and outwards entries of parcel are not seized by police. Therefore, considering the aforesaid admissions, I found substance in the argument advanced on this point by Ld. Advocate for A-6 that, the scope for manipulation in unsealed chits cannot be ruled out completely.

1131) As per prosecution the next chit (article 89 / Exh.6810) showing figure “475” in Gujrathi language it means Rs.4,75,000/- in the language of Courier company and it was sent to A-6 by PW-303 (Chetan Dhakan). In order to prove the aforesaid contention, the prosecution has examined PW-157 (Panch Witness Sandip Kalekar), PW-300 (API Atul Sabnis), PW-199 (Chetan Patel), PW-303 (Chetan Dhakan).

1132) On 12/11/2008, PW-157 (Sandip Kalekar) had been to ATS office Pune to act as a panch witness. In his presence, one Rupesh Patel produced one chit on which they found written something in Gujrathi language, some letters like “475” and name of Ajay Rahikar. But panchanama shows that, it was handed over by Chetankumar Patel. The PW-300 (API Atul Sabnis) seized the said chit and prepared the seizure panchanama (Exh.6623). He identified the chit and seizure panchanama.

1133) On the aforesaid point, it has came in the evidence of PW-199 (Chetan Patel), that he never visited the ATS office, Pune. He had not carried the said chit with him and handed over to ATS officers in the presence of panch witness at ATS office, Pune. On the contrary, he admitted that, it is nowhere mentioned that, 475 means or indicates the amount Rs.4,75,000/-. Police came to his office and he has handed over the aforesaid chit to police on inquiry with him. Thus, it falsifies the story of handing over

chit in police station and in his presence preparation of any such panchanama. Moreover, while seizure of the alleged chit from his custody at that time neither his signature was obtained nor any sealing of article was done in his presence. The admission given by him in cross examination itself shows that, the original chit i.e. which came from Mumbai to Pune is not handed over to police. The chit which he has prepared was handed over to police. The further admission given by him also indicates that, on first occasion the police had been to his office between 12.00 noon to 3 pm, then question of preparation of panchanama by police between 13 to 13.30 hours doesn't arise. Thereafter, on the second occasion police had been to his office between 12.00 noon to 03.00 pm. Then question of preparation of panchanama by police between 14.00 to 14.45 hours doesn't arise. If his admissions are considered then it makes clear that police were in his office and till then he had not handed over the chit i.e. till 3 pm. Therefore, question of preparation of panchanama in ATS office Pune prior to 3 pm doesn't arise.

1134) The statement of PW-199 are recorded twice by police. Several facts are omitted by him as stated in examination-in-chief like photo identity, handing over amount, calling on given numbers to verify the person, inquiry by police about parcel and verification by them, 475 indicates Rs.4,75,000/-, etc. It clearly indicates that there was improvement while deposing before the court. Therefore, I am of the view that, the testimony of PW-199 is not convincing, cogent and reliable.

1135) On the other hand, as per prosecution the transfer of amount through Angadiya itself shows that, there was financial transactions. The said cash / amount was handed over by PW-303 to Angadiya service to send those amount to A-6.

1136) Considering the aforesaid submission, the possibility cannot be ruled out that, the collection of amounts and transfer of amount may be in cash. On this point the prosecution has examined PW-303 (Chetan Dhakan). He has not supported to the case of prosecution. He was cross examined by Ld. SPP with permission but nothing material was elicited from him which would be beneficial to the case of prosecution. Moreover, his statement was recorded by PSI Sunil Mane but he is not examined as a witness. The witness has admitted in cross examination that, he was harassed at the hands of police, they kept him in custody for seven days, they were taking him at unknown places and threaten him to state as per their say otherwise face the consequences.

1137) Considering the entire evidence as discussed above, at all there is no evidence to show that PW-303 (Chetan Dhakan) had collected the cash and handed over the said cash to Angdiya Service / Courier Service to hand over to A-6. There is also no evidence on record at the instance of any accused PW-303 has collected the cash and transferred to A-6. In short, the source of cash collection till handing over is not on record. The evidence is

scanty which doesn't corroborate to the collection of huge cash. In the absence of any evidence, it remains the bare allegations that, accused had collected huge cash to the tune of Rs.21 Lakhs in the name of Abhinav Bharat and aforesaid transaction was part and parcel of it.

Transfer of Fund for House Construction:

1138) The PW-171 (Dnyaneshwar Jachak) is examined on the point of bringing cash of Rs.2,50,000/- from A-6 on the instructions of A-9. In the year 2008, he was serving as office boy in the office of Adv. S.R.Thakur. Madhav Seth Kalkeri, who was running the business of construction asked him to go at Pune to collect the cash. He has provided two mobile numbers. Accordingly, the PW-171 went to Pune on 14/11/2008 and called on the given number. Then as per the instructions of Call receiver he waited near the Gate of Dinanath Mangesh Hospital. Ajay Rahikar handed over cash of Rs.2,50,000/-. On the next day, he went to the office of Madhav Seth and handed over Rs.2,50,000/-. In cross examination, he admitted that, he came to know the name of Ajay Rahikar as he told his name while handing over money. He admitted that in his statement the dates 13/08/2008, 14/08/2008, 15/08/2008 of his to & fro journey are mentioned but those are wrongs. Admittedly, the mobile of said witness was not seized. The call details (CDR) of that relevant period were not collected.

1139) The PW-173 (Madhav Talkeri) is also examined by Prosecution.

He testified that, he undertook the construction of the house of A-9. The total cost of said house / bunglow was Rs.15,50,000/-. Initially he received Rs.75,000/- as token amount and cheque of Rs.1,35,000/- in the name of his construction company i.e. P.M. Construction Company. As per registered agreement executed among them, the house was in the joint name of A-9 and his wife. During construction work, the further amount was demanded. A-9 informed him that he is at Pachmarhi and hence, he will asked his family members to make the payment. Then as per his instructions, he sent PW-171 (Dnyaneshwar Jachak) to collect the amount. PW-171 collected the amount and handed over to him. He identified the receipt (Exh.6723) Rs.1,35,000 - issued by him. He also stated that the receipt of Rs.2,50,000/- was issued to the wife of A-9.

1140) Considering his entire testimony, it makes clear that PW-173 had not provided the mobile numbers of A-6. In cross examination, he specifically admitted that, he had given the phone numbers of A-9 only to PW-171. Except the phone numbers of A-9, he had not provided any phone numbers.

1141) Their testimony only indicates that, Rs.2,50,000/- was brought from Pune to Mumbai by PW-171 (Dnyaneshwar Jachak). The said amount was utilized for the further construction of house. The testimony of PW-171 and PW-173 (Madhav Talkeri) do not corroborate with each other's on the material point of giving two mobile numbers. PW-171 says those mobile numbers were of A-

6 which was provided to him by PW-173, whereas PW-173 says that, except the mobile numbers of A-9 he has not provided any number to PW-171. Moreover, the receipt of Rs.2,50,000/- was issued to the wife of A-9. It was not issued in the name of A-6 or given any acknowledgment to him. There is no CDR of both the witnesses filed on record and proved the same. PW-173 never told him to go to A-6 and collect that amount. Even for the sake of moment, it is assumed that A-6 issued that amount to A-9 but it was utilized for the private purpose i.e. for construction of house and not utilized for any illegal activities or in commission of crime. Moreover, there is nothing on record to show that, the said amount was issued from the funds of Abhinav Bharat. Hence, I am of the view that, the contradictory evidence of PW-171 and PW-173 on material aspect demolishes the prosecution story pertaining to handing over cash of Rs.2,50,000/-.

<u>Transfer of Funds for Purchasing Insurance Policies</u>:

1142) As per case of prosecution, the funds of Abhinav Bharat were utilized by A-6 and A-9 for purchasing of Insurance Policies in their names. On this point the prosecution has examined PW-149 (Pragyanshu Akotia), PW-208 (Shailesh Raikar), PW-251 (Harish Devasthali).

1143) The PW-149 (Pragyanshu Akotia) has testified that, he was serving in Reliance Nippon Life Insurance Company. He has provided the information on 24/12/2008 to ATS in writing

(Exh.6602) pertaining to the insurance policies purchased and lying in the name of A-6 and A-9. It is marked as Article-74, being computer print-out, he had also filed the 65-B Certificate on record and identified the said certificate (Exh.6669). From their company A-6 purchased policy by paying Rs.50,000/- and A-9 also purchased the policy.

1144) He was cross examined by the Ld. Advocates for accused. He admitted that, **Exh.6602 (reply-letter)** which was issued by their office in response to the letter issued by ATS on dated 23/12/2008. The subject in the said letter was pertaining to blasting material rules. It was not regarding the issuance of insurance policies & its details. He didn't know as to who prepared the chart enclosed with letter Exh.6602 by downloading from computer. Thus, his testimony is restricted only to the extent of issuance of letter by enclosing the chart with that letter. Except this he didn't know the contents of the said chart. He has not verified the said chart. He is not the officer who downloaded the chart and verified its contents with original. The chart was not prepared before him. He also admitted that there is no signature or date mentioned on the chart. He has not provided the copy of original documents to police. Therefore, it cannot be said that the contents of the chart are duly proved. Even for the sake of moment it is assumed that, the policies were purchased by A-6 and A-9, but there is no evidence to show that, the said policies were purchased from the funds of Abhinav Bharat.

1145) In the year 2008, PW-251 (Harish Devasthali) was serving in Reliance Money Company, Pune. He sold insurance policy to A-9 and to purchase the said policy A-9 told his friend to raise the funds. Thereafter, his friend was raising the funds through his relatives. After raising the funds, his friend handed over amount in cash to him. Police inquired with him. But nothing was jotted down by police at Pune. In cross examination he admitted that, police had jotted down his statement at Mumbai. Bare perusal of the statement shows that, it was jotted down at Pune and not at Mumbai. Already, the witness has stated that, while inquiring with him at Pune, the police had not shown to him that they had noted down anything as stated by him. He didn't know in his name what police has recorded in his statement. The witness has stated nothing about the person who raised the funds for purchasing the policy was either A-6 or PW-208 (Shailesh Raikar). He has not stated anything that for purchasing the policy the amount was brought from the funds of Abhinav Bharat or he got the knowledge about it. On the contrary, he admitted that his friend raised the fund from his sister. Thus, there is nothing to show the nexus between the alleged purchase of policy from the funds of Abhinav Bharat. Therefore, mere purchasing a policy by A-9 would not be an incriminating circumstance against him in the absence of cogent and reliable evidence.

Account Extract /Account Statement of Abhinav Bharat:

1146) It emerges from the testimony of PW-160 (Chandrashekhar Sawant) that, he was Assistant General Manager, SBI, Enrandavana Branch, Pune at the relevant time. He had provided the account extract and other relevant documents of Abhinav Bharat to ATS.

1147) Admittedly, the account extract / account statement is computer generated. Bank account statement can be proved in two ways. As per the Bankers Books of Evidence Act, the statement of account must bear the certificate either showing it as certified copy or true copy of original. If the said certificate is attached to the statement, then per-se it is admissible in evidence on the basis of the said certificate appended thereto. The other way is when statement is computer extract showing any bank account statement requires a certificate u/s 65-B of Indian Evidence Act to be admissible as evidence in the court. This certificate is mandatory requirement for electronic records, including bank statement or extract. The certificate ensures the authenticity and reliability of electronic record. As per Indian Evidence Act a certificate u/s 65 (B) (4) is mandatory when secondary copies of electronic records are produced in the court. This includes the printed bank statements that are not original electronic records. The original electronic record is saved in the computer and if the original electronic record is produced then a certificate is not required.

1148) In the present matter, it is not the case of prosecution that, they

were totally unaware about the requirement of any such certificates for admissibility of documents. On the other hand, their own witness PW-215 (Dilip Kaul) had deposited the certificate according to banker's books of evidence and I.T. Act, vide exhibit-6895, during the course of his evidence pertaining to the computerized documents filed by him. Thus, prosecution was aware about the requirement of law for admissibility of computerized documents. Admittedly, in the present case neither there is any certificate as per Banker Books of Evidence nor according to section 65-B of Evidence Act and hence, the copy of account extract filed on record is not admissible.

Faridabad to Pune transfer of amount in the Account of A-9:

1149) As per prosecution, PW-320 (ACP Mohan Kulkarni) had issued the letter to banks i.e. ICICI Bank Pune & Bandra, SBI Erandawane branch, SBI Deccan Gymkhana branch Pune, SBI Bhopal, Axis Bank Mumbai and thereby called the account related information of accused. In order to prove the transfer of funds from ICICI branch of Faridabad & Rohini branch of Delhi, in the account no.624001505303 of A-9 (Prasad Purohit), the prosecution has examined PW-280 (Gagan Gehalot) Branch Manager, ICICI Bank Bhandarkar Road, Pune.

1150) It came in the evidence of PW-280 (Gagan Ghelot) that, he received the letter (Article-308) from ATS, Mumbai dated 30/12/2008 bearing outward no.87/ATS/ACP/2008. He had sent the reply letter to it (Exh.7751) along-with the documents

submitted by A-9 for account opening. In their bank A-9 was having account bearing no.624001505303. The ATS has also made correspondence for getting the details of transactions in the said account. The reply was sent along with Quick cash deposit voucher (Exh.7754 Colly & Exh.7755 Colly). Their bank is having core banking solution, so any person can deposit the amount in the account of other person, at any place, in any branch.

1151) The documents on record shows that, it was a joint account of A-9 and his wife Aparna Purohit. The Quick cash deposit voucher (7754 Colly) of dated 03/11/2007 shows that the amount of Rs.50,000/- was transferred from ICICI Bank of Faridabad Branch in the account of Mrs. Aparna Purohit by Jaideep Mehta. The second Quick Cash Deposit Voucher (Exh.7755 Colly) of dated 03/11/2007 shows that the amount of Rs.30,000/- was transferred from ICICI bank, branch at Rohini in the aforesaid account in the name of Mrs. Aparna Purohit by Jaideep Mehta.

1152) The admissions given by the witness in cross examination indicate that, he has no personal knowledge about the aforesaid Quick cash deposit vouchers. Consequently, he was unable to specify who filled out those vouchers, when they were received by the bank, whose phone number appears on them, or who deposited the cash. He also does not know the nature or purpose of the transactions. He further admitted that, both the Quick

Cash Deposit vouchers are verified and signed by the different officers and they would be in better persons to state about the veracity of cash deposit transactions. Thus, the witness lacks of personal knowledge about the vouchers as well as about financial documents. The officers who actually verified and signed would be more qualified to comment upon the transaction's authenticity. Keeping aside the aforesaid aspect, even for the sake of moment it is assumed that, the amount was transferred from one Jaideep Mehta to the account of A-9, only that person can state the purpose of transaction. Prosecution had not examined Jaideep Mehta. Moreover, the alleged transaction of 2007 and not during the period of alleged conspiracy. Therefore, in the absence of examination of transferor of amount, every transaction noticed in the account of A-9 cannot be construed as collection of funds / donations.

1153) It came on record in the testimony of PW-250 (Amol Bitkar) that he was serving in HDFC, Bank, Camp Branch, Pune. Their Bhandarkar Branch had issued the statement of account / account extract (Art.264) of Vilok Sharma.

1154) The admissions made by the witness (PW-250) during his cross-examination clearly establish that, ATS did not issue any letter to its branch instructing it to furnish the aforementioned statement of account. Furthermore, the KYC documents are not in the custody of the said branch, despite the account having been opened therein. It is only upon verification of the KYC

documents that one can determine whether the account holder is indeed Mr. Vilok Sharma. Moreover, it is entirely plausible that multiple individuals bearing similar or identical names may exist, therefore it becomes difficult to verify the identity of the account holder. The alleged account holder Vilok Sharma is not examined by prosecution. Prosecution could not establish any link between the said account holder with accused.

Account Details showing amount credited to the account of A-5:

1155) The PW-215 (Dilip Kaul) was a branch manager, SBI, M.P. Nagar Branch, Bhopal. His testimony shows that, ATS issued letter to their branch and thereby demanded account opening form and other documents of Sameer Sharad Kulkarni (A-5). The said documents were not maintained at branch office and hence, the said letter was forwarded to Asst. General Manager, SBI, Liability Central Processing Cell, Mumbai and it was intimated accordingly to ATS. He has handed over the copy of account opening log. He identified it. He was shown the slips and he identified those slips. The cash voucher slip was in the name of Sameer S. Kulkarni (A-5) bearing account no.20005136743 of dated 13/11/2007. The statement of account of Sameer Kulkarni (A-5) from 13/11/2007 to 31/12/2008 was also identified by him. There are credit entries in his account except dated 13/11/2007. He has taken out all the information from their computer and all the slips are computer generated. The master server is at Mumbai and he has downloaded the data from the said master server. He has also given the certificate

according to banker's books of evidence and I.T. Act, vide exhibit-6895. From different branch of SBI, the amount was credited in the account of A-5, but the vouchers of the said entries are not available with them.

1156) The admissions given by the witness in his cross examination shows that, he has not seen the person at the time of opening of account. He has not handed over any KYC documents of the said customer. Anybody can deposit the cash in anyone's account from any branch. It is also possible that without obtaining the permission of the customer, third party may deposit the amount in that account. He also admitted that, there may be multiple accounts with the same names. Sometimes, the names of two customers can be similar. These admissions casts doubt on payment of account and the accuracy of account attribution.

1157) It has come in the testimony of PW-145 (Rajesh Kumar) was the Chief Manager of SBI, SPBB, Deccan Gyamkhana Pune. He had handed over the original deposit slip (Exh.6594) of the account of A-5 to ATS along-with the reply letter (Exh.6593).

1158) The admissions given by him in his cross examination clearly demonstrate that, he neither furnished details regarding the opening of the account nor possessed any knowledge of the deposit in question. Thus, he didn't provide details about opening of account and lacked knowledge of the deposit. The

existence of multiple accounts bearing similar names further complicates identification. Due to multiple accounts with similar names, there cannot be a certainty about the account, moreover creates ambiguity. Moreover, it is impossible to ascertain who deposited the said amount into the account, as banking systems allow any individual to deposit funds into other's account without necessarily being the account holder. Hence, the origin of the deposit remains unverified and cannot be conclusively attributed to any specific person.

Arms and Ammunition Purchase:

1159) In order to show that, the Arms and Ammunition had been purchased by A-9 for the illegal activities or commission of crime, the prosecution had examined PW-220 (Milind Joshirao), PW-259 (Shirish Date), PW-208 (Shailesh Raikar), PW-252 (Manish Goswami), PW-309 (Nithin Joshi) & PW-188 (Sanjeet Pendharkar).

1160) The evidence of PW-220 (Milind Joshirao) already discussed in detailed in earlier paras and hence, it is not reproduced here. Nothing came on record from the testimony of this witness about the financial transactions or purchasing of any arms by A-9.

1161) The evidence of PW-259 (Shrirish Date) is already discussed in detailed in earlier paras and hence, it is not reproduced here. It came from the mouth of this witness that ATS kept in illegal

custody under the pretext of inquiry and tortured him to confess his involvement in the aforesaid case. His statement was recorded behind his back. He didn't know about the contents of his statement.

1162) The testimony of PW-208 [Shailesh Raikar] is completely silent on the point of Arms and Ammunition or in his presence any Arms had been purchased by A-9.

1163) Thus, the testimony of aforesaid three witnesses on the point of Arms and Ammunition is not helpful to prosecution as nothing came on record through their evidence.

1164) The PW-252 (Manish Goswami) is licensed holder Arms seller at Nashik. In the year 2006, A-9 (Col. Purohit) visited his Arms Shop to purchase ammunition. A-9 showed license to him. And on the basis of said license the ammunition was supplied to him. He sold 0.32 revolver's bullets to him. A-9 was holding two licenses being serving in Military. Thereafter, he never sold any arms or ammunition to A-9. The Ld. SPP cross examined him with permission. In his cross he admitted that, A-9 with Capt. Nitin Joshi had been to his Shop and making inquiry about 0.22 rifle. After negotiation he was ready to sell the said rifle at the cost of Rs.75,000/- but A-9 failed to show his license and hence, weapon was not sold to him. The article 125 was shown to him which is golden plated 32 bore revolver but he could not identify the same.

1165) He was cross examined by the Ld. Advocate for accused. The admissions given by him in his cross examination itself shows that, the contents of Portion mark 'C' of his statement had not stated by him to police. So far as the contents of portion mark 'A' & 'B" of his statement are concerned, he for the first time came to know when it was read over to him in cross examination by Ld. SPP. Thus, it indicates that it was recorded without his knowledge. He also admitted that, near about five times he had been called by ATS. Repeatedly calling by ATS gave him tension and till today he is afraid, if he doesn't give the statement as per the say of ATS, then he would be in trouble. Apart from aforesaid admissions, even it is considered that he sold out arms or ammunition but only license holder can purchase the same as per rules. A-9 was license holder. It is not the case of ATS that, the said gun / revolver or 0.32 revolvers bullet had been used by A-9 for the commission of aforesaid alleged crime. Moreover, he is already discharged from Arms Act.

1166) Considering the evidence of PW-188 (Sanjeet Pendharkar) it clearly shows that, he did not state that A-9 asked him to hand over the rifles bag to A-11 or to collect a bag from A-6. Nothing emerged on record regarding the alleged rifles or any nexus involving A-9, nor was there any admission to that effect from PW-188.

1167) The PW-309 (Nitin Joshi) was cross-examined by the Learned

Special Public Prosecutor (Ld. SPP), as he did not support the prosecution's case. During cross-examination, he specifically stated that A-9 had never handed over any rexine bag to him to keep at his home, nor had he ever shown him any weapons from the said rexine bag. Nothing material elicited from witness which undercuts any allegations suggesting a link between the accused and illicit activities tied to that bag.

Section 27 Memorandum:

1168) As per prosecution, the cash to the tune of Rs.70,500/- of Abhinav Bharat came to be seized from the house of A-6 as per the memorandum Panchanama. In order to prove it, prosecution had examined PW-315 (Popat Avhad) and Panch Witness PW-175 (Sanjay Palkar).

1169) The PW-315 (Popat Avhad) has prepared Memorandum Panchanama. He has identified the said panchanama and its contents vide Exh.6731 & 6732. He identified the envelope (Art.121) in which cash was kept and currency notes (Art.120) and one electric Bill (Art.122).

1170) The PW-175 (Sanjay Palkar) has testified that, he had been acted as a Panch witness. On 08/11/2008, he had been Kalachowki Police Station. A-6 was present there. He disclosed that, he is treasurer of Abhinav Bharat Sanstha. He spent some amount and the remaining amount of said Sanstha is with him at his house at Pune. The panchanama was prepared accordingly.

Then they went to his house situated at Vakil Nagar, Erandawane, Pune. His father was present at Home. There was wooden cupboard in bedroom from which A-6 taken out Rs.70,500/- having one sealed bundle of denomination Rs.500/-, five currency notes of Rs.500/- and 18 currency notes of Rs.1000/-. It was sealed and packed in brown colour envelope and label was affixed. Then police prepared the panchanama.

1171) Bare reading of Section 27 makes it clear that, how much information received from accused may be proved. The essential ingredients of section 27 are the person giving information must be accused, he must be in custody of police, it led to discovery, statement first and then followed the discovery & statement must be voluntary. Information given by the accused must be recorded by the police officer in the presence of two panch witnesses and facts must be discovered in the consequences of information. Facts discovered is not equivalent to the object produced. If facts already discovered from known sources or police had knowledge that where the incriminating articles are hidden or recovered from open place which was accessible to all or threat is given or without statement or accused was handcuffed and taken to the spot then it is of no use.

1172) It came on record that, the accused was repeatedly called day-to-day for inquiry prior to his arrest. He was coming from Pune to attend the said inquiry. Then, he came to be arrested on dated

02/11/2008. The first house search was carried out by ATS on 04/11/2008. Thereafter, the Memorandum and seizure of amount was carried out on 08/11/2008. Moreover, PW-175 (Sanjay Palkar) has admitted in cross examination that, "the accused had not given his address but it is mentioned in Panchanama. Police persons were knowing the house of A-6. Police knew that where to go." Considering the aforesaid aspects, it cannot be said that, the ATS did not have knowledge of the place of residence of accused and he was working as treasurer of Abhinav Bharat. Thus, the place was within the knowledge of the ATS. Therefore, subsequent belated recovery of amount from the known place would be meaningless and not helpful to prosecution.

1173) The memorandum shows that, the father of A-6 was present at home. At the relevant time, he was the custodian of the house. While sealing the amount in envelope they could obtain his signature or record his statement separately or call the panch witness of local resident i.e. those are residing in the vicinity of the house to dispel the doubt. Though, PW-315 (Popat Avhad) had stated that, he had handed over the copy of Panchanama to accused and his father but nothing is mentioned about it in Panchanama nor there is any acknowledgment placed on record to show that the said copy was handed over to his father at the relevant time. Therefore, it doesn't inspire the confidence that, he had given the copy of panchanama to them. PW-175 had not personally seen the cupboard to verify the articles kept in

cupboard. The number of currency notes are not mentioned in the Panchanama. The second part of panchanama was prepared between 21.10 to 22.15 hours. PW-175 stated that it was completed between 10 pm to 10.30 pm, but they left Pune at about 9.30 to 10 pm. It indicates that the second part of panchanama was not prepared on the Spot.

1174) The PW-315 (Popat Avhad) has admitted in cross examination that, he had not made any investigation as to whether the seized amount belongs to Abhinav Bharat or not. He further admitted that he did not find any evidence in the house that the said amount belongs to Abhinav Bharat.

1175) Considering all the aforesaid admissions pertaining to the manner of recovery and since the incriminating articles were recovered on the basis of information already known, section 27 of Evidence Act has no application. Even for the sake of moment, it is considered that the alleged amount was seized but it was not of Abhinav Bharat. There is no evidence to connect that amount with Abhinav Bharat. It leads to inference that, it would be personal amount of accused which shown to be seized under the head of Abhinav Bharat. The number of witnesses related to Abhinav Bharat Trust / Abhinav Bharat are examined but nowhere they had stated that the aforesaid amount belongs to Abhinav Bharat.

<u>Handwriting Specimen of A-6:</u>

1176) The ATS had taken, on different dates, the specimen of handwriting of A-6. They had taken four times the handwriting specimen of A-6 to prove the allegations of money transactions. Thereafter, those were sent to Handwriting Expert and obtained his opinion. In order to prove, the prosecution has examined PW-158 (Vikas Shinde), PW-162 (Sandeep Palve), PW-164 (Rajesh Waghmare), PW-168 (Tajuddin Wahab Ali Shaikh) and PW-320 (ACP Mohan Kulkarni). It would be apposite to mention the relevant information in tabular format,

Sr. No.	Date	Documents are marked as Article No.	Panchanama Exhibit No.	Signatures of Panch witnesses are marked as Exhibit No.
1	16/12/2008	91, 92, 93	6625	6626, 6627, 6628
2	19/12/2008	102, 103,104	6665	6666, 6667, 6668
3	20/12/2008	105,106,107	6676	6677, 6678, 6679
4	17.12.2008	110,111, 112	6700	6701, 6702, 6703

1177) The testimony of PW-158 (Vikas Shinde) shows that, he had been to ATS Kalachowki Mumbai on 16.12.2018 to act as a panch for specimen handwriting of A-6 (Ajay Rahirkar). Police had handed over three papers to A-6 on which something was already written by police on the top of each paper. The block which is appearing on each page, he had written down some

numbers, letters and name inside that block. He identified his signatures and panchanama vide **Exh.6625**.

1178) Bare perusal of Panchanama shows that, police had given three white papers (Art.91/ Exh.6626, Art.92/ 6627, Art.93 /6628) to A-6 and as per their narration he had wrote down some words, name and put his signature on that paper. But in cross examination, PW-158 (Vikas Shinde) had denied that police had not told him to write down specific words but those words were written by accused as per his wish. It is not even digestible to ordinary prudent man that, any accused would write the incriminating words or words similar to the entries found in alleged diary.

1179) Moreover, PW-158 (Vikas Shinde) stated that A-6 had written down different things on each page. Whereas, perusal of three pages and writing appearing in the block seems to be similar words. Moreover, bare perusal of Panchanama doesn't show that, it was sealed on the spot by putting a label bearing signature of panch witnesses and police. Therefore, the alleged handwriting in the presence of panch witness do not inspire the confidence.

1180) The PW-162 (Sandeep Palve) has testified that, he had been to ATS Kalachowki Police Station on 19.12.2008 to act a panch witness. In his presence police has handed over three blank pages to the A-6 (Ajay Rahirkar). He jotted down some

numbers, letter, words and name of some banks on first paper and the same was written on the other two pages. All they signed on three pages including the signature of accused. He identified the panchanama prepared by police vide Exh.6665.

1181) He has not identified the accused. He acted as a panch in some cases registered at Kalachowki Police Station. Though he has testified that A-6 had written down some numbers and bank name in his presence but it is nowhere mentioned in the panchanama. He has also admitted that there is no reference of numbers and bank name in panchanama.

1182) As per Panchanama, A-6 had written down only some words, name and put-up his signature. But the three papers are also showing the transactions, figures, dates, debiting and crediting the amount. According to this witness, A-6 had jotted down the wording as per Panchanama on the three papers. And if, as per panchanama, anything is not jotted down then those are not prepared before him. While handing over the papers, those were blank but it shows that on the top of the page the details of the case are printed along with date. Thus, it can be said that it was partly blank paper and the contents of panchanama doesn't match fully with the written text and seems to be prepared in the absence of this witness. Admittedly, the documents were not sealed in the presence of panch witness by affixing label on it. Considering abovesaid discussion, I am of the view that, there is variance in oral testimony, panchanama and written text and

hence, it is not free from doubt.

1183) The PW-164 (Rajesh Waghmare) has testified that, he had been to ATS Police Station, Kalachowki on 20.12.2008 to act as a panch. Police had told him that they are going to obtain the signature of A-6 (Ajay Rahikar) and three pages were handed over to him. On the top of each page some information was written and there was one block on each page. There were some words, letters, amounts and names were written on the said three pages. All of them signed on three pages. Police prepared panchanama vide Exh.6676. He identified said panchanama and signatures appearing on three pages.

1184) The witness has admitted in cross examination that, "on the three pages, the same words and same letters were written. On the three pages the wording were already written. At that time, no wording regarding the "figures" was mentioned in the panchanama. Apart from "words, name and signature", if anything is written on the said paper, then it was not written before him. The said three pages were not sealed by police before him. The panchanama was not prepared on 19.12.2008 even-though it was mentioned in panchanama. On the three papers some description of the case was already written prior to handing over the three papers to the accused A-6. In his presence A-6 has not written down anything except his signature."

1185) The admissions given by the witness also clearly shows that except the signature nothing was written down in his presence by the accused. So, the possibility cannot be ruled out that already written papers were handed over to the accused in presence of panch witness and only his signature was obtained on those papers. The date mentioned in panchanama on top right hand side corner is 20/12/2008. Whereas the wordings mentioned while preparing the panchanama shows that, it was prepared on 19/12/2008 by calling the panch witnesses. In fact, the panch witnesses were not present on 19/12/2008. They were present on 20/12/2008. Nowhere it came from the testimony of any witness that it was inadvertently mentioned while preparing the panchanama. Therefore, it loses its sanctity.

1186) The PW-168 (Tajuddin Wahab Ali Shaikh) has testified that, he has also acted as a panch and went to ATS Police Station Kalachowki on 17.12.2008. In his presence A-6 jot down something on three papers. All they have signed on three papers. Police prepared panchanama and obtained his signature. He identified panchanama vide Exh.6700 and signatures appearing on three papers.

1187) The panch witness had given several admissions in his cross examination which shows that, he didn't know what was written in those three papers. He didn't know as to who signed right side and left side of those papers. The wording of panchanama shows that police told to A-6 to jot down some words, names

and put his signature on those three papers. The witness who was present had denied the aforesaid things. According to him, police had not told anything to jot down on papers. The accused on his own wrote down something on papers. Thus, the oral testimony of witness is contradictory to the wordings of panchanama. He also didn't know as to whether those documents were sealed or not by police.

1188) Bare perusal of all the aforesaid four panchanama vide exhibits 6625, 6665, 6676 and 6700 shows that all those were prepared on computer in the stereo type format, only by changing the name of witnesses, date and time. The chief investigating officer PW-320 (ACP Mohan Kulkarni) had only testified that, on 16/12/2008 and 18/12/2008 PSI Vijay Vakurdekar had taken the specimen handwriting of A-6 under Panchanama. He only identified two panchanamas i.e. Exh.6676 and 6665. On the other hand, PSI Vijay Wakurdekar in whose presence the specimen handwriting was obtained is also not examined by the prosecution as a witness. Considering the entire testimony of witnesses, all the aforesaid four specimen handwriting and panchanama are not free from doubt.

Handwriting Expert:

1189) Apart from the aforesaid observations and findings given in earlier para, it is necessary to consider the testimony of Handwriting expert on the touchstone of the opinion given by him.

1190) It emerges from the evidence on record that, whatever the documents shown to be seized from the house of A-6 on dated 04/11/2008, as enumerated in house-search and seizure panchanama vide exhibit - 8274 includes one diary & trust deed. In order to prove the entries found in diary were in handwriting of A-6, the diary was sent to State Examiner of Documents along with the specimen handwriting of accused taken on total 12 pages on different dates, account opening forms, vouchers, cheques, bills which were collected from various banks during the course of investigation. The covering letter bearing no. 198/EOW/CD/CID/800/2009 of dated 21/01/2009 in crime no. 18/2008 was issued to Addl. Chief State Examiner of Documents, CID, M.S., Mumbai under the signature of Shri. V.R. Dhobale, Addl. Commissioner of Police (crime), C.B., CID, Brihan Mumbai.

1191) The PW-205 (Jayant Aher) is examined as Handwriting Expert witness. He testified that, he was State Examiner of documents and examined more than 3 lakhs documents and furnished his opinion in 5,000 cases. Their department received the documents as per letter dated 21.01.2009. He had examined the documents and given his opinion vide exhibit-6850 bearing no.BB-16/2009 by issuing the covering letter bearing no.BHT/311/BB-16/2009/JKA, dated 22.05.2009.

1192) During the course of evidence, he has produced the reasons

prepared by him bearing no.BB-16/2009, which runs into 3 pages vide Exh.6849. The said copy was taken on record by my learned predecessor subject to considering the objection raised by learned advocates by marking that, the document is not having stamp and seal of the department.

1193) The documents marked by Handwriting Expert the PW-205 (Jayant Aher) are mentioned in the following tabular format:

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
1.	Cheque no.197878 of State Bank of India dated 07/03/2008 for the amount Rs.20,000/-	Signature portion marked Q-1	Exh.6636
2.	Cheque no.197879 of State Bank of India dated 16/06/2008 for the amount Rs.26,000/-	Signature portion marked Q-2	Exh.6637
3.	Cheque no.197881 of State Bank of India dated 23/10/2008 for the amount Rs.44,150/-	Signature portion marked Q-3	Exh.6638
4.	Cheque no.197882 of State Bank of India dated 23/10/2008 for the amount Rs.35,000/-	Signature portion marked Q-4	Exh.6639
5.	Four deposit slips for cash in ICICI bank, for the account no.624001505303	Writing and figures are marked as Q-5 to Q-8	Now four cash deposit slips are marked as **Exh.6826**

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
			colly.
6.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount Rs.15,000/-	Writing and figures are marked as Q-9	Exh.6645
7.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount Rs.20,000/-	Writing and figures are marked as Q-10	Exh.6652
8.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount Rs.10,000/-	Writing and figures are marked as Q-11	Exh.6644
9.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount Rs.5,000/-	Writing and figures are marked as Q-12	Exh.6657
10.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount Rs.5,000/-	Writing and figures are marked as Q-13	Exh.6656
11.	One deposit slip for cash of Punjab National Bank for the account no.1561009100010027 for the amount Rs.20,000/-	Writing and figures are marked as Q-14	Now one cash deposit slip is marked as Exh.6827
12.	One deposit slip for cash of Punjab National Bank for the account no.1561009400010027 for the amount of Rs.10,000/-	Writing and figures are marked as Q-15	Now one cash deposit slip is marked as Exh.6828

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
13.	One deposit slip for cash of Axis Bank Limited for the account no.062010100074892 for the amount of Rs.15,000/-	Writing and figures are marked as Q-16	Now one cash deposit slip is marked as **Exh.6829**
14.	One deposit slip for cash of State Bank of India for the account no.30177565738 for the amount of Rs.11,000/-	Signature portion is marked as Q-21	Exh.6658
15.	Cheque no.197880 of State Bank of India dated 30/09/2008 for the amount of Rs.9,600/-	Writing and signature portion are marked as Q-22 and Q-22 (a)	Exh.6640
16.	Cheque no.197876 of State Bank of India dated 06/08/2007 for the amount of Rs.4,000/-	Writing and signature portion are marked as Q-23 and Q-23 (a)	Exh.6641
17.	Four deposit slips for cash in ICICI bank for the account no.624001505303	Writing and figures are marked as Q-24 to Q-27	Now four cash deposit slips are marked as **Exh.6830 colly.**
18.	One deposit slip for cash of State Bank of India for the account no.0020005136743 for the amount of Rs.4,000/-	Writing and figures are marked as Q-28	Exh.6642
19.	One deposit slip for cash of State Bank of India for the account no.0020005136743 for the amount of Rs.2,000/-	Writing and figures are marked as Q-29	Exh.6643

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
20.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	Writing and figures are marked as Q-30	Now one cash deposit slip is marked as **Exh.6831**
21.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.3,000/-	Writing and figures are marked as Q-31	Now one cash deposit slip is marked as **Exh.6832**
22.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	Writing and figures are marked as Q-32	Exh.6646
23.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.5,000/-	Writing and figures are marked as Q-33	Exh.6647
24.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	Writing and figures are marked as Q-34	Exh.6648
25.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.15,000/-	Writing and figures are marked as Q-35	Exh.6651
26.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.8,000/-	Writing and figures are marked as Q-36	Exh.6649
27.	One deposit slip for cash of	Writing and figures	Exh.6650

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
	State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	are marked as Q-37	
28.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	Writing and figures are marked as Q-38	Exh.6653
29.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.10,000/-	Writing and figures are marked as Q-39	Exh.6654
30.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.15,000/-	Writing and figures are marked as Q-40	Exh.6655
31.	One deposit slip for cash of State Bank of India for the account no.20005136743 for the amount of Rs.2,000/-	Writing and figures are marked as Q-41	Exh.6594
32.	Five deposit slips for cash of Axis bank for the account no.062010100074892	Writing and figures are marked as Q-42 to Q-46	Now five cash deposit slips are marked as **Exh.6833 colly.**

Sr. no.	Description of document	Exhibit marked by Expert	Court Exhibit
33.	The writing and figures in English at page no.132 to 135	The portions marked Q-17, Q-	Page nos.132 to 135 in the

	on diary.	18, Q-18(a), Q-19, Q-19(a), Q-20, Q-20 (a)	diary are now marked as **Exh.6848 colly.**

Sr. No.	Description of document	Exhibit marked by Expert	Court Exhibit
1	Article 91	S-1	6836
2	Article 92	S-2	6837
3	Article 93	S-3	6838
4	Article 110	S-4	6839
5	Article 111	S-5	6840
6	Article 112	S-6	6841
7	Article 102	S-7	6842
8	Article 103	S-8	6843
9	Article 104	S-9	6844
10	Article 105	S-10	6845
11	Article 106	S-11	6846
12	Article 107	S-12	6847

1194) As per PW-205 (Jayant Aher) that, he has examined questioned writing and signature side by side comparison process with the specimen writing and signatures. On the basis of it, he formed his opinion vide Exh.6850. Till the deposition, he has not stated that, he has prepared the reasons bearing no.BB-16/2009 which runs into 3 pages. During the course of evidence, he has produced the copy of his reasons which runs into 3 pages.

1195) The witness has also admitted in cross examination that he is

neither holding any degree or diploma in handwriting. Examiner is also not possessing any certificate showing that, he has examined 3 lakhs documents and opined in 5,000 cases. Mere assertion would not be enough in the absence of any evidence related to it.

1196) He has testified that, he has prepared the rough notes while examining the documents and from which he has formed his final opinion. Admittedly, he had not sent his rough notes to ATS. He has also not preserved those rough notes in his department. The entry of those documents is nowhere taken by him. On the contrary it shows that he has destroyed those documents. Thus, he has not sent the rough notes as well as the copy of reasons to ATS. He also admitted that he had not sent the copy of reasons to the ATS with the opinion at that time. Admittedly, it is produced during the course of his evidence and till then it was withheld by him. He has also not assigned any reason for not sending the copy to ATS during the course of his evidence as well as it is also not mentioned in his opinion-cum-report vide Exh.6850. Destroying the rough notes on the basis of which he has formed his opinion as well as withholding the document pertaining to reasons till his evidence without assigning any reasons give rise to suspicion.

1197) Admittedly, the copy of reasons produced by the witness on record does not bear date and stamp of the department. The procedure adopted by him while examining the document and

forming of opinion is not mentioned in his report. The examination of document is a scientific work. There must be standard operating procedure which requires to be followed while examining the documents. But what procedure he has adopted after receipt of those documents is not mentioned by him in his opinion-cum-report vide Exh.6850.

1198) The expert has also admitted that his opinion is based on the document. The opinion about authorship of writer appearing on Exh.S-1 to S-12 was based on available data. The available data was inadequate. But, on the basis of inadequate available data he has formed the opinion. He compared the documents Q-5 to Q-15, Q-24 to Q-27, Q-37 to Q-40 with those documents Exh.S-1 to S-12. The said thing he has not specifically mentioned in para no.3 of his opinion-cum-report vide Exh.6850. Thus, comparison of those documents without mentioning in the report. The aforesaid admission itself goes to the root of the case and shows that, he has formed his opinion on the basis of inadequate data.

1199) Though, the witness has stated that, he has received the documents for comparison with covering letter of ATS of dated 21.01.2009, in crime no.18/2008, but the contents of said documents are not proved by examining the concerned witness. The witness has also stated that the covering letter was sent through his department on dated 22.05.2009 along with original documents, but the said document is not filed along with charge-sheet and shown to the witness. Thus, it remained

unproved document. Hence, it can be said that, sending and receipt of the documents along with covering letter are remained to be unproved.

1200) It is necessary to mention that, already the house search and seizure of dated 04/11/2008 is doubtful as discussed earlier in concerned para. Apart from this observation, even the report given by the State Examiner of Document is also not free from doubt on the counts as discussed above i.e. not given the comparative statement, formed the opinion on inadequate data, withholding the reasons for arriving certain conclusion, no documentary evidence to show possessing the required skill, correspondence between them is not on record. All those things certainly create the doubt not only about the actual examination of documents but also the sanctity of report. Even if it is assumed for the sake of moment that he had compared the documents but on the basis of inadequate data, there cannot be a 100% productive comparison, examination and formation of correct opinion.

Custodial Violence:-

1201) The Ld. Advocate for A-9 again raised the point during the course of final hearing that, A-9 had been ill-treated, tortured at the hands of ATS. Therefore, he sustained number of injuries. He was taken to Military Hospital for examination and he pointed out those reports. He further submitted that being an Army officer his sanction is mandatory. But the ATS or NIA had

not obtained Sanction u/s 197 of Cr.P.C. to prosecute the Government servant.

1202) On the other hand, Ld. SPP submitted that, there was no torture or ill-treatment as alleged. All the claim of ill-treatment which were raised during remand are struck-down by the remanding court.

1203) The remand report dated 03/12/2008 shows that the court has taken into the consideration the allegations of torture made by A-9 and considering his involvement in the offence, granted the PCR till 06/12/2008. Thereafter, on 06/12/2008, A-9 himself stated before the Court that, they have no complaint of ill-treatment at the hands of ATS/Police. On his own request, he was sent for medical examination in Military hospital at Colaba. Though the medical papers were showing some injuries but at the belated stage, he is taking the defence that he was thrashed or assaulted at the hands of police / ATS will not survive, as he himself stated before the remand Court that he has no complaint of ill-treatment at the hands of ATS. Moreover, he had not taken any prompt step at the relevant time before the appropriate court for the aforesaid allegations of ill-treatment, if any after receipt of medical papers. In addition to it, during the course of evidence of police witnesses, the suggestions were given to them about thrashing, torture which were categorically denied by them. Mere suggestion would not enough in the absence of any positive or corroborating evidence. Moreover, he

had not taken any prompt action against alleged torture or thrashing.

1204) Nothing is brought to my notice the said issue was kept open. Due to efflux of time & without pending complaint, after the lapse of near-about 16 years, the said issue is raised which has no force nor anything survived in it.

Issue of Sanction u/s 197 of Cr.P.C. :-

1205) According to prosecution, A-9 despite of being serving in Military Intelligence had collected huge funds for himself and for Abhinav Bharat. He has utilized some funds for himself and for illegal activities. He was indulged in illegal activities. He was present in all Abhinav Bharat Meetings. He never informed to his superior about the meetings, collection of funds, other illegal activities. Ld. SPP has also brought to my notice that, the said point is dealt by Hon'ble High Court in detail in writ petition no. 112/2018 filed by A-9. The Hon'ble High Court observed that, sanction u/s 197(2) was not required as the conduct of A-9 did not pertain to any of his official duties. Hence, writ petition was rejected by Hon'ble High Court.

1206) On the point of sanction under Section 197 of Cr.P.C., learned SPP has placed his reliance on the case of **State of Bihar and Ors. Vs. P. P. Sharma and Ors. [MANU/SC/0542/1992]**. In this Hon'ble Supreme Court, has observed as under:-

"64. ……. The emphasis laid in both the

sections are that no court shall take cognizance of offence against a public servant alleged to have committed while acting or purported to act in the discharge of official duty, except with previous sanction of the appropriate Government. The object behind prior sanction is to prevent malicious, vexatious and unnecessary harassment to a public servant by laying false or frivolous accusation or prosecution. In other words, Sections 197(1) and 15-A and related sections intended to immune a public servant who discharges his duties honestly and diligently from the threat of prosecution. Honest discharges of public duty would impinge adversely of the interests, acts or omissions of private persons who would be prone to harass in criminal proceedings and prosecution to demoralize a public servant.

65……..

66. The offending act must be integrally connected with the discharge of duty and should not be fanciful or pretended.

If the act complained of is directly, and inextricably connected with the official duty, though it was done negligently, or in dereliction of duty or in excess thereof, Section 197 and similar provisions operate as a canopy against malicious, vexatious or frivolous accusation or prosecution at the hands of the aggrieved persons. It is well settled law that public servant can only be said to act or purported to act in the discharge of his official duty if his act or omission is such as to lie within the scope of his official duty. It is not every offence committed by a public servant that requires sanction for prosecution, nor even every act done by him while he actually engaged or purported to have engaged under colour of his official duty that receives protection from prosecution. If questioned he must claim that he had done by virtue of office and it is inextricably connected with the duty. Sanction then would be necessary, irrespective of whether it was in fact a proper discharge of his duty or not is a

matter of defence on merits, which would be considered at the trial and could not arise at the time of grant of sanction which must precede taking cognizance of the prosecution. Therefore, there must be reasonable connection between the acts complained and discharge or purported discharge of the official duty, the act or omission must bear such a relation to the duty that the accused could lay reasonable, nexus between the offending act or omission and the duty but not a pretended or fanciful claim that he did it in the course of the performance of his duty. It is no part of the duty of a public servant to enter into conspiracy; to fabricate the records; falsification of the accounts; fraud or misappropriation or demand and acceptance of illegal gratification though the exercise of power given him an occasion to commit the offences."

1207) On the other hand, A-9 claims that, it was the part of his duty / job being a Military Intelligence Officer. He had been informing his superiors about infiltrated extremist group. He further

pointed out that, the order of Hon'ble High Court was challenged by A-9 before **Hon'ble Apex Court, SLP (Cri) No. 2681/2023**. While disposing-off the said writ petition, the Hon'ble Apex Court has observed that, "observations made in the impugned order for the purpose of examination of issue of sanction should not prejudice either the prosecution or the defence, in the proceeding before the trial court." In support of his submissions, he has placed his reliance on the following citations:

i] State of Punjab and Another Vs. Mohammed Iqbal Bhatti [(2011) 1 Supreme Court Cases (Cri.) 949; (2009) 17 Supreme Court Cases 92], the important observation of the Hon'ble Supreme Court is:

> *"Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and consideration of all the material facts and evidence collected during investigation and placed before it. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative."*

ii]. D. Devaraja Vs. Owais Sabeer Hussain [(2020) 7 Supreme Court Cases 695]. In this Hon'ble Supreme Court, has observed as under:-

> *"66. Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate*

government.

67. *Every offence committed by a police officer does not attract Section 197 of the Code of Criminal Procedure read with Section 170 of the Karnataka Police Act. The protection given* under Section *197 of the Criminal Procedure Code read with Section 170 of the Karnataka Police Act has its limitations. The protection is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and official duty is not merely a cloak for the objectionable act. An offence committed entirely outside the scope of the duty of the police officer, would certainly not require sanction. To cite an example, a police man assaulting a domestic help or indulging in domestic violence would certainly not be entitled to protection. However if an act is connected to the discharge of official duty of*

investigation of a recorded criminal case, the act is certainly under colour of duty, no matter how illegal the act may be.

68. *If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.*

69. *The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty*

and/or act done under colour of or in excess of such duty or authority.

70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."

iii] State of Maharashtra Vs. Dr. Budhikota Subbarao [(1993) 3 Supreme Court Cases 339]. In this Hon'ble Supreme Court, has observed as under:-

"Section 197 does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of

operation to only those acts or omissions which are done by a public servant in discharge of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed, strictly while determining, its applicability to any act or omission in course of service. Its operation has to he limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly

and in restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. If on facts, therefore, it is prima facie found that the act or omission for which accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.

So far public servants are concerned cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The

word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint cannot be taken notice of.

In the present case the courts below did not commit any error of

law in coming to conclusion that the entire proceedings were vitiated as no cognizance of the offences could have been taken against the accused without complying with provisions of Section 197 of the Code."

iv] Rakesh Kumar Mishra Vs. State of Bihar and Others [(2006) 1 Supreme Court Cases 557]. In this Hon'ble Supreme Court, has observed as under:-

"11. Use of the expression, "official duty" implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty."

v] Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others [(1998) 1 Supreme Court Cases 205]. In this Hon'ble Supreme Court, has observed as under:-

"*The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with a previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from his office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance, the accused after appearing before the court on process being issued, by an application indicating that Section 197(1) is attracted merely assists the court to rectify its error where jurisdiction has been exercised which it does not possess. In such a case there should not be any bar for the accused producing the relevant*

documents and materials which will be ipso facto admissible, for adjudication of the question as to whether in fact Section 197 has any application in the case in hand. The question of sanction can be considered at any stage of the proceedings."

vi] Om Prakash Yadav Vs. Niranjan Kumar Upadhyay and Others [2024 SCC OnLine SC 3726]. In this Hon'ble Supreme Court, in para nos.62 and 65, has observed as under:-

"62…….. if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted."

"65. Thus, the legal position that emerges from a conspectus of all the decisions referred to above is that it is not possible to carve out one universal rule that can be uniformly applied to the

multivarious facts and circumstances in the context of which the protection under Section 197 of Cr.PC is sought for. Any attempt to lay down such a homogenous standard would create unnecessary rigidity as regards the scope of application of this provision. In this context, the position of law may be summarized as under: -

> ***(i)*** *The object behind the enactment of Se*ction 197 C*rPC is to protect responsible public servants against institution of possibly false or vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act in their official capacity. It is to ensure that the public servants are not prosecuted for anything which is done by them in the discharge of their official duties, without any reasonable cause. The provision is in the form of an assurance to the*

honest and sincere officers so that they can perform their public duties honestly, to the best of their ability and in furtherance of public interest, without being demoralized.

(ii) *The expression "any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" in Section 197 CrPC must neither be construed narrowly nor widely and the correct approach would be to strike a balance between the two extremes. The section should be construed strictly to the extent that its operation is limited only to those acts which are discharged in the "course of duty". However, once it has been ascertained that the act or omission has indeed been committed by the public servant in the discharge of his*

duty, then a liberal and wide construction must be given to a particular act or omission so far as its "official" nature is concerned.

(iii) *It is essential that the Court while considering the question of applicability of Section 197 CrPC truly applies its mind to the factual situation before it. This must be done in such a manner that both the aspects are taken care of viz., on one hand, the public servant is protected under Section 197 Cr.P.C. if the act complained of falls within his official duty and on the other, appropriate action be allowed to be taken if the act complained of is not done or purported to be done by the public servant in the discharge of his official duty.*

(iv) *A public servant can only be said to act or purport to act in the discharge of his official*

*duty, if his act is such that it lies within the scope and range of his official duties. The act complained of must be integrally connected or directly linked to his duties as a public servant for the purpose of affording protection under Se*ction 197 Cr*PC.*

Hence, it is not the duty which requires an examination so much as the "act" itself.

(v) *One of the foremost tests which was la*id down in t*his regard was - whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.*

(vi) *Later, the test came to be re-modulated. It was laid down that there must be a reasonable connection between the act done and the discharge of the official duty and the act must bear such relation to the duty*

such that the accused could lay a reasonable, but not a pretended or fanciful claim, that his actions were in the course of performance of his duty. Therefore, the sine qua non for the applicability of this section is that the offence charged, be it one of commission or omission, must be committed by the public servant either in his official capacity or under the color of the office held by him such that there is a direct or reasonable connection between the act and the official duty.

(vii) *If in performing his official duty, the public servant acts in excess of his duty, the excess by itself will not be a sufficient ground to deprive the public servant from protection under Section 197 CrPC if it is found that there existed a reasonable connection between the act*

done and the performance of his official duty.

(viii) *It is the "quality" of the act that must be examined and the mere fact that an opportunity to commit an offence is furnished by the official position would not be enough to attract Section 197 CrPC.*

(ix) *The legislature has thought fit to use two distinct expressions "acting" or "purporting to act". The latter expression means that even if the alleged act was done under the color of office, the protection under Section 197 CrPC can be given. However, this protection must not be excessively stretched and construed as being limitless. It must be made available only when the alleged act is reasonably connected with the discharge of his official duty*

and not merely a cloak for doing the objectionable act.

(x) *There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down such a rule. However, a "safe and sure test" would be to consider if the omission or neglect on the part of the public servant to commit the act complained of would have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, the protection under Section 197 CrPC can be granted since there was every connection with the act complained of and the official duty of the public servant.*

(xi) *The provision must not be abused by public servants to camouflage the commission of*

a crime under the supposed color of public office. The benefit of the provision must not be extended to public officials who try to take undue advantage of their position and misuse the authority vested in them for committing acts which are otherwise not permitted in law. In such circumstances, the acts committed must be considered dehors the duties which a public servant is required to discharge or perform.

(xii) *On an application of the tests as aforesaid, if on facts, it is prima facie found that the act or omission for which the accused has been charged has a reasonable connection with the discharge of his official duty, the applicability of Section 197 CrPC cannot be denied."*

(vii) Devinder Singh and Others Vs. State of Punjab

through CBI [(2016) 12 Supreme Court Cases 87]. In this Hon'ble Supreme Court, in para nos.39.5 to 39.7, has observed as under:-

> *"**39.5** In case sanction is necessary it has to be decided by competent authority and sanction has to be issued on the basis of sound objective assessment. The court is not to be a sanctioning authority.*
>
> ***39.6.** Ordinarily, question of sanction should be dealt with at the stage of taking cognizance, but if the cognizance is taken erroneously and the same comes to the notice of Court at a later stage, finding to that effect is permissible and such a plea can be taken first time before appellate Court. It may arise at inception itself. There is no requirement that accused must wait till charges are framed.*
>
> ***39.7.** Question of sanction can be raised at the time of framing of charge and it can be decided prima facie on the basis of accusation. It is open to decide it afresh in light of evidence adduced after conclusion of*

trial or at other appropriate stage."

(viii) Anjani Kumar Vs. State of Bihar and Another [(2008) 5 Supreme Court Cases 248]. In this Hon'ble Supreme Court, has observed as under:-

> *"8. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably*

connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much

as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his

official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

(ix) Nanjappa Vs. State of Karnataka [(2015) 14 Supreme Court Cases 186] In this Hon'ble Supreme Court, has observed as under:-

"22. The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much

depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

(x) P. K. Pradhan Vs. State of Sikkim represented by the Central Bureau of Investigation **[(2001) 6 Supreme Court Cases 704].** In this Hon'ble Supreme Court, has observed as under:-

"15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the

act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial

and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

1208) I have gone through the aforesaid citations. I have no doubt about the legal propositions laid down in the aforesaid rulings. In the light of aforesaid citations, firstly it is necessary to go through the facts and evidence on record prior to its applicability. The principles laid down in the aforesaid citations are summarized as follows,

i] Courts cannot take cognizance of offences allegedly committed by public servants in the course of their official duties unless prior sanction is obtained from the appropriate government.

ii] The expression “official duty” connotes that the act or omission must bear a direct and reasonable nexus with the duties entrusted to the public servant as part of their official function. Thus, only actions reasonably connected to official duty are protected.

iii] The acts like fraud, conspiracy, forgery, or bribery are not protected, as they fall outside the scope of official duties.

iv] The issue of sanction can be raised at any stage.

v] A public servant must show a reasonable nexus between the act and their official role. It should not just a superficial or false claim.

vi] The sanction is purely a threshold requirement.

vii] Statutory protection does not extend to all acts performed in the course of service, but only to those reasonably related to the discharge of official duties.

viii] Acts that fall outside the scope of such duties are not covered under the protective ambit of the provision.

ix] There cannot be a straight jacket formula for Sanction. Each case must be examined individually based on the facts, circumstances and context to determine its applicability.

x] The protection granted under section 197 of Cr.P.C. is not absolute and does not extend to acts committed by public servant that constitute criminal misconduct or conspiracy. Those act falls outside the purview of Official Duty and therefore do not require any prior sanction for prosecution.

1209) Before dealing with rival submissions, it would be apposite to quote the section 197 of Cr.P.C.

197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013]-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein the expression "Central Government" were substituted.]

[*Explanation.* - For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166-A, section 166-B, section 354, section 354-A, section 354-B, section 354-C, section 354-D, section 370, section 375, section 376, [section 376-A, section 376-AB, section 376-C, section 376-D, section 376-DA, section 376-DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions

of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.

1210) Considering the rival submissions, firstly, it is necessary to mention that the A-9 though serving in Military Intelligence at the relevant time, but he is facing the charges of murder, criminal conspiracy with other charges under various sections of IPC, Explosive Substances Act, UAPA.

1211) It emerges from the evidence on record that, the trust deed of Abhinav Bharat which came to be seized from the house of A-6 along-with other documents and articles. No doubt the said seizure was under the cloud of doubt as discussed earlier under that head. But to decide the aforesaid issue, for the sake of moment, if it is perused being a public document, it clearly shows that A-9 was one of the trustees in Abhinav Bharat Trust. There is no documentary evidence on record to show that, his superior authority had granted him express permission to him to join the said trust as a member / trustee and to collect the funds or utilize the funds. He has not pointed out any documents in that regard.

1212) It has come on record, in the evidence of PW-307 (Keshav Pawar)

that, A-11 was one of the source persons of MI. Their MI agency of Military is the spy agency. They used to collect the information through their sources from religious, social and political organization, including Abhinav Bharat organization. A-9 was working on the nexus between SIMI and ISI. Whereas, it came on record in the evidence of PW-262 (Col. Praveen Khanzode) that, A-11 was their source person. The practice of MI unit is to cultivate the contacts and to pass on the information to superiors. Thus, testimony of both military officers shows that the nature of work of MI. They had not stated that A-9 was having express permission to join as member of Abhinav Bharat or they had seen any such documents showing the MI had granted the permission to A-9.

1213) Now coming to the evidence of PW-208 (Shailesh Raikar) who was the Military officer. In the month of March-2008, he left the service of Army. When he was in service of Army at that time in his unit A-9 was also working. After leaving Army service, he had joined the Bhonsala Military School, Nashik from March-2008. He was discussing with A-9 on the topic of Abhinav Bharat and said discussion was very casual and on general topics and not on any objectionable matters. To collect the information against Anti-national elements was the part and parcel of their duty and for this purpose they were taking the aid of various organizations. At the one hand, he acknowledged that, how A-9 was connected with Abhinav Bharat he had no knowledge about it, but on the other hand, he stated that A-9 was sending the

information of Abhinav Bharat. A-9 was permitted to collect the funds from patriotic organizations. The allegations according to the charge-sheets pertaining to the collection of funds / donation / money are mainly after march-2008. During that period, PW-208 was not in service, so no question arises about the sending information to him or through him to their superior officers. Mere admitting in cross examination, do not strengthen that A-9 was permitted to collect the funds. There is no documentary evidence in this regard to show that how much collected funds he had informed to MI or reply of MI on such collection of funds. Thus, inconsistent statement on the aforesaid point do not inspire the confidence to accept those as narrated by him, when he was having good relations with A-9 and not in service after March-2008.

1214) Ld. Advocate for A-9 has pointed out that DW-2 (Surendra Sing Chahal) was holding the post of Brigadier in the year 2018. He received an application of A-9. He had given the reply dated 2nd April 2018 (Exh.9835) after perusal of record available in his division. In reply, he has mentioned that A-9 was operating a 'Source' network through which he had obtained intelligence inputs. He had informed his superior at appropriate level about the inputs.

1215) Prior to DW-2 (Surendra Sing Chahal), Brigadier Jadhav and Gautam Deb holding the post of Brigadier of Army. As per the ethos of the Military Intelligence, the commanding officer or

Discipline & Vigilance Branch used to protect the interest of officers and sources. But after the arrest of A-9 no any steps were taken to protect their officer. If he would have really discharged the duty under the colour of his office, there would have been protection to him. The DW-2 has admitted that, except the statement in the court of inquiry, there was no other documents to show the record of this Military Intelligence. He also admitted that whatever the evidence given before the court of inquiry is not admissible in other court proceeding as per Army Rules. So, it clearly shows that, his reply (Exh.9835) is based on the inquiry papers & not based on the availability of records regarding the information of inputs, if any.

1216) The charges against the A-9 for the illegal act committed prior to 2009. In the year 2011, the PW-283 (Gautam Deb) was serving as Dy. Director General Military Intelligence, New Delhi. He received the correspondence from ATS Mumbai in the year 2011. The subject of the said letter was averment made by A-9 (Lt. Col. Prasad Purohit) in Criminal Bail Application No.333/2011 in Hon'ble High Court. He had sent reply letter (Exh.7778) to Shri. Rakesh Mariya, Addl. Director General of Police, ATS, Mumbai. Whatever correspondence he himself or his office was made on the basis of data available in their office. His reply letter dated 29th March 2011 (Exh.7778) itself shows that, no inputs were available.

1217) It has came in the evidence of DW-3 (Col. Skand Nayal) that A-9

was entrusted to penetrate / cultivate various individuals and organizations so as to establish a dependable network. He was arrested and handed over to Police by Colaba office. Prior to 2016, he was posted at Arunachal Unit. Prior to him, his predecessor Col. Vikas Katoch was commanding an intelligence unit. He has no documentary arrest to show that he persuaded about any wrongful arrest of A-9. His predecessor was having full access to files and to make correspondence. The sole prerogative of higher authority as to what action to be taken after receipt of information. The DW-3 joined the concerned unit in the year 2016 and all the incidents of prior to 2016 of which he had no personal knowledge. The admission given by him in cross examination itself shows that, whatever the facts deposed by him in his examination-in-chief were deposed by him for the first time. He is hearsay witness. Hence, his testimony would not assist to A-9 in any way.

1218) The testimony of DW-4 (Col. Patil Shree Vikas) shows that, after joining Southern Command Liaison Unit in the year 2007, he was performing the duty as officiating Detachment commander. He knows A-9 who was detailed to attend the Arabic Language course at Army Training Centre, Pachmarhi. On 5th or 6th November from media news he got the knowledge about arrest of A-9. But he informed his superior officer about the matter on 14th November. His immediate commanding officer was Col. V. N. Pachpore who had not taken any action on his oral complaint. He also stated that there are some modification in

movement order and those are done by Col. R. K. Shrivastava. And when he approached to Head Quarter MG and G Are, Provost Unit, he saw the movement order which was given to them, to his utter surprise the said movement order was fabricated and forged by Col. R.K. Shrivastava. Basically, the movement order issued by DW-2 (Surendra Sing Chahal) was not proved by him. So the modification were done by R.K. Shrivastava without any powers or authorization could be decided by the head office of MI. It falls within their province / prerogative. It is not the matter before the court to decide its validity.

1219) The testimony of DW-5 (Col. Sanjeev Sharma) shows that, he was commanding officer of A-9 from July 2020 to February 2023. He had gone through office records. Many reports and records were sent to Army Head Quarter about A-9. He was performing his duties and it was reported to the superior. His predecessor was Col. Skand Neyal. All the information which were gathered by intelligence unit were sent to SCLU from time to time. But there were no correspondence from SCLU with ATS. If reports would have really been sent from SCLU to Army head quarter, then there is no question of sending negative reply by PW-283 (Major General Gautam Deb) to ATS. Nothing is on record to show that what action taken by the SCLU unit at the relevant time to save their officer. Merely stating before the court after the lapse of several years without any documents do not inspire the confidence in the backdrop of aforesaid facts.

1220) The testimony of DW-6 (Ram Briksh Prasad) shows that he was working as Deputy Director in Discipline and Vigilance Directorate under Adjutant General Branch, Army Head Quarter, Delhi. The confidential reply (Exh.9945) was generated on 11th January 2023. The reply letter (Exh.9945) was prepared by department and it was not within the personal knowledge of DW-6. Thus, he has merely signed and issued the said reply. He has not cross verified the information. The reply letter merely depicts that he was sharing information about the intelligence gathered.

1221) In the evidence of PW-283 (Major General Gautam Deb), it has come that, some information pertaining to Abhinav Bharat might have been shared by A-9 with his intermediate officer or next superior officer but the said information was never shared with him. Thus, it clearly shows that, possibility of sharing of some information only being officer of military intelligence but nowhere disclosure about actual participation or became member of Abhinav Bharat Trust or collected the funds.

1222) Considering the entire testimony of PW-283 (Major General Gautam Deb), except the aforesaid correspondence, there is no other correspondence between ATS and DG MI, New Delhi are brought on record which would be favouring to A-9. Therefore, it cannot be said that, A-9 was sending the information about Abhinav Bharat Organization which was within the knowledge

of DG MI, New Delhi. There is nothing on record to show that, the PW-283 had acknowledged that, A-9 was ever permitted to join Abhinav Bharat Trust as a member and to collect the funds. The PW-208 (Shailesh Raikar) has stated that, at the relevant time, the Director General was the incharge of all India MI. But the Dy. Director who is examined had specifically stated that no any such information even been received by their office from A-9.

1223) The defense witnesses have relied upon the evidence and documents produced in court of inquiry conducted against A-9 by competent authority of Indian Army. The DW-2 himself admitted that the evidence given before court of inquiry is not admissible in the court proceeding as per Army rules. He had no documents to show the record of his military intelligence. The officers examined as defense witnesses or those who were working in the SCLU at the relevant time had not shown any interest to save the A-9. They had kept mum for several years. Their own inaction shows that, they might have noticed the action taken by ATS was proper, as their senior officers had also not shown any interest to protect their own officer considering the allegations and charges levelled. It shows that they had accepted the fact of arrest at the hands of ATS was proper at the relevant time.

1224) It came in the evidence of Capt. Nitin Joshi, that he is acquainted with A-9 but not aware about Abhinav Bharat Organization. He

was not associated with Abhinav Bharat nor knowing any activities of Abhinav Bharat. He didn't know who were the members of Abhinav Bharat. Thus, it can be inferred that, neither A-9 told him anything about Abhinav Bharat nor he knows anything about it.

1225) Although, Ld. Advocate for A-9 urged that, A-9 was permitted to collect the various information from ISI or SIMI or other terrorist organization and the said facts also came on record through the testimony of witnesses, but it is not claim of A-9 that, he was also the member of those organizations. Becoming a member of selective organization without express permission is nothing but act done out of the purview of discharge of duty.

1226) The collection of information by mixing-up with other members of the trust, to raise the sources, are different aspect than actually joining the trust as a member or trustee. The evidence on record though indicating that, he was permitted to mix-up with various organization only in order to get / collect the information. But there is no evidence on record in any form to show that, he was permitted to join the specific organization.

1227) Though on the basis of statement of witnesses in the Court of Inquiry, it is also urged that intelligence officer can temporarily associated with various organization in the society. Therefore, association of A-9 with Abhinav Bharat Trust or Abhinav Bharat organization would not be per-say illegal and was the part of his

duty. The court of inquiry is different than the criminal trial. Whatever stated in court of inquiry or documents relied upon in court of inquiry are not binding on criminal trial nor admissible in criminal trial, unless and until it passed the test of admissibility as per Evidence Act. There are army rules and regulations. According to those rules and regulations only any officer can become the member of any organization. As per the army rules the statement of witnesses or evidence of witnesses cannot be used in any other court except the court of inquiry. Moreover, court of inquiry papers cannot be construed as evidence before the court. The strict rules of evidence are not applicable to DE.

1228) The charges of ATS and NIA against the A-9 was serious which was based on the evidence they had collected during the course of investigation. Those charges itself show that, A-9 floated the Abhinav Bharat Organization. He was the founder member of Abhinav Bharat. He had control collected huge funds and had control over the financial transactions. He has accepted the thousands of rupees from co-accused and utilized those amounts for private use. Nothing material came on record to show that, all those allegations or charges were fake, baseless and all those acts are done by the A-9 with the permission of his superior officer. Merely the prosecution failed to prove the charges levelled against the accused in the absence of cogent evidence doesn't mean that, all the charges were baseless or without foundation.

1229) It is not every offence allegedly committed by a public servant that necessitates the prior sanction for prosecution under Section 197 of the Cr.P.C. Likewise, not every act undertaken by such a public servant during the performance of official duties is automatically entitled to such protection. However, where the act in question should be directly and reasonably connected to the discharge of official duties. In the present case, I did not find the alleged acts of A-9 were in discharge of his official duties. The prosecution could not prove the charges or alleged act merely because lapses kept by police officers, witnesses turned hostile and material evidence not came on record, so it doesn't mean that whatever act done by the A-9 as per the charges levelled against him were in discharge of his official duty. Therefore, the question of taking sanction u/s 197 doesn't arise.

1230) The charges of murder, criminal conspiracy were also levelled against A-9 with other charges. Those were serious, showing the involvement of A-9, and hence, their own officer had handed over the custody of accused to ATS. Ongoing through the papers, it is sufficient to hold that, the act done by him was not in discharge of his official duty. He has done those acts which were never permitted by his office. Those acts could not be covered or protected under the garb of section 197 of Cr.P.C.

1231) Ld. SPP during the course of hearing rightly brought to my notice

that, the Ld. Predecessor of this court had issued notice on dated 20/03/2009 below Exh.68 as per section 475 of Cr.P.C. The copy of final reports (Charge-sheets) was also annexed to it. On perusal of entire record, the reply (Exh.87) was sent by General Officer Commanding HQ, Madhya Bharat Area dated 26/03/2009 thereby stating that the proceeding against A-9 of Army Educational Corps Training College and Centre, Panchmarhi, serving under his command shall be instituted before the criminal / MCOC Court.

1232) Section 475 of Cr.P.C. General is an exception to the General Rule of section 197 of Cr.P.C. It applies to Armed force personnel and according to this exception no prosecution will lie unless the notice / summon issued by the criminal court to the Armed Force. Such notice was already given as per Exh.68 by this court. The reply letter (Exh.87 r/w Exh.88) itself shows that, the authorized officer submitted the decision given by the Competent Military Authority under Rule 9 of the Criminal Courts and Court martial Adjustment of Jurisdiction Rule 1978 to institute the proceedings against A-9 (Lt. Col. Prasad Purohit) before a criminal court. It is nothing but the sanction given to proceed in a court / MCOC Court against the A-9. Nothing brought to my notice that, said decision was ever challenged by accused before higher forum. He had not asked anything about Exh.87 or Exh.88 to any prosecution witnesses during the entire trial in order to show that it was never issued by the competent authority or on behalf of competent authority.

1233) According to section 197 of Cr.P.C., the cognizance by the court against public servant is barred without previous sanction. In the present case, already the cognizance was taken by the court. The said order of cognizance was not set aside by the higher court. Moreover, the decision which was communicated by the Competent Authority of Military intelligence is nothing but a deemed sanction. The language used in Exh.87 and Exh.88 are self-explanatory which shows that, competent authority has given the approval against A-9 to prosecute and to hand-over in the custody of criminal court for trial.

1234) Considering the entire aspects, basically prosecuting agency collected various incriminating evidence against A-9 showing his direct involvement in the alleged offence which includes the charge of murder and criminal conspiracy. Those charges never require a sanction. On the other hand, the authorized officer of Military submitted the decision given by their Competent Military Authority as per Military Rules to institute the proceeding against A-9 before criminal court. His custody was given by Military officers to ATS. In such peculiar facts, the defense taken by A-9 pertaining to sanction u/s 197 of Cr.P.C. does not survive.

Arrest of A-11:-

1235) As per prosecution, the bomb was assembled in the house of A-11 and it was fitted in LML Freedom motorcycle in the house of

A-11. The traces of RDX were also found in the house of A-11.

1236) It emerges from evidence on record that, on 04/11/2008 A-11 was arrested by Matunga Police Station in crime no.408/08 u/s 171 of IPC and 3, 25 of Arms Act. The Matunga Police Station has carried out his Narco Analysis on 18/11/2008 pertaining to Malegaon Bomb-blast Case-2008. Till 20/11/2008, he was neither arrested in Malegaon Bomb Blast Case nor his actual physical custody was obtained.

1237) The testimony of PW-320 (ACP Mohan Kulkarni) coupled with station diary entries taken by ATS, itself shows that, A-11 was repeatedly called for inquiry since 23/10/2008 & onward. PW-320 had applied for production warrant of A-11 on 15/11/2008. They had obtained the custody of A-11 from jail on 20/11/2008. After taking custody of A-11 from jail, he was arrested in present case by ATS on 20/11/2008 in the presence of Panch witnesses Sameer Warasi and PW-163 (Mangesh Panjri). The personal search cum arrest panchanama was prepared in ATS police station vide **exhibit-6672** Nothing came to be seized from the custody of A-11.

<u>House Search of A-11 and traces of RDX</u> :-

1238) On Co-joint reading of evidence of PW-320 (ACP Mohan Kulkarni), PW-302 (PI Rajan Ghule), PW-307 (K.K. Pawar), PW-183 (Vijay Chajjed) and PW-261 (Dr. Suhas Bakre), it emerges that, on 25/11/2008, a team was constituted for house search of

A-11 headed by PW-302 (PI Rajan @ Rajendra Ghule).

1239) On 25/11/2008, a letter vide exhibit **(Exh.8693)** was issued directly addressing to Assistant Chemical Analyzer PW-261 (Dr. Suhas Bakre) to remain present and to collect samples for analysis. The Panch witnesses namely, Vijay Chajjed and Laxman Reddi were called on the spot i.e. at Bana Chawl, Nashik, where the house of A-11 was situated. API Bagade was also one of the team members. The house search was carried out. The articles which came to be seized from the house of A-11 as per house search and seizure panchanama (**Exh.6761**) are mentioned in following tabular format:

Sr. Nos.	Articles	Article Nos.
1	Mobile handset of Nokia company.	143
2	Mobile handset of Classic company and SIM card of reliance company.	144
3	Mobile handset of China ZT 555 and two SIM cards of Vodafone and Idea company.	145
4	Black colour Pendrive.	146
5	14 railway tickets.	147
6	Brown colour file of Bhonsala Military School.	148
7	Laptop of DELL company.	149
8	Black colour Pendrive of D-Link.	150
9	Handy stamp of Shiny company	151

10	Plastic rubber stamp.	152
11	Election card, passbook of Bank of Baroda, Bank of Baroda ATM card and Ration card.	153 colly
12	One ID card	154
13	Light bill	155
14	One receipt.	Unmarked
15	Receipt book of Abhinav Bharat.	156
16	CD album of 11 CDs.	157
17	Monthly Monitor 2008 diary.	158
18	Two Goni (बारदानाची गोणी).	159 & 160
19	Plastic box and wire (Electric detonator)	161
20	Water and Acetone mixed cotton swab samples.	162 colly

1240) The house search and seizure panchanama **(exhibit-6761)** started at 16.30 and ended at 21.00 hours. Assistant Chemical Analyzer PW-261 (Dr. Suhas Bakre) had taken the water swab & acetone swab from the floor of the rooms on 25/11/2008. On the next day i.e. on 26/11/2008, PW-302 (Rajan Ghule) deposited all the articles in ATS police Station. On 28/11/2008, the swab which were taken from the house of A-11 sent to DFSL for chemical analysis. The analysis report had given the positive finding thereby showing that the traces of RDX found in acetone

swab.

1241) Before discussing the entire evidence on the aforesaid point along with rival submissions, in short according to the case of prosecution, the improvised explosive device was assembled inside the said room and the swabs which were taken from the said house clearly shows that it contained traces of RDX, which was similar to the RDX found at the scene of the offence. Thus, A-11 and co-accused had entered into criminal conspiracy between January 2008 to 23rd October 2008 with the common object to strike terror in the minds of people by exploding bomb at Malegaon and other places and overawe the Government. A-9 had brought RDX with him from Kashmir and the said explosives were assembled at the house of A-11 (Sudhakar Chaturvedi).

1242) To deal with rival submissions, in the light of evidence on record, it would be apposite to mention some dates showing chronology of events and connected with aforesaid issue,

01/04/2008 to 01/03/2009	Leave and License Agreement.
23/10/2008 & onwards	A-11 called for inquiry by ATS.
24/10/2008	Alleged that to be taken to Bhopal.
Till 03/11/2008	Alleged that kept in illegal custody.
03/11/2008	Army officers K.K. Pawar and Major Khanzode saw ATS officer Shri. Bagde in the house of A-11.
04/11/2008	Arrest in crime no.408/08 by

	Matunga Police Station.
15/11/2008	Transfer warrant obtained by ATS.
18/11/2008	Matunga P.S. taken A-11 for Narco Analysis.
20/11/2008	ATS taken him in custody from Jail and prepared arrest Panchanama.
23/11/2008	Produced but denied confessional statement under MCOCA.
25/11/2008	House search.
25/11/2008	Letter to Asst. Chemical Analyzer Shri. Bakre for house search.
26/11/2008	Rajan Ghule deposited seized articles in Malkhana.
28/11/2008	Articles seized were sent for Chemical Analysis.
03/12/2008	Detonator Diffused Panchanama.
05/12/2008	Letter to DFSL for comparative analysis.
15/12/2008	Comparative analysis report.
16/12/2008	Proposal to DM for consent / sanction under Explosive substances Act.
30/12/2008	Consent order issued by DM.

1243) It emerges from evidence of PW-320 (ACP Mohan Kulkarni), PW-302 (PI Rajan Ghule), PW-319 (API Shekhar Bagade), PW-216 (Ananda Mahajan) that, A-11 had taken a house on rent at

Devlali Camp / Cantonment area, Nashik. PW-216 (Ananda Mahajan) was owner of the said house. He had given the ground floor house to A-11 on rent for the period of eleven months commencing from 01/04/2008 to 01/03/2009. The house was situated in a chawl like structure. The rent agreement i.e. Leave and license agreement was executed and it is at **Exhibit-6898** His statement was recorded on dated 09/12/2008 by PW-319 (API Shekhar Bagade) and at that time, he had handed over the copy of agreement of house to him.

1244) Whenever, PW-216 (Ananda Mahajan) visited the house, he saw A-11 and his family members only. Except this, he had never seen any other person or any vehicle in the courtyard of the house or near that house. Panch Witness PW-183 (Vijay Chajjed) also admitted that the house was in daily use.

1245) As discussed earlier, absolutely the prosecution had not proved through cogent & reliable evidence that, A-9 brought the RDX from Kashmir and the said explosive (Bomb / IED) was assembled at the house of A-11. I have already discussed and answered those points in negative and hence, it is not discussed here again to achieve brevity.

1246) Upon consideration of the station diary entries pertaining to A-11 and the testimony of PW-320 (ACP Mohan Kulkarni), it is evident that A-11, residing in Deolali, Nashik, was called repeatedly for inquiry commencing from 23/10/2008. The

station diary entries and the oral evidence of PW-320 clearly establish that the investigating officers were aware of the residential address of A-11 from the outset.

1247) Prior to the execution of the house search and the seizure panchanama, the residential address of A-11 had already been communicated by PW-320 (ACP Mohan Kulkarni) to PW-302 (Rajendra Ghule). PW-302 has admitted that, he obtained the said information from PW-320. Thus, it is undisputed that the address of A-11's house was known to the Anti-Terrorism Squad (ATS) officers prior to the search and was not disclosed or indicated by A-11 himself.

1248) On the other hand, the Ld. Advocate for A-11 had pointed out that, he was taken in custody by ATS on 23/10/2008 and they took him Bhopal on 24/10/2008 by giving a name of Sangram Singh to him. He had also written a letter to concerned Magistrate on dated 17/06/2009 in Crime no.408/08 and thereby informed that, he had been taken in illegal custody by ATS since 23/10/2008 and ATS officer had taken him to Bhopal by charter plane and brought back by the said charter plane. Thereafter, assuring him no case is made out against him illegally handed over to Matunga police station officer.

1249) Admittedly, it is evident on record that, around 3.00 am on 24/10/2008, API Kanade brought A-11 from his house to ATS Kala-chowky police station. the ATS team went to Bhopal on

24/10/2008 to take in custody and arrest A-5 by seven-seater charter flight / plane. They had not filed on record the tickets and boarding pass (manifest details). Therefore, in the absence of those documents it is difficult to accept the contention of Ld. Advocate for A-11 that he was taken to Bhopal by ATS team.

1250) No doubt, the prosecution has not produced those documents for the best reason known to them. The Ld. Advocate for A-11 moved an application during the course of trial and thereby prayed to call various documents lying in the custody of various authorities. The said application was partly allowed by the court. This court had called the record & proceeding of Cr.No.408/08 from 30th Kurla Court in order to find out the factual position. The record shows that, there was one letter written by A-11 to concerned Magistrate on dated 17/06/2009 by alleging that he was taken to Bhopal by charter plane and brought back. So also he was handed over illegally in the custody of Matunga Police Station.

1251) It emerges from the evidence that the Matunga Police did not conduct any house search of A-11, although he was shown to have been arrested under the Arms Act. It is admitted that in both cases, no disclosure statement was voluntarily given by A-11 in the presence of panch witnesses which would indicate that the improvised explosive device (IED) had been assembled at his residence, or that a detonator was stored therein, and that he was willing to point out the location. Furthermore, the evidence

does not reveal that, pursuant to any such disclosure or recovery, PW-320 (ACP Mohan Kulkarni) had issued a letter to the expert PW-261 (Dr. Suhas Bakre) thereby requesting collection of samples from the said premises. On the contrary, the letter was sent directly to the expert for sample collection from the accused's residence, without any evidentiary foundation establishing the necessity or relevance of such action.

1252) It further emerges from the evidence on record that during the custody of A-11 at Matunga Police Station in connection with Crime No.408/08, a Narco Analysis test was conducted in relation to the Malegaon Bomb Blast Case of 2008. It is not the case of the Anti-Terrorism Squad (ATS) that they were unaware of the said test. However, the Investigating Officer did not annex the Narco Analysis report with the charge sheet, as the report yielded a negative result. The accused have placed the Narco Analysis papers on record through **Exhibit-6556**. Undoubtedly, Narco Analysis cannot be treated as conclusive proof of either the guilt or innocence of the accused, since the statements elicited during such procedures are rendered in a semi-conscious state of mind. Nonetheless, it is pertinent to note that at the relevant time, the accused had not been arrested in connection with the Malegaon Bomb Blast Case. He had been taken into custody by Matunga Police in Crime No.408/08. His formal arrest in Crime No.18/08 (Malegaon Bomb Blast Case) was effected on 20.11.2008. The test was conducted prior to such arrest, ostensibly to establish his involvement in the Malegaon

Bomb Blast Case, in which he was not an accused at that juncture.

1253) The investigating agency has failed to place on record the tickets, boarding passes, and the Narco Analysis Report of the accused along with the charge-sheet. As held by the Hon'ble High Court of Bombay in **Dr. Sublendu Prakash Diwakar v. State of Maharashtra, reported in 2024 ALL MR (Cri) 402**, it is incumbent upon the investigating authority to either furnish such documents with the charge-sheet or, if not relied upon, to at least prepare a separate index of unrelied documents and provide the same to the accused. The entire set of documents, whether relied upon or not, ought to be submitted before the court to facilitate the discovery of truth. Withholding such materials amounts to suppression of relevant facts and undermines the sanctity of the investigation.

1254) Though, the rent agreement is executed by A-11 and showing that the house was taken on rent by him. But PW-307 (Subhedar K.K. Pawar) has specifically admitted that, the said house in which A-11 was residing, at that time, was taken on rental basis by Army (MI). He further admitted that, for MI work, if any person used to come they were handing over keys of the said house to those persons. His admission clearly shows that, they were holding the keys, number of persons who used to visit for MI work, and so also they used to halt in the house of A-11.

1255) It emerges from the evidence of PW-307 (K.K. Pawar), PW-262 (Lt. Col. Khanzode), PW-320 (ACP Mohan Kulkarni) that, the identity card was issued to A-11 being source person of Army (MI). The said house is near Army office. Whenever A-11 used to go outside or out of station, he used to put up the keys of his house in the office of Army. Thus, keys were lying with Army office in his absence. Taking into consideration, the case of ATS as per charge-sheets also point out specifically that, A-11 kept the keys of his house with MI Office since September 2008.

1256) The PW-307 (K.K. Pawar) also testified that, in the absence of A-11, he has handed over the keys of the house of DA-12 (Praveen Takkalki) who came for dine for the period of three days in Army canteen. As per ATS case, DA-12 (Praveen Takkalki) and one more person stayed in the house of A-11, when he was out of station.

1257) Thus, the aforesaid evidence itself shows that, family of A-11 was residing with him whenever Owner of the house had been visiting to the house, the DA-12 (Praveen Takkalki) also stayed there in his absence, Army officers used to visit his house, other persons related to MI also halted there. ATS charge-sheet itself shows that, in his absence other persons stayed there. The wording mentioned in search and seizure panchanama (**Exh-6761**) itself shows that A-11 had informed them that he had not been resided in the house since 17/09/2008 as he left for Jabalpur.

1258) Moreover, the charge-sheet of ATS itself shows that, during the course of investigation, it was transpired to them that, A-11 had kept the keys of his house in the Army (MI) office at Devlali Camp in his absence in September 2008. In his absence some persons stayed there. So their own case itself shows that, A-11 was not having the keys with him nor he was having an exclusive possession of the said house during the relevant period.

1259) In this house search, API Bagade was also one of the team member. He was present till completion of Panchanama. PW-307 (K.K.Pawar) has specifically deposed that, he is familiar with API Bagade prior to 03/11/2008 i.e. before noticing his presence in the house of A-11.

1260) The co-joint reading of evidence of PW-262 (Col. Praveen Khanzode) and PW-307 (Keshav Pawar), it emerges that, on 03/11/2008, PI Bagade telephonically talked with K.K.Pawar and informed that ATS came to know from A-11 that his house is located in Bana Chawl and keys are lying with Army Unit. Hence, he called PW-307 to show the location of the house. K.K. Pawar immediately informed to Mr. Kanzode. Thereafter, Mr. Khanzode was busy in obtaining the permission from commanding officer and in the meanwhile, Bagade again called and informed that no need to show the house location as he is going back. Due to huge publicity of the case and on the basis

of doubt, K.K. Pawar and Khanzode went to the house of A-11 on the scooter. On reaching on the spot, they saw the door of the house of A-11 was in open condition. So K.K. Pawar went inside to see what is going on. He saw API Bagade holding one bag and sat on floor and rubbing the floor of the house. Due to said suspicious activity, K.K. Pawar came back and informed to Khanzode. Immediately within few minutes, API Bagade came with folded hands and requested not to narrate all those facts to anybody otherwise it would ruin his reputation and his service will be at stake. From his body language, Mr. Khanzode understood that, he has done something suspicious & wrong. On reaching to the Unit, Mr. Khanzode informed the said facts to their commanding officer.

1261) It emerges from the testimony of K.K. Pawar that, he has not narrated those facts to ATS officers while recording his statement due to request made by API Bagade. Whereas, Mr. Khanzode stated that, he has narrated those facts to his commanding officer and also while recording his statement by ATS officer & NIA officer. Both of them also stated categorically in court of inquiry that the aforesaid facts were observed by them. Moreover, both the witnesses have admitted that, their superior officer Shri. Shrivastava was present during their inquiry by ATS officer and they had given their statement as per the say of ATS due to threat extended by their own officer and ATS officer. Admittedly, to dispel the doubt, the prosecution had not examined Mr. Shrivastava as a witness. Moreover, during

the course of evidence, K.K.Pawar had expressed his apprehension in open court which was also recorded by the court. He expressed his apprehension that, in further he may get the threats at the hands of ATS due to deposing against them and bringing the factual position on record.

1262) In examination-in-chief itself, both the aforesaid witnesses have stated the aforesaid facts categorically about the receipt of telephonic call from Bagade and talk with him, his presence in the house with one bag, rubbing the ground / floor of the house, found doing suspicious activity, thereafter his request not to disclose those facts. All those facts are neither denied specifically by the prosecution nor re-examined those witnesses on the aforesaid point. No contrary evidence adduced by prosecution for not relying upon their own witnesses.

1263) The PW-319 (API Shekhar Bagade) is also examined as witness by prosecution. From 2007 to May 2011, he was serving in Nashik ATS unit. He is investigating in this case, since the date of Bomb-blast. He has given several admissions in his cross examination. He admitted that, he has good relations with some persons working in defense center Nashik and other defense center. He has not having any inimical terms with any police officers or ATS officers or NIA officers or Army /Military Officers. He had visited Deolali Army camp during investigation. The allegations of planting of RDX allegations came to his knowledge in the year 2015. He also came to know about the

said allegations of planting through New-papers. He had not lodged any complaint against the said news in any forum. He has no documentary evidence to show that, he had taken any written objection about it.

1264) Though, he denied the suggestions that, he had called K.K. Pawar on that day, asked to show the house of A-11, his presence in the house with suspicious activity had been noticed by them. But the evidence on record itself shows that, two army officer had deposed against him. They noticed him in the house of A-11 along with one Bag and doing some suspicious activity. They have pointed out those aspects during inquiry against A-9 initiated by Army, before NIA officers and during the course of evidence. Moreover, API Shekhar Bagade has no inimical terms with them. Now the question arises as to why they are deposing against him specifically. No doubt, at the time of recording their statement by ATS, they have not stated those facts, but at the same time they have stated that, they had kept mum on this point only due to request of API Bagade, their senior officer Shrivastava and ATS officer compelling them to narrate the facts as dictated by them.

1265) Moreover, API Shekhar Bagade was serving in ATS sub-unit Nashik and he was the part of team member in the present case. He had been investigating the present case since beginning. He came to know from various sources about the allegations of planting against him. Even-though, his inaction against them

creates a doubt, when the testimony of two officers are consistent on this point. Therefore, the possibility of material being planted cannot be ruled out in toto.

1266) Moreover, the recitals / wordings of House search and Seizure Panchanama itself shows that, Panch witnesses are not resident or inhabitant of that area. From other different area of Nashik, they had been called at Bana Chawl directly where the house of A-11 is located to act as a panch witness. The history of case is narrated to them at Bana Chawl. It is also necessary to mention that, it not the case of ATS that, the house was located in remote area or no inhabitant of that area were available and hence, they had opted to call the aforesaid panch witnesses from different area.

1267) The PW-319 (Shekhar Bagade) has admitted that, he was present till completion of Panchanama. The house of Mahajan was surrounded by other houses. In his presence, Rajan Ghule or Vijay Salunkhe or he himself had not issued any written notice to panch witnesses to remain present for house search panchanama. They had not called any independent persons / inhabitants of that locality to act as a panch witness.

1268) Out of aforesaid two panch witness, only one panch witness PW-183 (Vijay Chajjed) is examined by Prosecution. Whereas, the PW-183 testified that, he met the police party at one tea stall of Bhagur road. Bana chawl is ½ Km away from Bhagur Road. The

wording of Pachanama shows that, panch witnesses were directly called at Bana Chawl and the information about the case was given to them at Bana Chawl, where the house of A-11 is situated. PW-302 (Rajendra Ghule) also stated that, the Panch witness were called by Shipahi (constable) of Nashik Unit. But evidence of PW-183 is contradictory to aforesaid facts. It shows that, he was not directly called as Bana Chawl. He met at tea stall to police. Then they went to Bana Chawl.

1269) The panch witness PW-183 (Vijay Chajjed) had also stated that, "it is incorrect that police called him at Bana Chawl from Bhagur Road and if it is mentioned in panchanama, then it is incorrectly written. Police had not told him they are going to search the house of A-11 (Sudhakar Chaturvedi) or Ananda Mahajan. They had not told him A-11 (Sudharkar Chaturvedi) is residing in the house of Ananda Mahajan. He didn't know as to why the police has mentioned the aforesaid facts in panchanama." Thus, in the absence of knowledge of the witness the aforesaid facts are seems to be mentioned in the panchanama.

1270) The admissions given by him itself shows that, he has no knowledge about the numbering given to articles as PRADARSHIT A B C D by police. He didn't know after panchnama police sealed the house or locked the house. His signature was not obtained on laptop or mobile phones, railway tickets shown to be seized. He has not signed on the plastic pouches in which the cotton swabs were collected. No

identification mark was placed on plastic pouches. He had stated that, he saw 15 CDs during house search but in panchanama only reference of 11 CDs. Some criminal cases, including political cases are pending against him in Nashik Court. He was familiar with Nashik Police due to those criminal cases. Thus, panch witness is having criminal cases against him, he is not independent panch witness of the same locality, nor he was called directly on the spot but shown to be called on the spot. Number of articles his signature is missing. No personal search was taken in his presence nor he has taken any search of raiding team. He didn't know from where the Expert (Dr. Suhas Bakre) had brought the water for cotton swab. He saw 15 CDs on spot and in panchanama reference of only 11 CDs are found. There is discrepancy between his total narrated CDs and the CDs as mentioned in Pachanama. Separate lock break open panchanama was not prepared. He didn't know that after the panchanama as to whether the house was sealed or locked. He didn't know what the police had done with the said lock. The witness who claims to be present during entire search and seizure process but number of material facts didn't took place in his presence and the most of facts mentioned in panchanama are not within his knowledge. Therefore, the testimony of aforesaid witness creates a doubt about credibility, impartiality and his presence. Hence, his testimony is not inspiring the confidence of the court.

1271) As per the PW-307 (Keshav Pawar) and PW-303 (Chetan

Dhakan), A-11 was the source person of Army (MI) and for that purpose, the identity card was issued to him by the department. Admittedly, the ID card was seized by Matunga Police also and one ID card was found in the house of A-11 as per search and seizure panchanama. Admittedly, no verification of ID card was done by police. Military / Army officer had testified that it was issued to them by their office. Therefore, there is no reason to disbelieve that, he was not a source person of Army / Military. And being a source person, he used to visit military office. The house was taken on rental basis at Devlali Camp Nashik by the A-11, but in-fact the rent was paid by the Military and taken on rent by Military. Whenever A-11 used to go outside, he used to keep the keys of his house at the Army Office.

1272) The PW-320 (ACP Mohan Kulkarni) has testified that they came to know from the statement of Captain Nitin Joshi which is recorded on 14/11/2008 that, the house of A-11 was used to assemble the bomb. Admittedly, even after the information they had not conducted any raid immediately. They have conducted house search on 25/11/2008. The timely collection of evidence ensures its authenticity and conformity. Unexplained delay or inaction by police for a long time, even after having information certainly creates a cloud of doubt. Moreover, he was called repeatedly for inquiry and then they used to allow him to go. If it is construed as true for the sake of moment, then A-11 could destroy the evidence or wipe out the traces. It is not acceptable to any ordinary prudent man as to why any accused will keep

back the incriminating evidence to entangle himself.

1273) The wording as mentioned in the house search and seizure panchanama also corroborates to the aspect of keys and absence of accused at the relevant time. It would be apposite to mention the wording appearing in panchanama.

> "आरोपी सुधाकर चतुर्वेदी याने तो राहत असलेले बंद घर दाखविले ते पाहता उत्तर मुखी असुन सदर घराचे लोखंडी जाळीचे दरवाजास सिबा ब्रुजो कंपनीचे स्टीलचे कुलूप असून त्याची चावी आरोपीकडे विचारता त्याने शेजाऱ्यांकडे चावी ठेवलेली नसल्याचे सांगितले परंतु मी दि. 17/09/08 रोजी जबलपूर येथे जाण्यास निघालो तेव्हा माझे देवळाली कॅम्प येथील परिचित श्री. सुभेदार पवार यांचेकडे नेहमी प्रमाणे चावी ठेवून गेलो होतो"

1274) It emerges from evidence on record that, the lock was broke opened even after the availability of the keys lying with Army office (MI) located near the alleged house. PI Bagade and other were familiar with K.K. Pawar. The keys were available for all the time. Raiding team had not cared to call the Army officer on the spot with keys or not cared to call him and asked about the availability of the keys, even after the knowledge that the keys are with Army office. They have not called the owner of the house or Army officer to act as independent panch or any other person residing in the vicinity of that house to dispel the doubt.

1275) The PW-183 (Vijay Chajjed) has also admitted that, A-11 told the name of Subhedar Pawar with whom the keys of the house were lying. In search and seizure panchanama the name of Subhedar

Pawar is also appears / reflects and shows that the key were with him. PW-302 (Rajendra Ghule) has admitted that A-11 told them that keys are kept with Subhedar Pawar. Even after that he had not bothered to make inquiry with him. They did not call him with the keys and to act as a panch witness who would the Government witness to dispel the doubt. The panch witness which is examined by prosecution PW-183 had admitted that number of criminal cases are registered against him. PW-302 has admitted that, he had not contacted Mahajan i.e. owner of the house before raid or prior to house search. The alleged lock was not sealed, seized and produced before the court. As per head of the team PW-302, the address of the house of A-11 was given by PW-320 (ACP Mohan Kulkarni). Therefore, the recoveries effected from the house of A-11 cannot be said to be at the instance of A-11.

1276) The PW-261 (Dr. Suhas Bakre) testified that, in order to collect the samples from the said house of A-11, he was called by issuing the letter. Bare perusal of the letter (**Exh-8693**) shows that, it was directly addressed and issued to Dr. Suhas Bakre and called him on the spot. The PW-261 had admitted the official correspondence should be in the name of head of the department. But the said letter was directly addressed to him. His testimony doesn't depict that he had raised any objection on the said direct correspondence. He (PW-261) also admitted that he had not obtained permission in writing of his senior officer or head of department while leaving towards the spot. He also

admitted that, the movement register is compulsory but their office do not maintain the movement register. The movement of sample kit register is also necessary in order to show that, for what purpose it was obtained, who has obtained and when it was re-deposited. The object behind the maintaining the said register is that there should not be alteration in sample. The admission itself shows that all the procedural requirements are kept aside and also points out towards the interest of ATS officer to call the specific expert to collect the sample in order to get desired results.

1277) The PW-261 (Dr. Suhas Bakre) testified that, he directed ATS officers to send all the extracts collected by him in sealed condition. It shows that those were not sealed in his presence. There is no evidence on record to shows that immediately after the seizure of articles those were deposited by PW-302 (Rajendra Ghule) in Malkhana of Nashik ATS Unit or nearest police station of Nashik or at Mumbai ATS. He has kept the articles with him. The articles were handed over to PW-320 on next day i.e. on 26/11/2008 as per the station diary entry taken by ATS, Mumbai. Thus, articles were lying with the officer for more than 24 hours. There is no explanation came on record as to why those articles were kept by him without depositing the same immediately to the nearest police station or concerned police station. So the possibility of tampering with articles cannot be ruled out.

1278) It is well settled position that, the 164 statement are not substantive piece of evidence and it is only corroborative piece of evidence. PW-320 (ACP Mohan Kulkarni) testified that, the 164 statement (**Exh-8411**) of PW-307 (K.K. Pawar) was recorded before Magistrate of Mumbai. The admissions given by PW-307 goes to the root of the case. He has admitted that the statement was already prepared by ATS and handed over to him to read over and narrate the written facts before the Magistrate. Moreover, on Exhibit-8411 i.e. 164 statement, there is reference of ATS on right hand side upper corner. It is well settled that the person whose 164 statement is recorded should state the facts lying within his knowledge. If the words are trusted in his mouth or compelled to say something as directed would not amount to voluntary statement having knowledge of facts. Thus, the witness had gone through the written document given by ATS prior to recording his 164 statement and narrated those facts. The 164 statement should be given by witness freely, voluntarily and facts known to him and not on the basis of facts conveyed or compelled to the witness to narrate. Therefore, I am of the view that, deposing the said facts before the Magistrate while recording 164 statement, would not be helpful to prosecution in any way.

1279) It is evident on record that, the lock of the house was broke open. But, it was not seized and produced before the court. There is no reference of seizure of said lock in the panchanama. There is no explanation from the aforesaid witnesses as to why

the said lock was not seized and produced before the court along with other articles. The broken lock was not identified by the witnesses as it was not produced on record along with other articles. Therefore, non-seizure of said lock, bringing factual position on record, not producing the same on record also creates a cloud of doubt as to whether the lock was broke open or merely shown in the panchanama.

1280) The Ld. Advocate for accused had rightly pointed out that, during the course of investigation NIA also disbelieved the story of ATS. The testimony of PW-321 (Dy.SP Anil Dubey) itself shows that, it was transpired to them that the Army authorities had conducted a Court of Inquiry (CoI) against A-9. During scrutiny of the proceedings of the CoI, a different story of assembling of IED in the House of A-11 (Sudhakar Chaturvedi) came to light. During re-examination of the witnesses by the NIA who deposed before the Court of Inquiry (CoI), it was revealed that they suspiciously found API Bagde of ATS in the house of A-11, when A-11 was not present in the house. On the strength of the statement of those two witnesses NIA also disbelieved the story of ATS pertaining to RDX traces also.

1281) On considering the entire evidence of aforesaid witnesses, more particularly the evidence of PW-307 (K.K. Pawar) and PW-262 (Praveen Khanzode) clearly indicates that PW-319 (API Shekhar Bagade) had visited the house of A-11 in his absence. There is nothing on record in rebuttal of the aforesaid facts. It is also

pertinent to mention the fact that the ATS conducted the search of the house of A-11 on 25.11.2008, i.e. after the alleged incident and they had taken the swab found RDX during house search, which creates a doubt on the recovery itself in the backdrop of testimony of aforesaid witnesses.

Detonator :-

1282) On 25/11/2008, in the house search of A-11, one Detonator was came to be seized as per seizure panchanama vide **Exh.6761**. Panch witness PW-183 (Vijay Chajjed) has admitted that, he never seen the detonator prior to panchanama. All the articles seized were kept in custody by PW-302 (PI Rajan Ghule). On the next day i.e. on 26/11/2008, he has handed over the seized articles along with panchanama to PW-320 (ACP Mohan Kulkarni).

1283) Thereafter, on dated 01/12/2008, PW-320 (ACP Mohan Kulkarni) issued a letter (Exh.8697) to Sr. Police Inspector of BDDS, Mumbai, to diffuse the detonator and directed to forward the compliance report along-with the remnants found after diffusion.

1284) As per PW-315 (PSI Popat Avhad) the duty was assigned to him and hence, he had taken the sealed packet in which detonator was lying for diffusing at BDDS, Mumbai on dated 02/12/2008. He prepared detonator diffusing Panchanama (**Exh-6823**) in the presence of Panch witnesses namely Javed Shaikh and Parvz

Maniyar. The detonator was kept in a pit and covered with soil and it was diffused by API Gawade of BDDS, Mumbai. At the time of diffusing it made a sound like Laxmi Bomb cracker. After preparing the panchanama (**Exh-6823**), he has handed over the muddemal mentioned in the said panchanama i.e. white wires, remnants of detonator after diffusing and soil. He has handed over aforesaid things to PW-320 (ACP Mohan Kulkarni) along with the covering cum compliance letter vide exhibit-8555 of dated 02/12/2008. On 03/12/2008, the aforesaid muddemal (after diffusing detonator) was sent to Forensic Science Laboratory, Mumbai.

1285) It is also necessary to mention that, the admission given by PW-261 (Dr. Suhas Bakre) is material. He testified that, during house search, he was busy in sample collection and police / ATS officers were doing their own work in the house. He came to know from one ATS officer that, they had found detonator in one cupboard of the room. He had not seen personally while taking into custody or where it was kept. Thus, he had not personally seen the detonator in the house before taking into custody by ATS officer. Till showing the detonator to him, he is hearsay witness about the alleged seizure of detonator.

1286) The detonator was shown to PW-261 (Dr. Suhas Bakre). On inspecting it, he told them that, it is shock and friction sensitive. He advised them to diffuse it immediately before sending Forensic Laboratory. Thus, it clearly shows that the ATS raiding

team came to know about the nature of detonator i.e. Shock and friction sensitive and requires to be diffused immediately. Even then they had not called the BDDS on the spot either to diffuse it or to take it with them in safe custody. Keeping sensitive nature explosive device in own custody give rise to inference that as to whether it was dummy and not alive. Because Detonator is primary exploding device and keeping it in own custody without the help of BDDS or any other expert of explosive creates a reasonable doubt about it.

1287) On the other hand, the seized articles / muddemal was deposited by PW-302 on next day in ATS office, Mumbai. The station diary entry was taken to that effect on 26/11/2008. But bare perusal of said station diary, it clearly shows that, there is no reference of detonator, spotted gunny bags, in station diary entry taken about the said seized articles. Therefore, seizure of detonator, spotted gunny bags itself creates the doubt.

1288) The officer API Sachin Gawade who has actually diffused the detonator as per the case of prosecution is not examined as witness. He was the only person who could narrate, the exact condition of detonator, the procedure carried out by him for diffusing detonator and collection of remnants after diffusing. The non-examination of material witness give rise to adverse inference. Moreover, the diffusing of detonator process is carried out in the absence of A-11, PW-183 (Vijay Chajjed), PW-261 (Suhas Bakre). They were not called on the spot during diffusing

detonator. The search and seizure of articles requires to be informed to the concerned court immediately as per mandate of section 102 of Cr.P.C. But nothing is brought to my notice that, the said mandate was also complied with.

1289) Bare perusal of house search and seizure panchanama (**Exh.6761**) shows that, the said detonator **('च')** was packed in one plastic transparent box wrapped in Khaki Colour Paper. Whereas PW-204 (Javed Shaikh) panch witness who was present for detonator diffusing panchanama, has testified that, ATS officer had brought one brown colour envelope and it was shown to him. It was opened by the officer in which 5 Cms pencil like instrument having white colour wires to it was present. Thus, before diffusing it was in transparent white plastic box which seems to be changed and put up in one brown colour envelope. Thereafter, the said envelope was opened in presence of panch witness. In addition to it, PW-315 (PSI Popat Avhad) has testified that he has brought one envelope at BDDS office, Mumbai and it was directly opened in presence of panch witness. He also admitted in cross examination that, while leaving ATS office one constable brought a plastic box as per his say. Thus, it clearly shows that in order to bring back again the plastic box in picture, the remnants were put up in the box and resealed on the spot by obtaining signature of panch witnesses and sent for analysis and thereafter produced in the court. Considering all the aforesaid admissions, the possibility of tampering with the articles cannot be ruled out.

1290) In cross examination, PW-204 (Javed Shaikh) was not able to tell as to whether the detonator was kept in box or not. Being illiterate, he could not read over the label and its contents. No identification mark was put on article 161 Colly (Plastic box holding remnants). He did not know the procedure adopted by the police for diffusing detonator. As per this witness the Article 161 (Detonator) was having four wires.

1291) The PW-315 (Popat Avhad) had directly obtained the said Muddemal from Malkhana. He also admitted that, if any muddemal is handed over then name of officer, his signature is obtained. But he didn't know as to whether those requirements are fulfilled or not. He also admitted that, there is no reference in detonator diffusing panchanama about condition of detonator i.e. live or not, open ground where it was diffused, diameter of detonator, etc. He voluntarily stated that, he did not accompany API Gawade and hence, he did not know what procedure had been adopted to diffuse the detonator. The PW-204 (Javed Shaikh) has testified that, simultaneous work of writing of panchanama and diffusing detonator was going on. The PW-315 had not accompanied API Gawade, then he had not been a eye-witness of the procedure adopted to diffuse the detonator. Thus, PW-315 is hearsay witness about the said procedure adopted by API Gawade. His further admission also shows that the details about detonator he came to know from panchanama prepared during house search. Thus, neither he has seen the

detonator nor seen the actual diffusing process. Therefore, panchanama (**Exh-6823**) which is based upon hearsay contents are not inspiring the confidence.

1292) Though, the remnants had been sent for chemical analysis through PW-140 (Krushnaji Sawant) and the report is obtained vide **Exhibit-7309** showing that in the exhibits 1-1 & 1/3, lead & nitrite compound are found. Basically, the seizure of articles, procedure adopted, packing, sealing is under cloud of doubt as discussed supra, and then mere obtaining the positive result of finding some explosive would not be helpful to prosecution.

Section 3, 4 of Explosive Substances Act (ESA):

1293) **Section 3** of ESA, provides punishment for causing explosion likely to endanger life or property. This section punishes persons unlawfully and maliciously causing explosions of serious nature irrespective of the resulted damage. The section contemplates explosion by explosive substance which is likely to endanger life or to cause serious injury to property. Even when no loss or injury is caused to any life or property by such explosion due to any reason, the offence would fall under this section, if the explosion is made unlawfully and maliciously.

1294) **Section 4** of ESA, provides punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. For the completion of offence under this section it is not necessary that the intended explosion

should take place or any injury to person or property be actually caused.

1295) As per the evidence on record, the bomb explosion took place in the month of Ramzan around 9.30 pm in a crowded area. As discussed earlier, nobody has seen the as to who parked the vehicle, when it was parked or how it came on the spot. It is not the incident which took place in wee hours of that night when everybody was sleeping and hence, they don't know about the arrival of vehicle on the spot. The police were deployed for Bandobast due to Ramzan and Navaratri Utsav to commence. The area was barricaded. Outside vehicles were not allowed.

1296) The conspiracy was hatched in the alleged meetings of Bhopal and Faridabad mainly. Independent witnesses on the point of meeting and alleged conspiracy have not supported to the case of prosecution. The meetings, presence of accused, discussion among them is not proved beyond reasonable doubts. The evidence is also lacking on the point of conspiracy i.e. to explode the bomb in Muslim dominated area, in the alleged meetings. No direct evidence on bringing of RDX, keeping in cupboard, fitted or strapped to vehicle, parking the vehicle on the spot. The recovery of alleged traces and detonator from the house of A-11 is also under the cloud of doubt and recovery was not at the instance of A-11. Mere examining the expert to establish that it was certain type of explosive material would not be enough when seizure is doubtful and not free from suspect.

1297) There is nothing on record which will fortify that, the accused were having knowledge of existence of explosives with them or in their custody and / or they had they had an intention to cause injury to life or property by it. For conviction under sections 4 and 5 of Explosive substances Act,1908 exclusive possession and control of the accused is necessary. Absolutely, there is no evidence to show that the accused have caused explosion likely to endanger life or property. The evidence on record is scanty which don't fortify that, there was attempt to cause explosion or they exploded the bomb or kept explosives with them to endanger life or property. Thus, in the absence of positive evidence, accused cannot be convicted **u/s 3 or 4 of ESA**.

1298) To bring home the offence **u/s 5 of ESA**, the prosecution is required to prove,

(i) That the substance in question is explosive substance;

(ii) That the accused makes or knowingly has in possession or under his control any explosive substance;

(iii) That the accused does so under such circumstances as to give rise to a reasonable suspicion that he is not doing so for an unlawful object.

1299) The burden of proof to prove the aforesaid ingredients lies on prosecution. The moment prosecution has discharged the burden, it shifts to the accused to show that he was making or possessing the explosive substance for a lawful object after he

takes that plea.

1300) The 'possession' within the meaning of Section 5 of Explosive Substance Act means the 'conscious possession'. **Conscious Possession** comes into play when there is physical possession over the house round o' clock and it is under the control of the possessor exclusively. Mere custody, without any element of consciousness or knowledge of that possession, cannot amount to an offence. Act must have the element of consciousness or knowledge of that possession. A person cannot be charged with the offences unless it can be shown that he had the knowledge that any sort of prohibited items was present in his house.

1301) The Ld. Advocate for A-11 had placed his reliance on the following citations in support of his submissions that, mere recovery is not enough in the absence of failure to prove the conscious possession, custody and control:

(I) Salim Akhtar @ Mota Vs. State of Uttar Pradesh [(2003) 3 Supreme Court Reports 470]. In this case, Hon'ble Apex Court has observed that the evidence on record clearly shows that the pistol alleged to have been recovered from the polythene bag which was allegedly taken out from the mud by the appellant was not sealed on the spot. Though the cartridges were sealed but the most important object, namely, the pistol was not sealed on the spot and the same was deposited as it is in the police station. The fact that the pistol

alleged to have been recovered at the pointing out of the appellant was not sealed on the spot coupled with the fact that neither its number nor its make, etc. to fix its identity was mentioned in the recovery memo or in the FIR, raises considerable doubt regarding the factum of recovery.

(II) Khudeswar Dutta Vs. State of Assam [(1998) 4 Supreme Court Cases 492]. In this case Hon'ble Apex Court has observed that, allegations that two guns and two cartridges were recovered from the house of accused. Mere knowledge of the accused that incriminating articles were kept at certain place does not amount to conscious possession. Accused clearly stated that, they were recovered from the house of another person situated far away from his house and he led to police to that house. On the basis of such statement, it cannot be treated as admission of guilt.

(III) Gangadhar Alias Gangaram Vs. State of Madhya Pradesh [(2020) 7 S.C.R. 173]. In this case, Hon'ble Apex Court has observed that, prosecution failed to establish conscious possession of the house with the appellant so as to attribute the presumption under the NDPS Act against him with regard to recovery of contraband. Conviction could not be based on a foundation of conjectures and surmises to conclude on a preponderance of probabilities, the guilt of appellant without establishing the same beyond reasonable doubt.

(IV) Avtar Singh and others Vs. State of Punjab [(2002) SUPP. 2 Supreme Court Reports 482]. In this case, Hon'ble Apex Court has observed that, the three appellants one of whom was driving the vehicle and the other two sitting on the back were having custody or control of the goods. It transpires from evidence that the appellants were not the only occupants of the vehicle. One of the persons who was sitting in the cabin and another person sitting at the back of the truck made themselves scarce after seeing the police and the prosecution could not establish their identity. It is quite probable that one of them could be the custodian of goods whether or not he was the proprietor. The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods. True, their silence and failure to explain the circumstances in which they were travelling in the vehicle at the odd hours, is one strong circumstance that can be put against them. A case of drawing presumption under Section 114 of the Evidence Act could perhaps be made out then to prove the possession of the accused, but, the fact remains that in the course of examination under Section 313 Cr.P.C., not even a question was asked that they were the persons in possession of poppy husk placed in the vehicle. The object of examination under Section 313, it is well known, is to afford an opportunity to the accused to explain the circumstances appearing in the evidence

against him. It is unfortunate that no question was asked about the possession of goods. Having regard to the charge of which appellants were accused, the failure to elicit their answer on such a crucial aspect as possession, is quite significant. In this state of things, it is not proper to raise a presumption under Section 114 of Evidence Act.

1302) I have gone through the aforesaid citations placed on record. With due respect, I have no doubt about the legal propositions laid down in the aforesaid citations. As discussed above, I have already discussed that, A-11 had not been in exclusive possession of the house or occupation of the house since September 2008. The keys of the said house were available with Army office located in the vicinity of the said house. The said keys were not obtained by raiding team. No independent witness residing in the vicinity of the house were called. It is apparently clear that, the keys were handed over to every visiting person may be related to Army or A-11. It clearly reflects that, he was not single occupant or user of that house. Though, Lock was broken up but not produced or seized on the spot. The RDX shown to be seized in the present case from the house of A-11 is very minute or small in quantity and not in large quantity. Now the question is whether the traces of explosive substance which is shown to be recovered by the ATS officer would attract the provisions of section 5 regarding the possession or control of any explosive substance. The reasonable suspicion that the accused is making or there is no evidence to show that the

accused was in possession of RDX or the RDX was under his control for an object, unless it is shown that the accused made it or had it in his possession or under his control for the object then the accused cannot be punished under this section. Moreover, those remnants of RDX which were found tilts towards the planting. Two Army officer testified that, they had seen PI Bagade in the house in suspicious circumstances holding one bag and carrying out some suspicious activities. Thereafter, he confessed & requested not to disclose those facts to anybody. The detonator which was shown to be seized is already discussed that the said recovery is under the cloud of doubt. The prosecution could not prove the exclusive possession of A-11 over the said house as well as could not prove beyond the reasonable doubt that the IED /Bomb was installed or fitted in the house of A-11 and hence, those remnants were found.

1303) Though, the charge in the present case had been framed under section **5 of ESA** against A-11 and other co-accused. But, there is no evidence against other co-accused nos.A-1, A-4, A-5, A-6, A-9, A-10 that, they have done any preparatory terrorist act, thereby helped or assisted A-11 to prepare or assemble IED or Bomb in his house in order to be fitted in the LML Motorcycle. Thus, the ingredients of section 5 are not made out against the accused.

1304) Bare perusal of NIA charge-sheet itself shows that, during the course of investigation, it was transpired to investigating officer

of NIA that, Army Authority had conducted a court of inquiry (COI) against A-9. During the scrutiny of the said proceeding, they noticed that two witnesses namely, K.K. Pawar and Praveen Khanzode (then Major) had stated the new fact of seeing API Bagade, on 3rd November 2008, in suspicious condition in the house of A-11 in the absence of A-11. To verify those facts they had re-examined those witnesses. They were found consistent on their statement. Considering the facts emerging during the course of investigation of NIA, a serious doubt was raised in the charge-sheet itself as to why API Bagade had visited to the house of A-11 in his absence. He also requested Subhedar Pawar not to tell those facts to anybody. The alleged raid was shown of 25/11/2008, admittedly after the alleged incident. Therefore, the alleged traces of RDX tilt towards the planting theory in the light of evidence of aforesaid witnesses and facts which were transpired during the course of investigation. Moreover, the investigating officer of NIA had not denied the aforesaid facts emerged during the course of their own investigation.

Sanction under Explosive Substances Act :-

1305) The evidence on record shows that, at the relevant time, PW-297 (S. Chockalinoam) was the Collector and District Magistrate at Nashik. He had received the proposal for grant of consent u/s 7 of Explosive Substances Act. He being examined as prosecution witness PW-297. It would be apposite to mention some dates,

Sr. No.	Dates	Particulars
1	16/12/2008	Proposal for permission to file

		chargesheet.
2	---Nil---	Visit to spot by D.M.
3	30/12/2008	Consent Order.

1306) He deposed that, at the relevant time, being District Magistrate, he was empowered to grant consent under section 7 of the Explosive Substances Act. He had received the letter from ATS pertaining to crime no.18/08. He had issued the consent order dated 30/12/2008 to the proposal placed before him by ATS officer. On showing the consent order, he has identified the said consent order vide exhibit 8133. He further deposed that, he has issued the consent order after going through the DFSL Report and report filed by ATS, Mumbai. The consent is granted **u/s 7** only for **sections 3, 4, 5** of Explosive Substances Act as per the consent order.

1307) During course of hearing, it was brought to my notice that, the consent order which has been issued was only under section 3, 4 and 5 of Explosive Substances Act and not for section 6 of Explosive Substances Act. The predecessor of this court also framed the charge under **section 6** of Explosive Substances Act. No consent order on record to show that, it was issued under 6 of Explosive Substances Act also. No doubt, before commencement of trial or even after filing of charge-sheet the consent order under rest of the section could be issued considering the evidence collected by the investigating agency during the course of investigation. Ongoing through the consent

order it clearly shows that, it was not issued for section 6 considering the entire material placed before the consenting authority. It is also not the case of ATS or evidence of consenting authority that the aforesaid section is inadvertently remained to be mentioned. Assuming consent under all sections, my Ld. predecessor has framed the charge under section 6 of Explosive Substances Act also. In my view, the section would not come into play as there was no consent order for **section 6** of Explosive Substance Act. Therefore, keeping it out of consideration would neither affect the trial nor it will cause any prejudice to the accused. Hence, I have kept it out of consideration without giving any findings on it.

1308) The Ld. Advocate for A-1 & A-6, during the course of hearing emphasized on the point that, prior to filing of charge-sheet the consent order is not necessary. As per his submissions, the consent order should be after filing of charge-sheet. Therefore, the consent order is bad in law.

1309) In the present matter, the consent order is of dated 30/12/2008 issued by District Magistrate, Nashik. The Charge-sheet came to be filed on dated 17/01/2009 by ATS, Mumbai. Admittedly, the consent order is obtained prior to filing of charge-sheet. It was annexed with charge-sheet.

1310) It would be apposite to mention **section 7** of Explosive Substances Act,

Section 7. *Restriction on trial of offences - No Court shall proceed to the trial of any person for an offence against this Act except with the consent of District Magistrate.*

1311) Previously the power of granting consent **u/s 7** of the ESA rests with the Central Government. The Central Government has delegated it to District Magistrate. Therefore, District Magistrate is empowered to grant consent **u/s 7** of ESA.

1312) No doubt, the wording of **section 7** of the Explosive substances Act itself shows that, the consent is required for trial. As per section 7 of Explosive Substances Act, consent is not necessary as per the statute, for submitting the final report. As contemplated under section 7, consent is needed for the commencement of the trial and this will not preclude the investigation agency from filing a final report even in the absence of consent.

1313) The trial commences after filing of charge-sheet. During the course of framing of charge against the accused the court requires to go through the consent order. The session trial commences as soon as the prosecution opens their argument after filing of charge-sheet. Therefore, mere filing of consent order prior to trial would not cause any prejudice to accused. There is no bar in the act showing that along with charge-sheet the consent order should not be filed and it should be filed after filing of charge-sheet. Therefore, filing of consent order with

charge-sheet will not affect the case of prosecution. Therefore, I do not find any substance in the said point raised by the Ld. Advocate for A-1 and A-6.

1314) Now, coming back to the next contention of Ld. Advocates for accused that, the said consent order is without application of mind. Whereas the contention of SPP for NIA that it is legal and valid sanction. To deal with this aspect, the testimony of PW-320 (ACP Mohan Kulkarni) and District Magistrate PW-297 (Shri. Choklingum) are important.

1315) The PW-320 (ACP Mohan Kulkarni) has testified that, he has sent the proposal for getting consent against A-11 only. PW-297 (Collector / District Magistrate) has testified that he received the proposal vide **Art.347** dated 16/12/2008 from ATS Mumbai. Both of them have identified the Consent Order vide **exhibit-8133**.

1316) Bare perusal of consent order (**Exh-8133**) issued by District Magistrate, Nashik shows that, he has gone through the following four documents. Hence, except the following four documents, there is no any other documents reference is found in consent order. Those documents are as follows :-

i] Section 3, 4, 5 & 7 of Explosive Substances Act,

ii] Notification of Central Govt. Home Dept. Delhi.

iii] Letter issued by ACP ATS Mumbai bearing No.60/SPAA

/DAVIP/ 2008 Dtd. 16/12/2008

iv] FSL, Sanchanalaya Home Dept. Mah. Mumbai letter No. M(T) /23085/08 Dtd. 12/12/2008.

1317) During course of evidence, the Consent related papers were confronted to him and ongoing through those papers, although he has stated that the other documents like, FIR, Spot Panchanama, house search panchanama, FSL report were annexed with the proposal but there is no reference in his order that he has gone through all those documents and those were annexed with the covering letter or proposal at the relevant time.

1318) The testimony of PW-320 (ACP Mohan Kulkarni) is completely silent on the point of documents annexed with the proposal. The said proposal is also not shown to him during the course of his evidence. Thus, the covering letter or proposal sent by him is not identified by him. His testimony only depicts that, he had sent the proposal for sanction under Explosive Substances Act against accused Sudhakar Chaturvedi. His own testimony indicates that, only against the single accused (Sudhakar Chaturvedi) he had forwarded the proposal to the District Magistrate.

1319) It emerges from the evidence on record that, the basis purpose of sending the letter / proposal to District Magistrate is to obtain his permission to file charge-sheet. The PW-297 (Collector /

District Magistrate) had full knowledge that consent never accorded for filing of charge-sheet under section 7 of ESA but only it is granted only to proceed with trial. It means without consent trial cannot be proceeded. But the object itself is frustrated by obtaining the consent for filing of charge-sheet and granting the permission to file charge-sheet. The admission given by PW-297 (Collector / District Magistrate) on this point are very specific. He has admitted in cross examination that, the letter (proposal) sent by ATS, Mumbai dated 16/12/2008 was for getting the permission to file charge-sheet. He also admitted that under **section 7** of Explosive Substances Act consent is required for trial. Thus, his own admission shows that, the proposal was not submitted for the purpose of consent for trial. He further admitted that, there is no wording in the letter of ATS showing that for the purpose of trial the consent is required.

1320) On considering the aforesaid admission, it would be possible that the proposal might have been wrongly worded by ATS officer without going through the **section 7** of Explosive Substances Act. But the consenting authority was fully aware of Explosive substances Act. He had admitted that he was acquainted with the provisions of Explosive Substances Act. Prior granting to consent order, he had gone through the Explosive Substances Act. If it is so, then he could have appraised about it to A.C.P. Mohan Kulkarni before granting consent. Moreover, it emerges from the testimony of PW-297 (Collector / District Magistrate)

that he had called PW-320 (A.C.P. Mohan Kulkarni) for discussion & PW-320 had been to his office. If it would have been the position, then at that time also, it could be brought to his notice about wrong drafting and wrong prayer made by him. Such prayer could not be allowed and hence, the fresh proposal would have been obtained or it would have been rectified.

1321) It is also necessary to mention that, the consent order is required to proceed with trial as per **section 7** of ESA. The consent order is valid, legal or not cannot be decided at the preliminary stage as it is the mixed question of fact and law. Therefore, the opportunity is required to be given to the concerned issuing authority. After the evidence of concerned authority, the said issue could be decided on merits.

1322) Basically, under **section 7** of Explosive Substances Act consent is required for trial and not for filing of the charge-sheet. The PW-297 (Collector / District Magistrate) has specifically admitted that, consent is required for trial and not for the filing of charge-sheet. Thus, it makes clear that, he had full knowledge of **section 7** of Explosive Substance Act and for what purpose the consent is required under this section. He further admitted that, there is difference between permission and consent and his permission is not required for filing of charge-sheet. Even then he had given the permission to file charge-sheet. Thus, he had given the permission to file charge-sheet, even after the knowledge of provisions, acquainted with law, gone through provisions prior

to granting consent and also knew that the wrong drafting and wrong prayer has been made. No efforts are taken to call the rectified proposal or get it corrected and thereafter the consent was issued for trial. He also admitted that he has not taken extra efforts to find out whether the charge-sheet was filed or not. He has not asked the officer as to why his permission is needed for filing of charge-sheet. He knew that, it was an important to ask the officer, as to why he wants his permission to file charge-sheet. Thus, his own order along with his admissions shows that, he has given the consent for filing of charge-sheet which is not required by the provisions of law. Even after filing of charge-sheet the consent order could be passed and there is no bar under ESA as discussed above. Moreover, the consent is given in the similar wording / manner as worded & prayed in the proposal.

1323) The requirement of law is that, the consenting authority should independently observe, assess or scrutinize the documents placed before him. After the subjective satisfaction should mention his observations as to why he arrived to certain conclusion. Mere reproduction of facts mentioned in proposal are not enough. Repetitions of similar lines of proposal itself indicates that, he has not applied his mind. PW-297 (Collector / District Magistrate) has also admitted that, the Muddemal was not placed before him. He has also not called the said Muddemal and observed or viewed personally. He was unable to assign the reason as to why the said facts are not mentioned

in his report.

1324) During cross examination, PW-297 (Collector / District Magistrate) has exaggerated the facts in order to show that what efforts he had taken prior to granting the consent. He has stated that, he has called the PW-320 (ACP Mohan Kulkarni) for discussion. But, the testimony of PW-320 is completely silent on this point. He has not testified that, the PW-297 (Collector / District Magistrate) had ever been called him after sending proposal and there was discussing between them. The Ld. Advocates for accused have rightly pointed out that, if he would have called the Investigating Officer for discussion, then it would have been mentioned in his consent order itself and Investigating Officer would have deposed the same. The admissions given by the PW-297 (Collector / District Magistrate) itself shows that, he has not recorded in his consent order that he had called the Investigating Officer for discussion. Thus, it shows that facts are exaggerated by the witness.

1325) In addition to aforesaid point, he has also stated in cross examination that, he had been to the spot of incident before granting consent. But there is no documentary evidence or oral evidence to support the said version. He was unable to give details of spot visit or officer accompanied him. On this point, his testimony is not corroborated with other prosecution witnesses examined during trial. Nobody has seen him on the spot during his spot visit as narrated by him. He also admitted

that, both the aforesaid facts are not mentioned in his consent order. Thus, it clearly indicates that, the answers given by him in cross examination are after thought and without any corroboration.

1326) During the course of hearing, it was also pointed out by the Ld. Advocates that, the proposal which is placed on record is not proved. PW-320 (ACP Mohan Kulkarni) has not identified the said proposal. Moreover, as per PW-320, he has sent the proposal of A-11 (Sudharkar Chaturvedi) only and not of other accused. In the light of evidence on record, the testimony of both witnesses and documentary evidence on record on the point of proposal of single accused or all accused are inconsistent i.e. doesn't match with each other.

1327) During the course of evidence, the PW-297 (Collector / District Magistrate) was confronted with his consent order and other documents. Even after going through the documents, he was unable to tell the name of accused who was in possession and control of explosives under suspicious circumstances. Neither sanction nor consent can be granted mechanically. In the same manner, it can be said that there should be application of mind prior to granting either sanction or consent. It must be reflected in order. Sanction or Consent are not a formality but mandatory provision incorporated under the act as a safeguard. In the present case, the aforesaid admissions itself make it clear that, for what purpose the consent order is required to be granted,

that purpose is itself frustrated by granting wrong prayer not desired by law. Therefore, considering the entire evidence on record, I am inclined to hold that, there is non-application of judicious mind while granting the consent order. Hence, I am inclined to hold that consent order is defective and invalid.

1328) Apart from above discussion, another count which makes the consent order infructuous and valueless is that, the allegations pertaining the source of RDX, transportation of RDX, Storage of RDX merely found in charge-sheet. Absolutely, there is no evidence at all on the aforesaid points. Moreover, prosecution is unsuccessful in proving that A-11 was in conscious possession of RDX. In addition to it, the recovery of articles including traces of. RDX found at his home is also doubtful and evidence tilt towards planting. In such situation, the sanction against him and other accused under explosive substances act are valueless and nothing survives in it.

<u>CDR, SDR and Nodal Officers</u> :-

1329) During the course of investigation, in order to get CDR and SDR of the mobile numbers of accused, there was correspondence between ATS and service providing companies. On this point, the testimony of concerned officers and Nodal officers are important. The prosecution has examined total eleven officers of concerned service providing companies.

1330) As per prosecution, while arresting the accused the mobiles were

seized bearing the following mobile numbers. Those are mentioned in the following tabular format,

Accused Number	Mobile Numbers
A-1 (Pragyasing Thakur)	9406600004, 9303343231
A-4 (Ramesh Upadhyay)	9326603000,
A-5 (Sameer Kulkarni)	----------
A-6 (Ajay Rahirkar)	9766631435, 9850825042
A-9 (Prasad Purohit)	9424465041, 9422516175
A-10 (Sudhakar Dhar Dwivedi)	----------
A-11 (Sudharkar Chaturvedi)	------Nil-----

1331) Before discussing the evidence on the point of CDR, SDR and Nodal Officer, it would be apposite to quote the relevant citations as follows,

1332) In case of **Rahil & Anr. Vs. State (Govt. of N.C.T. of Delhi) [In Criminal Appeal No.1856 of 2014; decided on 25.06.2025]**, Hon'ble Supreme Court has observed as under:-

31. PW23 Nodal Officer Bharti Airtel produced CDRs of the phones of Fazal and Rahil being Ex. PW 23/A and 23/B, respectively. Site details of Airtel in Delhi and NCR were exhibited as Ex. PW23/C. The ownership certificate was also

produced as Ex. PW23/D. All the exhibits were secondary evidence being computer printouts of the data said to be preserved in the computers of the service provider concerned. During cross-examination, PW23 admitted he had neither signed the said documents nor were the documents certified.

32. Section 65-B(4) requires issuance of a certificate by a person-in-charge or responsible officer in relation to operations of the relevant computer network in question stating as per his knowledge or belief that during the relevant period:-

(a) computer(s) were carrying out regular activities, and were working properly; and

(b) the relevant information was regularly fed into the computer in ordinary course of business, as proof of the facts stated therein.

33. In State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600] this Court held computer printouts are secondary evidence and may be admitted on mere production. Production of certificate under section 65-B(4) was not mandatory for admission of such secondary evidence. However, in Anvar PV v. PK Basheer [(2014) 10 SCC 473] this Court took a different view and held Section 65-B laid down a special procedure for admissibility of electronic records which mandatorily requires production of certificate under 65-B(4) for admissibility of secondary evidence i.e. computer printouts. This view was

doubted in Shafhi Mohammad v. State of Himachal Pradesh [(2018) 2 SCC 801]. In Sonu v. State of Haryana [2017) 8 SCC 570], another bench of this Court, held the ratio in Anvar PV (supra) shall apply prospectively unless the defence during trial raised objection to admission of computer printouts. Finally, the issue was settled by a three-judge bench in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal [(2020) 7 SCC 1], wherein the bench overruling Navjot Sandhu (supra) and Shafhi Mohd. (supra) upheld the ratio in Anvar PV (supra) and held issuance of certificate under section 65-B(4) is a condition precedent for admissibility of computer-generated secondary evidence. It cannot be supplemented through oral evidence.

34. It would be argued that Navjot Sandhu (supra) which did not insist on production of certificate for admissibility of computer-generated printouts was prevailing at the time when the case was decided by the Trial Court and the Appellate Court. The judgement in Anvar PV (supra) was delivered subsequently and cannot be a ground to render the CDRs inadmissible. It is also brought to our notice that issue of retrospective application of the ratio in PV Anvar (supra) is pending for consideration before this Court [M.A. No. 1563/2017 in C.A. No. 4226/2012].

35. Be that as it may, it is relevant to note the larger bench in

Khotkar (supra) while reiterating PV Anvar (supra) did not hold that its ratio shall apply prospectively. Furthermore, in Mohd. Arif @ Ashfaq v. State (NCT of Delhi) [(2023) 3 SCC 654] this Court while hearing a review petition in a death penalty case retrospectively applied the ratio in Anvar PV to cases decided earlier and eschewed secondary electronic evidence dehors certificate under section 65-B(4), holding as follows:-

> *"23. Navjot Sandhu was decided on 4-8-2005 i.e. before the judgment was rendered by the trial court in the instant matter. The subsequent judgments of the High Court and this Court were passed on 13-9-2007 and 10-8-2011 respectively affirming the award of death sentence. These two judgments were delivered prior to the decision of this Court in Anvar P.V. which was given on 18-9-2014. The judgments by the trial court, High Court and this Court were thus well before the decision in Anvar P.V. and were essentially in the backdrop of law laid down in Navjot Sandhu. If we go by the principle accepted in para 32 of the decision in Sonu, the matter may stand on a completely different footing. It is for this reason that reliance has been placed on certain decisions of this Court to submit that the matter need not be reopened on issues which were dealt with in accordance with the law then prevailing. However, since the instant matter pertains to award of*

death sentence, this review petition must be considered in light of the decisions made by this Court in Anvar P.V. and Arjun Panditrao Khotkar.
24. Consequently, we must eschew, for the present purposes, the electronic evidence in the form of CDRs which was without any appropriate certificate under Section 65-B(4) of the Evidence Act."

Similar view was taken in Sundar @ Sundarrajan v. State by Inspector of Police [2023 SCC Online SC 310].

36. Though the present case does not involve death penalty, it is undeniable that appellants were facing a criminal trial and the prosecutor was required to prove a fact beyond reasonable doubt strictly in accordance with law. Appellants during trial raised objections to admissibility of the secondary electronic evidence relating to Rahil which was marked as exhibit PW23/B-D. Thereby the prosecutor was put on due notice and had opportunity to fill the lacuna by producing the requisite certificate under Section 65-B(4) but did not do so.
In Sonu (supra), this court held if an objection is taken to CDRs being marked without a certificate and the same was not cured by the prosecutor at relevant stage the document shall be inadmissible in law.
In these circumstances we are inclined to apply the ratio in PV Anvar and Khotkar to the case and hold that the exhibits are

inadmissible in law being secondary evidence without certification.

1333) In case of **Balasaheb Gurling Todkari & Ors. Vs. The State of Maharashtra [Criminal Appeal No.432 of 2012; decided on 09.06.2015]**, Hon'ble Bombay High Court has observed as under:

"35……..On CDR, learned counsel for accused No.1 strenuously submitted that there is no compliance of the mandatory provisions of Section 65B of the Indian Evidence Act and therefore, CDR reports cannot be admitted in evidence. In support, Shri Khamkar, learned counsel placed vehement reliance on Anvar P. V. Vs. P. K. Basheer and others 7. In this case, the Hon'ble Supreme Court overruled its previous decision in AIR 2005 SC 3820 and held in para 19 & 22 as under:-

> *"19. Proof of electronic record is a special provision introduced by the IT Act amending various provisions under the Evidence Act. The very caption of Section 65A of the Evidence Act, read with Sections 59 and 65B is sufficient to hold that the special provisions on evidence relating to electronic record shall be governed by the procedure prescribed under Section 65B of the Evidence Act. That is a complete Code in itself. Being a special law, the general law under*

Sections 63 and 65 has to yield."

"22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65A and 65B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case (supra), does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence

pertaining to that electronic record, is inadmissible."

36] It is pertinent to note that in the State (NCT of Delhi) Vs. Navjot Sandhu two Judge Bench of the Hon'ble Apex Court had an occasion to consider an issue on production of electronic record as evidence. While considering the printouts of the computerized records of the calls pertaining to the cellphones it was held that secondary evidence is permissible in the absence of certificate under sub-section (4) of Section 65-B of the Indian Evidence Act. This judgment was overruled in Anvar's case (supra).

In the present case the requisite certificate on Call Details Record as per law was not filed. In view of the ratio laid down in the above authority absence of such certificate would render the CRD inadmissible in law. Being inadmissible, same cannot be considered."

1334) In the year 2008, the **PW-241 (Zia Ul Hasan)** was serving as General Manager at BSNL Bhopal. He testified that, he received correspondence from ATS, Mumbai pertaining to mobile nos.9406600004 (Pragyasing Thakur), 9406524594 (Mina Vaishnav), 9406545514 (Hari Prasad Tetram), 9424465041 (Prasad Purohit), 9425911745 (Ramchandra Kalsangra), 9425352670 (Shivnarayan Kalsangra) and thereby demanded the details of subscriber, call, SMS, Cell location address. He

has provided that information as available.

1335) The admissions given by the witness in cross examination itself shows that, he has no documentary evidence to show that, he had acted as Nodal Officer during that particular period. Their central Department looks after the correspondence and powers are vested to that department head to provide the information. He was having second hand information. There is no document on record to show that, he had handed over those relevant documents to ATS at that time. He didn't know the subscribers name whose telephone numbers are mentioned. Even going through the CDR documents, he couldn't say anything about the CDR Documents. Considering his admissions, it reflects that except the forwarding the information he had not done anything. Neither he personally collected or downloaded the information nor he could authentically say about the contents of the said documents.

1336) Pertaining to mobile number 9303343231 (Sachin Soni), 9326603000 (Ramesh Upadhyay), 9336548787 (Vivek Pandey), 9336038007 (Prema Devi), 9907282400 (Sameer Kulkarni), 9907282422 (Dinesh Singh) the prosecution has examined PW-246 (Prakashchand Jain). He was serving as Chief Technology Officer, Reliance Communication, Mumbai. He testified that, he received the letter (Art.239) from ATS Mumbai dtd.11/11/2008 and thereby demanded subscriber details, calls, SMS details, cell ID, documents details of mobile number 9303343231. He sent

the information to ATS by reply letter on 24/11/2008. He identified the reply letter (Exh.7037) which issued under the signature of Rajesh Gaikwad, an alternate nodal officer.

1337) In cross examination, the admissions given by him shows that, he didn't receive the article 239. The information which was collected by alternate nodal officer Rajesh Gaikwad was forwarded to ATS. He had not personally collected that relevant information. The information (CDR) was print-scan-copy of downloaded data. Those are not original documents. Original CDR remains in Hard-disk. He cannot certify the genuineness of the contents of documents. He had not personally sent the copies of documents to ATS. He had no knowledge as to whether 65B certificate was attached to it or not. Thus, neither he had personally collected or downloaded the information nor he could authentically say about the contents of the said documents. The alternate Nodal officer Rajesh Gaikwad who downloaded the information and sent under his own signature is not examined by prosecution. No 65-B certificate was annexed or produced.

1338) In the year 2008, PW-227 (Sachin Shinde) was serving as Nodal Officer at Idea Cellular Company. He received the various letters from ATS office and thereby called the required information i.e. subscriber details, calls, SMS, Cell ID, Location, etc. about the mobile numbers 9850825042 (Ajay Rahirkar), 9881310684 (Sudhakar Chaturvedi), 9604372982 (Ajay

Rahirkar) given in the letter. He had supplied those required information.

1339) In cross examination, he had admitted that, he has no documentary evidence to show that he was Nodal officer of Idea Cellular Company. He didn't get the documents submitted by purchaser / customer while purchasing SIM card and he also not verified those documents. They used to maintain the data in digital form in their computer. He extracted the details from computer by using his ID and Password. He had not provided 65 (B) certificate. There is no endorsement and acknowledgment of Idea Cellular Company on Exh.6943, 6945, 6947. Thus, in the absence of 65-B certificate the documents are neither admissible as evidence nor it could be considered.

1340) In the year 2008, PW-229 (Amit Karkera) was serving as a Nodal Officer at Bharti Airtel Limited Pune. He received the request letters from ATS, Mumbai and thereby called the information (CDR, SDR) about the mobile numbers 9766631435 (Ajay Rahirkar), 9960111907 (Ajinkya Khasnis), 9766677736 (Vilok Sharma) mentioned in the letters. He had provided the requisite information. The CDR (Call Detail Record), SDR / other requisite documents which he had provided are the print out taken from the computer-generated data.

1341) The documents supplied by him there is no signature of any officer nor it is mentioned that those are true copies or certified

copies. Without his signature he cannot say about the genuineness of documents. He had no documentary evidence to show that at the relevant time he was Nodal officer in Bharati Airtel Ltd. He had not personally verified the documents which were sent to ATS. The KYC documents are photostat copies. On the other hand, it shows that the data was stored in Centralized Server of the company which is maintained by some experts such as Engineers and technicians. He has not provided 65(B) certificate nor ATS had demanded any such certificate to him.

1342) In the year 2008, PW-237 (Chandu Rao) was serving as a Nodal Officer of Maharashtra and Goa at Hutchison Cellular Company. He received the request letters from ATS, Mumbai and thereby called the information about the mobile number 9923354185 (Sudhakar Chaturvedi) mentioned in the letters. He had provided the requisite information being working as Nodal Officer. The CDR (Call Detail Record) which had provided are the print out taken from the computer-generated data.

1343) All the data / CDR are maintained in the server of their company. The CDR is print out of data stored in computer. He didn't know in how many columns the CDR is maintained. He has not personally maintained that Computer and IT department used to look after it. The company was not having the information to show that actually who was using the SIM Card during that period. On the provided CDR there is something written by pencil on Exh. 6991, the alphabets "A, B, C, D, E and

F" and numerical. There are also "E-1, E-2 ....." etc. are also seems to be written by pencil on those CDR. He had not written any such things on the aforesaid CDR. The letters Exh.6989 and 6990 were issued under the signature of Sachin Bhadange. He is not examined as a witness. Thus, Nodal officer is lack of knowledge about in how many number of columns CDR maintained by the company as well as along with the supplied photostat copies no 65-B certificate was annexed or produced.

1344) In the year 2008, PW-254 (Hemant Rathave) was working in BSNL, Pune as a Deputy General Manager (DGM). Being DGM the responsibility of Nodal officer was also assigned to him. He received the letters from ATS Mumbai for getting the details about the mobile numbers 9422516175 (Aparna Purohit), 9423162661 (Varsha Dhawade) provided in those letters. Their security team sent the reply along with the requisite information called under the signature of V. V. Jadhav, SDE, Mobile Security.

1345) In cross examination he has admitted that, he didn't know exactly who received the letters (Art.267, 268) and what correspondence was made in reply with ATS. Thus, it clearly shows that he was totally unaware about the correspondence made with ATS. The person who exactly made the correspondence or provided the required documents is not examined by the prosecution.

1346) In the year 2008, PW-258 (Vasant Jadhav) was working in BSNL, Maharashtra and Goa State as a Nodal Officer. Being DGM the responsibility of Nodal officer was also assigned to him. He received the letters from ATS Mumbai for getting the details about the mobile number provided in those letters. He had supplied the requisite information in hard copies, time to time, in response to those letters. He had downloaded the information stored in server and provided CDR and photostat copies of customer application form to ATS.

1347) In cross examination he admitted that, they used to reply through email. He supplied the downloaded CDR to ATS. During the course of his evidence, it was objected by Ld. Advocate for accused that, CDR is not original but computer print out and it is without 65-B certificate. Hence, the document was tentatively marked as Exh.7259, 7260. Although the document is tentatively marked but the contents cannot be said to be proved, unless and until the details are narrated by the witness and 65-B certificate is annexed with it. Mere exhibiting the documents doesn't mean that its contents are proved. Therefore, I found substance in the objection raised by the Ld. Advocates for accused. Moreover, the witness had not verified personally the documents supplied by him.

1348) In the year 2008, PW-263 (C.A.J. Prakash) was working as Chief Nodal Officer in the capacity of General Manager, Corporate office, Idea Cellular Ltd. Mumbai. He used to look after the

departmental correspondence. Their office received the letters from ATS Mumbai for getting the details about the mobile numbers 9753784088 (Ashita Jain), 9891137738 (Santosh Thakur), 9977281182 (Manish Shrivastav), 9926638866 (Papu Singh) provided in those letters. The mobile numbers were of different state and hence, he forwarded to the concerned Nodal officers of respective state and the concerned Nodal Officers sent the compliance mail to him by providing directly the requisite information to ATS.

1349) In cross examination, he has admitted that he has no documentary evidence to show that he was working with Idea Company at the relevant time or he was authorized to provide the information to ATS at that time. ATS also did not ask about the aforesaid documents. He also admitted that in the year 2006 to 2008, the physical verification of address of the proposed subscriber was mandatory before the activation of concerned mobile numbers. If any customer application form is blank or incomplete, then that number would not be activated. The correspondence made by ATS i.e. article 280, 281, 283 bears no inward number of their office, in order to show that really, he had received any such demand letters from ATS.

1350) In the year 2008, PW-277 (Saidatta Bohare) was working as Circle Nodal Officer in Bharati Airtel Ltd. Indore Office. Their office received the letters from ATS Mumbai for getting the details about the mobile numbers 9893860524 (Arvindra

Kumar), 9755003058 (Nitendra Gangaram), 9893544113 (Ram Kishan), 9893544112 (Ram Gothui), 9755458713 (Ram Gothi), 9755555785 (Kailash Singh), 9893877644 (J. Ramkishan Gauthi), provided in those letters. He had supplied the requisite information to the concerned officers. The CDR was maintained in electronic format. He downloaded the CDR through the link provided through the server and sent those copies to ATS.

1351) During the course of his evidence, the Ld. Advocates for accused have disputed the authenticity and admissibility of electronic evidence in the form of CDR and other photostat copies. They objected to its admissibility for the want of strict compliance of the provisions of Section 65-B of Indian Evidence Act, 1872. Admittedly, the CDR documents were tentatively marked as Exh.7662, 7664, 7665, 7667, 7668, 7670, 7671, 7673, 7675, 7676, 7678, 7679, 7681, 7683, 7684 subject to their objections. No doubt, CDR is not original document but those are computer print-out. Those are without 65-B certificate. Although the documents are tentatively marked for the purpose of identification, but the contents cannot be said to be proved, unless and until the details are narrated by the witness and 65-B certificate is annexed with it. Mere exhibiting the documents doesn't mean that its contents are proved. Admittedly, both twin condition is missing. Therefore, I found substance in the objection raised by the Ld. Advocates for accused.

1352) In the year 2008, PW-285 (Ambarish Tiwari) was serving as

Nodal Officer in Idea Cellular Ltd. Indore. Their office received the letters from ATS Mumbai for getting the details about the mobile number provided in those letters. He had supplied the requisite information to the concerned officers. All the information including CDR was stored in their computer. He downloaded the requisite information from computer including CDR pertaining to mobile numbers 9977281182 (Manishi Ji Shrivastav), 9753784088 (Ashita Jain) and sent to ATS.

1353) In cross examination, he has admitted that he has no documents to show that at the relevant time he was working as Nodal Officer in Idea Cellular Company. ATS also not demanded those documents. Master server was located at their Indore Office in the year 2008-2009. At that time, he had no knowledge about hardware and software. The Switch Head was having the knowledge of hardware and software. He didn't know who was the Switch Head at the relevant time. The call details record is maintained in 16 to 32 Column as per regulations of Department of Telecommunication but he didn't know in how much column he had provided the call details.

1354) Considering the entire testimony of aforesaid witnesses, it depicts that, all the service providing agencies received letters of different dates from Addl. C.P. ATS and thereby the requisite information / details pertaining the mentioned mobile numbers were called as discussed above. All the letters issued by Addl. C.P. ATS Mumbai but he is not examined as a witness and

hence, the contents of those letters are not proved by prosecution.

1355) During the course of arrest of A-1, the two mobile phone bearing mobile numbers 9406600004 and 9303343231 shown to be seized. As per the case of prosecution, the mobile number 9406600004 belongs to Ashutosh Mishra, who is not examined as a witness. The SDR is also not proved. There is no evidence on record to show that he has provided his SIM or the alleged mobile number to A-1.

1356) As per the case of prosecution, the second mobile number 9303343231 belongs to PW-193 (Sachin Soni). Admittedly his SDR is also not proved through the Nodal officers. The PW-193 has specifically stated that he never purchased any such number in his name nor provided to A-1 for her use.

1357) The Nodal Officer or other officer of concerned companies had sent the data in the form of CDR and subscriber details. Their evidence itself shows that, all the data are stored in the computer and almost of them had not verified the data or documents with subscriber's record. Most of them were unable to state with certainty the data provided by them is the same or not without comparing with original record.

1358) Admittedly, the data was stored in the computer at the relevant time. The original device or original media on which recording is

made is not produced on record. All the documents are copy of downloaded data. All those documents are in the form of secondary evidence which are tendered in the court. There is no 65-B certificate along-with those data or documents. The said certificate was also not produced during the course of their evidence of concerned nodal officers nor it was produced during the course of entire trial. Though, the present matter is of 2008. During entire trial, the prosecution had not filed 65-B certificates on record. There is no bar to produce the 65-B certificate at any stage. The prosecution were having ample time to collect the 65-B certificate and to file it on record.

1359) It is not the case of prosecution that, they were totally unaware about the 65-B certificates. During the course of evidence, the prosecution witness, the Bank Manager PW-215 (Dilip Kaul) is examined to prove the computerized printed extract. He has filed the hand-written certificate (Exh.6895) captioned as Banker's Book of Evidence and/or Information Technology Act, 2000. And the another witness PW-149 (Pragyanshu Akotia) has also filed electronic document certificate (Exh.6669) u/s 65B of Indian Evidence Act to prove the computer print out provided to ATS. Thus, they procured the mandatory certificates from two witnesses and filed on record which reflects that they had knowledge about the mandatory provision. But they had neither procured the certificates from Nodal officers nor those are filed on record during the entire trial.

1360) In the backdrop of the facts as discussed above, data / documents provided by Nodal Officers cannot be looked into on the two major counts. Firstly, it is not original copy and secondly there is non-compliance of mandatory provision incorporated u/s 65 i.e. requirement of 65(B) certificate as per Evidence Act. Now prosecuting agencies cannot take the advantage of non-compliance of mandatory provision and non-filing of 65-B certificate. Therefore, the citations quoted by Ld. Advocate for accused in cases of **Anvar P. V. Vs. P. K. Basheer, Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal** and observations made in those citations by Hon'ble Apex Court are squarely applicable in the present scenario of the case.

1361) The prosecution has also examined police inspector PW-314 (Shashikant Bhandare). He was working in technical wing of ATS till 2010. He had prepared the chart on the basis of CDR information collected by the investigating officer of ATS. He testified that, if two mobile numbers belongs to single accused, then he marked those numbers as A1, A2. If there are more than one accused, then they had given the identification marks in alphanumeric manner co-relating to the respective number of the accused. He prepared the detail chart showing SDR, date of activation, incoming calls, outgoing calls, SMS, etc. The mobile number 9425911745 was marked by him as W2 which belongs to Ramchandra Kalsangra. The mobile number 9406600004 marked as A2 belongs to Pragyasing Thakur. The mobile number 9406932965 are marked as E1 to E6 belongs to Prasad

Purohit. The mobile number 9424465041 marked as E4 belongs to Prasad Purohit. The mobile number 9766631435 marked as C2 belongs to Ajay Rahirkar. At that time, Senior Police Inspector Wadake was the head of their technical department.

1362) The cross examination of this witness shows that, ATS IO made the request to Mr. Wadake to do the analysis of CDR and submit his report. There is nothing on record to show that, the documents were marked to PW-314 to submit his report of analysis of CDR. The Sr. PI Shri Wadake is not examined by prosecution.

1363) At the time of preparation of chart, the Investigating officer of ATS was with PW-314. He dictated the names of arrested accused, absconding accused and their respective mobile numbers. The chart was prepared as per the dictation given by the investigating officer who was physically present with him for preparation of chart. Thus, it clearly indicates that, he has not made the chart personally, independently by verifying the available record of CDR or other documents. But the chart was prepared according to the narration of Investigating officer without verifying the actual available data renders the evidence unreliable.

1364) His attention was invited to his statement recorded by investigating officer. In portion mark 'A' he had stated that, the

phone number marked A1 belongs to Sachin Soni, whereas the phone number marked as A2 belongs to Ashutosh Mishra. The phone number marked as E1 belongs to Meena Vaishnav, E2 belongs to Hari Prasad Tetram, E4 belongs to Dr. Aparna Purohit, E5 belongs to Ajay Rahirkar and Arvindra Kumar. The mobile number 9406932965 belongs to Prasad Purohit is nowhere mentioned in his chart as he stated during recording his statement. There is no reference of SMS in the name of Pragya Singh Thakur or Ramesh Upadhyay in his statement. Thus, it is totally contradictory to his deposition.

1365) He has admitted that, the phone number marked as E1 to E6 which shown as belongs to Prasad Purohit, there were no incoming or outgoing SMS received and hence those are not mentioned in the chart. So also, the phone number marked as F2, D1 and D2, G1, G2 and G5 there were no incoming or outgoing SMS received. Hence, those are not mentioned in his statement by him.

1366) He has admitted that he has not verified the SIM number as well as IMEI number of each mobile even after he had knowledge that, for the verification of contents of mobile number, the verification of IMEI and SIM number are necessary.

1367) He further admitted that, total number of calls reflected in his analysis chart of Pragya Singh Thakur, in respect of mobile no.9406600004 with mobile number (9326603000) of Major

Ramesh Upadhyay is only one call. On the other hand, analysis chart of same mobile number of Major Ramesh Upadhyay with that same number of Pragya Singh Thakur is 3 calls in total. Thus, it clearly indicates that, the chart is mismatched with the details provided by the witness. Moreover, his admission goes to the root of the case which shows that Investigating Officer Mohan Kulkarni narrated him the name of accused and directed him to mention those names in the chart. All the charts of his statement do not match with each others.

1368) The CDR, SDR sent by the concerned company were in the form of photostat copies and not the original one. But, the witness has stated that, he received original SDR and CDR for the purpose of analysis. It do not inspire the confidence in the backdrop of the evidence of concerned Nodal officers. He is totally unaware in how many columns the CDR was reflecting. The chart prepared by him also shows that A-5 (Sameer Kulkarni) called himself for 121 times. Thus, the testimony of aforesaid witness is totally contradictory to the chart prepared by him while recording his statement and the deposition given before the Court. Thus, the inconsistent testimony and not linking with the chain of CDR in correct manner would not be helpful to the prosecution in any way.

1369) In my humble opinion, even CDRs are taken into consideration for the sake of moment, they merely establish that, the accused were known to each other via cellular communication. The

actual chat or conversation among them is not produced on record. Apart from this, there are number of weakness in the evidence. It has already been discussed in detail that the arrest of the accused and the seizure of mobile phones from their possession are highly doubtful. Even for the sake of moment, keeping aside this aspect, considering the entire evidence of Nodal officers on the touchstone of admissions given by them and non-compliance of mandatory provision of law, mere providing the CDR and other photostat copies or computer-generated copies cannot be deemed to be admissible and possess substantive evidential value. The prosecution has failed to establish a coherent and unbroken chain of custody to prove that the alleged mobile numbers were in use by the accused at the relevant time or that they were in contact with one another during the course of the alleged offence. So by stretch of imagination CDRs alone cannot be sufficient in the absence of proper procedure and require certification to that effect.

Electronic Devices Examiner (PW-296):

1370) It emerges from the evidence on record that, the number of electronic devices like pen-drives, mobiles, Laptops were seized by the investigating officers of ATS on different dates. Initially, those electronic devices were kept in custody by ATS. After the lapse of several days, those devices were sent for analysis. The analysis was carried out by Assistant Chemical Analyzer / Examiner of Electronic devices PW-296 (Kiran Deokate). He has issued his total four analysis reports. Those are mentioned in

following tabular format for the sake of convenience,

Analysis Report	Date of commencement of Analysis	Date of completion of Analysis	Report Issued on Dated
Exh.8061 (M.L.Case No. Cy155/08 page 23 to 95)	22/11/2008	12/01/2009	17/01/2009
Exh.8151 M.L.Case No. Cy-156/08 (Page No. 96 to 98)	05/01/2009	12/01/2009	17/01/2009
Exh. 8160 M.L. Case No. Cy-159/08 (Page 99 to 103)	18/12/2008	12/01/2009	17/01/2009
Exh.8152 M.L. Case No. Cy-155/08 (Page No. 9 to 13)	-------	------	26/02/2009

1371) PW-296 has testified that, in the year 2008, he was Assistant Chemical Analyzer at Directorate Forensic Science Laboratories on contract basis. He is MCA graduate and having five years' experience before joining DFSL. He got training from various labs of Government situated all over India. He had described the procedure after receipt of articles. After receipt of articles / devices, they used to describe its condition. They put up their

marking on the parts of articles. In case of hard-disk, they copy bit-to-bit information/ data from source hard disk to sanitize /blank hard-disk. When data appears in sanitized hard-disk it is called as Forensic Image. The sanitized hard disk (blank hard disks) is provided by the concerned investigating agencies. They work on sanitized hard-disk / forensic image by annexing it to their workstation hard-disk. While analyzing the forensic image, whatever the video files, audio files, images, documents are book-marked in their work-station hard-disk, and those are copied into CD and DVD to provide investigating agency. As per Exh.8061, he had enclosed CD and DVD and those were handed over to investigating agency. Those are, CD marked as "Annexure-Mobile Phone", CD marked as "Annexure-documents", CD marked as "Annexure-videofiles-I", DVD marked as, "annexure-videofiles II", DVD marked as, "Annexure-audio files", CD marked as "Annexure-picture images".

1372) The PW-296 (Kiran Deokate) further testified that, in case of mobiles, they used to check whether it is in switch on condition or switch off condition. When it is switch off condition, only then they used to separate its parts. For analysis they have licensed software i.e. Encase software. He has mentioned the chart wise data noticed by him in each electronic device while examination / analysis.

1373) It is necessary to mention that, although multiple electronic devices were seized and sent for forensic analysis, the

prosecution has failed to establish key details regarding the digital evidence. Neither the testimony of PW-296 nor his reports indicate, the quantum of data retrieved, the portion of data unrecoverable or inaccessible, and whether any data had been deleted.

1374) He further admitted that, FSL used to maintain the register while handing over the articles for analysis to the particular analyzer but he could not state or show that how much articles exactly he had received for analysis in the present crime.

1375) He detached the hard-disk from each laptop for analysis, but while detaching admittedly he had not pasted the label on laptop which would show the date, time, place, and hard-disk details. Only six laptops were received for analysis and each laptop had a single hard-disk in it. But he had received 12 sanitized hard-disks from ATS for mirror imaging. He had not checked those hard-disk as to whether those were having any data or not.

1376) Now pertaining to the software used by the expert. He had used Encase software for analysis of devices. The Encase software is open-source software also with limited features. It can be downloaded by any person. He admitted that, Encase software generates logs about the transfer of the data mentioning how many files are copied, how many of them are skipped, how many are corrupted in process of cloning. Neither he has

mentioned those anywhere nor given any such separate report with his analysis report. He doesn't possess any certificate as Encase examiner. He has not attached the internal verification report of Encase with his examination report. They don't have any certificate to show that the software was validated and tested before analysis. He had not mentioned the Encase product ID in his report. There is no documentary evidence to show that they had used the licensed Encase software for analysis. He also admitted that, at the relevant time, the DFSL was under-equipped and hence, at the optimum level the work of analysis could not be carried out. Considering his admissions, it can be said that, every software has its own loopholes / limitations. Every software doesn't have 100% accuracy. His own admission itself shows that, if software is backdated or expired, then it doesn't support fully to all electronic gadgets and doesn't give the accurate results. He could not analyze the number of articles as mentioned in his report.

1377) Admittedly, the prosecution had not filed any comparative chart of hash value showing Station-Hard-disk, Work Copy, CD and DVD. PW-296 has specifically admitted that, he had not prepared the comparative chart thereby showing that hash value of data lying in source hard-disks, sanitized hard-disks and CD/ DVD.

1378) No doubt the hash values have unique identification capabilities that have a high degree of accuracy to confirm whether two

records or files are a match or are dissimilar. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is identical to original. Before or at the time of seizing any digital evidence, their hash value must be taken or calculated using forensic tools and the generated report should be reflected in panchanama. Generation of hash value at the time of opening electronic gadgets is meaningless unless the hash value at the time of seizure of electronic gadgets had been recorded.

1379) In the present case, the investigating officers were aware about the generation of hash value. Investigating officer / technical branch ATS used MD5 (Message-Digest algorithm 5) to generate hash value. The testimony of prosecution witness 182 (Nivrutti Kadam) itself shows that, at the time of coping data from mirror images they had taken the hash value by using MD5. The integrity and authenticity of digital evidence are primarily safeguarded through the generation of hash values. However, in the present matter, no hash values were generated or documented at the time of seizure of the devices. PW-296 has specifically admitted that, police sent him articles for analysis without drawing hash value. Due to non-sending of hash value by police, he could not compare with the hash value generated by him.

1380) The PW-296 had also not taken any hash value of source hard-

disks. Even after going through his analysis report, he was unable to point out the hash value, which he had taken of the source hard-disks. He had also not taken the hash value of the data existing in the source disks / all electronic devices, before bit-to-bit copying the data in work-hard-disks. He had not checked as to whether the data was lying in the sanitized hard-disks sent by ATS. Thus, whatever the hash value is reflecting in his report those are taken from Encase software generated hash value in their workstation hard disk. Even for the sake of moment, it is assumed that those are tallies & accurate but the CD, DVD which are produced in the court are copy of copy without 65-B certificate. Therefore, those are not admissible, in the light of observations made by Hon'ble Apex Court in **Anvar P.V. Vs. P.K. Basheer [MANU/SC/0834/2014] and Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors [MANU/SC/0521/2020].** Moreover, hash value could not be comparatively verified with source hard-disk as the investigating officer had not taken any hash value before sending those hard-disks nor the expert had run those detached hard-disk before the court in order to demonstrate the alleged data or hash-value. Mere placing the detached hard-disk on record would not be sufficient, unless and until those are played or demonstrated by the digital expert examiner during the course of his evidence.

1381) Thus, the testimony of police witnesses coupled with expert testimony clearly shows that, police had not generated the hash value nor any explanation came on record for non-generation of

hash value even after knowledge that generation of hash value gives authenticity of digital evidence.

1382) Moreover, at the time of seizure or sealing of electronic devices, investigating officers had not even checked the devices or gadgets as to whether those are in working condition or not. On this point, PW-296 has admitted that, if any laptop or electronic devices are shown without switching it on, then it cannot be said that those are in working condition. Even on perusal of his report, he could not say in which laptop which operating system was installed. Therefore, the omission to verify whether the seized devices were in working condition, coupled with the absence of any explanation for the non-generation of hash values, raises serious doubts regarding the reliability, continuity, and admissibility of the electronic evidence relied upon by the prosecution, even though the hash value is merely generated & pointed out by PW-296.

1383) Thus, data is copied from original hard-disk to sanitized hard disks. From sanitized hard disks to work station hard disk and from work station hard-disk to CDs and DVDs without comparative chart of hash value as well as without 65 B certificate. Moreover, prior to sending gadgets for analysis, the hash value was not taken and provided by ATS to the expert in order to verify and compare.

1384) He has not verified or performed any test to show that the

alleged mobile phones were in used or how long those were in use. There is no reference of any mobile numbers in his report vide exhibit-8061 Colly. Ongoing through his reports, he was unable to tell the mobile numbers. The report vide exhibit-8161 shows that, he received mobile phone handset of Make ZTC Model ZT555 in "switched-on" condition. It means it was never switch off after the seizure of mobile. With reference of switch on state of electronic devices, he had admitted that there could be remote destruction or addition by giving such commands without the investigator's knowledge.

1385) Although multiple electronic devices were seized and sent for forensic analysis, the prosecution failed to prove that, without delay the electronic articles were sent for analysis, and there were no manipulation or addition or tampering. No use of faraday bags or safety measures are seems to be taken while seizing & sealing the electronic articles. Number of articles were packed in envelops. The electronic record is more vulnerable to alteration, transposition, tampering, excision, etc. without the presence of any safety measures.

1386) PW-296 has specifically admitted that, he cannot state as to whether media / data was tampered or not. He had not conducted any test to ascertain that, the exhibits received by him are not tampered, edited or altered or mastered. In the absence of those test, he cannot certify that, the data was authentic or not. Thus, indirectly, the authenticity of data is not

certified by the expert.

1387) All the reports are computer generated. He had not carried out day-to-day analysis. All the data are stored and written in workstation computer. The analysis reports are computer generated without 65-B certificates. PW-296 has admitted that he had not given those analysed articles including CD and DVD in sealed condition while handing over to HOD. The HOD are not examined as a witness.

1388) PW-296 received extra three CD as per letter of advice but its reference is not found in covering letter. Even after that, he had not intimated to his superior or HOD about it. In letter of advice (6387- A) there is no reference of memory card in Exhibit-1 but there is reference of memory card (exh.1/2) in the report of analyzer (Exh.8061). The extra data card i.e. Exh.23/2 (No. HPSp S:435743-00 HP :HSTNN-PR07) is found by expert as mentioned in Exh.8061, whereas it is nowhere mentioned in letter of advice (6387-A).

1389) The PW-296 had admitted that, they do the mapping of forensic image with source hard-disk but he has not issued any such certificate showing that actually he had done any such mapping. In his report he had mentioned the files accessed data & time, written date and time and full path. He admitted that, there are several files mentioned in his report vide exhibit-8061 showing the time of writing and time of access is one and the same. The

time of access of file is always after the time writing of the time. There are several files mentioned in his report which have date and time of access is prior to time of written. During examination he opened the files but in forensic image, when he accessed the files, it doesn't show the time of access.

1390) In his analysis report, there is no reference of sanitization of hard-disk for the purpose of analysis. Under which algorithm he had extracted the hash value is not mentioned in his report. There is no reference of mapping of image hard-disk with source hard-disk. This omission jeopardizes the chain of custody and fails to affirm that the image is a true and complete representation of the source. There is also no reference of process or software used by him. His report is bereft of reasons to arrive at certain conclusion. He had not mentioned Encase product ID in his report. Considering all aspects as discussed supra, it creates the doubt about the integrity of the evidence.

Sanction under UAPA:

1391) Now, I have to deal with the issue of sanction under UAPA has been raised by the accused since from the inception of the Case. Accused have raised and challenged from, time to time, the issue regarding valid sanction under UAPA before this Court, Hon'ble High Court and Hon'ble Supreme Court. The sanction accorded under UAPA has been disputed by all accused on the various points.

1392) The sum and substance of the arguments of accused persons that, there is a total non-compliance of section 45(2) of UAPA. There are two sanction orders on record, which are inconsistent with each other. The Central Government has not accorded sanction under UAPA. It is further argued that, while according sanction no material was placed before Sanctioning Authority. The sanction accorded without application of mind by the Sanctioning Authority. Approval of the then Home Minister had been obtained to grant the sanction, which is not permissible / required under law. The sanction was not accorded, as per amended Act of 2008 and it was sanctioned under Act of 2004. The cognizance of the offence is bad in law and finally this Court has no jurisdiction to entertain the present case.

1393) To buttress their contentions, the learned advocates for A-1 and A-6 have placed their reliance on the following citations on the point of sanction:-

I) **Ashrafkhan Alias Babu Munnekhan Pathan and Another Vs. State of Gujarat [(2013) 1 Supreme Court Cases (Cri.) 1095; (2012) 11 Supreme Court Cases 606].** The Hon'ble Supreme Court has observed as under:-

> *"32. Another question which needs our attention is the effect of approval dated 15-6-1994 given by the Additional Chief Secretary, Home Department of the State. Section 20-A of TADA authorises the District Superintendent of Police to grant approval for*

recording the offence and Additional Chief Secretary of the Home Department or for that matter, State Government does not figure in that. The Legislature has put trust on the District Superintendent of Police and therefore it is for him to uphold that trust and nobody else. Hence, approval by the Additional Chief Secretary is inconsequential and it will not save the prosecution on this count, if found vulnerable otherwise. We may however observe that in order to prevent the abuse of TADA, the State Government may put other conditions and prescribe approval by the Government or higher officer in the hierarchy but the same cannot substitute the requirement of approval by the District Superintendent of Police. Not only this, the District Superintendent of Police is obliged to grant approval in his own wisdom and outside dictate would vitiate his decision. This view finds support from the decision of this Court in ***Anirudhsinhji Karansinhji Jadeja.***

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35. The submission that absence of sanction under Section 20-A(2) by the Commissioner of Police has been held to be a curable defect and for parity of reasons the absence of approval under Section 20-A(1) would be curable is also without substance and

reliance on the decision of ***Lal Singh v. State of Gujarat,*** *in this connection, is absolutely misconceived. An Act which is harsh, containing stringent provision and prescribing procedure substantially departing from the prevalent ordinary procedural law cannot be construed liberally. For ensuring the rule of law its strict adherence has to be ensured. In Lal Singh relied on by the State, Section 20-A(1) of TADA was not under scanner. Further, this Court in the said judgment nowhere held that absence of sanction under Section 20-A(2) is a curable defect. In Lal Singh the question of sanction was not raised before the Designated Court and sought to be raised before this Court for the first time which was not allowed. This would be evident from the following paragraph of the judgment :*

> *"4. Sub-section (2) makes it clear that when the objection could and should have been raised at an earlier stage in the proceeding and has not been raised, mere error or irregularity in any sanction of prosecution becomes ignorable. We therefore do not permit the appellants to raise the plea of defect in sanction."*

36. The decision of this Court in the case of ***Ahmad***

Umar Saeed Sheikh v. State of U.P., relied on by the State, instead of supporting its contention clearly goes against it. As observed earlier, the omission to grant approval does not come within the purview of Section 465 of the Code and, hence, the rigors of Section 465 (2) shall be wholly inapplicable. Otherwise also, the accused have raised this point at the earliest. Grant or absence of approval by the District Superintendent of Police is a mixed question of law and fact. The very existence of the approval under Section 20-A(1) of TADA has been questioned by the accused during the course of trial, which is evident from the trend of cross-examination. Not only this, it was raised before the Designated Court during argument and has been rejected. Thus, it cannot be said that it was not raised at the earliest."

II) **Rambhai Nathabhai Gadhvi and others Vs. State of Gujarat [1997 Supreme Court Cases (Cri.) 1169].** The Hon'ble Supreme Court held as under:-

"8. Taking cognizance is the act which the Designed Court has to perform and granting sanction is an act which the sanctioning authority has to perform. Latter is a condition precedent for the former. Sanction contemplated in the sub-section is the permission to prosecute a particular

person for the offence of offences under TADA. We must bear in mind that sanction is not granted to the Designated Court to take cognizance of the offence, but it is granted to the prosecuting agency to approach the court concerned for enabling it to take cognizance of the offence and to proceed to trial against the persons arraigned in the report. Thus a valid sanction is sine qua non for enabling the prosecuting agency to approach the court in order to enable the court to take cognizance of the offence under TADA as disclosed in the report. The corrollary is that, if there was no valid sanction the Designated Court gets no jurisdiction to try a case against any person mentioned in the report as the court is forbidden from taking cognizance of the offence without such sanction. If the Designated Court has taken cognizance of the offence without a valid sanction, such action is without jurisdiction and any proceedings adopted thereunder will also be without jurisdiction.

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10. Apparently Ext.63 makes reference only to two documents which alone were available for the Director General of Police to consider whether sanction should be accorded or not. One is the FIR in this case and the other is the letter sent by the

Superintendent seeking permission or sanction. No doubt in that letter to the Director General of police the Superintendent of Police had narrated the facts of the case. But we may observe that he did not send any other document relating to the investigation or copy thereof along with the application. Nor did the Director General of Police call for any document for his perusal. All that the DGP had before him to consider the question of granting sanction to prosecute were the copy of the FIR and the application containing some skeleton facts. There is nothing on record to show that the Director General of police called the Superintendent of Police at least for a discussion with him.

11. In such a situation, can it be said that the sanctioning authority granted sanction after applying his mind effectively and after reaching a satisfaction that it is necessary in public interest that prosecution should be launched against the accused under TADA. As the provisions of TADA are more rigorous and the penalty provided is more stringent and the procedure for trial prescribed is summary and compendious, the sanctioning process mentioned in Section 20A(2)

must have been adopted more seriously and exhaustively than the sanction contemplated in other penal statutes. One of us (Dr. Anand, J) has explained in Hitendra Vishnu Thakur v. State of Maharashtra, while dealing with sanction under Section 20-A of TADA, that: (SCC p. 647, para 56).

> *"56. The section was obviously introduced to safeguard a citizen from any vaxatious prosecution under TADA. Vide Section 20-A(2) of TADA no court can take cognizance of an offence under TADA unless there is a valid sanction accorded by the competent authority as prescribed by the section."*

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15. In view of the aforesaid legal and factual position we have no doubt that sanction relied on by the prosecution in this case was not accorded by the Director General of Police in the manner required by law. Ext.63 is not the result of a serious consideration and the document reflects scanty application of the mind of the sanctioning authority into vital and crucial aspects concerning the matter. It vitiates sanction and hence Ext.63

cannot be treated as sanction under Section 20-A(2) of TADA."

III) **State of Punjab and Another Vs. Mohammed Iqbal Bhatti [(2011) 1 Supreme Court Cases (Cri.) 949; (2009) 17 Supreme Court Cases 92]**. The Hon'ble Supreme Court has observed as under:-

"5. The respondent is a public servant. The Governor of the State of Punjab is his appointing authority. He is, therefore, not removable from his office save by and with the sanction of the Government and in that view of the matter if he is accused in any offence alleged to have been committed by him while acting or purporting to act in discharging of his official duty, grant of prior sanction is imperative in character in terms of Section 197 of the Code of Criminal Procedure, 1973. The power of the State, as is well known, is performed by an executive authority authorized in this behalf in terms of the Rules of Executive Business framed under Article 166 of the Constitution of India insofar as such a power has to be exercised in terms of Article 162 thereof. Once a sanction is refused to be granted, no appeal lies there against.

6. Although the State in the matter of grant or refusal to grant sanction exercises statutory

jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the authority concerned is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts.

7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidences must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an

order on extraneous consideration not germane for passing a statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. ***[See Mansukhlal Vithaldas Chauhan v. State of Gujarat]****. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority.* ***[See State v. Dr. R.C. Anand]****."*

IV) **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [1997 Supreme Court Cases (Cri.) 1120].** The Hon'ble Supreme Court has observed as under:-

"A trap against the appellant a Divisional Accountant in an irrigation project in the State was laid on 4-4-1983 on the complaint of partner of a firm having official dealings with the appellant. The appellant was alleged to have been caught accepting bribe. The Secretary, Gujarat Vigilance Commission, wrote to the Government to grant sanction for prosecution but the Government did not immediately grant sanction. Meanwhile, the partner of the complainant firm filed a petition under Article 226, for a direction to the State of Gujarat and others, to grant sanction for prosecution. The High Court directed the Secretary of

the Department in which the appellant was working to accord sanction under the relevant provisions of the Prevention of Corruption Act to prosecute the appellant within one month from the receipt of the writ of the Court. In view of these directions of the High Court, sanction was granted and the appellant was prosecuted and convicted under Section 161 IPC and Section 5(2) of the Prevention of Corruption Act. He challenged his conviction on the ground that proceedings before the trial court and the High Court were vitiated because there was no valid sanction for prosecution under Section 6 of the Prevention of Corruption Act, 1947.

Held:

The Central or the State Government or any other authority (depending upon the category of the public servant) has the right to consider the facts of each case and to decide whether that public servant is to be prosecuted or not. Since Section 6 of the Prevention of Corruption Act, 1947, prohibits the Court from taking cognizance of the offences specified therein, it envisages that the Central or the State Government or the other authority, has not only the right to consider the question of grant of sanction, it also has the discretion to grant or not to grant sanction. The sanction is not intended to be, nor is an

automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. One of the guiding principles for sanctioning authority is to keep in mind the public interest and, therefore, the protection available under Section 6 to a public servant cannot be said to be absolute. Sanction lifts the bar for prosecution. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions. Sanction is a weapon to ensure discouragement of frivolous and vexatious prosecution and is a safeguard for the innocent but not a shield for the guilty."

V) **Fuleshwar Gope Vs. Union of India and others [Criminal Appeal No.003923 of 2024 (Arising out of SLP (Crl.) No.004866 of 2023, decided on 23.09.2024)].** The Hon'ble Supreme Court has held as under:-

"51.1 The validity of sanction should be challenged at the earliest instance available, before the Trial Court. If such a challenge is raised at an appellate stage it would be for the person raising the challenge to justify the reasons for bringing the same at a belated stage. Such reasons would have

to be considered independently so as to ensure that there is no misuse of the right of challenge with the aim to stall or delay proceedings.

51.2 The timelines mentioned in Rules 3 & 4 of the 2008 Rules are couched in mandatory language and, therefore, have to be strictly followed. This is keeping in view that UAPA being a penal legislation, strict construction must be accorded to it. Timelines imposed by way of statutory Rules are a way to keep a check on executive power which is a necessary position to protect the rights of accused persons. Independent review by both the authority recommending sanction and the authority granting sanction, are necessary aspects of compliance with Section 45 of the UAPA."

1394) On the point of non-compliance of Section 45(2) of the UAPA, learned advocate for A-9 has placed reliance on the following case laws:

I) **Subhashree Das @ Mill Panda & Others Vs. State of Orissa [2011 SCC OnLine Ori 61].** The Hon'ble Supreme Court has observed as under:-

"9..... learned Additional Government Advocate, fairly responded that, <u>no such formal appointment</u>

order appointing the Special Secretary for the purpose of reviewing cases under Section 45 of the Act is available on record. To a further query of the Court as to whether the State have prescribed any time limit for the purpose of producing such report by the reviewing authority, learned Addl. Government Advocate for the State also responded in the negative.

In view of the aforesaid response of the State, it is clear therefrom that the State have failed to produce before this Court any documentary evidence in order to establish the appointment of the Special Secretary A.M. Prasad as the authority for the purpose of carrying out an independent review as required under Section 45(2) of the Act. I am also constrained to note that the State have also failed to produce any document or order prescribing any "time limit" for furnishing of such recommendation, by the independent review authority....."

II) **Ravi Sharma @ Arjun @ Mahesh @ Ashok Vs. State of Jharkhand and Others [2012 SCC OnLine Jhar 2080].** The Hon'ble Supreme Court has observed as under:-

"8. Thus, from bare a perusal of the aforementioned provisions of the Act and Rules, it is apparent that

investigation of the case under Sections 18 and and 20 of the Act had to be carried out by a police officer not below the rank of a Deputy Superintendent of Police or a police officer of the equivalent rank, whereas, the investigation in the present case has been done by a Sub-Inspector of Police, which is absolutely illegal and prohibited by the law. Furthermore, Section 45 of the Act clearly prescribes that no Court shall take cognizance of the offence under the Act without there being any sanction of the appropriate Government, but in the present case, it is found that sanction orders were issued by the State Government at about the fag end of the trial in the month of November and December 2011. The sanction orders clearly depict that the same have been passed much beyond the prescribed time limit as provided under the Rules and that too, without any application of mind, in view of the fact that even though the case was not investigated by the police officer of the rank prescribed by the Act, still relying on the said investigation, the sanction orders were passed by the State Government.

9. In that view of the matter, the order dated 11.1.2010 passed by the learned Chief Judicial

Magistrate, Hazaribag, so far it relates to taking cognizance against the petitioner for the offences under the Unlawful Activities (Prevention) Act, was clearly passed without there being any valid sanction in the eyes of law, as provided under Section 45 of the Act and accordingly, the said order to that extent, cannot be sustained in the eyes of law. That being the position, the entire proceeding in the Court below so far it related to offences under Sections 10, 13, 18 and 20 of the Act was absolutely vitiated. Similarly, the order dated 18.2.2012 passed by the Trial Court, whereby, after getting the sanction orders, the case was committed to the Court of Sessions, only in view of the fact that punishment as provided under Sections 18 AND 20 of the Act could not be inflicted by the Trial Court, also cannot be sustained in the eyes of law."

III) **Mohd. Mahboob Ali @ Sheru @ Sheikh Alam Vs. State of U.P. [2018 SCC OnLine All 108].** The Hon'ble Supreme Court has observed as under:-

"39. From a bare perusal of the aforesaid provisions of the Act and Rules, it is apparent that the Investigating Agency has not followed the mandatory statutory provisions. Furthermore, Section 45 of the Act clearly prescribes that no

Court shall take cognizance of the offence under the Act without there being any sanction of the Competent Authority. In the presence case, the question has been raised as to whether the said sanction has been given by the Competent Authority duly appointed by the Government as per the statute. As per the settled principle of law, Sanctioning Authority is independently required to consider the report/materials provided in it by the Investigating Agency. It is further contended by the counsel appearing on behalf of the applicant that till date no authority has been appointed by the State Government as required under Rule 2(b) of Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008.

40. ..... The State has also failed to produce any documentary evidence in order to establish the compliance of the mandatory provisions of Section 45 of the Unlawful Activities of (Prevention) Act. It is well settled proposition of law that where there is no sanction by the competent authority, the proceeding itself stands vatiated."

1395) Per contra, the learned SPP argued that the sanction accorded by the Sanctioning Authority is as per the provision of the UAPA. The Competent Authority by applying his mind has accorded the

sanction. The sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution. There is no fault or illegality in it. The second sanction is only pertaining to DA-12 and thus, it cannot vitiate the entire proceeding. This Court has the Jurisdiction to try the case. On the point of Sanction under UAPA, learned SPP placed reliance on following citations:

I) **Jaswant Singh Vs. The State of Punjab [MANU/SC/0050/1957].** In this case, Hon'ble Supreme Court, has observed as under:-

> *"10. It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case....."*

II) Mansukhlal Vithaldas Chauhan Vs. State of Gujarat [MANU/SC/1303/1997]. In this case, Hon'ble Supreme Court, has observed as under:-

> *"18. The validity of the sanction would, therefore, depend upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by*

the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also: ***Jaswant Singh v. The State of Punjab MANU/SC/0080/1957 : (1957)IILLJ696SC ; State of Bihar & Am. vs P.P. Sharma MANU/SC/0542/1992 : 1991CriLJ1438).***

19. Since the validity of "Sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is

shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be bad for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

III) **Vinod Kumar Garg Vs. State (Government of National Capital Territory of Delhi) [MANU/SC/1635/2019].** In this case, Hon'ble Supreme Court, has observed as under:-

"18. ..... On the said aspect, the later decision of this Court in ***State of Maharashtra v. Mahesh G. Jain*** *MANU/SC/0561/2013 : (2013) 8 SCC 119 has referred to several decisions to expound on the following principles of law governing the validity of sanction:*

14.1. It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.

14.2. The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.

14.3. The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.

14.4. Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.

14.5. The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.

14.6. If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.

14.7. The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity."

IV) **State of West Bengal Vs. Union of India (UOI)**

[MANU/SC/0086/1962]. In this case, Hon'ble Supreme Court has observed as under:-

> *"75. .....In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs....."*

V) **Lalit Kumar Jain Vs. Union of India and Ors. [MANU/SC/0352/2021].** In this case, Hon'ble Supreme Court has observed as under:-

> *"51. Legislative intent, it is urged, cannot be gathered by a bare mechanical interpretation of words or mere literal reading. The words are to be read and understood in the context of the scheme of the Act and the purpose or object with which the power is conferred. As Iyer, J. observed in* ***Chairman Board of Mining Examination v. Ramji MANU/SC/0061/1977 : AIR 1977 SC 965 at p. 968*** *"to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision." This has been followed in* ***Directorate of Enforcement v.***

Dipak Mahajan MANU/SC/0422/1994 : (1994) 3 SCC 440. Recently too, this Court has moved on to accept purposive interpretation of the statute as the correct approach to ascertain legislative intent. If the given words can reasonably bear a construction which effectuates the purpose or object then that construction is to be preferred. In this regard, the decision in **Arcelor Mittal v. Satish Kumar Gupta MANU/SC/1123/2018 : (2019) 2 SCC 1, at para 27-29 and Swiss Ribbons** *(supra) were relied on."*

VI) **The Edward Mills Co. Ltd., Beawar and Ors. Vs. The State of Ajmer and Ors. [MANU/SC/0106/1954].** In this case, Hon'ble Supreme Court has observed as under:-

"17. ..... The legislative policy is apparent on the face of the present enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour. The Legislature undoubtedly intended to apply this Act not to all industries but to those industries only where by reason of unorganized labour or want of proper arrangements for effective regulation of wages or for other causes the wages of labourers in a particular industry were very low. It is with an eye to these facts that the list of trades has been drawn up in the schedule attached to the Act but the list is not an exhaustive one

and it is the policy of the Legislature not to lay down at once and for all time to which industries the Act should be applied. Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State. It is to carry out effectively the purpose of this enactment that power has been given to the "appropriate Government" to decide, with reference to local conditions, whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list.....

18. The third and the last point raised by Mr. Chatterjee is directed against the notification of the Chief Commissioner by which he extended the term of the Advisory Committee till the 20th of September, 1952. It is argued that the term of the committee, as originally fixed, expired on the 16th of July, 1952, and on and from the 17th of July all the members of the committee became functus officio. The Commissioner therefore was not competent to give a fresh lease of life to the committee which was already dead. We do not think that there is much substance in this contention. Rule 3

of the rules framed under section 30 of the Act expressly lays down that the State Government may fix the term of the committee when it is constituted and may from time to time extend it as circumstances require. The State Government had therefore a right to extend the term of the committee in such way as it liked. The only question is whether it could do so after the period originally fixed had come to an end. ..... It is not disputed that the committee did not function at all and did no work after the 16th of July, 1952, and before the 21st of August next when its term was extended. No report was submitted during this period and there was no extension of time granted after the submission of the report. Assuming that the order of the 21st August, 1952, could not revive a committee which was already dead, it could certainly be held that a new committee was constituted on that date and even then the report submitted by it would be a perfectly good report. Quite apart from this, it is to be noted that a committee appointed under section 5 of the Act is only an advisory body and that the Government is not bound to accept any of its recommendations. Consequently, procedural irregularities of this character could not vitiate the final report which fixed the minimum wages....."

VII) **State of Madhya Pradesh Vs. Bhooraji and Ors.**

[MANU/SC/0481/2001]. In this case, Hon'ble Supreme Court has observed as under:-

> *"8. ..... A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert "a failure of justice". Any omission or even the illegality in the procedure which does not effect the core of the case is not a ground for ordering a de novo trial. This is because the appellate court has plenary powers for re-evaluating or re-appraising the evidence and even to take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes unpreventable for the purpose of averting "a failure of justice". The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all*

the troubles to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation.

21. The expression "a Court of competent jurisdiction" envisaged in Section 465 is to denote a validly constituted court conferred with jurisdiction to try the offence of offences. Such a court will not get denuded of its competence to try the case on account of any procedural lapse and the competence would remain unaffected by non-compliance of the procedural requirement. The inability to take cognizance of an offence without a committal order does not mean that a duly constituted court became an incompetent court for all purposes. If objection was raised in that court at the earliest occasion on the ground that the case should have been committed by a magistrate, the same specified court has to exercise a jurisdiction either for sending the records to a magistrate for adopting committal proceedings or return the police report to the Public Prosecutor or the police for presentation before the magistrate. Even this could be done only because the court has competence to deal with the case.

Sometimes that court may have to hear arguments to decide that preliminary issue. ……..

22. The bar against taking cognizance of certain offences or by certain courts cannot govern the question whether the Court concerned is a "a Court of competent jurisdiction", e.g. Courts are debarred from taking cognizance of certain offences without sanction of certain authorities. If a Court took cognizance of such offences, which later found to be without valid sanction, it would not become the test or standard for deciding whether that court was "a Court of competent jurisdiction". It is now well settled that if the question of ***sanction*** *was not raised that earliest opportunity the proceedings would remain unaffected on account of want of sanction. This is another example to show that the condition precedent for taking cognizance is not the standard to determine whether the Court concerned is "a Court of competent jurisdiction"."*

1396) Now, in view of rival submission and in the light of aforesaid citations, I proceed further to dealt with the issue of validity of sanction accorded under section 45 of the UAPA. Prior to it, in my humble opinion, it is necessary to mention the factual aspects, admitted position and the chronology of events which came on record pertaining to the sanction since from the inception of the case. Those are as follows:

(i) The summon was issued by the Ld. Predecessor-in-Court and thereby called the documents related to recommendation report and notification. The Deputy Secretary, Home Department of State of Maharashtra and in-charge Director of Directorate of Prosecution have filed the documents as per list of documents vide exhibits 4534, 4578, 4556.

(ii) As per the order passed by Ministry of Home Affairs, India dated 01.04.2011, the investigation of the case had been transferred to National Investigating Agency and in pursuance of the said order, on 13.04.2011, NIA took over the charge of the case by re-registering the FIR vide crime no.05/2011 and carried out further investigation. They have filed separate supplementary charge-sheet on dated 13.05.2016 against the accused named therein and dropped the charges of MCOC Act against the accused. They have also exonerated A-1 (Pragya Singh Thakur), as they had not found any evidence against her.

(iii) In Criminal Writ Petition no.4926/2017 and Criminal Application No.529/2017, the issue of sanction was challenged before the Hon'ble Bombay High Court by A-9. The identical relief had been claimed by A-5 in Criminal Application No.529/2017. Both accused have prayed for quashing the cognizance of offence registered under Sections 15, 16, 17, 18, 20 and 23 of UAPA, for the want of

valid sanction. The Hon'ble Bombay High Court by keeping reliance in the judgement of Hon'ble Apex Court, wherein the Hon'ble Apex Court has accepted the suggestions made by learned ASG that, the issue can be considered at the time of trial only after Sanctioning Authority is given opportunity to narrate the facts, without expressing any opinion on merits, dismissed the petitions by common order dated 18.12.2017.

(iv) Thereafter, the A-9 has filed SLP (Cri.) No.611-613 of 2018, before the Hon'ble Apex Court. During trial, the two orders of Hon'ble Apex Court of dated 20.04.2018 (Exh.4835) and 27.04.2018 (Exh.4836) are placed on record. The order dated 20.04.2018 depicts that, *"Mr. Harish Salve, learned senior counsel appearing on behalf of the petitioner submitted that the observations made by this Court in the order deciding the bail application shall not be totally brushed aside but shall be considered during framing of charges and the trial. In view of the observations, the Special Leave Petitions stand disposed of. Pending applications stand disposed of."* The next order dated 27.04.2018, it was observed by Hon'ble Apex Court that, *"Mr. Harish Salve, learned Senior Counsel appearing on behalf of Petitioner submitted that observations made by this Court in order to deciding bail application shall not be totally brushed aside but shall be considered during framing of charges and the trial and the High Court shall*

decide the same on its own merits without being influenced by observations in respect of sanctions in para 19 of the order dated 21.08.2017. In terms of above, the Special Leave Petitions stand disposed of. Pending applications stand disposed of."

(v) The A-9 had filed an application bearing no.1529/2018 in Criminal Appeal No.112/2018 for quashing the order of Special Court dated 29.08.2018. The Hon'ble High Court has observed that, "*Since the Supreme Court has directed to expedite the trial before Special Court, it may not be appropriate to stay the trial. However, before framing the charge the special court is bound to consider the order passed by Supreme court on dated 20.04.2018 and to consider and decide the objection to sanction under Section 45(2) of UAPA, 1967 taken by the defence after affording a reasonable opportunity of hearing to the parties and then proceed further. With above observations, the application stands disposed off*."

(vi) The predecessor of this Court had passed an order dated 20.10.2018 below Exh.4923 and thereby held that, "*both the sanction orders dated 17.01.2009 and 20.04.2011 for prosecution against the present accused and absconding accused are valid and its legality and validity would be considered during the trial only after framing the charge*."

(vii) Being dissatisfied with the order dated 20.10.2018, A-9 has challenged said order before Hon'ble High Court, Bombay in Cri. Writ Petition no.1124/2019. The Hon'ble High Court, Bombay granted leave and liberty to A-9 to withdraw the present appeal with liberty to cross examine the concerned authority on the point of sanction under Section 45(2) of the UAPA.

(viii) The A-5 moved an application before this Court below Exh.8382 after recording evidence of first sanctioning authority and thereby contended that, sanction is invalid and defective. This court has kept this point open till final hearing. Being dissatisfied with the said order A-5 has challenged the said order before the Hon'ble Bombay High Court in Cri. Writ Petition No.1875/2023. The Hon'ble Bombay High Court, upheld the order of trial court and dismissed the petition. Thereafter, A-5 approached to the Hon'ble Apex Court in SLP (Cri.) No.11824/2023. The Hon'ble Apex Court has also dismissed the said SLP. Thus, the point regarding legality and validity of sanction which was kept open had not been set aside.

Two Sanction Orders :-

1397) Now, firstly, I want to deal and discuss the point raised regarding validity of two sanction orders accorded by the Sanctioning Authority. Admittedly, there are two sanction orders on record which were issued under UAPA by the then Secretary (ACS) /

Sanctioning authority PW-304 (Mrs. Chitkala Zutshi) and PW-310 (Mr. Umesh Sarangi) as summarized below :-

Additional Chief Secretary Home (Home) and Secretary in charge of Home Department, Government of Maharashtra, Mumbai						
Date of Proposal	Covering Letter	Date of Receipt	Sanctioning Authority	Recommending Authority	Date of Sanction	Sanction under sections
---NIL--- (No documentary evidence)	---NIL--- (No documentary evidence)	---NIL---- (No documentary evidence)	PW-304 (Mrs. Chitkala Zutshi)	Legal Remembrance Department (Law and Judiciary Department)	Dated 17th January 2009	Ist Sanction Order (Under sections 15 r/w 16, 17, 18, 20 & 23 of UAPA and u/s 196 of Cr.P.C.)
---NIL--- (No documentary evidence)	---NIL--- (No documentary evidence)	---NIL--- (No documentary evidence)	PW-310 (Mr. Umesh Sarangi)	Director of Prosecution)	Dtd. 20th April 2011	II sanction order (Under Sections 13,16,17, 18, 18-B,20, & 23 of UAPA and under section 153-A of I.P.C.

1398) The first sanction order was issued after arrest of total eleven accused namely, Pragyasingh Thakur, Shivnarayan Kalsangra,

Shyam Sahu, Ramesh Upadhyaya, Sameer Kulkarni, Ajay Rahirkar, Rakesh Dhawade, Jagdish Mhatre, Lt. Col. Prasad Purohit, Sudhakar Dhar Dwivedi @ Swami Amrutanand Devtirth @ Dayanand Pandey, Sudhakar Chaturvedi. Whereas the second sanction order was issued after the arrest of absconding accused Praveen Takkalki @ Pravin Mutalik.

1399) As stated above there are two sanction orders. Prima-facie, it is not a case of absence of sanction under UAPA. No doubt, there is distinction between **'absence of Sanction'** and **'invalidity of sanction'**. It is well settled position that 'absence of sanction' can be raised or agitated at the very inception or 'absence of sanction' can be looked into at the threshold. Moreover, co-joint reading of **sections 45 and 48 of UAPA** doesn't state specifically that at the thresh-hold the validity & legality of sanction should be decided by the court. As far as the validity & legality of sanction is concerned that is subject matter of the trial. It is mixed question of fact and law. Section 45 of UAPA makes it crystal clear that, no court is empowered to take the cognizance of any offence under the act without the prior sanction of the Competent Authority. Thus, obtaining prior sanction from competent authority is sine-qua-non to take the cognizance against the accused prosecuted under UAPA.

1400) My Ld. Predecessor-in-court has passed an order below exhibit-4923, on the point of Sanction which was purely based upon the documents produced before the court and for the purpose of

deciding the issue of cognizance. Admittedly, the aforesaid order was passed prior to recording of evidence of sanctioning authority and relevant witnesses. Now, the stage is completely changed. The sanctioning authority and relevant witnesses are examined before this court. They got the opportunity to explain the circumstances and facts. The point of legality and validity was also kept open by this court which was upheld by Hon'ble Higher courts. Hence, the legality and validity of sanction is taken into consideration only after giving an opportunity & recording the evidence of sanctioning authority and other witnesses. This court has kept open the issue of legality and validity of sanction, in order to decide the various issues involved and connected with Sanction like, competency of authorities, effect of amended provisions, time-limit, relevant rules, documents considered and application of mind, etc.

1401) It is the contention of Ld. Advocates for accused that, sanctions are invalid as there is two sanction orders on record and both are inconsistent with each other's. To deal with this contention, it would be apposite to reproduce the sanction orders passed by the sanctioning authority (ACS) PW-304 (Mrs. Chitkala Zutshi) and PW-310 (Mr. Umesh Sarangi).

Sanction order

Home Department (Special)
Mantralaya, Mumbai 400 032
Dated the 17th January, 2009.

No. TER-0109/CR NO-34/SPL-1-B:- Whereas, it has been reported to Government that arrested accused persons in Anti Terrorism Squad, Mumbai Police Station CR No. 18/08 (Azad Nagar Police Station, Malegaon, CR No. 130/08) U/Sec. 302, 307, 326, 324, 427, 153-A(1)(b), 120-B of IPC r/w 3, 5, 25 Arms Act, 1959 r/w 3, 4, 5 of Explosive Substance Act, 1908 r/w 15, 16, 17, 18, 20 & 23 of Unlawful Activities (Prevention) Act, 1967 (Amendment Act, 2004) r/w 3(1)(i), 3(1)(ii), 3(2), 3(4), 3(5) MCOC Act 1999, namely (1) Pragyasingh Chandrapalsingh Thakur @ Swami Purnachetananda Giri, 38 yrs, (2) Shivnarayan Gopalsingh Kalsangra, 36 yrs, (3) Shyam Bhavarlal Sahu, 42 yrs, (4) Major (Retd) Ramesh Shivji Upadhyaya, 57 yrs, (5) Sameer Sharad Kulkarni, 39 yrs, (6) Ajay Eknath Rahirkar, 39 yrs, (7) Rakesh Dattatray Dhawde, 42 yrs, (8) Jagdish Chintaman Mhatre, 40 yrs, (9) Lt. Colonel Prasad Shrikant Purohit, 36 yrs, (10) Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, (11) Sudhakar Omkarnath Chaturvedi, 37 years and wanted accused 1) Ramji @ Ramchandra Gopalsingh Kalsangra, 2) Sandip Dange, 3) Pravin Mutalik and others (hereinafter referred to as “the said accused persons”) as specified in column 1 of the schedule appended hereto (hereinafter referred to as “the said Schedule”) committed the offence as specified in column 3 of the schedule;

And whereas, it appears to the Government of Maharashtra that on the date and at the place mentioned in the said schedule, the accused persons apart from other provisions of law, also committed offences (hereinafter referred to as “the said offence”) punishable under sections 15 r/w 16, 17, 18, 20 & 23 of the Unlawful Activities (Prevention) Act-1967 Amendment Act 2004;

And whereas, in accordance with the provisions of subsection (ii) of section 45 of the Unlawful Activities (Prevention) Act-1967 (Amendment Act 2004), before any Court takes cognizance of the any offence under Chapter IV, it is necessary for the State Government to accord sanction for the prosecution of the said accused persons.

And whereas, after having fully examined the material placed before me and considering all facts, I am satisfied that there is prima facie case made out against the

accused persons and that it is necessary in the interest of justice that the accused persons should be prosecuted in the Court of competent jurisdiction for the said offences;

Now therefore, in exercise of the Powers conferred by Subsection (ii) of section 45 of the Unlawful Activities (Prevention) Act-1967 (Amendment Act 2004) and under Section 196 of Criminal Procedure Code 1973 (2 of 1974) the Govt of Maharashtra hereby accords Sanction to the prosecution against the arrested accused namely (1) Pragyasingh Chandrapalsingh Thakur @ Swami Purnachetananda Giri, 38 yrs, (2) Shivnarayan Gopalsingh Kalsangra, 36 yrs, (3) Shyam Bhavarlal Sahu, 42 yrs, (4) Major (Retd.) Ramesh Shivji Upadhyaya, 57 yrs, (5) Sameer Sharad Kulkarni, 39 yrs, (6) Ajay Eknath Rahirkar, 39 yrs, (7) Rakesh Dattatray Dhawde, 42 yrs, (8) Jagdish Chintaman Mhatre, 40 yrs, (9) Lt. Colonel Prasad Shrikant Purohit, 36 yrs, (10) Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, (11) Sudhakar Omkarnath Chaturvedi, 37 years and wanted accused 1) Ramji @ Ramchandra Gopalsingh Kalsangrah, 2) Sandip Dange, 3) Pravin Mutalik for taking cognizance of the said offence by the Court of Competent jurisdiction.

Name address etc. of the accused persons	**Police station, CR No and date**	**Criminal acts of the arrested and wanted accused persons leading to unlawful activities, terrorist activities and unlawful association**
1	**2**	**3**
<u>Arrested Accused</u> :- 1.Pragyasingh Chandrapalsingh Thakur @Swami Purnachetanand Giri /38 yrs, Res-1) c/o, Sanjiv Gupta, Sangam House, Gorakhpur Road, Jabalpur, Madhya Pradesh 2) 7, Ganga Sagar apartment, Katodara road, Surat, Gujarat state. Native Address: At- Lahar, Main Road, Dist- Bhind, MP	Anti Terrorism Squad, Mumbai Police Station CR No. 18/08 (Azad Nagar Police Station, Malegaon, C.R. No. 130/08) U/Sec. 302, 307, 326, 324, 427, 153-A 153-A (1)(b), 120-B IPC, r/w 3, 5, 25 Arms Act, r/w 3, 4, 5 of Explosive Substance Act, r/w 15, 16, 17, 18, 20 & 23 of Unlawful Activities (Prevention) Act, 1967	Arrested accused at Sr. Nos.1 to 11 along with the wanted accused at Sr. Nos.1 to 3, with intent to strike terror in the minds of the people, conspired together and caused a bomb blast on 29/09/2008 at Malegaon, Dist- Nashik, Maharashtra using explosives device on LML Freedom motor cycle killing 06 and injuring 101

State.

2. Shivnarayan Gopalsingh Kalsangra /36 yrs, Res- 21st Shanti Vihar Colony, Bangali Chauraha, Kanadia road, Indore, Madhya Pradesh, Native Address: At post- Gopipur, Tehshil & Dist- Shajapur, M.P.

3. Shyam Bhavarlal Sahu/42 yrs, Res-502, Varsha Apartment, South Tukoganj, Indore, M.P. Native Address : Param Chauk, Tal & Dist- Rajgadh, M.P.

4. Ramesh Shivji Upadhyaya/57 yrs, Res. C/17, Rail Residency, Bijalinagar, Chinchwad, Pune-33, Native Address: At post- Ramnagar, Tal- Bairiya, Thana- Dokati, Dist- Baliya, U.P.

5. Sameer Sharad Kulkarni/39 yrs. Res - 1) Runa Nets, near Giriraj Ganapati Temple, Bijalinagar, Chinchwad, Pune &
2) House No. 28, Swaraj Mangalwara, near Mangalwara police Chowky, M.P. Native Address: 56, Khadad galli, Baliram peth, Jalgaon, Maharashtra.

6. Ajay @ Raja Eknath Rahirkar/39 yrs, Res – 16/04, Erandwane, Karve road, Pune-4 & 722, Shukrawar Peth, Pune.

(Amendment Act 2004) r/w 3 (1)(i), 3(1)(ii), 3(2), 3(4), 3(5) MCOC Act 1999.

persons & damaged the property valued at Rs. 4,23,500/-. Since it was a holy month of Ramzan and on 30/09/2008 the festival of Navratrotsava was to commence, the conspirators has caused the bomb blast with intent to cause loss of lives and property and to create communal rifts which is pre judicial to the maintenance of harmony between different religious, racial communities which was likely to disturb the public tranquility.

Arrested accused at Sr. Nos. 4, 5, 6, 7, 9, 11 & some other people had formed an organization called “Abhinav Bharat” in the year 2007 with the intention to propagate a separate Hindu Rashtra with their own constitution. With the intent to threaten the unity, integrity and security of India. The arrested accused at Sr. No. 6 and 9 are trustees and arrested accused at Sr. Nos. 1, 4, 5, 7, 10 and 11 are members of this organization. To commit an offence of blast at Malegaon arrested accused at Sr. Nos.1, 4, 5, 6, 9, 10, 11 and the wanted accused at Sr. No. 1 to 3 had hatched a conspiracy in the meetings of Abhinav Bharat conducted at Faridabad, Bhopal, Indore and

7. Rakesh Dattatray Dhawde/42 yrs., Res- Manini Apartment, Flat No.3, Dhayarigaon, last bus stop, Wadgaon Dhayari, Pune, Native Address : At post – Kondwe Dhawde, Tal – Haveli, Dist-Pune.

8. Jagdish Chintaman Mhatre/40 yrs., Res- Sai Sparsh building, Mahatma Phule road, Opp. Bhoirwadi play ground, Dombiwali (West), Thane, Native Address : At post- Dombivali, Mota gaon, Dombivali, Dist– Thane.

9. Lt. Colonel Prasad Shrikant Purohit/36 yrs, Res – 76/21, Shanti Sheela Colony, Erandwane, Pune-4 Present Address: 52/2, Kiran Colony, Army Education Corp, Panchmadhi, M.P.

10. Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, Res – House no. 248, sector no. 1-A, Trikutanagar, Jammutawi, Jammu & Kashmir Native Address: At- Deoghat, Post- Patherdeva, Tal & Dist – Devariya, U.P.

11. Sudhakar Omkarnath Chaturvedi / 37 yrs., Res- c/o A.B. Mahajan, Vanat Chawl, Bhagur road, Deolali Camp, Tal. & Dist – Nashik, Native Address: At- Hargadh, Bahurupur Post Nashik.

In furtherance of their conspiracy, while conducting various open and closed meetings of Abhinav Bharat, accused at Sr. No. 9 who is founder trustee of this organization and in spite of being serving Lt. Colonel of the Indian Army, started collecting funds illegally for the said trust from various people and and kept the same with the arrested accused at Sr. No. 6, who is a trustee and treasurer of Abhinav Bharat organization. As per the direction of arrested accused at Sr. No. 9, the arrested accused at Sr. No. 6 disbursed the raised funds approximately valued at Rs. 21,00,000/- to arrested accused persons at Sr. No.4, 5, 7, 9, 10, 11 and other persons for many purposes including for procuring firearms and ammunition and other advantages.

In furtherance of the conspiracy, the arrested accused at Sr. No. 7 who is a founder member of the organization namely (IRDOS) Institute of Research and Development in Oriental Studies of Arms and ammunition and is also actively involved in the clandestine work of Abhinav Bharat. The arrested accused at Sr. No.

Gogaon Tal & Dist - Mirzapur, Thana – Jigana, U.P.

Wanted Accused :-

1. Ramchandra Gopalsingh Kalsangra/38 yrs, Res- 21st Shanti Vihar Colony, Bangali Chauraha, Kanadia road, Indore, Madhya Pradesh, Native Address: At post – Gopipur, Tehshil & Dist- Shajapur, M.P.

2. Sandeep Vishwas Dange, r/o 360, Lokmanya Nagar, Railway Stn Road, Indore, Madhya Pradesh.

3, Pravin Mutalik, r/o Gokak Karnataka state and others.

7 along with his associates has been indulging in continuing unlawful activities in Maharashtra state, since 2003. He conspired for gaining pecuniary benefits and other undue advantages for him self and other co-accused persons. It is also revealed that the accused at Sr. No. 7 had made arrangements and facilitated training to the accused persons in three different bomb blast cases committed at Parbhani, Jalna and Nanded, in 2003, 2004 and 2006 respectively. At the instance of the arrested accused at Sr. No. 9, the accused at Sr. No. 7 has accepted Rs. 2,25,000/- for his IRDOS organization. In furtherance of the conspiracy the arrested accused at Sr. No. 9 directed arrested accused at Sr. No. 6 to handover Rs. 3,20,000/- to accused No. 7 for procuring firearms & ammunition for the unlawful activities of Abhinav Bharat. At the instance of arrested accused at Sr. Nos. 7 and 8, six foreign made firearms and 211 rounds of different caliber were recovered which also disclosed the complicity of the accused person No.9, who is serving Lt. Colonel of Indian Army.

Under the leadership of

the accused at Sr. No. 9, accused at Sr. Nos. 1, 4, 5, 6, 10 and 11 had arranged many meetings of Abhinav Bharat at Pune, Faridabad, Nashik, Bhopal & Indore. In a secret meeting of Faridabad held on 25th or 26th January, 2008, arrested accused at Sr. Nos. 4, 5, 9, 10 and 11 were present along with the other members. In this meeting, the arrested accused at Sr. No.11 took responsibility of providing two men for the purpose of planting of the bombs. The accused at Sr. No. 9 took the responsibility to provide explosives. A secret meeting was held at Bhopal on 11th & 12th of April 2008 in which the arrested accused at Sr. Nos. 1, 4, 5, 9, 10 and 11 were present. It was decided in the said meeting that the bomb explosions should be made at Malegaon, a thickly Muslim populated area, for taking revenge of the bomb blasts committed by Muslim persons in various parts of India.

In furtherance of the conspiracy and to achieve the object decided in Bhopal meeting, in June 2008, the arrested accused at Sr. No.10 to the wanted accused at Sr. Nos. 1 & 2 as her henchmen, at Circuit House, Indore, Madhya Pradesh. The

arrested accused at Sr. No.1 asked the arrested accused at Sr. No. 10 to direct the arrested accused at Sr. No. 9 to provide RDX to wanted accused at Sr. Nos. 1 & 2, as he was not heeding to her request. Accordingly, the arrested accused at Sr. No. 10 asked the arrested accused at Sr. No. 9 to deliver the explosive to wanted accused at Sr. Nos. 1 & 2. Thereafter, on 03/08/08, the arrested accused at Sr. No. 10 arranged a meeting between the arrested accused at Sr. No. 9 & the wanted accused at Sr. Nos. 1 and 2, at Ujjain, MP.

The arrested accused at Sr. No.2 had intentionally concealed two electric timer circuits, which were provided to him by the wanted accused at Sr. No.1.

The arrested accused at Sr. No. 3 had knowingly facilitated by procuring the mobile phone, SIM cards & refill cards to the arrested accused at Sr. No.1 and the wanted accused at Sr. 1 which were subsequently used in hatching conspiracy and the commission of this offence.

In continuation of the continuous unlawful

activities and in furtherance of this conspiracy, the arrested accused at Sr. No. 9 had also prepared forged documents. The arrested accused at Sr. No. 9 has made a bogus identity card in the name of accused at Sr. No. 11 and handed over the same to him for enabling his entry into cantonment area of Deolali, Nasik. The arrested accused at Sr. No. 9 had also prepared forged arms license in the name of the witnesses Shirish Date and Milind Date. In this connection two different cases of cheating and forgery have been registered against accused No. 9 vide Sarkarwada PS C.R. No.367/2008 at Nashik & vide ATS PS C.R. No.19/08 at Mumbai respectively. The arrested accused at Sr. No. 9 was also in possession of three firearms & ammunition illegally, which was kept with one of the witnesses. The arrested accused at Sr. No. 9 had in possession of RDX, which he had also shown to a witness. The arrested accused at Sr. No. 9 had also confessed to abovementioned witness about the involvement of himself and the arrested accused at Sr. No. 11 and wanted accused at Sr. No. 1, for the assembling of the IED at the house of the

arrested accused at Sr. No. 11 at Deolali, Nasik, which was used in the commission of present offence at Malegaon. The Forensic Experts opined that explosive ingredients detected in the blast site exhibits at Malegaon are similar to the samples seized from the house search of accused No.11.

In furtherance of the criminal conspiracy hatched by arrested and wanted accused persons, the arrested accused at Sr. No. 1 knew that her LML Freedom Motor cycle vide No. GJ-05-BR-1920 was being used by the wanted accused person at Sr. No.1. The wanted accused at Sr. No. 1 had knowingly not only erased the chassis and engine number but also used bogus registration number vide MH-15 P-4572 of LML Freedom Motor cycle. This fact is emerged in a statement of one of the witnesses.

Arrested accused at Sr. Nos. 6 and 9 raised funds for unlawful and terrorist activities and for the said purpose received money either through hawala transactions or directly from their likeminded people in India.

In furtherance of the criminal conspiracy hatched by the members of Abhinav Bharat

organization floated by the accused at Sr. No. 9 who was making preparation to propogate Hindu Rashtra by overawing the Government of India for and to commit illegal and unlawful activities like causing bomb explosion, collecting firearms and ammunition, explosive to eliminate the persons who do not subscribe their ideology.

Accused at Sr. No. 1 to 11 along with the wanted accused at Sr. No. 1 to 3, with intent to strike terror in the minds of the people in India, conspired together, aided and abetted the commission of terrorist act i.e. bomb explosion on 29/09/2008 in a crowded place at Malegaon during Ramzan festival causing death of 06 persons and injuring 101 persons and also to create communal rift among sections of people.

By order and in the name of the
Governor of Maharashtra

(Chitkala Zutshi)
Addl. Chief Secretary (Home) and
Secretary In-Charge of Home Department,
Government of Maharashtra,
Mumbai.

Sanction order

Home Department (Special)
Mantralaya, Mumbai 400 032
Dated – 20th April, 2011

Read :- TER – 0109/C.R. No. 32/SPL-1-B, Dated :- 17th January 2009, Home-Department (Special)

No. TER 0411/C.R.-136/SPL-1B :- Whereas, it has been reported to Government that arrested accused persons in Anti Terrorism Squad, Mumbai Police Station C.R.No. 18/2008 (Azad Nagar Police Station, Malegaon, Dist. Nashik C.R. No. 130/08) U/Sec. 302, 307, 326, 324, 427, 153-A, 419, 420 r/w 120-B of the Indian Penal Code r/w 3, 5, 25 Arms Act, r/w 3, 4, 5, 6 of the Explosive Substances Act, r/w 13, 15, 16, 17, 18, 18-B, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 (Amended) 2004 r/w 3(1)(i), 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act 1999, namely Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik along with accused persons viz (1) Pragnyasingh Chandrapalsingh Thakur @ Swami Purnachetananda Giri, 38 yrs. (2) Shivnarayan Gopalsingh Kalsangra, 36 yrs, (3) Shyam Bhavarlal Sahu, 42 yrs, (4) Major (Retd) Ramesh Shivji Upadhyaya, 57 yrs, (5) Sameer Sharad Kulkarni, 39 yrs, (6) Ajay Eknath Rahirkar, 39 yrs, (7) Rakesh Dattatray Dhawde, 42 yrs, (8) Jagdish Chintaman Mhatre, 40 yrs, (9) Lt. Colonel Prasad Shrikant Purohit, 36 yrs, (10) Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, (11) Sudhakar Omkarnath Chaturvedi, 37 years and wanted accused 1) Ramji @ Ramchandra Gopalsingh Kalsangrah, 2) Sandip Dange and others (hereinafter referred to as “the said accused persons”) as specified in column No. 1 of the schedule appended hereto (hereinafter referred to as “the said Schedule”) committed the offence as specified in column No. 3 of the schedule;

And whereas, it appears that on the date and at the place mentioned in the said schedule, the accused persons apart from other provisions of law, also committed offences (hereinafter referred to as “the said offence”) punishable under

sections 13, 15, 16, 17, 18, 18-B, 20 & 23 of the Unlawful Activities (Prevention) Act-1967 Amended 2004;

And whereas, in accordance with the provisions of subsection 1 of section 45 of the Unlawful Activities (Prevention) Act-1967 Amended 2004, before any Court takes cognizance of the any offence under Chapter III & IV, it is necessary to accord sanction for the prosecution of the said accused;

And whereas, after having fully examined the material collected during the further investigation of this case and considering all facts, there is prima facie case made out against the accused persons and that it is necessary in the interest of justice that the accused persons should be prosecuted in the Court of competent jurisdiction for the offences under sections 13, 15, 16, 17, 18, 18-B, 20 & 23 of the Unlawful Activities (Prevention) Act-1967 Amended 2004;

And whereas, in exercise of the powers conferred by section 45 of the said Act, the **Central Government vide its order No. II-14017/3/2000-XI-(DV) dated 27.09.2001**, has authorized the Secretary of the State Government in charge of Home Department, Government of Maharashtra to exercise powers to accord sanction for taking cognizance of the said offence by the Court, and under clause (ii) of sub Section 1 of the Section 45 of the Unlawful Activities (Prevention) Act - 1967 it is necessary to accord sanction to the prosecution against the accused persons;

Now therefore, sanction is hereby accorded under section 45 of the Unlawful Activities (Prevention) Act-1967 Amended 2004 and under Section 196 of the Code of Criminal Procedure, 1973 to the prosecution against the presently arrested accused person Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik along with the already charge sheeted accused persons viz (1) Pragnyasingh Chandrapalsingh Thakur @ Swami Purnachetananda Giri, 38 yrs, (2) Shivnarayan Gopalsingh Kalsangra, 36 yrs, (3) Shyam Bhavarlal Sahu, 42 yrs, (4) Major (Retd.) Ramesh Shivji Upadhyaya, 57 yrs, (5) Sameer Sharad Kulkarni, 39 yrs, (6) Ajay Eknath Rahirkar, 39 yrs, (7) Rakesh Dattatray Dhawde, 42 yrs, (8) Jagdish Chintaman Mhatre, 40 yrs, (9) Lt. Colonel Prasad Shrikant Purohit, 36 yrs, (10) Sudhakar

Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, (11) Sudhakar Omkarnath Chaturvedi, 37 years and wanted accused persons viz. 1) Ramji @ Ramchandra Gopalsingh Kalsangrah, 2) Sandip Dange for taking cognizance of the offence under Sections 13, 15, 16, 17, 18, 18-B, 20 & 23 of the Unlawful Activities (Prevention) Act-1967 Amended 2004 and under Section 153-A of the IPC by the Court of Competent Jurisdiction.

SCHEDULE

Name address etc. of the accused persons	Police Station, C.R. No. and date	Criminal acts of the arrested and wanted accused persons leading to unlawful activities, terrorist activities and unlawful association
1	2	3
Presently Arrested Accused No. 12 **Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik,** age 32 yrs, Res – CTS Number 1100, 1101, Acharya Lane, Killa Gokhak, Taluka Gokhak, District Belgaon, State Karnataka, Native Place :- Bedsur, Taluka Saudatti, Dist. Belgaon, State Karnataka. **Along with already charge sheeted accused persons.** **1. Pragyasingh Chandrapalsingh Thakur @ Swami Purnachetanand Giri/ 38 yrs,** Res-1) C/o, Sanjiv Gupta, Sangam House, Gorakhpur Road, Jabalpur, Madhya Pradesh 2) 7, Ganga Sagar Apartment, Katodara road, Surat, Gujarat state Native Address: At- Lahar, Main Road, Dist- Bhind, MP State. **2. Shivnarayan Gopalsingh Kalsangra/36 yrs,** Res- 21st Shanti Vihar Colony, Bangali Chauraha, Kanadia road,	Anti Terrorism Squad, Mumbai Police Station CR No. 18/08 (Azad Nagar Police Station, Malegaon, C.R. No. 130/08) U/Sec. 302, 307, 326, 324, 427, 153-A, 419, 420 r/w 120-B IPC r/w 3, 5, 25 Arms Act, r/w 3, 4, 5 of the Explosive Substance Act, r/w 13, 15, 16, 17, 18, 18-B, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 (Amended) 2004 r/w 3 (1) (i), 3(1)(ii), 3(2), 3(4), 3(5) of the MCOC Act 1999	Arrested accused persons at Sr. Nos. 4, 5, 6, 7, 9, 11 & some other people had formed an organization called “Abhinav Bharat” in the year 2007 with the intention to propagate a separate Hindu Rashtra with their own constitution. The arrested accused at Sr. No. 6 and 9 are trustees and arrested accused at Sr. Nos. 1, 4, 5, 7, 10, 11 and 12 are members of this organization. To commit an offence of blast at Malegaon arrested accused at Sr. Nos.1,4,5,6,9,10,11,12 and the wanted accused at Sr. No. 1 to 2 had hatched a conspiracy in the meetings of Abhinav Bharat conducted at Faridabad, Bhopal, Indore and Nashik. In furtherance of their conspiracy, while conducting various open and closed meetings of Abhinav Bharat, accused at Sr. No. 9 who is founder trustee of this organization and in spite serving Lt. Colonel of the Indian Army, started collecting funds illegally for the said trust from various people with the arrested accused at Sr. No. 6, who is a trustee and treasurer of

Indore, Madhya Pradesh, Native Address: At post – Gopipur, Tehshil & Dist – Shajapur, M.P.

3. Shyam Bhavarlal Sahu/42 yrs, Res-502, Varsha Apartment, South Tukoganj, Indore, M.P. Native Address : Param Chauk, Tal & Dist – Rajgadh, M.P.

4. Ramesh Shivji Upadhyaya/57 yrs, Res. C/17, Rail Residency, Bijalinagar, Chinchwad, Pune-33, Native Address: At post- Ramnagar, Tal- Bairiya, Thana- Dokati, Dist- Baliya, U.P.

5. Sameer Sharad Kulkarni/39 yrs. Res -
1) Runa Nets, near Giriraj Ganapati Temple, Bijlinagar, Chinchwad, Pune &
2) House No. 28, Swaraj Mangalwara, near Mangalwara police Chowky, M.P. Native Address: 56, Khadad galli, Baliram peth, Jalgaon, Maharashtra.

6. Ajay @ Raja Eknath Rahirkar/39 yrs, Res - 16/04, Yarandwane, Karve road, Pune-4 & 722, Shukrawar peth, Pune.

7. Rakesh Dattatray Dhawde/42 yrs., Res- Manini Apartment, Flat No. 3, Dhayarigaon, last bus stop, Wadgaon Dhayari, Pune, Native Address: At post– Kondwe Dhawde, Tal- Haveli, Dist-Pune.

8. Jagdish Chintaman Abhinav Bharat organization. As per the direction of arrested accused at Sr. No. 9, the arrested accused at Sr. No. 6 disbursed the raised funds approximately valued at Rs. 21,00,000/- to the arrested accused persons at Sr. No. 4, 5, 7, 10, 11, 12 and other persons for many purposes including for procuring firearms and ammunition.

In furtherance of the conspiracy, the arrested accused at Sr. No. 7 who is founder member of the organization namely **Institute of Research & Development in Oriental Studies (IRDOS)** and also actively involved in the clandestine work of Abhinav Bharat. The arrested accused at Sr. No. 7 along with his associates has been indulging in continuing unlawful activities in Maharashtra State, since 2003. He conspired for gaining pecuniary benefits and other undue advantages for himself and other co-accused persons. It is also revealed that the accused at Sr. No. 7 had made arrangements and facilitated training to the accused persons in three different Bomb Blast cases committed at Parbhani, Jalna and Nanded, in 2003, 2004 and 2006 respectively. At the instance of the arrested accused at Sr. No. 9, the accused at Sr. No. 7 has accepted Rs.2,25,000/- for above mentioned IRDOS organization. In furtherance of the conspiracy the arrested accused at Sr. No. 9 directed arrested accused at Sr. No. 6 to handover Rs. 3,20,000/- to accused No. 7 for procuring firearms & ammunition for the unlawful activities of Abhinav Bharat. At the instance of arrested accused at Sr.

Mhatre/40 yrs., Res- Sai Sparsh building, Mahatma Phule road, opp. Bhoirwadi play ground, Dombiwali (West), Thane, Native Address: At post- Dombivali, Mota gaon, Dombivali, Dist- Thane.

9. Lt. Colonel Prasad Shrikant Purohit/36 yrs, Res- 76/21, Shanti Sheela Colony, Yerandwane, Pune-4 Present Address: 52/2, Kiran Colony, Army Education Corp, Panchmadhi, M.P.

10. Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pande @ Swami Amrutanand Devtirth @ Shankaracharya, 40 yrs, Res- House no.248, sector no.1-A, Trikutanagar, Jammutawi, Jammu & Kashmir Native Address: At – Deoghat, Post- Patherdeva, Tal & Dist- Devariya, U.P.

11. Sudhakar Omkarnath Chaturvedi/ 37 yrs., Res- c/o A.B. Mahajan, Vanat Chawl, Bhagur road, Deolali Camp, Tal & Dist- Nashik, Native Address: At- Hargadh, Bahurupur Post Gogaon Tal & Dist- Mirzapur, Thana- Jigana, U.P.

Wanted Accused :-

1. Ramchandra Gopalsingh Kalsangra/ 38 yrs, Res- 21st Shanti Vihar Colony, Bangali Chauraha, Kanadia road, Indore, Madhya Pradesh, Native Address: At post- Gopipur, Tehshil & Dist- Shajapur, M.P.

Nos. 7 and 8, six foreign made firearms and 211 rounds of different caliber were recovered which also disclosed the complicity of the accused person No.9, who is serving Lt. Colonel of Indian Army.

Under the headship of the accused at Sr. No. 9, accused at Sr. Nos. 1, 4, 5, 6, 10, 11 and 12 had arranged many meetings of Abhinav Bharat at Pune, Faridabad, Nashik, Bhopal & Indore. In a secret meeting of Faridabad held on 25th or 26th January, 2008, arrested accused at Sr. Nos 4, 5, 9, 10 and 11 were present along with the other members. In this meeting, the arrested accused at Sr. No. 11 took responsibility of providing two men for the purpose of planting of the bombs. The accused at Sr. No. 9 took the responsibility to provide explosives. A secret meeting was held at Bhopal on 11th & 12th of April 2008 in which the arrested accused at Sr. Nos. 1, 4, 5, 9, 10 and 11 were present. It was decided in the said meeting that the bomb explosions should be made at Malegaon, a thickly Muslim populated area, for taking revenge of the bomb blasts committed by Muslim accused persons in various parts of India. In a meeting of Abhinav Bharat at Nashik, which was held on 15th & 16th September 2008, the accused at Sr. No. 4, 6, 9, 11 and 12 were present. In that meeting, the subject regarding preparations and arrangements for the training camp of Abhinav Bharat from 15th to 20th October 2008 at Panchamadhi, Madhya Pradesh was discussed. It was also discussed that the weapons acquired for Abhinav Bharat trust are in possession of

2. Sandeep Vishwas Dange, r/o 360, Lokmanya Nagar, Railway Stn Road, Indore, Madhya Pradesh State and others

accused at Sr. No. 10 and to avoid their misuse it is necessary to take them back.

The arrested accused at Sr. No. 9 was also in possession of three firearms & ammunition illegally, which was kept with one of the witnesses. The arrested accused at Sr. No. 9 had in possession of RDX, which he had also shown to a witness. The arrested accused at Sr. No. 9 had also confessed to abovementioned witness about the involvement of himself and the arrested accused at Sr. No. 11 and wanted accused at Sr. No. 1, for the assembling of the IED at the house of the arrested accused at Sr. No. 11 at Deolali, Nashik, which was used in the commission of present offence at Malegaon. The Forensic Experts opined that explosive ingredients were detected in the blast site exhibits at Malegaon are similar to that samples seized from the house search of accused No.11. As instructed by the accused at Sr. No. 9 the accused at Sr. No. 12 had stayed in the same house in last week of September 2008 i.e. some days prior to to this offence.

In furtherance of the criminal conspiracy hatched by the accused persons the accused at Sr. No. 9 had organized training for making of the fuse of the bomb for accused at Sr. No. 12 at Nashik. Accordingly the accused at Sr. No. 7 had given training to accused at Sr. No. 12 at Bhosala Military School, Nashik. Thus the accused at Sr. No. 12 along with accused at Sr. No. 7 and 9 made preparatory acts to the commission of terrorist act by conducting training of making of

"Fuse of the Bomb".

In furtherance of the criminal conspiracy hatched by the members of Abhinav Bharat organization floated by the accused at Sr. No.9 who making preparation to propogate Hindu Rashstra by overawing the Government of India for and to commit illegal and unlawful activities like causing bomb explosion, collecting firearms and ammunition, explosive, to eliminate the person who do not to subscribe their ideology.

The data retrieved from the laptop of accused at Sr. No. 10 in the form of Audio and Video transcript, shows that the conspirators were planning towards their object in forming their own government i.e. Hindu Rashtra against the secularist concept of Constitution of India. The prior activities carried by the conspirators i.e. during the period from January to September 2008 amounts to unlawful activities committed by them with the intent to incite individuals and groups of individuals to bring about cession or secession. The unlawful activities of the accused persons and the preparation made by them are to disclaim, question, to disrupt, intended to disrupt the Sovereignty and territorial integrity of India and to cause, intended to cause disaffection of India. The recovery of four foreign made firearms and 196 cartridges at the instance of accused at Sr. No. 7 and two foreign made firearms and 15 cartridges at the instance of accused at Sr. No. 8 is also integral part of their unlawful activities. The Forensic Expert has also

opined that the explosive ingredients (RDX, Ammonium and Nitrate radicals) detected in blast site exhibits at Malegaon are similar to that of report in samples seized from the house of accused Sudhakar Chaturvedi (A-11).

Therefore, the acts committed by the accused at Sr. No. 1 to 12 and wanted accused at Sr. No. 1 to 2, are nothing but the Unlawful Activity/Preparation for Terrorist Activities with the intent to threaten the Unity, Integrity, Security and Sovereignty of India.

In furtherance of larger criminal conspiracy, the accused at Sr. No. 1 to 12 and wanted accused at Sr. No. 1 to 2, have contributed towards the unlawful activities with the full knowledge that they were participating in various illegal acts and between January 2008 to 23 October, 2008 with the common object and with intention to strike terror in the minds of people by exploding bomb in Malegaon and to overawe the Government, made preparatory acts by collection of fire arms, explosives and other articles, required for assembling bombs and thereby aided & abetted each other by advocating, inciting and knowingly facilitating the commission of terrorist act and / or act preparatory to the commission of terrorist act and on 29/09/2008 at about 21.35 hrs. did commit an explosion by means of Improvised Explosive Device fitted on LML Freedom Motor Cycle, opposite Shakil Goods Transport, between Anjum Chowk to Bhiku Chowk, Malegaon, Dist : Nashik.

The material collected against

them establish a case for grant of section to prosecute them Under Section 13, 16, 17, 18, 18-B, 20 & 23 of the Unlawful Activities (Prevention) Act 1967 and 153-A of the Indian Penal Code.

By order and in the name of the
Governor of Maharashtra

(Umesh Chandra Sarangi)
Addl. Chief Secretary (Home) and
Secretary In-Charge of Home Department,
Government of Maharashtra,
Mumbai.

1402) In the present case, undisputedly the accused were arrested on different dates. The first sanction was accorded on 17/01/2009 by PW-304 (Mrs. Chitkala Zutshi) against eleven arrested accused. Thereafter, ATS Mumbai has filed the charge-sheet on 20/01/2009 against the aforesaid eleven arrested accused. Later on the absconding accused Pravin Takkalki (DA-12) was came to be arrested. On 20/04/2011, PW-310 (Mr. Umesh Sarangi) has accorded the sanction to prosecute the arrested accused. This court has taken the cognizance on the basis of First Sanction order dated 17/01/2009. The second sanction order was filed later-on along with supplementary charge-sheet after the arrest of DA-12. Thus, mere passing the second sanction order, cannot be said that the court has taken the cognizance on the basis of second sanction order or repeatedly the cognizance was taken. The cognizance is always taken of offence and not the offender. So, there can be more than one sanction order as per the

prevailing facts and circumstances, at the relevant time. The court has taken the cognizance of offence on the basis of first sanction order and not on the basis of second sanction order. Therefore, mere passing the two different sanction orders against the accused, per-say would not invalidate the sanction orders or affect the case of prosecution. The alleged inconsistency between two sanction order is discussed with other issues.

Proposal and Receipt of documents:

1403) It is incumbent upon the prosecution to prove that, a valid sanction has been granted by the Sanctioning Authority after being fully satisfied that the case for sanction has been made out constituting the offence.

1404) The chief investigating officer PW-320 (ACP Mohan Kulkarni) has testified that, he had sent the proposal to sanctioning authority through his senior officer i.e. Additional Commissioner of Police, ATS, Mumbai on dated 01.01.2009. Thereafter, he received the sanction order of dated 17.01.2009. He identified the sanction order (Exh.8379).

1405) Although, PW-320 (ACP Mohan Kulkarni) has stated that on 01.01.2009 the proposal was sent through Addl. CP, but Addl. CP has not been examined by the prosecution. The covering letter showing the documents annexed with the said proposal are also not filed on record. Absolutely, there is no documentary

evidence on record to show that, on which date the proposal was sent, when it was received, to whom it was addressed, who had received the same and what was the exact contents of said proposal. In the absence of those important documents, the question of identification or taking into consideration of those documents and its contents doesn't arise.

1406) There is covering letter filed on record (Art.396) shows that, it was issued by Desk Officer Shri. Gharge dated 17.01.2009 by annexing sanction order to it. He is not examined to prove the contents of the said letter. The PW-304 or PW-310 have also not identified the said letter. Thus, the contents of the said letter cannot be said to be proved.

1407) On the other hand, during course of hearing, it was also brought to my notice that, sanction under MCOCA was obtained on 15.01.2009 and within two days sanction under UAPA was obtained on 17.01.2009. For obtaining sanction entire record required to be sent for the perusal of sanctioning authority. Though, PW-320 (ACP Mohan Kulkarni) denied the suggestion given in cross examination that, he did not file any documents / case-papers before Sanctioning Authority, but on the other hand, he has admitted that, he has no documentary evidence to show that Sanctioning Authority received those papers. He stated that he submitted the papers through Additional Commissioner of Police to Additional Chief Secretary, Home, Maharashtra State but, he has no documentary evidence except his bare words.

Thus, his testimony is not corroborated by either by his senior officer on the point of covering letter or proposal or documents annexed with it or by any other documentary evidence.

1408) Moreover, the then ACS PW-304 (Smt. Chitkala Zutshi) has not enumerated the materials produced by ATS before her in the Sanction Order. The PW-304 has also admitted the aforesaid fact in her cross examination. Therefore, it can be said that, except the bare submissions, there are no evidence on record to support those contentions. Bare words are not enough. Without filing those documents, it cannot be said that on what date the exactly the proposal was sent & placed before the competent Authority. On what date it was received by the relevant / concerned department. What was its contents. What documents were annexed with it to obtain sanction order, etc. In short in the absence of those important documents and data the period can not be reckoned as to whether the mandatory time-limit was efflux-ed or available to the authority.

1409) The sanction order must expressly show that, the sanctioning authority has perused the material placed before him and after considering the entire record / material and circumstances, role of accused, the sanction has been granted for prosecution. The prosecution must prove by adducing cogent and reliable evidence to show that all the adequate and relevant materials were placed before the Sanctioning Authority and his satisfaction was arrived after perusing the entire material placed

before him. But, it didn't reflect from the record.

1410) In the light of the aforesaid evidence, I am of the view that, entire evidence collected during the course of investigation had not been placed before the Sanctioning authority. Neither the Sanctioning Authority speaks about the entire record nor the sanction order depicts the same as to which documents they have considered. There is nothing on record to show that what electronic evidence is perused or any other reports or papers related explosives were placed before the authority for perusal. Thus, without going through the material record, the sanction order seems to be accorded.

Time Limit:-

1411) Now, another aspect which needs consideration is the Time Limit, within which sanction has to be granted by the competent authority.

1412) S.45(1)(ii) of the UAPA prohibits, unequivocally, any Court from taking cognizance of offences under Chapters IV & VI without previous sanction of the appropriate Government. Ss. 15 r/w 16, 18 of the UAPA charged against the accused which falls under Chapter IV. Sub-section (2) of S.45 requires the sanction for prosecution, from the appropriate Government, under sub-section (1), within such time as prescribed, after considering the report of such Authority appointed by the appropriate Government. The Authority so appointed is also required to

make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as prescribed by the Central Government. The Rules of 2008 is brought out specifically to prescribe the time as mandated under sub-section (2) of S.45. The Rules of 2008, but for the short title and definition clauses have only two Rules; Rule 3 & 4. Rule 3 prescribes the time for making the report containing the recommendations, by the Authority to the appropriate Government. Rule 4 prescribes the time limit for issuance of sanction of prosecution, by the appropriate Government. Both these rules prescribe **'seven working days'** as the time within which the recommendation is to be made and the sanction has to be issued; commencing respectively from the receipt of evidence gathered by the investigating officer and the receipt of recommendation of the Authority. Admittedly, in the present case, both the recommendation of the Authority and the sanction of the State Government were after the prescribed seven days.

1413) In the absence of those relevant documents, the burden lies on prosecution to prove the exact date of tendering the case-papers for seeking sanction and to calculate the prescribed mandatory period. Admittedly, there are no documentary evidence on record. The sanctioning authorities PW-304 (Smt. Chitkala Zutshi), PW-310 (Mr. Umesh Sarangi) even after perusal of their own sanction orders unable to give such dates. Therefore, it is difficult to calculate the exact period or time taken by the

Authority to grant the sanction.

1414) No doubt, in the present case the issue of sanction is disputed since the inception of the case. It is the most crucial aspect. The whole provisions of UAPA devolves around it. The rules framed, time to time, deals with the provisions of sanction, its procedure, competent authority, time limit and other relevant aspects which are directly connected with the issue of sanction. Therefore, it would be beneficial to quote the relevant provisions along with its rule to discuss the other aspects involved on the point of sanction.

Effect of Rules / Nature of Rules:

1415) The learned SPP has submitted that the rules framed under Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008, are based on the procedural provisions, if it uses "Shall" may be construed as directory and it would not cause any prejudice to any party. On the other hand, the Ld. Advocates for accused urged that the rules of 2008 cannot be construed as directory. Those are mandatory. It's compliance in strict sense is necessary, in order to say that the sanction is valid.

1416) Ordinarily the substantial compliance of Rules is obligatory and in the absence of non-providing penal consequences, it can be construed as directory. Now a days, the previous scenario regarding consideration of sanction is completely changed.

Previously the parameters which are required to be considered and to be answered, those were whether there is sanction, whether there is application of mind and delegation of power. Now the scenario is completely changed. New acts including special acts along with rules are come into force. So special act along with rules will have to be considered in legal parlance as well as along with its objects while deciding the point of Sanction.

1417) In the case of **Ashraf Khan Pathan Vs. State of Gujarat, in Criminal Appeal Nos.482/2002, dated 26/09/2012,** it was observed that "*An Act which is harsh, containing stringent provision and prescribing procedure substantially departing from the prevalent ordinary procedural law, cannot be construed liberally. For ensuring rule of law its strict adherence has to be ensured.*"

1418) In case of **Fuleshwar Gope Vs. Union of India and others** [Criminal Appeal No.003923 of 2024 (Arising out of SLP (Crl.) No.004866 of 2023, decided on 23.09.2024)], Hon'ble Apex Court has observed in para nos.51.1 and 51.2, as follows:

"51.1 The validity of sanction should be challenged at the earliest instance available, before the Trial Court. If such a challenge is raised at an appellate stage it would be for the person raising the challenge to justify the reasons for bringing the same at a belated stage. Such reasons would have to be considered independently so as to

ensure that there is no misuse of the right of challenge with the aim to stall or delay proceedings.

51.2 The timelines mentioned in Rules 3 & 4 of the 2008 Rules are couched in mandatory language and, therefore, have to be strictly followed. This is keeping in view that UAPA being a penal legislation, strict construction must be accorded to it. Timelines imposed by way of statutory Rules are a way to keep a check on executive power which is a necessary position to protect the rights of accused persons. Independent review by both the authority recommending sanction and the authority granting sanction, are necessary aspects of compliance with Section 45 of the UAPA."

1419) Thus, in the light of aforesaid judgement, it can be said that, the rules framed under UAPA are mandatory in nature. It should be complied scrupulously, in order to say that, the sanction accorded is valid.

1420) Section 45 of the UAPA makes it crystal clear that no court is empowered to take cognizance of any offence under the act without prior sanction of the competent authority. Section 45 says only about sanction to be placed on record and without sanction order the court is not empowered to take cognizance of offence. It would be beneficial to quote the provisions regarding section 45 in the both amended act of 2004 and 2008.

Section 45 of UAPA as per Amendment of 2004:

1421) Section 45 :- Cognizance of offence :- No court shall take the cognizance of any offence –

I) Under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf;

II) Under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

Section 45 of UAPA as per Amendment of 2008:

1422) Now, prior to proceed further, it is useful to refer the provision of Section 45 of the UAPA, which reads as under:-

Section 45 :- Cognizance of offence :-

[1][(1)] No court shall take cognizance of any offence –

(i) under Chapter III without the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf;

(ii) under Chapters IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and [2](if) such offence is committed against the Government of a foreign country

without the previous sanction of the Central Government.

[3][(2)] Sanction for prosecution under sub-section (1) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation within such time as may be prescribed to the Central Government or, as the case may be, the State Government.]

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1. Section 45 renumbered as sub-section (1) thereof by Act 35 of 2008, s. 13 (w.e.f. 31-12-2008).

2. Subs. by Act 28 of 2019, s. 9 for "where" (w.e.f. 14-8-2019).

3. Ins. by Act 35 of 2008, s. 13 (w.e.f. 31-12-2008).

THE UNLAWFUL ACTIVITIES (PREVENTION) (RECOMMENDATION AND SANCTION OF PROSECUTION) RULES, 2004

MINISTRY OF HOME AFFAIRS NOTIFICATION

New Delhi, the 14th October, 2004

G.S.R. 675(E) – In exercise of the powers conferred by clause (e) of Sub-section (2) of Section 52 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby makes the following rules regulating the qualifications of members of the Review Committee, namely :-

1. **Short title and commencement.** - (1) These rules may be called the Qualifications for the members of the Review Committee Rules, 2004.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definition** – In these rules, "*member*" means a member of the Review Committee constituted under Sub-section (1) of Section 37 of the Act.

3. The Central Government may, by notification in the Official Gazette, appoint a person as member of the Review Committee who is, or has been, -

(a) an officer not below the rank of Secretary to the Government of India; and

(b) has one year experience in legal affairs administration of criminal justice.

[F.No. I-17014/72/2004-IS-VII]
L.C. Goyal, Jt. Secy.

THE UNLAWFUL ACTIVITIES (PREVENTION) (RECOMMENDATION AND SANCTION OF PROSECUTION) RULES, 2008

In exercise of the powers conferred by sub-section (2) of Section 45, read with clause (f) of sub-section (2) of section 52 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement – (1) These rules may be called THE UNLAWFUL ACTIVITIES (PREVENTION)) (RECOMMENDATION AND SANCTION OF PROSECUTION) RULES, 2008.

(2) They shall come into force on the date of its publication in the official Gazette.

2. Definitions – (1) In these rules, unless the context otherwise requires, -

(a) "Act" means the Unlawful Activities (Prevention) Act, 1967 (37 of 1967);

(b) "Authority" means the Authority to be appointed by the Central Government 2[or, as the case may be, the State Government] under sub section (2) of section 45;

(c) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Words and expression used herein and not defined in these rules, but defined in the Act, shall have the meanings respectively assigned to them in the Act.

3. Time limit for making a recommendation by the Authority - The Authority shall, under sub-section (2) of Section 45 of the Act, make its report containing the recommendations to the Central Government 2[or, as the case may be, the State Government] **within seven working days** of the receipt of the evidence gathered by the investigating officer under the Code.

4. Time limit for sanction of prosecution – The Central Government 2[or, as the case may be, the State Government] shall, under sub-

section (2) of section 45 of the Act, take a decision regarding sanction for prosecution **within seven working days** after receipt of the recommendations of the Authority.

Independent Review Authority/ Recommending Authority:

1423) Now, it is to be noted that, accused have argued that, there is total non-compliance of the mandate of section 45(2) of UAPA as there was no Independent Review by the State Government. Thus, I have to see whether the mandate of Section 45(2) was complied or not.

1424) It is disputed by accused persons that, no independent review authority was constituted or notified till 28/05/2010 as per mandate of Section 45(2) of UAPA. Therefore, there were no review or recommendation was done / submitted by the Authority falls under Section 45(2) of UAPA.

1425) My Ld. Predecessor-in-court has issued summon to the concerned authorities and thereby called the gazette notification and recommendation reports. Those were filed on record by the concerned as per list of documents vide exhibits 4533, 4534, 4556, 4577 and 4578. Before considering the aforesaid point in the light of evidence on record, it would be apposite to mention some important dates showing chronology of events related to the issue of sanction,

FIR	30/09/2008
UAPA provisions are invoked	18/10/2008

NIA act came into force	31/12/2008
Section 45(2) of UAPA came into force	31/12/2008
Sanction order issued by PW-304	17/01/2009
Effect given to UAPA rules of 2008	31/03/2009
Appointment of Authority [Section 45 (2)]	26/05/2010
Second Sanction order issued by PW-310	20/04/2011

1426) The amended section 45(2) of UAPA came into force from 31/12/2008. The amended rules of 2008 were given effect from 31/03/2009. Thus, it can be said that, prior to amended rules of 2008, the amended rules of 2004 were in existence and applicable.

1427) As per the mandate of sub-section (2) of section 45 UAPA, there should be a separate recommending authority. It should be appointed by the Central Government or State Government, as the case may be.

1428) On this point, the testimony of sanctioning authorities PW-304 (Smt. Chitkala Zutshi) and PW-310 (Mr. Umesh Sarangi) and Investigating officers of ATS PW-320 (ACP Mohan Kulkarni) and investigating officer of NIA PW-321 (Dy.S.P. Anil Dubey) are important.

1429) The then ACS /Sanctioning authority PW-304 (Smt. Chitakala Zutshi) testified that, independent reviews were carried out by the authorities and officers who were given the task of scrutiny

of proposal both in Law and Judiciary Department and the Home Department. The authorities were Under Secretary, Deputy Secretary of Home Department, Joint Secretary of Home Department, Principal Secretary. Firstly, their own department made the scrutiny and thereafter the proposal was sent to Law and Judiciary department. Accordingly, the sanction was accorded. On the basis of it, prosecution has claimed that the purpose of twin filter test is duly followed.

1430) The PW-304 (Smt. Chitakala Zutshi) admitted in her cross examination that, she was fully aware about the amendment which was carried out in UAPA in the year 2008. She had gone through the sub-section (2) of Section 45 of UAPA. She had an updated library of law books at that time. It means before according sanction, she had full knowledge about the amendments carried out in UAPA in the year 2008. She granted sanction admittedly on 17/01/2009. Thus, prior to her sanction order the act came into force. Therefore, it can be said that, at the relevant time, the act of 2004 was not applicable. She had full knowledge of amended act provisions. She further admitted in cross examination that, no such authority as required under sub-section (2) of section 45 was appointed by the Central Government or the State Government. So it indicates that routine recourse was adopted for scrutiny of documents and report. Admittedly, it was not strictly as per mandate of section 45(2) of UAPA.

1431) It would be apposite to reproduce the copy notification which is place on record showing the date of notification and authority appointed.

महाराष्ट्र शासन राजपत्र
असाधारण भाग चार — अ

वर्ष २, अंक १८ शुक्रवार, मे २८, २०१०/ ज्येष्ठ ७, शके १९३२ (पृष्ठे १)
असाधारण क्रमांक ७५

प्राधिकृत प्रकाशन
महाराष्ट्र शासनाने केंद्रीय अधिनियमांन्वये तयार केलेले (भाग एक, एक—अ आणि एक — ल यांमध्ये प्रसिध्द केलेले नियम व आदेश यांव्यतिरिक्त) नियम व आदेश.

HOME DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 26th May 2010
Order
UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.
No. Ter. 0410/C.R. 216/Spl-1(B) – In exercise of the powers conferred by sub-section (2) of section 45 of the Unlawful Activities (Prevention) Act 1967 (37 of 1967), the Government of Maharashtra, hereby appoints the Director of Prosecutions, Maharashtra State, to be the Authority to make an independent review of the evidence gathered in the course of investigation and to make a recommendation within a period of seven working days from its receipt, to the State Government.

By order and in the name of the Governor of Maharashtra

D. B. BORHADE
Under Secretary to Government

1432) The UAPA act is a special act of statute. This act is having stringent and draconian provisions. Therefore, it should be complied strictly. The section 45(2) of UAPA itself mandates for the appointment of Authority, independent scrutiny by that authority and consideration of his recommendation report.

Admittedly, the first sanction order was issued on dated 17/01/2009 till then such notification about recommending authority appointed / constituted by the State Government has not been issued.

1433) On the aforesaid point, the second sanctioning authority PW-310 (Shri. Sarangi) has also admitted that no such authority was appointed till 28/05/2010. For the first time, on 28/05/2010 Maharashtra State had notified the Director of Prosecution, Maharashtra State as Authority to make an independent review of the evidence gathered in the course of investigation and to make recommendations within the stipulated period. It is further admitted that, prior to 28/05/2010, there were no notification in respect of Authority i.e. Director of prosecution of State of Maharashtra to make independent review of evidence gathered. Thus, it is crystal clear that as per mandate of section till 28/05/2010 no such authority was appointed.

1434) It has come in the evidence PW-304 (Smt. Chitkala Zutshi) that before granting first sanction order, the proposal was sent to Law and Judiciary Department (**Legal Remembrance Authority).** The said authority is functioning as per rules 1964. Thus, as per prosecution, the said department was the alternate arrangement for time being and it was the recommending authority who scrutinized the proposal and forwarded their recommendation. The said department was in existence to act as legal advisory to Government Department and an administrative department.

Though the sub-section (2) was inserted on 31/12/2008, however, there was no clarification in the act about who shall be an authority. Moreover, the effect to the rules of 2008 was given from 31/03/2009. No doubt, the effect to rules of 2008 was given from 31/03/2009. Thus, from the date of 31/12/2008 to 31/03/2009 there was no clarification on 'Authority'.

1435) The word "State Government" can be noticed for the first time in the rule third of The Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules 2008. The said rule was inserted by G.S.R. 224 (E), dated 31/03/2009. The plain reading of the aforesaid rule makes it clear that, powers were vested in the hands of Central Government prior to 31/03/2009 and from 31/03/2009 the powers were also given to the State Government. Although, the clarifying word "State" was inserted later-on but for the purpose of rules Central Government includes State Government, otherwise there would not have been inclusion of word State Government in Section 45 (2) of UAPA. Therefore, in my humble view, from the date of 31/12/2008, the State Government was also empowered to notify the authority as per mandate.

1436) Admittedly, ongoing through the testimony of PW-304 (Smt. Chitkala Zutshi) had admitted that she was having full knowledge about the amendments. But there is no clarification or order or authorization or notification placed on record in

order to show that, before according sanction, the scrutiny report was permitted to call from their local authority or to adopt the routine recourse by deviating the mandate of law.

1437) As per amended rules of 2008, the rule 2(b) says that, Authority means the authority to be appointed by the Central Government [or, as the case may be, the State Government] under sub-section (2) of section 45. Thus, appointment of Authority was mandatory in nature and it was vested in the hands of both the Government i.e. Central Government and State Government. But, admittedly till 28/05/2010 no such appointment of authority and it was not in existence in State of Maharashtra.

1438) UAPA is a special Act of statute. The present Act is against terrorism. It is tough law i.e. stringent & draconian provisions are incorporated under this Act to uproot the terrorism. It is a special act of statute and requires to be complied strictly. The section 45(2) of UAPA itself mandates for the appointment of authority, his recommendation report and considering the same. Those conditions are sine-qua-non for passing the test of fulfillment of section 45(2) of UAPA. Without compliance of those conditions, there cannot be a sanction in routine manner.

1439) During hearing, the parliamentary debate was also pointed out by the Ld. Advocate for A-10. In this parliamentary debate, then Hon'ble Minister Shri. P. Chidambaram said about the various aspects / facets of UAPA and some of those are, "the present law

is against terrorism. It is tough law to uproot terrorism from India. Terrorism has no religion. Fundamental rights of all citizens are also considered while presenting the bill of said law. The trial under this act of any offence by a Special Court shall be held on day-to-day basis on all working days and have precedence over the trial of any other case against the accused in any other offence. The most important safeguard they are going to introduce first time in criminal law is that a Judicial Authority trained in law who is experienced in such matters will be appointed as Independent Authority."

1440) In my view, there is no specific bar not to state about debate or discussion took place in parliament or Legislature while making any enactment or amendment. The parliamentary debate can assist to understand the framework of law. But it cannot be relied upon solely or completely for the purpose of interpreting the statutory provisions.

1441) Considering the entire scheme of the act, it can be said that it provides various safeguard in order to avoid its misuse or misapplication. Section 45 of UAPA deals with the provision of Sanction. Section 45(2) creates a statutory bar on the grant of sanction unless independent authority, "reviews" the evidence gathered and gives its recommendations in time bound manner. The recommendations of an independent authority are not an empty formality. Firstly, the rules of 2004 and later on the amended rules of 2008 governs the grant of sanction for

prosecution within prescribed time limit. The intention of legislature is very clear which shows that, mere executive sanction is not enough, hence, a dual step of filtering process has been specified in the Act itself. Both the authority i.e. recommending and sanctioning will have to apply their mind to the material placed before them and it is sine-qua-non in order to arrive at independent decision. It is also well settled that, any case instituted under UAPA without proper sanction must fail because it is manifest defect in the prosecution which renders entire proceeding void-ab-initio. Therefore, all those safeguards and mandatory provisions incorporated under the act and rules cannot be ignored or keep aside while dealing with the point of legality and validity of sanction.

1442) In case of **Mahesh Kariman Tirki and others Vs State of Maharahstra** [**2024 (2) ABR (Cri) 389**], the Hon'ble High Court has observed in para 38 that, *"In order to emphasize the importance of sanction under UAPA, it is submitted that the UAPA is a stringent statute and an extraordinary piece of legislation. The statute itself has provided a safeguard against its misapplication or misuse. The legislature thought that mere executive sanction is not enough, hence a two stage filter has been specifically provided. Every sanction must be preceded by reviewing of the entire material by an independent authority. The authority issuing the recommendation shall independently apply its mind to the material qua each accused. The recommendation is bereft of reasons or anything from which it*

could be perceived that there was due application of mind. Resultantly, the Sanctioning Authority was deprived from considering an independent review report mandated by law."

1443) It is also settled position that, the more stringent law, the less is discretion of the Court. Stringent laws are made for the purpose to achieve its objectives.

1444) The then ACS i.e. Sanctioning Authority PW-304 has stated that, she had duly complied the amended provision. On the other hand, she admitted that, as per section 45(2) no such authority was appointed by Central Government or State Government, at the relevant time. She further admitted that, she had not received any recommendation from the authority mentioned u/s 45(2) of UAPA. Thus, the aforesaid admissions itself show that, neither there was recommending authority nor they have called the report of such authority. The gazette notification of Home Department of Maharashtra is of dated 28/05/2010 and thereby appointed director of prosecution, Maharashtra State as an independent authority to review the evidence gathered in the course of investigation and to make recommendation within the period of seven working days from its receipt, to the State under section 45(2) of UAPA. Therefore, technically & as per mandate, Authority was not appointed to recommend and submit report within the prescribed time limit. In routine manner, as an alternative arrangement, the Legal Remembrance authority had been given the task of scrutiny and recommendation.

1445) It would be apposite to quote the observations made in case of ***Nazir Ahmad Vs. Emperor [AIR 1936 Privy Council Page 253],*** *it was held that "Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden."*

1446) Twin conditions under section 45(2) came into force with the 2008 amendment to UAPA. Rules framed in 2009 provide clarity, but the conditions were applicable even before that. In absence of rules, the spirit and substance of section 45(2) of UAPA still needed to be followed scrupulously.

1447) In the light of aforesaid ruling it can be said that, the law prescribed under enactment must be strictly followed and there should not be any deviation from it.

1448) Taking into consideration the provision incorporated in Section 45 of UAPA Act, in strict sense Legal Remembrance Authority was not a recommending authority as per amendment of 2008 & mandate given under section 45(2) of UAPA. It is a mere advisory department functioning as per rules of 1964. It is not duly constituted or notified as review authority or committee to recommend as per the amended provision of 2008. Admittedly, the recommending Authority was duly constituted or notified i.e. on 26/05/2010. So, at the time second sanction order dated 20/04/2011, the provision incorporated in the act was duly

complied and there was no violation of section 45(2) of UAPA. But in respect of first sanction order of dated 17/01/2009, admittedly there was no appointment of 'Authority' as per mandate of section and no report of such Authority was called in strict sense.

1449) Thus, two stands are taken by prosecution. During first sanction order no appointment of authority as per mandate but taken the recourse of routine procedure and claimed to be valid. On the other hand, while granting second sanction, they had not adopted the routine recourse but changed their stand by complying the mandatory provision and claimed to be valid but both the sanction order are issued as per amendment of 2004 and not as per amendment of 2008. Thus, considering the entire facts and evidence, it can be said that in strict sense or scrupulously there is non-compliance of section 45(2) of UAPA while granting first sanction order.

Sanction Orders as per Amendment of 2004:

1450) Admittedly, both the sanction order of dated 17/01/2009 and 20/04/2011 are issued as per the amendment of 2004 and not as per the amendment of 2008. Bare perusal of the sanction order and its wording itself shows that, it was issued according to the amendment of 2004 and not as per amendment of 2008.

1451) Both the Sanctioning Authority PW-304 and PW-310 have admitted that, they have issued the sanction order as per

amended act 2004. Ld. SPP had submitted that, the date of registration of offence was of 30/09/2008 and till that period the amendment of 2008 was not in existence. And hence, sanction as per amendment of 2004 is proper and correct. No doubt, FIR was registered on 30/09/2008. The amendment of 2008 came into force on 31/12/2008. But the investigation was commenced after registration of offence. For granting sanction mere FIR or its date of registration is not sufficient. The entire evidence collected by the investigating machinery during the course of investigation is required to be placed before the Sanctioning authority. The sanctioning authority will have to apply its mind and takes their own decision as to grant sanction or not. Before granting sanction, the sanctioning authority takes into consideration various aspects like the evidence/material collected by the investigating, role of each accused, offence is made out or not, provision of the act etc. Only after considering all the aforesaid aspects, the sanction is accorded. Moreover, the charge-sheet came to be filed on dated 20/01/2009. Thus, it can be said that the sanction had never been accorded merely on the basis of FIR or date of registration of offence but could be granted only after considering the aforesaid points /aspects. Even it is assumed for the sake of moment that, in the present matter the sanction had been granted merely on the basis of FIR or its date of registration, then it could be construed as valid and legal sanction in strict sense, unless the case papers / charge-sheet is placed before the sanctioning authority there cannot be due application of mind by such Authority.

1452) The reason for granting of sanction as per amendment of 2004 can be gathered from the admissions given by the witnesses in their evidence. The PW-320 (ACP Mohan Kulkarni) has admitted in cross examination that, they have demanded the sanction under UAPA as per the amendment of 2004 and not as per the amendment of 2008. As per their demand, they have received the Sanction order as per amendment of 2004. He also admitted that he has full knowledge that, there was amendment in the year 2008 in UAPA. Thus, even after the knowledge about the amendment, they had not claimed to grant sanction according to amendment provision of 2008. Moreover, sanctioning authority themselves admitted that, they were having updated library of law-books and they had knowledge about amendments carried out in the Act. Even after that, their own admission coupled with both sanction orders show that, they have accorded the sanction as per amendment of 2004 as claimed by the ATS. The PW-304 also admitted that, as per the request of ATS sanction was accorded. Thus, aforesaid admissions make it clear that, as per the request & claim of ATS sanction was accorded as per the amendment of 2004 without considering the amended act of 2008 and other relevant aspects. Moreover, at the one hand, PW-310 while granting sanction has admitted that, they had appointed the authority as per amended section 45(2) of UAPA, but his report shows that it was granted as per amendment of 2004 and not as per amendment of 2008. Therefore, considering the aforesaid all admissions, I do not find any force in the

aforesaid contention of Ld. SPP for prosecution.

Application of Mind:

1453) The next contention of Ld. Advocates for accused and A-5 in person is that both the Sanctioning authorities have not applied their judicious mind nor satisfied themselves about sufficiency of material to put accused on trial. To canvas the objection about non-application of judicious mind, it is necessary to consider the evidence of Sanctioning authority.

1454) It is incumbent upon the prosecution to prove that, a valid sanction has been granted by the Sanctioning Authority after being fully satisfied that a case for sanction has been made out constituting the offence. The sanction order must expressly show that, the sanctioning authority has perused the material placed before him and after considering the entire record / material and circumstances, role of accused, the sanction has been granted for prosecution. The prosecution must prove by adducing cogent and reliable evidence that all the adequate and relevant papers / material was placed before the Sanctioning Authority and his satisfaction was arrived after perusing the entire material placed before him.

1455) Ongoing through the wordings of Sanction order coupled with oral testimony of sanctioning authority, it reflects that, the proposal (draft sanction) was attached with letter. Bare perusal of first Sanction order dated 17/01/2009, it depicts that, the

sanction order is divided in total five para and one schedule. In first para there are names of accused and sections as reported by ATS. In second para what offences the accused have committed as per the annexed schedule. In third para for taking cognizance by court the sanction is necessary. In fourth para satisfied with material produced before her to prosecute the accused. In fifth para, sanctioning authority accorded sanction against eleven named accused.

1456) The Sanctioning Authority PW-304 had admitted in cross examination that to arrive at particular conclusion for granting sanction under UAPA, it is extremely important that the order has to be appreciated the material put-forth and well reasoned. She also admitted that in such cases minimum two days are required to go through the entire documents. Prior to 16/01/2009 she had no opportunity to go through documents, but she hardly issued that sanction in one day i.e. on 17/01/2009. The bare perusal of her evidence shows that, the sanction order nowhere reflects that which documents were placed and considered by the authority and on what basis the sanctioning authority came to conclusion to accord the sanction. In addition to it, PW-304 had also admitted that, she had not mentioned the issues, her finding, analysis and reasoning as to why she accorded the sanction. There is nothing on record to show that, all the relevant material was placed before the Sanctioning Authority and after going through the same the sanction was accorded. Particularly, FSL Reports, soft copies of

electronic data, mirror images of hard-disk or other electronic evidence didn't seems to be placed, perused and considered by the then secretary while granting sanction. Thus, it reflects that they have not satisfied themselves about the sufficiency of material to put the accused on trial. There is no reference about those documents or perusal or taken into consideration of those documents. The grant of sanction is a serious exercise of powers by competent authority. It has to be apprised of all the relevant materials and on such materials, the authority has to take a conscious decision as to whether facts would reveal commission of offence under relevant provisions. No doubt an elaborate discussion is not required. However, decision making on relevant materials should be reflected in the order. But both the sanction order doesn't reflect that what documents are placed and perused.

1457) It has further admitted by the Sanctioning Authority PW-304 that the first para of sanction order is replica of proposal sent by ATS. She had not personally prepared any chart or schedule as mentioned in the sanction order. Her department also not prepared the said schedule. Thus, the schedule is replica of proposal submitted by ATS. The schedule attached to sanction order was submitted by ATS department. Her own admission itself shows that, first para and schedules are nothing but replica of proposal (draft sanction order) submitted by ATS. Those are reproduced in the Sanction order as it is i.e. without any changes. Therefore, it can be said that, the large number of

contents of her sanction order are nothing but the replica of proposal.

1458) The further admission goes to the root of the case. She admitted that, the type written order was produced before her. She had not dictated the said order. She had only signed over it and dispatched the same as per standard operating procedure. So mere reproduction of contents and placing of ready-made order cannot be construed as due application of mind to the facts of the case, evidence collected by investigating machinery and role played by each accused in the offence. The sanctioning authority cannot act as mere signatory. Sanction under UAPA is not mere formality when the act having stringent and draconian provisions.

1459) It is observed by the Hon'ble Apex court in the case of **Mohd. Iqbal Ahmad vs. State of Andhra Pradesh [AIR 1979 SUPREME COURT 677]** that, *"it is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. The grant of sanction is not an idle formality but a solemn and sacrosanct act which affords protection to government servants against frivolous prosecutions and must therefore be strictly complied with. It is further held that what the Court has to see is whether or not the sanctioning authority at the time of giving the sanction was aware of the facts constituting the offence and applied its mind for the same.*

Any subsequent fact coming into existence after the resolution had been passed is wholly irrelevant."

1460) In catena of cases the Hon'ble Apex court has observed that, granting of sanction is not an idle formality *but a solemn and sacrosanct act.*

1461) In the case of **Mansukhlal Vithaldas Chauhan vs. State of Gujarat [AIR 1997 SC 3400],** the Hon'ble Apex Court held that, validity of sanction would, therefore, depend upon material placed before sanctioning authority and the fact that all relevant facts, material and evidence have been considered by sanctioning authority. Consideration implies application of mind. The order of sanction must exfacie disclose that sanctioning authority had considered evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing relevant files before Court to show that all relevant facts were considered by sanctioning authority.

1462) In cross examination the number of admission given by the Sanctioning Authority PW-304 shows that, she accorded sanction as per request of ATS and as claimed by ATS as per the amendment of 2004. She didn't know which officer sent proposal and what documents were placed before her. The sanction order was not addressed to anybody. The most of para of her sanction order are replica of ATS proposal. There are no documentary evidence what material was produced by ATS or when their

department received the proposal. She didn't know as to whether FIR was annexed or not with proposal by ATS. Even after going through her sanction order she was unable to point out any document to show that A-1 was the member of "Abhinav Bharat". She didn't know as to whether she had seen any receipt of sale or purchase of ammunition / firearms and any panchanama regarding seizure of firearms / ammunition. There is no reference in her sanction order even to show that, she perused the schedule particularly the column no.3 of the schedule which was prepared by ATS showing the role of each accused.

1463) As discussed above, mere annexing the documents would not be enough. The sanction order which was placed before then secretary was ready-made and scanty. The job of preparation of sanction order without any dictation and left with the staff. The order which was placed for signature was without perusal of entire record. It clearly indicates that, the then ACS had not gone through the entire papers.

1464) It is well settled position that, the Authority, who is conferred with a power to take a decision and exercise its discretion, cannot act at the dictation of another, though it is open to take into account advice or assistance, but a decision taken is its own. Similarly, when the power conferred on an authority is expected to be exercised after applying its mind to the facts and circumstances of the case, if it is not complied with, then, there is

clear non-application of mind, as the Authority may act mechanically, without due care and caution and on failure to exercise its discretion, the action taken would be rendered bad in law. The sanction is sacrosanct act. It requires the proper appreciation and application of mind. The sanction cannot be accorded in mechanical manner or casual manner when the provisions of UAPA are stringent and draconian.

1465) Taking into consideration entire admissions, which clearly shows that, the then ACS did not dictate order, she merely signed on order put up before her, she did not call to the investigating officer to discuss before granting sanction. All the admissions goes to the root of the case. Such mechanical sanction does not pass the test of section 45 of UAPA and its mandatory rules. The cumulative effect of it renders the sanction defective and invalid.

1466) When sanctions are defective and invalid, then the recourse of section 465 of Cr.P.C. would not be available in the present matter as the UAPA is the special act. The provision of section 48 is having overriding effect. Therefore, the said defect is incurable which cannot be cured later-on.

1467) Therefore, taking into consideration all the aforesaid aspects, I found substance in the argument advanced by Ld. Advocates for accused, that prima-facie the order must reflect that the sanctioning authority had applied their own judicious independent mind for generation of its satisfaction for sanction.

Then Hon'ble Home Ministers Approval:

1468) The Ld. Advocate for A-10 has also submitted that, the sanction is bad in law as the then Hon'ble Home Minister's approval was obtained. Whereas the prosecution has submitted that, being head of home department, she used to report the Home Minister and hence, the note-sheet was placed.

1469) On this point, the testimony of the Sanctioning Authority PW-304 is important. It came in her evidence that, she assumed that without approval of Home Minister, the sanction could not be granted. Her testimony shows that, it was her perception that, the consent of Home Minister is mandatory for granting sanction under UAPA. Hence, she put up the file before then Home Minister. Accordingly, the approval was obtained and after obtaining the said approval the sanction order had been issued.

1470) No doubt, there is nothing mandatory under UAPA to obtain the sanction of (then) Hon'ble Home Minister or his approval. The PW-304 had admitted that, as per section 45, there is only role of sanctioning authority and not any other authority. The Ld. Advocates for accused though urged that, her admission pertaining to mandatory nature shows that, if not approved by then Hon'ble Minister, then she could not accord the sanction. But mere interpretation is not enough in the absence of any pin-point cross examination on this point. It would have been a different situation if it was specifically cross examined on this

point. Without any explanation or answer on that point, I am not inclined to accept that she would have refused the sanction if she would not have got approval.

Second Sanction Order:

1471) It is evident on record that, the Sanction order dated 20/04/2011 was issued by Additional Chief Secretary of Home Department, Mantralaya Mumbai (PW-310) only against DA-12 (Pravin Takkalki). Admittedly, Pravin Takkalki (DA-12) was discharged by Ld. Predecessor of this court considering that no prima-facie case is made out against him. Even though, the prosecution has examined PW-310 who issued the sanction order against him for the sections falling under Chapter III also. The said sanction order is also assailed by accused on various grounds. One of the grounds is that, he was not empowered to accord the sanction under Chapter-III & the said sanction is required to be granted by Central Government only. There is total non-application of judicious mind of sanctioning authority.

1472) No doubt, the section 13 falls under Chapter III of Act. There is bar given under clause (i) Sub-section (1) of Section 45 of UAPA. Under Chapter III without the previous sanction of Central Government or any officer authorized by the Central Government in this behalf cognizance cannot be taken. At the cost of repetition, it is also necessary to mention that, the cognizance was taken on the basis of first sanction order which was issued by PW-304. So, question of taking cognizance again

doesn't arise.

1473) The Sanctioning authority PW-310 testified that, after arrest of Pravin Takkalki, he received the proposal for seeking sanction from ATS in the year 2011. He verified the said proposal and issued sanction against Pravin Takkalki on dated 20/04/2011. The said sanction order was never issued against the already arrested and charge-sheeted accused. Admittedly, the sanction order dated 20/04/2011 is issued by PW-310, under section 13 also which falls under chapter III. It was brought to my notice that as per the notification dated 21/06/2007, the secretary of State is empowered to grant sanction for the offences falling under chapter III. Therefore, nothing survives in the said objection / point raised by Ld. Advocates for accused.

1474) The next contention of Ld. Advocates for accused are that, in the present matter, the proposal had not been placed before Central Government and therefore, central government has not accorded sanction. Ld. Advocates for accused during the course of hearing taken to me through the order of MHA, Delhi of dated 01/04/2011. Bare perusal of the said order issued by MHA, New Delhi itself shows that, in view of sub-section (5) & (6) of Section 6 of NIA Act, 2008, the ATS or State Government ceased to act and cannot be said to have right / authority to apply for sanction by forwarding letter. If the said interpretation / proposition is applied to the facts of present matter, then since the date of order issued by MHA and taking over the charge by

NIA on dated 04/04/2011, it is for NIA to conduct the further investigation and not by ATS or any other State Authority. Then obviously, the review authority would be of Central Government and sanction requires to be accorded by the Central Government as they are only authorized to issue sanction through their competent authority duly appointed. So, sanction order dated 20/04/2011 passed by the Sanctioning Authority PW-310 (Mr. Umesh Sarangi) will be inoperative, though issued.

1475) On this point, the evidence of investigating officer of NIA PW-321 (Dy.S.P. Shri. Anil Dube) is also important. He has admitted that, they have not obtained sanction of Central Government. He had knowledge that, ATS had obtained the Sanction of State Government. During investigation, they had not sent any proposal before Central Government to obtain the Sanction. Thus, aforesaid admissions itself speak that, NIA has never applied for sanction or placed the proposal before Competent Authority of Central Government for getting sanction against the accused. The reasons behind it can be gathered from the testimony of this witness that; it was within their knowledge that ATS obtained sanction and second one is they had dissenting opinion about the evidence collected by ATS during the course of investigation. Their own charge-sheet depicts that, they were not in consonance with the investigation done by ATS. They found various witnesses' statement being recorded by ATS by browbeating the witnesses. They have exonerated the A-1 from all charges as the evidence against her was scanty. They

have also dropped MCOCA provisions and various other charges against the accused.

1476) The PW-321 (Dy.S.P. Shri. Anil Dube) has admitted that, they cannot prosecute under Schedule Offences, unless and until sanction is obtained. He further admitted that, there are some common accused in Malegaon Bomb Blast Case-2006 and Malegaon Bomb-blast Case-2008. In case of Malegaon Bomb-blast-2006, the NIA has obtained the sanction from Competent Authority of Central Government, though previously the said offence was investigated by other premier investigating agencies. In the present matter, admittedly NIA has not sent the investigating papers to the competent authority of Central Government to obtain Sanction under UAPA. Therefore, I found substance on the point raised by Ld. Advocates for accused that the stand taken by NIA pertaining to Sanction in both the aforesaid matters are quite different.

1477) The central objective of having a prior sanction from a competent authority is to protect the accused from undue harassment and malicious prosecution. The UAPA provides for a two step process for grant of sanction. Under the UAPA an independent authority after assessing the evidence gathered by the Investigating Authority makes a recommendation report to the government which then decides upon the basis of such report whether or not there exists a fit case for booking the accused under the provisions of UAPA. It is pertinent to mention that the

recommendation report is not binding on the competent authority and it is empowered to take a decision contrary to what has been recommended.

1478) The testimony of PW-310 (Mr. Umesh Sarangi) depicts that, before granting sanction, the case papers were sent to Director of Prosecution who was appointed as independent review authority as per notification dated 26/05/2010. Before discussion on this point, it would be apposite to quote the observations of **Hon'ble Bombay High Court,** in case of **Mahesh Tirki Vs. State of Maharashtra. [Criminal Appeal Nos.136 & 137 of 2017, Nagpur Bench, Nagpur],**

"53. The statute itself provides twin safeguards against misuse of a stringent law. The statute has engrafted an additional filter of review by an independent authority before granting conventional executive sanction as contained in other Acts. It is argued that though the independent authority has submitted its report, it is nothing, but a sheer formality without application of mind. It has frustrated the very legislative object by such mechanical exercise. In this regard, we have been taken through the report of the Reviewing Authority i.e. the Director of prosecution (Exh.358) which reads thus:-

"Report regarding review of evidence gathered during Investigation in C.R.No.3017 of 2013, Registered at Police Station Aheri, District Gadchiroli

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I perused -

1. Copy of F.I.R.

2. Copy of panchnama.

3. Copy of Statement of witnesses, etc.

4. And other related documents (Image documents).

It is clear that there is prima facie evidence against the arrested and non-arrested accused persons in the Police Station, Aheri, Gadchiroli C.R. No. 3017/2013 (1) Mahesh K. Tiraki, (2) Pandu P. Narote, (3) Hem K. Mishra, (4) Prashant Rahi, (5) Prasad @ Vijay N. Tirki, (6) G.N. Saibaba u/s. 13, 18, 20, 38 and 39 of Unlawful Activities Prevention Act.

I therefore recommend to accord sanction in this case.

This report regarding review of evidence is only with regard to the offences under the Unlawful Activities (Prevention) Act, 1967.

sd/-
(Vidya Gundecha)
I/c. Director,
Directorate of Prosecution,
Maharashtra State, Mumbai."

54. *We have examined the report to understand what was perused by the Reviewing Authority, and what material prompted the authority to form an opinion that there exists prima facie evidence against the accused, and therefore the recommendation. Can such a report be*

treated to be in conformity with the legislative expectations, and can the said report would achieve the purpose of assisting the Sanctioning Authority in forming its opinion?

55. *……*

56. *……*

57. *……*

58. *Words employed in the section itself conveys the legislative intent, that recommendation by an independent authority is prerequisite for grant of sanction. The Sub-clause (2) is specific, and mandates that the authority shall make an "independent review" of the evidence gathered and submit its recommendations. It is a prerequisite for Sanctioning Authority to consider the "report" of the independent authority before grant of sanction. The term report has its own significance. The word "report" does not mean to pass on assent, but is to be read in context. It is generally understood that a report is a concise piece of writing that refers to facts and evidence to look at issues, situations, events or findings. Reports are informative texts that aim at analyzing material with a specific purpose and audience in mind.*

59. *It is a statutory mandate for the authority to take independent review of the entire evidence. The legitimate expectation is that the authority will apply its*

mind, consider the entire material, re-scan the evidence before reaching to the particular conclusion. The term "review" in general parlance connotes to reconsider or to view again or to give second thought on the existing material or to re-examine. The report at least should indicate broadly the basis on which the conclusion was reached, however we cannot find a single word in the Report to lay such a foundation for making a recommendation for grant of sanction. The Report displays total non-application of mind to the material on record.

60. *In the light of the above statutory requirement, we have looked at the report (Exh.358) of the Director of Prosecution. The report only indicates in cryptic manner as to what the authority has perused. The report does not convey anything beyond the conclusion of finding of prima facie evidence and the recommendations to that effect. Cryptic non-speaking report neither gives an idea about the exercise done by the authority, nor convey anything even briefly, while reaching a conclusion. We find it difficult to treat the said communication as a "report" in terms of Section 45(2) of the UAPA. Certainly, this was not the legislative intent. Rather it was expected that the Sanctioning Authority would get a good deal of assistance from the report of the*

independent authority for its consideration which is totally lacking. In the result, what was with the Sanctioning Authority for its consideration was nothing more than a mere green signal and certainly not an independent opinion. A cryptic communication cannot be considered as a "report" as expected under the law."

1479) In the light of aforesaid observations, in the present matter it would be apposite to quote the report received by the PW-310 (ACS) from independent review authority as follows :-

Report regarding review of evidence gathered during Investigation in C.R. No. 18/2008 Registered in ATS Police Station, Mumbai.

I perused -

1. Copy of F.I.R.
2. Copy of Panchnama
3. Copy of Statement of witnesses etc.

It is clear that there is sufficient evidence against the arrested accused persons in the A.T.S. C.R. No. 18/2008 viz., 1) Pragyasinh Chandrapalsinh Thakur @ Swami Purnachtenand Giri, 2) Shivnarayan Gopalsingh Kalsangra, 3)Shyam Bhavarlal Sahu, 4) Major (Retd.) Ramesh Shivaji Upadhaya, 5) Sameer Sharad Kulkarni, 6) Ajay @ Raja Eknath Rahirkar, 7) Rakesh Dattatray Dhawde, 8) Jagdish Chintaman Mhatre, 9) Lt. Colonel Prasad Shrikant Purohit, 10)

Sudhakar Udaybhan Dhar Dwivedi @ Dayanand Pandey @ Swami Amrutanand Devtirth, 11) Sudhakar Omkarnath Chaturvedi, 12) Praveen Venkatesh Takkalki @ Pravin Mutalik @ Pradeep V. Naik, and wanted accused viz. 1) Ramji @ Ramchandra Gopalsingh Kalsangra and 2) Sandeep Dange to prosecute them under section 13, 15, 16, 17, 18, 18-B, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967. In addition to prosecution for offenses under the other penal provisions under other enactments.

I therefore recommend to accord sanction to this case. Hence this report regarding review of the evidence.

Sd/-
(R.D. Sankhe)
Director,
Directorate of Prosecution,
Maharashtra State, Mumbai

1480) I have gone through the said report, in order to understand what documents are perused and considered by the Reviewing Authority on the basis of which the said opinion was formed that there is prima-facie case against the accused for prosecution. No doubt the statute had not provided any prescribed format or form in which the report to be made. Bare perusal of the aforesaid report shows that, without quoting any reasons to arrive at independent conclusion, the mere assent is seems to be given and recommended to grant sanction. The independent authority is certainly expected to at-least communicate in brief as

to what prompted the authority to make recommendation. The laconic and cryptic communication cannot be considered as a report as expected under law. Thus, it clearly shows that, the mechanical exercise was done which is not a curable defect or curable irregularity.

1481) The cross examination of PW-310 (Umesh Sarangi) shows that, he also issued sanction as claimed by ATS as per amendment of 2004, although the recommending authority was duly constituted according to Section 45 (2) of amended act 2008. He further admitted that, when he accorded the sanction in the year 2011, at that time, he was supposed to grant sanction as per amendment of 2008. But he has granted the sanction as per amendment of 2004.

1482) It further came on record that, he knew that, ATS officer Mr. Deshpande had sent the case papers. Admittedly, the said officer (Mr. Deshpande) is not examined by prosecution. The case-papers were received by 'Tapal' in the office. He didn't know the date of sending the proposal and exactly when it was received by department. Thereafter, case-papers were sent to Director of Prosecution who had scrutinized and given their opinion. His department only put-up the opinion of Director of Prosecution and no any other documents before him in order to accord sanction. On the basis of it, the sanction order seems to be accorded.

1483) Even after perusal of his own sanction order, he has stated that, he has granted the sanction only against accused Pravin Takkalki (DA-12) and not against any other accused. His oral testimony didn't match with the text. The sanction order shows that, he issued sanction against all accused including Pravin Takkalki. Thus, his oral testimony is contradictory to the text. The sanction order was not addressed to anybody. In the sanction order there is reference of first sanction order and not of the details of proposal of ATS. The ready-made chart / schedule sent by ATS was annexed with the sanction order. He didn't know before granting sanction as to whether to comply with sub-section (3) of 196 of Cr.P.C. or not. In sanction order there is no reference of I.O. Mr. Deshpande, recommendations given by Director of Prosecution, corresponding dates.

1484) Both the sanction orders issued by Sanctioning authorities PW-304 and PW-310 are having almost similar paragraphs, schedules and contents. They have considered the amended act of 2004 and granted sanction accordingly. But they had not considered the amended act of 2008.

1485) Sanction is sacrosanct act. It requires the proper appreciation and application of mind. The sanction cannot be accorded in mechanical manner or casual manner. Sanction must reflect the proper application of mind by the sanctioning authority. UAPA act is having stringent provisions and hence, under this act the sanction cannot be accorded in casual manner. Taking into

consideration all the aforesaid admissions, I have no doubt to hold that, the sanctions are accorded without the proper judicious application of mind and it goes to the root of the case. It is also one of count which renders the sanction defective and invalid. When Sanctions are defective and invalid, then the recourse of section 465 of Cr.P.C. would not be available in the present matter as the UAPA is a special act of statute and Section 48 of UAPA is having overriding effect. Therefore, the said incurable defect cannot be cured later-on.

Cognizance & Jurisdiction:

1486) Since from the inception of the case, the accused are disputing the issue of sanction, cognizance and jurisdiction of the court. A-5 had vehemently submitted that, sanctions are invalid and hence, the court has no jurisdiction to try the case. Hence, it is necessary to deal with the said issue as it goes to the root of the case.

1487) The word Cognizance is used under section 45 of UAPA. Cognizance is nowhere defined in the Act. It means 'Jurisdiction' or 'Power of a competent Authority' to determine the matter. Taking cognizance is the act which the designated Court has to perform and granting Sanction is an act which the sanctioning authority has to perform. Latter is condition precedent for the former. Sanction contemplated in the Act is for prosecuting agency to approach the Court concerned for enabling it to take cognizance of offence and to proceed to trial against the persons

arraigned in the report /Charge-sheet. Whereas the jurisdiction meant the authority which a court has to decide the matters that are litigated before it or to take cognizance of matters presented before it for its decision. The jurisdictional limit of court can be confined by the Statute, charter or any act. Thus, it can be extended or restricted by the Act or Statute. If there are no restrictions or limit is imposed the jurisdiction of the court is said to be unlimited.

1488) In the present case, ATS had filed their charge-sheet on 20/01/2009 along with the sanction order dated 17/01/2009 issued by PW-304. My Ld. Predecessor has passed an order below exhibit-4923 the thereby the cognizance was taken considering the sanction orders placed on record including the Sanction orders issued under MCOCA, UAPA, Explosive Substances Act. For taking cognizance under UAPA, it is mandatory as per section 45 that, there must be a sanction order. It is a procedural safeguard laid down by the legislature which essentially creates a fetter on the Court's power to take cognizance. Ld. Predecessor has taken into consideration the said sanction order & he has passed an order below exhibit 4923 and thereby taken the cognizance. Undisputedly, the said order (Exh-4923) was prior to recording of evidence of relevant & concerned witnesses. It was purely based on the documents produced before the court and only for the purpose of taking cognizance.

1489) Pertaining to the jurisdiction, there are some provisions incorporated in the NIA Act itself and it would be apposite to reproduce the same:

13. Jurisdiction of Special Courts.

(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) ----------

(3) ----------

Section 14. Powers of Special Courts with respect to other offences.

(1) When trying any offence, a Special Court may also try any other offence with which the accused may, under the Code be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or under any other law, the Special Court may convict such person of such other offence and pass any sentence or award punishment authorized by this Act or, as the case may be, under such other law.

Section 16. Procedure and powers of Special Courts.

(1) ----------

(2) ----------

(3) Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(4) Subject to the other provisions of this Act, every case transferred to a Special Court under sub-section (2) of section 13 shall be dealt with as if such case had been transferred under section 406 of the Code to such Special Court.

(5) ----------

1490) The Co-joint reading of all aforesaid sections itself makes it clear that, those are enabling provisions incorporated under the Act which gives the jurisdiction to the Special court to try all the offence committed within its local jurisdiction, falling under scheduled offences or not. There is no bar to try the other offences in which accused are charged under the Code in the same trial. Thus, jurisdiction of the court is protected by the aforesaid provisions and even if any offence under scheduled offence is not made out, the court can proceed further with the other offences.

1491) Moreover, in addition to it, it is necessary to mention that, this court is having power to try all the cases falling under IPC and

other acts. This court is designated as a Special Court by notification u/s 11 and 22 of NIA Act. Thus, this court is empowered to try all types of cases falling under NIA Act or schedule offences as mentioned in the Act. In the present matter, initially the charge-sheet was filed under various sections of IPC, MCOCA, Explosive Substances Act, UAPA. Later-on, the MCOCA sections were dropped against the accused as discussed supra. The charges were come to be framed against accused not only under various sections of IPC, UAPA and Explosive Substances Act. Entire trial is conducted by this court. Moreover, explosive substances act is enumerated in the list of scheduled offence. The charge was also framed under this section and it was not struck down or suspended against accused. UAPA is having penal provisions and on the other hand, NIA is procedural in nature. Being procedural in nature it has retrospective effect. In addition to it, the jurisdiction remains with the court due to enabling provision given under sections 13, 14 and 16 of NIA Act. Therefore, even though this court came to conclusion that the sanction issued under UAPA is defective and invalid would not take away the jurisdiction of the court.

<u>Sections 10 & 106 of Evidence Act</u>:

1492) The Ld. SPP submitted that, in the present case the prosecution has proved the facts including meetings held at Faridabad, Bhopal and Calcutta by cogent and reliable evidence. The prosecution has also proved the recovery of voice of accused persons from the Laptop of A-10. The major conspiracy was

cooked in those meetings and the aforesaid evidence on record itself shows that A-9 and A-10 are the main conspirator. The evidence on record is self sufficient to show their culpability in the offence. Therefore, section 106 of Evidence act comes into play and the accused to reverse the onus lies upon them. In support of his submissions, he has also placed his reliance on the following citations:-

(i) **Shambu Nath Mehra Vs. State of Ajmer [1956 CrLJ 794]**

(ii) **State of West Bengal Vs. Mir Mohammad Omar and Ors. [AIR 2000 SC 2988]**

In case of Shambu Nath Mehra Vs. State of Ajmer, the Hon'ble Apex Court has observed that,

"(11) This lays down the general rule that in a criminal case the burden of proof is on the prosecution and S. 106 is certainly not intended to relive it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are "especially" within the knowledge of the accused and which he could prove without difficulty or inconvenience.

The word "especially" stresses that, it means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the

burden lies on the accused to prove that he did not commit the murder because who could know better than be whether he did or did not."

In case of State of West Bengal Vs. Mir Mohammad Omar and Ors., the Hon'ble Apex Court has observed in para nos.36 to 39 that,

"36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: "When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.

38. Vivian Bose, J., had observed that Section 106 of the Evidence Act is designed to meet certain exceptional cases in which it would be impossible for the prosecution to establish certain facts which are particularly within the

knowledge of the accused. In Shambu Nath Mehra v. The State of Ajmer MANU/SC/0023/1956 : 1956CriL J794 the learned Judge has stated the legal principle thus:

> *This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word 'especially' stresses that. It means facts that are pre-eminently or exceptionally within his knowledge.*

39. In the present case, the facts which prosecution proved including the proclaimed intention of the accused, when considered in the light of the proximity of time within which the victim sustained fatal injuries and the proximity of the place within which the dead body was found are enough to draw an inference that victim's death was caused by the same abductors. If any deviation from the aforesaid course would have been factually correct only the abductors would know about it, because such deviation would have been especially within their knowledge. As

they refused to state such facts the inference would stand undisturbed."

1493) On the other hand, it is submitted by Ld. Advocates for accused that, though prosecution claims that they had recorded the statement of number of witnesses during the course of investigation but mere recording of statement u/s 161 of Cr.P.C. are not proof in the form of evidence unless the facts are proved by cogent and reliable evidence. The prosecution failed to prove any charges of conspiracy or commission of any offence by as alleged. The Ld. Advocate in support of his submission has placed his reliance on the following citations and urged that the section 10 of Evidence act would also not come into assistance of prosecution in view of the evidence on record.

State of Gujarat Vs. Mohammed Atik and others [1998 Supreme Court Cases (Cri) 936]. In this case, Hon'ble Apex Court has observed as under:-

> "*14. .....If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made "in reference to their common intention." In other words, a post-arrest statement made to a police officer, whether it is a confession or otherwise, touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence act."* It was also observed by Hon'ble

Apex Court that, *"Section 10 of the Evidence Act is founded on the principle of law of agency by rendering the statement or act of one conspirator binding on the other if it was said during subsistence of the common intention as between the conspirators. If so, once the common intention ceased to exist any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. Any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act."*

Mohd. Khalid Vs. State of W. B. [2002 Supreme Court Cases (Cri) 1734]. In this case, Hon'ble Apex Court has observed as under:-

"33.....*However, we find substance in the stand of learned counsel for accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against another conspirator restricts it to the statement made during the period when the agency subsisted. In State of Gujarat v. Mohd. Atik, it was held that principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall*

within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act."

1494) I have gone through the aforesaid citations. With due respect, I have no doubt about the legal propositions laid down in the aforesaid citations. In the light of aforesaid citations coupled with Section 106 of Indian Evidence Act it can be said that, the Section 106 of the Indian Evidence Act, 1872, provides that when any fact is especially within the knowledge of a particular person, the burden of proving such fact lies upon that person. This provision constitutes a departure from the general principle enunciated under Section 101, which places the burden of proof upon the party asserting the existence of a fact. The bare reading of section 106 of evidence act shows that, it does not reverse the presumption of innocence nor does it place the burden of proving innocence upon the accused. Section 106 of the Indian Evidence Act, 1872, raises a presumption when a fact is especially within the knowledge of a person. In such cases, the burden of proving that fact shifts to that person. This section is often applied in criminal cases where the prosecution has

established certain facts, and the accused possesses knowledge of other facts that could explain or negate those established facts.

1495) It would be apposite to quote the observations made by Hon'ble Apex Court in case of **Rahil and Anr. vs. State (Govt. Of N.C.T. of Delhi)** in Criminal Appeal No. 1856/2014 (decided on 25.06.2025**)** has observed that, "It is settled law in criminal case whether based on direct or circumstantial evidence, the burden of proof always rests on the prosecution. Only when the prosecution discharges the initial onus, that it, proves the incriminating attending circumstances to establish the cause of death are within the 'special knowledge' of an accused does the onus shift and an adverse inference against such accused may be drawn if he fails to discharge such onus."

1496) The **section 106** of the Indian Evidence Act doesn't come into play ipso-facto unless supported by the facts. The presumption is raised only when the facts are duly proved. The well-established principle governing criminal jurisprudence is that the burden of proving the guilt of an accused lies squarely upon the prosecution. This cardinal rule is not altered or diluted by the provisions of Section 106. Section 106 cannot be invoked to compensate for the prosecution's inability to produce evidence establishing circumstances that conclusively point to the guilt of the accused. It is impermissible to rely on this provision as a substitute for direct or circumstantial evidence essential to prove

the commission of the offence. The section cannot be utilized to support a conviction unless and until the prosecution has discharged its burden by proving all constituent elements of the alleged offence beyond reasonable doubt.

1497) Section 106 of the Indian Evidence Act, 1872, does not apply in situations where the fact in question, by virtue of its nature, is such that it could reasonably be known not only to the accused but also to other individuals who may have been present when the event transpired. The legislative intent underlying this provision is confined to instances in which the relevant fact lies solely and exclusively within the personal knowledge of the accused, thereby justifying a shift in the evidentiary burden.

1498) The prosecution has to prove the commission of crime by the accused beyond any reasonable doubt. Till then, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. In other way, the plea of alibi taken by the accused needs to be considered only when the burden, which lies on the prosecution, has been discharged satisfactorily. Thus, in criminal proceedings, once the prosecution establishes a *prima facie* case by adducing sufficient evidence in support of the foundational facts, and a material fact is deemed to be exclusively within the knowledge of the accused, the evidentiary burden shifts to the accused to offer a cogent explanation. However, such shifting of the burden does not absolve the prosecution of its primary obligation to establish

the guilt of the accused beyond reasonable doubt. In other way, it can be said that, once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. In such situation, the duty is cast upon the court to weigh in scales the evidence adduced by them. However, while weighing the prosecution cases and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to benefit of that reasonable doubt.

1499) Thus, burden is cast upon prosecution to prove its case beyond reasonable doubt and only then its shifts on accused. It is based upon the settled position that, the prosecution should stand upon its own legs and cannot take the advantage of defence plea. As discussed in earlier paras under the caption of meetings, I have already pointed out that, the prosecution has not proved the role of accused in the said meetings, their participation or conversation took place in those alleged meetings. The evidence pertaining to alleged meetings are in negative on record. Mere allegations in charge-sheets are not sufficient, without adducing the cogent and reliable evidence. The collection of voice sample, procedure adopted for voice samples, analysis of it is under the cloud of doubt as discussed in earlier under the caption of voice samples, Interception and result of analysis.

1500) In the light of aforesaid citations, it is crystal clear that, the scope of section 10 of Evidence Act is founded on the principle of law of agency but statement or act of the conspirator or become relevant only when it is done or made during the subsistence of conspiracy. Once the conspiracy comes to an end or common intention ceased to be exist, the statement or act of the conspirator thereafter does not become admissible.

1501) According to the prosecution case, the conspiracy period is January 2008 to 20.10.2008 i.e. till the date of arrest of A-1. At the cost of repetitions, it is necessary to mention that, I have already pointed out the arrest, search, seizure of articles, evidence on the point of meetings, CDR are under the cloud of doubt. The alleged conspiracy is not proved beyond reasonable doubt. Therefore, in the absence of positive evidence on record, the question of application of section 10 of Evidence Act does not arise.

Section 15, 16, 17, 18 of UAPA :-

1502) The accused are charged with section 16 and 18 of UAPA. The accused had not been charged for the commission of offence u/s 17 of UAPA which falls under chapter IV of UAPA. It would be apposite to quote firstly, the important definitions and the aforesaid sections.

Section 2 :-

(k) " terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

(m) " terrorist organisation" means an organisation listed in the [First Schedule] or an organization operating under the same name as an organisation so listed;

Section 15:- Terrorist act.

[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [economic security] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high-quality counterfeit Indian paper currency, coin or of any other

material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]

commits a terrorist act.

[*Explanation*.—For the purpose of this sub-section,—

(a) "public functionary" means the constitutional authorities or any other functionary notified in the *Official Gazette* by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

[(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]

Section 16. Punishment for terrorist act.

(1) Whoever commits a terrorist act shall, —

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Section 18. Punishment for conspiracy, etc.—

Whoever conspires or attempts to commit, or advocates, abets, advises or [incites, directly or knowingly facilitates] the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

1503) Firstly, it is necessary to mention that, the onus generally lies on prosecution to prove the facts by adducing the cogent and reliable evidence. The onus of proof lies on prosecution which is higher than the mere preponderance of probability. The

prosecution is under an obligation to establish the guilt of the accused beyond reasonable doubt. The doubt should not be fanciful or mere imaginary. Though the alleged offences are against the security and integrity of the nation, the law does not dilute the standard of proof, except in case, where statutory presumptions would apply. Thus, the prosecution is bound to establish the guilt of the accused with the standard of proof ordinarily required to prove criminal offences.

1504) In the backdrop of the facts, it is necessary to mention that, the Abhinav Bharat Organization / Abhinav Bharat Trust/ Abhinav Bharat is not banned organization. There is nothing on record to show that, it is declared as unlawful or enlisted in the list issued by the Central Government of unlawful association by way of notification in the official gazette.

1505) As per prosecution, the A-9 had brought the RDX from Kashmir and stored in his house and with the help of co-accused they had prepared the IED in the house of A-11 which was fitted in the LML Freedom Motor-cycle. As discussed earlier, there is absolutely no evidence on the point of source, transportation, storage, fitting, recci and parking of alleged motor-cycle fitted with RDX except the bare allegations. The prosecution could not prove the meetings held at alleged places among the accused were with the object to commit alleged illegal activities which are against to the interest and / or security of the nation.

1506) As discussed earlier, there is absolutely no cogent and reliable evidence on the point of arms, ammunition or any weapons found in the possession of A-9 or any other co-accused. The recovery and seizure of RDX traces and detonator are suspicious.

1507) Moreover, the Chief investigating officer of ATS PW-320 (ACP Mohan Kulkarni) had given various admissions during his cross examination which shows that, though they had repeatedly called to A-6 for inquiry, who was allegedly treasurer of Abhinav Bharat, prior to his arrest, but they never called the trust deed with him or any other documents of Abhinav Bharat during the course of inquiry. He had gone through the trust-deed of Abhinav Bharat Sanstha. It's object was to create patriotism and religious activities. Bhopal meeting was attended by number of persons, but he could not say as to whether in the attendees the members of Abhinav Bharat Sanstha were present or not. They had no documentary evidence to show that A-9 had founded Abhinav Bharat apart from bare statement recorded by them. There is no documentary evidence to show that, A-9 had arranged the meetings at alleged places. Neither they have any document to show that A-9 collected Twenty One Lakhs Rupees nor they have any evidence to show that A-9 incurred One lakh Rupees for purchasing hand-grenade. Abhinav Bharat had not lodged any complaint against accused. They have no documentary evidence to show that A-9 had taken the responsibility to provide explosives. Abhinav Bharat Organization is not declared as terrorist organization till date by

Central Government. Abhinav Bharat Trust or Sanstha or Sanghatana or Foundation is not banned organization.

1508) The investigating officer of NIA PW-321 (Anil Dubey) had also given the various admissions which shows that, during their investigation it was transpired to them that, the statements of several witnesses were recorded by ATS by use of force. Those were involuntary statements. Therefore, witnesses resiled from their earlier statements. It was also transpired to them that, some accused were illegally detained and tortured by ATS.

1509) His further admissions show that, from the statement of Keshav Pawar and Major Khanzode, it was transpired that, ATS officer Shekhar Bagade was present in the house of A-11 (Sudhakar Chaturvedi) and doing some suspicious activity in the absence of A-11. The alleged recovery of traces of RDX in the swabs taken from the alleged house of Sudhakar Chaturvedi became suspect on the ground that ATS, Mumbai might have planted the RDX traces to implicate A-11 and other accused persons.

1510) The PW-321 (DySP Anil Dubey) also admitted that, since last two years of alleged incident, A-1 was neither in possession and control of motor-cycle lying in her name nor they found any evidence to show that she was using the motor-cycle or alleged motorcycle was given to Ramji Kalsangra with her consent or it was within her knowledge. They did not find any evidence to show that A-1 attended the meeting at Anangpur Dist.

Faridabad. Abhinav Bharat is not mentioned in the banned list of organizations declared by Government. NIA had not seized any incriminating documents or arms or ammunition from accused. The A-9 had not collected personally the huge funds as alleged. He had gone through the charge-sheet of ATS but did not find any eye-witness to show that the accused committed alleged bomb-blast. After the incident, nobody had seen any accused running from spot. In the alleged conversation of any accused the word "Malegaon Bomb-blast" as a phrase are not appearing collectively.

1511) Thus, nothing came on record which would show that, the accused persons were conspired together to commit any terrorist act within the scope and ambit of section **18** of UAPA. Indeed, some accused persons were in contact with one another but the evidence as discussed earlier is already under the cloud of doubt which falls short to decipher that accused persons were hatched the criminal conspiracy to commit the terrorist act or an act preparatory to commission of a terrorist act.

1512) Although no formal charge has been framed under **Section 17** of the Unlawful Activities (Prevention) Act, 1967, but the Court is not precluded from invoking the said provision, provided there exists sufficient, cogent, and reliable evidence supporting such inference. The fact that the accused had thoroughly cross-examined the prosecution witnesses on the relevant aspects pertaining to Section 17 further strengthens the admissibility of

such evidence. Therefore, in the absence of any procedural infirmity or prejudice to the defense, there is no legal bar to recording a conviction under Section 17 of the UAPA. Thus, it can be said that mere non-framing of the charge under section 17 would not be a bar to invoke this section.

1513) There is no dispute that the evidence exists on record indicating that A-6 distributed funds to A-4, A-5, A-9, A-10. **Section 17** of the UAPA prescribes punishment for raising funds intended for terrorist acts. It states that anyone who, in or outside India, raises or provides funds or collection of funds (from legitimate or illegitimate sources) knowing they are likely to be used for terrorist activities, shall be be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine. The offense applies to raising or providing funds for terrorist acts, regardless of whether the funds were actually used for such acts. The key point is that act is concerned with the knowledge that the funds will be used for terrorism. Certainly, Section 17 applies irrespective of whether the funds were actually utilized for carrying out terrorist acts or not. The primary element of the offence is the accused's knowledge that the funds are likely to be used for such activities.

1514) The evidence led by the prosecution regarding the raising of funds and transfer thereof to the accused persons has already been discussed in detail. However, taking into consideration the

entire evidence on record, I am of the view that, the **Section 17** of the UAPA is also not attracted in the present scenario of case for the following reasons:

(I) The evidentiary record concerning the raising and transfer of funds by the accused is under the cloud of doubt and lacks sufficient corroboration;

(II) The sanction orders issued by the competent authority under the provisions of the UAPA suffer from legal infirmities and procedural irregularities, rendering them invalid, as discussed in detail.

Accordingly, in my humble view, in the absence of credible evidence and valid sanction under law, the invocation of **Section 17** of the UAPA is untenable and unsustainable.

1515) Thus, considering the entire evidence on record, it is not proved through the cogent, reliable and acceptable evidence to show that, the alleged act was done by the accused with intent to threaten or likely to threaten the unity, integrity or security or sovereignty of India or with intent to strike the terror or likely to strike terror in the people by using bomb (RDX) or other explosive substances and thereby caused the death or injuries to the persons. As per prosecution, the alleged conspiracy was cooked in the various meetings held among the accused. But the evidence on record is not sufficient to prove those alleged meetings as discussed supra. Section **43E** of UAPA is a presumption as to offence **u/s 15** of UAPA which is punishable

u/s 16 of UAPA. Though, the prosecution had led the evidence of 323 witnesses to establish the foundational fact, but evidence is not sufficient to prove the facts and to raise the presumption. There must be definitive evidence suggesting the involvement in the offence of a terrorist act must be found at the site of the offence and by use of bomb or explosive substances as defined u/s 15 of UAPA. Thus, presumption would not apply. Merely raising the presumption would not be sufficient in the absence of cogent, reliable and acceptable evidence. It is also well-established principle of law that, the more serious offence, the higher standard of proof required for conviction.

1516) The section of UAPA is also not attracted or invoked on another count that, the sanction accorded under the Unlawful Activities (Prevention) Act (UAPA) is defective, invalid, and legally untenable. In view of the invalid sanction, the invocation of provisions under various sections of the UAPA against the accused is unsustainable. Consequently, the statutory presumptions contemplated under the said Act cannot be attracted nor invoked against the accused. Therefore, the question of applying such presumptions or sections does not arise.

Directions to Arrest RSS Chief:-

1517) Now I have to deal with the next contention of Ld. Advocate for A-10 that, the ATS officer Mehboob Mujawar was one of the investigating officers in the present case. The senior ATS officers

had given the directions to him to arrest Mr. Mohan Bhagwat (RSS Chief) by taking him in custody. Whereas, their own officer (Mehboob Mujawar) had denied to obey such illegal order as he did not find any role of Mr. Mohan Bhagwat in the alleged offence. Hence, Mehboob Mujawar was entangled in a false case by ATS which was filed before the Ld. Magistrate of Solapur. In support of aforesaid submissions, Ld. Advocates has produced some documents on record along with application marked as **exhibit-10766**. Those are the certified copy of application and copy of statement given u/s 313 of Cr.P.C. of applicant Maheboob Mujawar filed before the court of Ld. CJM, Solapur.

1518) Before adverting the aforesaid point raised by Ld. Advocate for accused no.10, it is necessary to mention the evidence which came on record pertaining to ATS officer Mehboob Mujawar. The PW-320 (ACP Mohan Kulkarni) had denied the suggestion given in his cross examination that, Mehboob Mujawar was sent by them to bring one senior office bearer of RSS. But admitted that, he was sent to find out / trace out AA-1 (Ramji Kalsangra) and AA-2 (Sandeep Dange). He also denied the suggestion that Mehboob Mujawar publicly declare that the ATS short-dead two persons and hence, his name was not included in the list of witness filed with charge-sheet. Whereas, the cross examination of PW-321 (Dy.SP Anil Dubey) shows that, he knew that Mehboob Mujawar was also a team member of ATS. Mr. Wankhede had recorded his statement. Mehboob Mujawar was

called in the office of NIA and they had inquired with him in respect of his statement before media and news agency about the death of Ramchandra Kalsangra and Sandip Dange.

1519) Thus, considering the aforesaid evidence, it can be said that, he was a member of ATS team and investigated in the present case as per the directions of his superior officer. There was inquiry with him pertaining to his statement before media and news agency about the death of AA-1 (Ramchandra Kalsangra) and AA-2 (Sandeep Dange). His name is not listed in the witness list nor he is examined as a witness before this court by prosecution side or defense side.

1520) Now coming to the aspect of documents filed on record as discussed above. I have gone through those documents. Firstly, it is necessary to mention that, application filed by the applicant (Mehboob Mujawar) was for the expeditious trial before the Ld. Magistrate of Solapur, which was considered by the concerned court. The statement recorded u/s 313 of Cr.P.C. cannot be construed as a evidence on the counts that, the statement is not recorded before this court and in support of those documents, he is not examined as a witness before this court. So mere placing some documents are not sufficient. It must be proved through the cogent and reliable testimony of concerned witness. Moreover, those documents show that, it was his defense before the particular court and not before this court. Therefore, I did not find any force in the aforesaid contention raised by the Ld.

Advocate for the A-10.

Hostile Witnesses and Credibility of their statements recorded u/s 161 of Cr.P.C. :-

1521) The prosecution has examined total 323 witnesses in order to prove the charges levelled against the accused. The following witnesses had not supported to the case of prosecution. Those are,

Sr. No.	PW Number	NAME OF HOSTILE WITNESSES
1	132	Rahul Krushnarao Deshmukh
2	165	Mr. Prashant Bhagwan Kharadkar
3	188	Sanjit Kishor Pendharkar
4	193	Sachin Jagdishchandra Soni
5	198	Shailesh Maganbhai Patel
6	200	Smt. Varsha Rakesh Dhawade
7	201	Dr. Arun Chintamani Datar
8	206	Amod Shriram Damale
9	207	Sunita Sudhir Jadhav
10	208	Shailesh Shankar Raikar
11	210	Ajay Harikishan Thapar
12	211	Jagdish Prasad Jatav
13	212	Arvind Pateria @ Banti Pateria
14	213	Mohd. Mustakim Shaikh Mohd. Kasam

Sr. No.	PW Number	NAME OF HOSTILE WITNESSES
		Shaikh
15	214	Shashank Mohanlal Sahu
16	218	Somnath Tukaram Gunjal
17	219	Ramesh Narayan Surve
18	220	Milind Avinash Joshirao
19	221	Mohit Shivsingh Thakur
20	226	Raju Vasant Devkar
21	232	Chanakya Harbans Bakshi
22	243	Bapaditya Dhar
23	245	Dattatray Aatmaram Pawar
24	252	Manish Mahesh Goswami
25	259	Shri Shirish Yashwant Date
26	264	Shri Varun Devendra Goswami
27	265	Prasad Sudhir Deosthali
28	268	Pradeepkumar Tapaskumar Mukherjee
29	276	Kashinath Kanhaiyalal Banarjee
30	281	Mahendra Bhagwanprasad Bhatnagar
31	282	Shaik Khaja Nayab Rasool
32	286	Ram Chandra Ramkrishna Sharma
33	303	Chetan Matumal Dhakan

Sr. No.	PW Number	NAME OF HOSTILE WITNESSES
34	305	Dilip Rameshchandra Nahar.
35	306	Gaurav Kaushal Sharma
36	308	Yashpal Sarupa Bhadana
37	309	Capt. Nitin Dattatray Joshi
38	312	Ram Pratap Singh @ R.P. Singh
39	316	Dharmendra Subhashdas Bairagi

1522) The Ld. SPP has submitted that, though the number of witnesses turned hostile but their evidence can be considered in order to convict the accused. To buttress his submissions, he further submitted that, the Hon'ble Apex Court in catena of Judgments hold that the evidence of Hostile witnesses cannot be treated efface or wash off the records all together but can be accepted to the extent that their version found to be dependable on careful scrutiny. As observed in Rameshbhai Mohanbahi Koli and Ors Vs State of Gujarat [2011 AIR SCW 378 ; AIR 2011 SC (SUPP) 577] that, *"It is settled legal proposition that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross examine him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent that their version is found to be dependable on a careful scrutiny thereof."*

1523) He further submitted that, it is also observed by the Hon'ble Apex Court that testimony of hostile witness not to be discarded as a whole it can be partly believed and it can be used to lend credence to the testimony of other witnesses. The Hon'ble Supreme Court has observed in G. Parshwanath Vs. State of Karnataka [AIR 2010 SC 2914], "That the witnesses were declared Hostile by the prosecution does not result in automatic rejection of their evidence. The testimony of hostile witnesses need not be rejected entirety". The Hon'ble Supreme Court has observed in Lella Srinivasa Rao Vs. State of Andhra Pradesh [AIR 2004 SC 1720], *"Even the evidence of a hostile witness if it finds corroboration from the facts of the case may be taken into account while judging the guilt of an accused."* The Statement of Hostile witness can be believed. Gagan Kanojia and Ors. Vs. State of Punjab [(2006) 13 SCC 516]. Hostile witness has supported the prosecution case in part but has not supported the prosecution on certain minor points which have no bearing on the prosecution case. His testimony will to be accepted in that part of the evidence which supports the prosecution case. The State Vs. V. Sejappa [2008 Cr. LJ 3312]. "Evidence of Hostile witness need not be discarded. Evidence of Hostile witness can be relied on by the prosecution if any portion of the evidence supports its case and on the basis of such evidence even order of conviction can be passed." Dada S/o Appasaheb Khose Vs. The State of Maharashtra [Criminal Appeal No.210 of 1997; decided on 9th April 2009]. Evidence of Hostile witnesses cannot be rejected in toto because prosecution chose to treat him as hostile

and cross examined him. The evidence of such witnesses cannot be treated as efface or wash-out the record or together. The testimony of such witnesses can be considered and accepted by the court to the extent their version is found to be dependable on careful scrutiny thereof. The portion of evidence which is consistent with the case of the prosecution or de-fence has recorded by the court cannot be held to have wash off or unavailable to the prosecution to prove the guilt of the accused. Bindu Vs. The State (NCT) of Delhi [2009 Cr. LJ 4582]. Reference : Mallappa Siddappa Alakanur and Ors. Vs. State of Karnataka [AIR 2009 SC 2959].

“Evidence of Hostile witness remain admissible in the trial and there is no legal bar to based conviction upon his testimony if corroborated by other reliable evidence.” Parimal Gowala and Ors. Vs State of Tripura [2007 Cr. LJ 2394], Anil Rai Vs State of Bihar [AIR 2001 SC 3173], Meena Gopalkrishna Mudiliyar Vs State of Maharashtra [1993 Cri LJ 3634] and Bhagwan Singh Vs. The State of Haryana [AIR 1976 SC 202].

“Testimony of Hostile witness need not be discarded as a whole it can be partly believed & it can be used to lend credence to the testimony of other witnesses.” Veer Singh and Ors. Vs. State of U.P. [2014 Cri.LJ 1083], Paulmeli and Ors. Vs. State of Tamil Nadu [2014 Cri. LJ 3240]. “The testimony of Hostile witness has to be read & considered as a whole to find out the truth. The Court has to be very careful about a witness who have different

statement at different time & has no regard for truth."

Paramjeet Singh Vs. State of Uttarakhand [AIR 2011 SC 200], it was observed by Hon'ble Apex Court that, witnesses were declared hostile by the prosecution does not result in automatic rejection of their evidence. The testimony of hostile witnesses need not be rejected entirety.

1524) Whereas the Ld. Advocates for accused had submitted that, the statement of witnesses was taken forcefully by ATS. Those statements were involuntary and contents were written without their knowledge. They were tortured, ill-treated, detained by ATS officers in order to please the then government and specific community. In support of their submissions, the Ld. Advocate for A-10 had relied upon the case of **Sat Paul Vs. Delhi Administration [(1976) 1 Supreme Court Cases 727].** In this case, it is observed as under:-

> *"42. The fallacy underlying this view stems from the assumption that the only purpose of cross-examination of a witness is to discredit him; it ignores the hard truth that another equally important object of cross-examination is to elicit admissions of facts which would help build the case of the cross-examiner. When a party with the leave of the court, confronts his witness with his*

previous inconsistent statement, he does so in the hope that the witness might revert to what he had stated previously. If the departure from the prior statement is not deliberate but is due to faulty memory or a like cause, there is every possibility of the witness veering round to his former statement. Thus, showing faultiness of the memory in the case of such a witness would be another object of cross-examining and contradicting him by a party calling the witness. In short, the rule prohibiting a party to put questions in the manner of cross-examination or in a leading form to his own witness is relaxed not because the witness has already forfeited all right to credit but because from his antipathetic attitude or otherwise, the court feels that for doing justice, his evidence will be more fully given, the truth more effectively extricated and his credit more adequately tested by questions put in a more pointed, penetrating and searching way."

1525) The principle laid down in the aforesaid citations can be summarized as follows:-

I) Hostile witness testimony cannot be discarded completely or entirety just because the prosecution cross-examined the witness.

II) Court can consider the evidence of hostile witness, if found creditable or reliable after careful examination.

III) The testimony of hostile witness is valid if it is supported by independent evidence.

IV) The evidence of hostile witness is admissible in trial.

1526) In the light of aforesaid legal propositions, it is also necessary to consider the rival submissions and evidence of hostile witnesses. Firstly, it is necessary to mention that, Section 161 of CrPC clearly indicates that, the examination of witnesses during investigation who are acquainted with the facts. Such statement may be oral or in writing or in electronic form i.e. audio or video form. The statement recorded u/s 161 are not substantive evidence. It can be used only for the contradiction or omission purpose. Whatever the contents of statement being recorded, the witness must point it out during the course of his evidence. It should inspire the confidence of the court to accept and his testimony should reflect that he is not tortured or tutored or pressurized to give statement or to depose. Thus, it should be free from all doubts and only then it can inspire the confidence

to accept the same, otherwise it is safe to discard those statements.

1527) Almost all those witnesses, during the course of the evidence deposed that, they had not given their statements voluntarily, but their statements were taken as dictated under coercion by the officers of ATS. The number of witnesses further alleged that, they were subjected to torture, ill-treatment, and unlawful detention during the course of investigation. The absence of formal complaints against ATS officers by all such witnesses cannot, by itself, be grounds to dismiss their testimony as false or unreliable. It is a well-acknowledged aspect of human behavior that the decision to lodge complaints is influenced by various subjective factors, including personal courage, perception of risk, psychological trauma and apprehension of future retaliation.

1528) Moreover, it emerges from the evidence of witnesses that certain witnesses have demonstrated courage and filed complaints against ATS personnel, specifically alleging acts of torture, harassment, and illegal detention. In addition to it, the several facts are admitted by the investigating officer of NIA PW-321 (Dy.SP Anil Dubey) in his cross examination which also shows that, during the course of their investigation, it was transpired that, the ATS officers tortured, illegally detained not only to the some witnesses but also the accused. This underscores the credibility of such allegations.

1529) It is also necessary to mention that, two prime investigating agencies were involved in this matter i.e. ATS and NIA. Both agencies conducted independent investigations and submitted separate charge-sheets upon completion thereof. However, the allegations of misconduct, torture, illegal detention have been levelled exclusively against ATS officers and no such accusations have been made against any officer of the NIA. Thus, pointing out towards the treatment given by ATS officers to the witnesses is self-sufficient which raises serious concern and credibility of evidence collected by ATS officers during the course of investigation.

1530) I have gone through the aforesaid citations. I have no doubt about the legal propositions laid down in the aforesaid citations. It is also necessary to mention that, mere filing or placing on record the number of citations would not be enough when facts are not supporting to the case of prosecution. With due respect, the facts of the present case are different than the facts mentioned in aforesaid citations and hence, in the present scenario of the case, the citations filed on record by prosecution would not helpful to them.

<u>Non-examination of Material Witnesses</u> :-

1531) The Ld. Advocates for accused and accused no.5 in person had submitted that, the number of material witnesses are not examined by the prosecution. Hence, in the absence of any

explanation, the adverse inference is required to be drawn.

1532) Admittedly, in the present case, the number of material witnesses are not examined by the prosecution. Their names are mentioned in concerned paragraphs while discussing the evidence.

1533) In a murder case and serious offences, it is primarily for the prosecutor to decide which witnesses to be examined in order to unfold the story. The prosecutor must act fairly and not to keep back the witnesses those who would likely to go against the prosecution case. It is the duty of the prosecutor to assist the court in reaching a proper conclusion in regard to the case which is brought before the court. It is the sole prerogative of the prosecutor and prosecuting agency to decide which witnesses are to be examined and which are not to be examined. If there are large number of witnesses on the point of incident, it would be open to the prosecutor to make a selection of those witnesses in support of their case and to unfold the story. And on the other hand, if during the trial, it is brought to the notice of the court that, relevant witnesses are not examined or kept back or dropped, then court may draw the adverse inference against the prosecution by assuming the serious infirmity in the case of prosecution.

1534) Upon a comprehensive evaluation of the entire evidence available on record, I am of the considered view that the

prosecution has failed to adduce cogent, reliable, and legally acceptable evidence. The testimony of prosecution witnesses is riddled with material inconsistencies and contradictions. Such discrepancies undermine the credibility of the prosecution's case and fall short of establishing the guilt of the accused beyond reasonable doubt.

1535) The statements of key witnesses relating to the alleged conspiracy, meetings, or other incriminating circumstances have not sufficiently supported the case of the prosecuting agency. While there may be strong suspicion against the accused, mere suspicion cannot take the place of legal proof.

1536) It is pertinent to note that the witnesses deposed after a considerable lapse of time from the date of the alleged incident, which has led to natural lapses in memory and narration. However, when contradictions, omissions, embellishments, and other infirmities in the testimony raise grave doubts regarding the veracity of the prosecution’s version, it would be unsafe for the Court to rely on such evidence. Though, the testimony of police witnesses suggest that they were consistent and meticulous in detailing the procedural aspect concerning the recording of statements, arrest and recovery of articles, but the overall evidence does not inspire sufficient confidence to warrant conviction.

1537) In the backdrop of the facts, it is also necessary to mention that,

the evidence on record creates the grave suspicion against the accused but mere on suspicion there cannot be a conviction. Hence, I am extending the benefit of doubt.

1538) Before I conclude, it is necessary to place on record the fact that, I am fully aware of the degree of agony, frustration, and trauma caused to society at large and, more particularly, to the families of the victims by the fact that a heinous crime of this nature has gone unpunished. However, the law does not permit courts to convict an accused solely on the basis of moral conviction or suspicion. No doubt, the terrorism has no religion because no religion in the world preaches violence. The court of law is not supposed to proceed on popular or predominant public perceptions about the matter. It is a cardinal principle of criminal jurisprudence that the burden rests entirely upon the prosecution to establish the guilt of the accused beyond reasonable doubt, based on admissible and credible evidence. The more serious offence, the higher standard of proof required for conviction. Admittedly, in the present case there is no reliable, cogent and acceptable evidence on record, as discussed supra, to warrant the conviction. Consequently, I pass the following order: -

ORDER

I) The accused no.1 (Pragyasing Chandrapalsingh Thakur@ Swami Purnachetananand Giri), the accused no.4 (Ramesh Shivaji Upadhyay), the accused no.5 (Sameer Sharad Kulkarni @

Chanakya Sameer), the accused no.6 (Ajay @ Raja Eknath Rahirkar), the accused no.9 (Prasad Shrikant Purohit), the accused no.10 (Sudhakar Dhar Dwivedi @ Dayanand Pandey @ Swami Amrutanand Devtirth), the accused no.11 (Sudhakar Omkarnath Chaturvedi @ Chanakya Sudhakar) are hereby acquitted of the offences punishable Sections 120-B, 153-A, 302, 307, 326, 324, 427 IPC and sections 16 and 18 of Unlawful Activities (Prevention) Act, 1967 and Sections 3, 4, 5, 6 of the Explosive Substances Act,1908 vide section 235(1) of the code of criminal procedure, 1973.

II) Bail bond of accused persons stand cancelled. The sureties stand discharged.

III) The prosecuting agencies are at liberty to file a separate charge-sheet against the absconding accused Ramji Kalsangra and Sandeep Dange on their arrest.

IV) All the Muddemal including gadgets shall be preserved in safe and sure custody. It should be ensured that all the Muddemal would be made available whenever called by the Appellate court or needed for trial against absconding accused or disposal as per the rules.

V) The accused persons are directed to execute the bail bonds with surety in the amount of Rs.20,000/- each to appear before

the higher court in compliance of section 437-A of the code of criminal procedure,1973.

VI) The copy of judgement be sent to collector, D.G. of ATS and NIA for perusal and necessary action.

VII) The victims / injured are entitled to get compensation under the victim's compensation scheme. And hence, the prosecuting agency to prepare the separate victims / injured list and shall be forwarded to DLSA Mumbai, for compensation. After receipt of the said list, the DLSA, Mumbai to take the necessary steps to get the compensation to the victims. The compensatory amount of Rs. Two Lakh to each deceased family be paid and the amount of Rs.50,000/- to each injured be paid.

VIII) Judgement is dictated and pronounced in open court.

DISTRICT COURTS MAHARASHTRA
सत्यमेव जयते

ABHAY KAMALNAYAN LAHOTI

Digitally signed by ABHAY KAMALNAYAN LAHOTI
Date: 2025.08.01 17:40:18 +0530

Date: 31.07.2025

(A.K.LAHOTI)
Special Judge (C.R. 26)
(MCOCA/NIA/TADA/POTA),
City Civil and Sessions Court,
Gr. Mumbai.

Dictated on : Since 24.04.2025 to 31.07.2025.
Transcribed on : Since 24.04.2025 to 31.07.2025.
Signed on : 31.07.2025

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"		
UPLOAD DATE	**TIME**	**NAME OF STENOGRAPHER**
01.08.2025	**5.40 pm**	**Umesh G. Jadhav (Grade I)**

Name of the Judge	**HHJ SHRI A. K. LAHOTI (CR No.26)**
Date of Pronouncement of Judgment.	31.07.2025
Judgment signed by P.O on	31.07.2025
Judgment uploaded on	01.08.2025