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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CONFIRMATION CASE NO. 02 OF 2015

The State of Maharashtra	...Appellant
versus	
Kamal Ahmed Mohd. Vakil Ansari and others	...Respondents

**WITH
CRIMINAL APPEAL NO.71 OF 2019**

Mohammad Sajid Margub Ansari	...Appellant
versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPEAL NO.72 OF 2019**

Mohammad Majid Mohamad Shafi	...Appellant
versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPEAL NO.553 OF 2021**

Naveed Hussain Khan Rashed Hussain Khan	...Appellant
versus	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPEAL NO.554 OF 2021**

Mohd.Faisal Ataur Rahman Shaikh	...Appellant
versus	
The State of Maharashtra	...Respondent

WITH
CRIMINAL APPEAL NO.555 OF 2021

Suhail Mehmood Shaikh ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.556 OF 2021

Asif Khan Bashir Khan @ Junaid @ Abdulla ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.557 OF 2021

Ehtesham Qutubuddin Siddique ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.333 OF 2022

Shaikh Mohd. Ali Alam Shaikh ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.655 OF 2022

Zameer Ahmed Latifur Rehman Shaikh ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.1075 OF 2023

Muzzammil Aatur Rahman Shaikh ...Appellant

versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPEAL NO.1104 OF 2023

Tanveer Ahmed Mohd. Ibrahim Ansari ...Appellant

versus

The State of Maharashtra ...Respondent

Mr.Raja Thakare, Senior Advocate, with Mr.A.M.Chimalkar, SPP, with Mr.Siddharth Jagushte, Mr.Akash Kavade, Ms.Aishwarya Sharma, Ms.Drushti Gala, Mr.Tushar C.Nirbhavane i/by Smt.M.M.Deshmukh, APP, Smt.G.P.Mulekar, APP, Smt.R.S.Tendulkar, APP, Mr.A.D.Kamkhedkar, APP, Mr.P.H.Gaikwad and Mr.A.R.Metkari, APP, for State.

Dr.Yug Mohit Chaudhari with Ms.Payoshi Roy, Mr.Hasan Nizami, Mr.Anush Shetty, Mr.Siddharth Sharma and Dashrath Gaikwad for Respondents.

Ms.Nitya Ramakrishnan, Senior Advocate, with Ms.Stuti Rai i/by Mr.Ansar Tamboli, Advocate for Respondent nos.2 and 12.

S.Nagamuthu, Senior Advocate, with Ms.Payoshi Roy, Mr.Siddhartha Sharma for Respondent nos.3 and 6.

Dr.S.Murlidhar, Senior Advocate, with Mrs.Ninni Susan Thomas, Mr.Maitreya Subramaniam for Respondent nos.9 and 11 i/by Mr.Ansar Tamboli for Respondent nos.2,8,11 and 12.

Mr.Gaurav Bhawnani for Respondent Nos. 3 and 10.

Ms.Hetali Sheth for Respondent no.4.

Mr.Khan Ishrat Azar Ali for Respondent nos.5 and 7.

Mr.Aditya Mehta for Respondent Nos.6 and 13.

Accused/Appellants through V.C.

CORAM : ANIL S. KILOR AND
SHYAM C. CHANDAK, JJ

DATE OF RESERVING THE JUDGMENT : 31/01/2025

DATE OF PRONOUNCING THE JUDGMENT : 21/07/2025

JUDGMENT : [PER ANIL S. KILOR, J.]

Punishing the actual perpetrator of a crime is a concrete and essential step toward curbing criminal activities, upholding the rule of law, and ensuring the safety and security of citizens. But creating a false appearance of having solved a case by presenting that the accused have been brought to justice gives a misleading sense of resolution. This deceptive closure undermines public trust and falsely reassures society, while in reality, the true threat remains at large.

Essentially, this is what the case at hand conveys.

FACTUAL MATRIX

1. On 11th July 2006, seven bomb blasts had taken place in the first class compartments of seven local trains, in Mumbai, between 18.23hrs to 18.29hrs. In the said blasts, 187 people had died and around 824 people got injured. Thereupon, the seven crimes in different police stations were registered, and later on, all were clubbed together and investigated by the Anti Terrorism Squad (ATS). The ATS revealed that the thirteen accused, who were tried along with fifteen wanted accused and two deceased accused, are involved in the crime. Accordingly, the chargesheet came to be filed and a trial was conducted vide MCOC SPECIAL CASE NO. 21/2006 by the Special Court No. 1 of the Special judge under Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA') and the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act'), at Mumbai. The accused, having committed the said crime, have been convicted vide Judgment and Order dated 30/09/2015 as under: -

A.1 - Kamal Ansari

- i. Sec. 302 r/w 120-B IPC - Sentenced to **death** and pay a fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- ii. Sec. 307 r/w 120-B IPC - Sentenced imprisonment for life.
- iii. Sec. 326 r/w 120-B IPC - sentenced to imprisonment for life and fine of Rs. 20000/- (in default to suffer simple imprisonment for 2 months)
- iv. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- v. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- vi. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 325 r/w 120-B IPC - Sentenced to imprisonment for 7 years and fine of 10,000/- (in default to suffer simple imprisonment for 1 month)
- viii. Sec. 324 r/w 120-B IPC - Sentenced to rigorous imprisonment for 3 years and fine of Rs. 10,000 (in default to suffer rigorous imprisonment for 1 month)
- ix. Sec. 3(b) (Explosive Substances Act, 1908) - Sentenced to death and fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- x. Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years
- xi. Sec. 16 (UAPA, 1967) - Sentenced to death and fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- xii. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- xiii. Sec. 3(1)(i) MCOCA,1999 - Sentenced to death and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- xiv. Sec. 3(1)(ii) & 3(2) MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)

- xv. Sec. 3 (4) MCOCA,1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
 - xvi. Sec. 152 (Railways Act, 1989) - Sentenced to imprisonment for life.
 - xvii. Sec. 151(1) and 153 (Railway Act, 1989) - Sentenced to imprisonment for 5 years on each count.
 - xviii. Sec. 3 (2) (e) of Prevention of Damage to Public Property Act, 1984 - Sentenced to imprisonment for 5 years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- (Acquitted for the charges u/s 19 and 40 of UAPA, 1967)

A.2 - Tanveer Ansari

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- iv. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- vi. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- viii. Sec. 3(1)(ii) & 3(2) of MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)

- ix. Sec. 3 (4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- x. Sec. 9B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years
(Acquitted for charge under 124A of IPC)

A.3 - Mohd. Faisal Shaikh

- i. Sec. 302 r/w 120-B IPC - Sentenced to death and pay a fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- ii. Sec. 307 r/w 120-B IPC - Sentenced imprisonment for life.
- iii. Sec. 326 r/w 120-B IPC - Sentenced to imprisonment for life and fine of Rs. 20000/- (in default to suffer simple imprisonment for 2 months)
- iv. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- v. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- vi. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 201 IPC - Sentenced to imprisonment for 7 years and fine of Rs. 10,000/- (in default to suffer imprisonment for one (1) month)
- viii. Sec. 325 r/w 120-B IPC - Sentenced to imprisonment for 7 years and fine of 10,000/- (in default to suffer simple imprisonment for 1 month)
- ix. Sec. 324 r/w 120-B IPC - Sentenced to rigorous imprisonment for 3 years and fine of Rs. 10,000 (in default to suffer rigorous imprisonment for 1 month)
- x. Sec. 3(b) (Explosive Substances Act, 1908) - Sentenced to death and fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- xi. Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908 - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- xii. Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years

- xiii. Sec. 16 (UAPA Act, 1967) - Sentenced to death and fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- xiv. Sec. 19 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- xv. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- xvi. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- xvii. Sec. 3(1)(i) MCOCA, 1999 - Sentenced to death and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- xviii. Sec. 3(1)(ii) & 3(2) MCOCA, 1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- xix. Sec. 3(4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- xx. Sec. 3(5) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 2,00,000/- (in default to suffer simple imprisonment for 9 months)
- xxi. Sec. 152 (Railways Act, 1989) - Sentenced to imprisonment for life.
- xxii. Sec. 151 (1) and 153 (Railway Act, 1989) - Sentenced to imprisonment for 5 years on each count.
- xxiii. Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984) - Sentenced to imprisonment for 5 years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)

(Acquitted for charges under 124-A IPC, Sec. 40 UAPA, 1967 and Sec. 12 (1) (c) of Passport Act, 1967)

A.4 - Ehtesham Siddique

- i. Sec. 302 r/w 120-B IPC - Sentenced to death and pay a fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- ii. Sec. 307 r/w 120-B IPC - Sentenced imprisonment for life.

- iii. Sec. 326 r/w 120-B IPC - Sentenced to imprisonment for life and fine of Rs. 20000/- (in default to suffer simple imprisonment for 2 months)
- iv. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- v. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- vi. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 325 r/w 120-B IPC - Sentenced to imprisonment for 7 years and fine of 10,000/- (in default to suffer simple imprisonment for 1 month)
- viii. Sec. 324 r/w 120-B IPC - Sentenced to rigorous imprisonment for 3 years and fine of Rs. 10,000 (in default to suffer rigorous imprisonment for 1 month)
- ix. Sec. 3(b) (Explosive Substances Act, 1908) - Sentenced to death and fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- x. Sec. 16 (UAPA Act, 1967) - Sentenced to death and fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- xi. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- xii. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- xiii. Sec. 3(1)(i) MCOCA,1999 - Sentenced to death and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- xiv. Sec. 3(1)(ii) & 3(2) MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- xv. Sec. 3(4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- xvi. Sec. 152 (Railways Act, 1989) - Sentenced to imprisonment for life.

- xvii. Sec. 151 (1) and 153 (Railway Act, 1989) - Sentenced to imprisonment for 5 years on each count.
 - xviii. Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984) - Sentenced to imprisonment for 5 years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
 - xix. Sec. 9-B(2) (Explosives Act, 1884) - Sentenced to imprisonment for 3 years.
- (Acquitted for charges under section 124-A IPC, Sec. 17 and 19 of UAPA, 1967)

A.5 – Mohd. Majid

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- vi. Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- vii. Sec. 3(1)(ii) & 3(2) MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- viii. Sec. 3 (4) MCOCA,1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)

(Acquitted for charges under section 19 of UAPA , 1967)

A.6 - Shaikh Mohd. Ali Alam Shaikh

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- vi. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- viii. Sec. 3(1)(ii) & 3(2) MCOCA,1999- Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- ix. Sec. 3 (4) MCOCA,1999- Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- x. Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908 - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- xi. Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years

(Acquitted for charges under section 124-A IPC, Sec. 40 UAPA, 1967 and 12 (1) (c) of Passport Act, 1967.

A.7 - Sajid Ansari

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)

- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- v. Sec. 201 IPC - Sentenced to imprisonment for 7 years and fine of Rs. 10,000/- (in default to suffer imprisonment for one (1) month)
- vi. Sec. 20 (UAPA, 1967)- Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- vii. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- viii. Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999- Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- ix. Sec. 3(1)(ii) & 3(2) MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- x. Sec. 3 (4) MCOCA,1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- xi. Sec. 6 r/w 4(ii) Explosive Substances Act, 1908 - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)

(Acquitted for charges under section 124-A IPC, Sec. 40 and 19 of UAPA, 1967)

A.9 - Muzzammil Shaikh

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)

- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
 - iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
 - v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
 - vi. Sec. 10 (a) (i) (UAPA, 1967)- Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
 - vii. Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
 - viii. Sec. 3(1)(ii) & 3(2) MCOCA,1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
 - ix. Sec. 3(4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- (Acquitted for charges under section 124-A IPC)

A.10 - Suhail Shaikh

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)

- vi. Sec. 10 (a) (i) (UAPA, 1967)- Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- viii. Sec. 3(1)(ii) & 3(2) MCOCA, 1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- ix. Sec. 3 (4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)

(Acquitted for charges under section 124-A IPC)

A.11 - Zameer Shaikh

- i. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- ii. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- iii. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- iv. Sec. 120-B IPC r/w 16 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- v. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- vi. Sec. 10 (a) (i) (UAPA, 1967)- Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999 - Sentenced to imprisonment for life and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- viii. Sec. 3(1)(ii) & 3(2) MCOCA, 1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)

- ix. Sec. 3 (4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)

(Acquitted for charges under section 124-A IPC)

A.12 - Naveed Khan

- i. Sec. 302 r/w 120-B IPC - Sentenced to death and pay a fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- ii. Sec. 307 r/w 120-B IPC - Sentenced imprisonment for life.
- iii. Sec. 326 r/w 120-B IPC - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- iv. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- v. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- vi. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 325 r/w 120-B IPC - Sentenced to imprisonment for 7 years and fine of 10,000/- (in default to suffer simple imprisonment for 1 month)
- viii. Sec. 324 r/w 120-B IPC - Sentenced to rigorous imprisonment for 3 years and fine of Rs. 10,000 (in default to suffer rigorous imprisonment for 1 month)
- ix. Sec. 3(b) (Explosive Substances Act, 1908) - Sentenced to death and fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- x. Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years
- xi. Sec. 16 (UAPA Act, 1967) - Sentenced to death and fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- xii. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)

- xiii. Sec. 3(1)(i) MCOCA, 1999 - Sentenced to death and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- xiv. Sec. 3(1)(ii) & 3(2) MCOCA, 1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- xv. Sec. 3(4) MCOCA, 1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- xvi. Sec. 152 (Railways Act, 1989) - Sentenced to imprisonment for life.
- xvii. Sec. 151 (1) and 153 (Railway Act, 1989) - Sentenced to imprisonment for 5 years on each count.
- xviii. Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984) - Sentenced to imprisonment for 5 years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)

A.13 - Asif Khan

- i. Sec. 302 r/w 120-B IPC - Sentenced to death and pay a fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- ii. Sec. 307 r/w 120-B IPC - Sentenced imprisonment for life.
- iii. Sec. 326 r/w 120-B IPC - Sentenced to imprisonment for life and fine of Rs. 20000/- (in default to suffer simple imprisonment for 2 months)
- iv. Sec. 120-B r/w 121-A and 122 IPC - Sentenced to imprisonment for life on each count and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- v. Sec. 120-B r/w 123 IPC - Sentenced to imprisonment for 10 years and fine of Rs. 15,000/- (in default to suffer simple imprisonment for 1 and half months)
- vi. Sec. 120-B of IPC r/w 13(1) UAPA, 1967 - Sentenced to imprisonment for 7 Years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- vii. Sec. 201 IPC - Sentenced to imprisonment for 7 years and fine of Rs. 10,000/- (in default to suffer imprisonment for one (1) month)
- viii. Sec. 325 r/w 120-B IPC - Sentenced to imprisonment for 7 years and fine of 10,000/- (in default to suffer simple imprisonment for 1 month)

- ix. Sec. 324 r/w 120-B IPC - Sentenced to rigorous imprisonment for 3 years and fine of Rs. 10,000 (in default to suffer rigorous imprisonment for 1 month)
- x. Sec. 3(b) (Explosive Substances Act, 1908) - Sentenced to death and fine of Rs. 30000/- (in default to suffer simple imprisonment for 3 months)
- xi. Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908 - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer imprisonment for 2 months)
- xii. Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years
- xiii. Sec. 16 (UAPA Act, 1967) - Sentenced to death and fine of Rs. 30,000/- (in default to suffer simple imprisonment for 3 months)
- xiv. Sec. 20 (UAPA, 1967) - Sentenced to imprisonment for life and fine of Rs. 20,000/- (in default to suffer simple imprisonment for 2 months)
- xv. Sec. 10 (a) (i) (UAPA, 1967) - Sentenced to imprisonment for 2 years and fine Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)
- xvi. Sec. 3(1)(i) MCOCA,1999 - Sentenced to death and fine Rs. 1,00,000/- (in default to suffer simple imprisonment for 6 months)
- xvii. Sec. 3(1)(ii) & 3(2) MCOCA, 1999 - Sentenced on each count to suffer imprisonment for life and to pay a fine of Rs. 50,000/- (in default to suffer simple imprisonment for one year)
- xviii. Sec. 3 (4) MCOCA,1999 - Sentenced to imprisonment for life and fine of Rs. 5,00,000/- (in default to suffer simple imprisonment for 1 year)
- xix. Sec. 152 (Railways Act, 1989) - Sentenced to imprisonment for life.
- xx. Sec. 151 (1) and 153 (Railway Act, 1989) - Sentenced to imprisonment for 5 years on each count.
- xxi. Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984) - Sentenced to imprisonment for 5 years and fine of Rs. 10,000/- (in default to suffer simple imprisonment for 1 month)

(Acquitted for charges under section 124-A IPC and 19 of UAPA, 1967)

2. It may be noted that in this case there are fifteen wanted accused.

3. During the pendency of the confirmation case, the accused no. 1 died.

4. The Special Court has granted acquittal to A.8 – Abdul Wahid Din Mohammad Shaikh.

5. It is, thus, it is evident that along with accused no. 1, A.3, 4, 12, and 13 were sentenced to death for the offences punishable u/s 302 r/w 120-B of IPC, Section 3b of Explosive Substances Act, 1908, section 16 of Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as “UAPA”) and under section 3(1)(i) MCOC Act, 1999.

6. Hence, the learned Special Court referred the proceeding, Confirmation Case No. 2 of 2015, in terms of Section 366(1) of Cr.PC.

APPEALS

7. Except accused no. 1, who died during the pendency of this case, all other accused persons have filed respective criminal appeals.

8. The State has not filed appeal against the acquittal of A.8 Abdul Wahid

9. Hence, with the confirmation case no. 02/2015, there are following appeals which are taken for hearing and to decide the same. The chart given hereunder is in respect of the respective appeals filed by the A.2 to 7 and 9 to 13:

CHART NO. 1

Sr. No.	Accused No.	Name of the Accused	Cri. Appeal No.
1.	2	Tanveer Ahmed Mohd. Ibrahim Ansari	1104 of 2023
2.	3	Mohd. Faisal Aatur Rahman Shaikh	554 of 2021
3.	4	Ehtesham Qutubuddin Siddique	557 of 2021
4.	5	Mohd. Majid Mohd Shafi	72 of 2019
5.	6	Shaikh Mohd. Ali Alim Shaikh	333 of 2022
6.	7	Mohammad Sajid Margub Ansari	71 of 2019
7.	9	Muzzammil Aatur Rahman Shaikh	1075 of 2023
8.	10	Suhail Mehmood Shaikh	555 of 2021
9.	11	Zameer Ahmed Latifur Rehman Shaikh	655 of 2022
10.	12	Naveed Hussain Khan Rasheed Hussain	553 of 2021
11.	13	Asif Khan Bashir Khan @ Juned @ Abdulla	556 of 2021

10. This Court, vide order dated 16/07/2024, allowed the accused to remain present during the hearing through video conferencing in view of the judgments in the cases of *Kalyan Chandra Sarkar ..vs.. Rajesh Ranjan Alias Pappu Yadav & Another*, reported in (2005) 3 SCC 284 and *State of Maharashtra ..vs.. Dr. Praful B. Desai*, reported in (2003) 4 SCC 601.

11. Total thirteen accused along with 15 wanted accused and two deceased accused, i.e., (1)Salim, Pakistani National and (2)Abu Osama @ Abu Umed @ Mohd. Ali @ Mohammad Chinag, Pakistani National were chargesheeted for having caused the bomb explosions and thereby having committed the murders of 187 persons, for having attempted to

cause the death of some persons, for having voluntarily caused hurt, grievous hurt, mischief, mischief by fire or explosive substance, for having conspired to commit these offences, for having conspired to wage war or attempt to wage war or abet waging war against the Government of India, for having collected men, arms or ammunition or otherwise made preparations with the intention of waging war against the Government of India, for having concealed the existence of a design to wage war against the Government of India, for having committed an act of sedition, and for having caused disappearance of evidence of offence, which are the offences punishable under sections 302, 307, 324, 325, 326, 427, 436, 120-B, 121-A, 122, 123, 124-A, 201 and 212 of the Indian Penal Code, 1860 (the IPC).

12. They are also chargesheeted for having committed the above offences as an organised crime of promoting insurgency, for having conspired, advocated, abetted and knowingly facilitated the commission of the organised crime, for having harbored or concealed any member of the organised crime syndicate, for being members of an organised crime syndicate and for holding property derived or obtained from the commission of an organised crime or which has been acquired through the organised crime syndicate's funds, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3(1)(i), 3(2), 3(3), 3(4) and 3(5) of the Maharashtra Control of Organised Crime Act, 1999 (the MCOC Act).

13. They are also chargesheeted for being members of an association declared as an unlawful association under section 3 of the Unlawful Activities (Prevention) Act, 1967 (the UA(P)A), for committing unlawful activities, for committing terrorist act, for raising funds for terrorist act, for conspiring to commit the terrorist act, for harbouring

terrorists, for being members of a terrorist gang or terrorist organisation and for raising funds for terrorist organisation, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 10, 13, 16, 17, 18, 19, 20 and 40 of the said Act.

14. They are also chargesheeted for having possessed, transported and used explosives, alongwith the fifteen wanted accused and two deceased accused, and thereby having contravened the notification issued by the Central Government under section 6 of the Explosives Act, 1884 and having committed an offence punishable under section 9B of the said Act.

15. They are also chargesheeted for having conspired to cause explosions of a nature likely to endanger life or to cause serious injury to property by means of explosive substance, for being in possession of explosive substance for unlawful object and for having procured, counseled, aided, abetted or become accessory to the commission of offences under the Explosive Substances Act, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908. They are also chargesheeted for having committed mischief and causing damage to the public property of the Western Railways, alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 3, 4 of the Prevention of Damage to Public Property Act, 1984.

16. They are also chargesheeted for having intended to cause damage and destruction of the public property and having caused death, having endangered the safety of persons travelling in local trains,

alongwith the fifteen wanted accused and two deceased accused, which are the offences punishable under sections 151 to 154 of the Railways Act, 1989.

17. Two accused are chargesheeted for having failed to produce their passports and travel documents and thereby having committed the offences punishable under section 12(1) (c) of the Passports Act, 1967.

The case of the prosecution is as follows: -

18. Mumbai is known as the financial capital of India due to its role as the hub of commerce, banking, and industry. It is home to the Bombay Stock Exchange (BSE), Reserve Bank of India (RBI), major national and international banks, financial institutions, and corporate headquarters. The city generates a significant portion of India's GDP and attracts a large workforce from across the country. The **Mumbai local trains** are rightly called the *lifeline of the city*. They transport millions of passengers daily, connecting distant suburbs with the city center. Operating across three major lines – Western, Central, and Harbour – the local train network is vital for the daily commute of millions of Mumbaikars, supporting the city's fast-paced economic and social life.

19. As noted by the learned Trial Court in the impugned judgment, millions of commuters travel each day southwards in the morning and northwards in the evening in the western railway suburban trains between Churchgate and Virar during peak hours. These commuters comprise of executives, businessmen, students and persons in the employment at various levels in the Government as well as private

establishments. Hence, the suburban trains are aptly called as essential services and the lifeline of the Mumbai metropolis. It is alleged that this lifeline came to a grinding halt on the evening of 11th July, 2006 when seven high intensity, highly sophisticated explosive devices ripped through the first-class gent's compartment of seven suburban trains that were headed towards the distant western/northern suburbs. The blasts at Mahim and Borivali took place when the trains were near the stations, while the remaining five blasts took place in moving trains and away from platforms. The explosions were so powerful that they ripped through the double layered steel roofs and sides of each of the seven compartments, throwing bodies of the injured and dead passengers out of the compartments, and, at Mahim and Borivali Railway Stations, apart from the passengers in the compartments, the explosions even killed and injured passengers waiting on the platform and those travelling from the trains proceeding to the opposite direction. The roof of the platform no.3 of Mahim station was blown off by the explosion. Some passengers from the Borivali bound train that witnessed an explosion near Mahim station, jumped out of the train and got killed under a local train proceeding in the opposite direction. The prosecution states that from the record, three blasts simultaneously took place at 1823 hours near Mahim, Bandra and Mira Road stations, while the last took place at 1828 hours near Borivali station. This suggests that timer devices were used to cause the blasts simultaneously and at specific places and were aimed at large scale devastation of life and property and widespread panic and chaos with an intention to cripple the economy. The public transport was extensively damaged and disrupted with a view to overawe the government. The entire western railway, suburban as well as main line, came to a grinding halt. The commuters poured on the western express highway, thereby disrupting

the north as well as south bound vehicular traffic and causing hindrance to the rescue operations. It was reported that 187 persons lost their lives in the explosions and 817 had sustained injuries of various gravity and railway property worth Rs. 85,61,039/- was reportedly damaged till the time of filing of the chargesheet. One of the unclaimed dead was identified as a Pakistani national involved in the planting of an explosive laden bag in one of the trains.

20. The individual crimes of bomb blasts were initially registered separately at the respective railway police stations as per the table below: -

CHART NO. 2

(Reproduced From The Trial Court Judgment)

Sr. No.	Police Station C.R. No.	Time of Blast (FIR)	Place of Offence (Blast)	Train No.	Affected Coach	Persons	
						Killed	Injured
1	Mumbai Central Railway 77/06	1824 hrs.	Matunga	645 DN Virar Fast	864 A	28	127
2	Mumbai Central Railway 78/06	1823 hrs.	Mahim	641 DN Borivali Fast	0528 A	43	096
3	Bandra Railway 86/06	1823 hrs.	Bandra	637 DN Borivali	8003 A	22	107
4	Bandra Railway 87/06	1825 hrs.	Khar Subway	635 DN Borivali Slow	849 A	09	102
5	Andheri Railway 41/06	1824 hrs.	Jogeshwari	619 DN Borivali Slow	0634A	28	115
6	Borivali Railway 156/06	1828 hrs.	Borivali	621 DN Virar Fast	935A	26	153
7	Vasai Road Railway 59/06	1823 hrs.	Mira Road	607 DN Virar Fast	846A	31	122

21. Initially, the investigation was being handled by different investigating officers from seven different police stations where the crimes were registered. Later, Considering the sensitivity of the matter,

the DGP Maharashtra State, deemed it fit to transfer the investigation of all the cases to the ATS, Maharashtra on 12th July, 2006 itself. As the investigation was already in progress by the respective railway police, they were directed to make compilation of the statements and documents and handover the charge of all the papers to ATS, and the ATS effectively got all papers of investigation on 20th July, 2006. Thereafter, different police officers were entrusted with the investigation of seven different crimes except PW-176 PI Rathod, who continued with the investigation of Cr. No. 77 of 2006. Although, all the 7 cases were transferred to ATS, the investigation in respect of each case was independently conducted by each of the aforementioned investigating officer and till 12th of August 2006, following accused were arrested, namely Dr. Tanveer (A-2) on 23rd July, 2006, Zameer Ahmed Latifur Rehman (A-11) on 25th July, 2006, Suhail Mohammad Sheikh (A-10) on 25th July, 2006, Faisal Ataur Rehman Sheikh (A-3) on 27th July, 2006, Muzzamil Ataur Rehman Sheikh (A-9) on 27th July, 2006 and Ehtesham Qutubuddin Siddique (A-4) on 12th August, 2006.

22. During the course of their investigation, it occurred to PW-174 PI Khandekar, who was analyzing the evidence collected and proceeding with investigating CR. No. 156 of 2006, that the then arrested accused (A2 and A4) and one wanted accused have been associated with the banned organization SIMI and that the present bomb blast appears to be a work of a banned organization, namely SIMI, with the intention to promote insurgency and commit terrorist acts. Therefore, he gathered material in respect of wanted accused Asif Khan Bashir Khan (A-13), when it transpired that there are already 2 charge sheets for the offences under 153A (1) and Explosives Act in

Jalgaon (Maharashtra) and hence he came to the conclusion that the cases of Railway Bomb Blast in Mumbai were the handy work of the banned organization, SIMI. It was in these circumstances that the provisions of the UAPA came to be invoked to the said case on 17th September 2006 and also the investigating officer brought it to the notice of chief-investigating officer that the case was a fit one for also invoking the provisions of MCOCA and a proposal to that effect was submitted to the Competent Authority through the DCP. The said proposal was submitted on 18th September 2006. Further, on 24th September 2006, on receiving the prior approval from the officer of the rank of DIG, the provisions of MCOCA were invoked to CR No. 156/2006 of Borivali Railway Police Station, which was being investigated by PI Khandekar (PW-174) and after the invocation of MCOCA the investigation was transferred to the officer of the Rank of ACP i.e. PW 186 i.e. ACP Sadashiv Patil. During the course of further investigation of the said crime, further arrests were made as under; 29/09/06 Mohammed Majid Mohammed Shafi (A-5), 29/09/06 Shaikh Mohammed Alam Shaikh (A-6), 29/09/06 Mohammed Sajid Margub Ansari (A-7), 29/09/06 Abdul Wahiuddin Mohammed Shaikh (A-8), 30/09/06 Naveed Hussain Khan (A-12), 03/10/06 Asif Khan Bashir Khan (A-13).

23. It was, thus, revealed that causing seven powerful serial bomb blasts almost within a span of 6 minutes, resulting in the death of several people and causing grievous injuries to several people, was nothing more than a single larger conspiracy of the members of the Organized Crime Syndicate, and thus all seven cases were clubbed together on 13/10/2006, by registering ATS police station Cr. No. 5/2006, to which all the sections mentioned below were applied, viz.

302, 307, 326, 325, 324, 427, 436, 120(B), 121, 122, 123, 124A, 201, 212 of IPC r/w 3(1)(i), 3(2), 3(3), 3(4), 3(5) of MCOCA r/w section 10, 13, 16, 17, 18, 19, 20, 40 of UAPA, r/w 6 and 9B of the Explosives Act r/w 3, 4, 5, 6 of Explosive Substances Act 1908 r/w 3, 4 of Prevention of Damage to Public Property Act 1984 r/w 151, 152, 153 and 154 of the Indian Railways Act r/w 12(1)(c) of Passport Act.

24. On completion of the investigation, the investigating officer ACP Patil, PW 186, sent a proposal for obtaining sanction u/s 23(2) MCOCA, which was granted by the CP Mumbai (PW185), on 25/11/06, and finally the chargesheet came to be filed before the MCOCA Special Court on 30th November 2006, which was registered as MCOCA 21/2006. Thereafter, chargesheet was filed against 13 arrested accused persons and 15 wanted accused, most of which were Pakistani. It is the case of the prosecution that 2 of the Pakistani Nationals viz. Salim and Mohammed Ali @ Abu Umed @ Abu Osama died. One died in the explosion itself and other one was encountered at Antop Hill.

INVOLVEMENT OF ACCUSED INCLUDING WANTED ACCUSED *(Reproduced from the Trial Court Judgment)*

25. It is alleged by the prosecution that it transpired during the course of investigation that wanted accused Azam Cheema @ Babaji, a Pakistani national, the arrested accused A3, A13 and others, conspired sometime in the year 1999 and thereafter, both within and outside India, to do and cause to be done illegal acts, i.e., to wage war against the Government of India, to collect men and explosives with the intention of waging war against the Government of India, to overawe

by means of criminal force the Government of Maharashtra and Government of India, to terrorise the people in general and railway commuters in particular by indulging in wanton killings and destruction of property through bomb explosions in local trains, thereby disrupting public transport system in Mumbai, the economic capital of India, to create instability in the State of Maharashtra and in India by the aforesaid subversive activity, to shake and reduce the faith of the common citizen in its elected democratic government by large scale violence, destruction of lives and property and thereby destabilize the system of Government established by law, to organize the spread of secessionist and rebellious thoughts through covert and secret meetings with like minded Muslim youths, to exploit the communal sentiments of Muslims and to provoke them in the name of religion in order to resort to terrorist acts, to collect money from across the border and by sale of provocative SIMI literature in India for achieving the objective of the criminal conspiracy, to organize training camps in Pakistan in order to impart training to Indian Muslim youths in the handling and use of arms and explosives for causing the explosions, to establish training camps in India too and organise training in the handling of arms and explosives to like minded Indian Muslim youths locally, to facilitate infiltration of Pakistani militants from across the Indian border along with explosives for causing the explosions, to store and conceal such explosives at such safe places alongwith the Pakistani wanted accused for achieving the objective of criminal conspiracy, to do and commit any other illegal acts as were necessary for achieving the aforesaid objective of criminal conspiracy, to continue unlawful activities of banned organisations, i.e., SIMI and L-e-T, with an intention to promote enmity between different groups on grounds of religion prejudicial to the maintenance of harmony, incite individuals

or group of individuals to cause disaffection against India or the Government of India or encourage or aid persons to undertake any unlawful activity like bomb explosions or of which the members undertake such activities and to continue activities of organised crime syndicate, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, conspire, advocate, abet or knowingly facilitate the commission of an organised crime by use of violence or other unlawful means and promote insurgency by causing explosions in local trains in order to cause large scale loss to life and railway property.

26. It is alleged that in pursuance of the aforesaid conspiracy, during one such meeting held in the month of May, 2006 in the house of the A3 at Bandra (W), the plan to cause explosions in western railway local trains was finalised and the co-conspirators were assigned specific responsibilities. As a part of the conspiracy, wanted accused Azam Cheema took the responsibility of sending RDX and Pakistan based terrorists, including those who would be experts in assembling the explosive devices. As a part of the conspiracy, the A5 of Kolkata and the A1 from Bihar were entrusted the responsibility of bringing Pakistani terrorists into India through Indo-Bangladesh and Indo-Nepal borders respectively. It was also decided to assemble explosive devices in the house of A6 in Govandi, Shivajinagar, Mumbai. Co-conspirator A13 was entrusted with the responsibility of procuring rexene bags, utensils, ammonium nitrate/nitrite, detonators, etc., and make arrangements to send them to the house of the A6 at Govandi, Shivajinagar, Mumbai. The A7 was entrusted with the responsibility of procuring timer electric circuitry and other relevant devices and keep it ready for the 'D' day.

27. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of conspiracy, in the month of May, 2006, the A5, an Indian national and residing in Kolkata, made arrangements and ensured the infiltration of wanted accused and Pakistani nationals, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan into India through Bangladesh border. These accused persons traveled from Kolkata to Mumbai by train. Similarly, in the month of May, 2006, wanted accused, viz., Salim, Sohail Shaikh, Abdul Razak and Abu Umed illegally crossed over from Pakistan into India from Kutch border in Gujarat. Accused persons, viz., Salim and Abu Umed (both dead) are Pakistani nationals, while Abdul Razzak is a resident of Hyderabad, Andhra Pradesh and Sohail Shaikh is a resident of Pune, but now both are learnt to be settled in Pakistan. As a part of the same conspiracy, the A1 made arrangements for and illegally escorted wanted accused Pakistani nationals, viz., Aslam and Hafizullah into India through Nepal border.

28. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of conspiracy, wanted accused, Pakistani national Ehsanullah brought RDX with him, which was used for causing explosions in Mumbai on 11/07/06.

29. It is alleged that in pursuance of the aforesaid conspiracy, the above mentioned wanted accused illegally crossed over into India and came to Mumbai. The accused who crossed over from Bangladesh border were received by the A13 and were harbored in Flat no.304, Amrapali Apartments, Naya Nagar, Mira Road, Thane. Similarly, wanted accused, who crossed over into India from Kutch border, were provided safe house and harbored in flat no.24, Lucky Villa building,

Kant Wadi, Perry Cross Road, Bandra (W), Mumbai 400 050 belonging to the A3. The two wanted accused and Pakistani nationals, who illegally infiltrated into India through Nepal border and brought to Mumbai by the A1, were housed and harbored in Flat No.101, Saba Parveen Apartment, Pooja Nagar Road, Naya Nagar, Mira Road, Thane, belonging to the A7. It has also come on record that as a part of the same conspiracy, after the bomb blasts on 11/07/06, the A4 provided shelter and harbored wanted accused Pakistani nationals and co-conspirators by name Ammu Jaan, Sabir, Abu Bakr, Kasam Ali, Ehsanullah and Abu Hasan brought by the A5, at 202, B Wing, 2nd Floor, Moonlight Apartment, Opp. Kalsekar College, Kausa, Mumbra, Thane, rented by the A8.

30. It is alleged that, in pursuance of the aforesaid conspiracy, during the said period, A3, A2, A10, A11, A9 and A4 traveled in western railway local trains between Mumbai and Virar in order to make a reconnaissance of the target. The conspirators decided to cause bomb blasts in the evening of a working day so as to cause maximum damage to the lives and to the property and also to strike against a symbolic institution of governmental authority. The same was approved by the blast master-mind wanted accused Azam Chima, top commander of L-e-T, based in Bahawalpur, Pakistan. The act of causing bomb explosions was aimed at disturbing public peace and subverting the authority of government established by law under the constitutional framework of India. The above modus confirms to the professed ideology and agenda of L-e-T. The L-e-T has repeatedly claimed through its web sites that its main aim is to destroy the Indian Republic and annihilate Hinduism.

31. It is alleged that in pursuance of the said conspiracy, sometime in the month of April, 2006, A4, A2, A3 and A12 went to the house of the A6 and surveyed the surroundings.

32. It is alleged that in pursuance of the said conspiracy and in order to achieve objectives of the conspiracy, between 08/07/06 upto 10/07/06, accused persons, viz., A7, Sohail Shaikh, Pakistani national and one more unknown Pakistani national assembled seven explosive devices in the house of A.6, at Plot No.33, T. Line, Room No.2, Shivajinagar, Govandi, Mumbai 43, to plant the explosives in local trains. They were assisted, aided and abetted by various means by co-conspirators, viz., A6, A2, A4, A12, A13 and A3.

33. It is alleged that in pursuance of the conspiracy referred to above, wanted accused Azam Chima, a Pakistani national, and an office bearer of banned terrorist outfit L-e-T, organised training camp in Pakistan for training of Indian Muslim youths in the handling and use of arms and explosives. For the said purpose, he sent money to India through various persons and means for funding travel of Indian Muslim youths, desirous of undergoing the said training, to Pakistan. During the course of and after the said training, Azam Cheema incited the trained youths to avenge the alleged atrocities committed on Muslims in India, by causing wide spread insurgent and terrorist activities by exploding / bombing financial nerve centers and causing mass damage to life and property thereby crippling the economy of the nation.

34. It is alleged that between 1999 and 17/07/06 wanted accused Azam Chima, through wanted accused Mohammed Rizwan Dawrey

and Rahil Ataur Rehman Shaikh, sent money through various means to India to the A3 for publishing jihadi literature, promoting anti-India sentiments and bearing the expenditure for the travel of those Indian Muslim youths who were to be sent for training to Pakistan and escape of those who participated in the bombing operations with an intention to achieve the objectives of the larger conspiracy referred to above. After the A3 returned from Pakistan, after receiving training in March, 2002, he received Rs.1,80,000/- through hawala transaction from wanted accused Azam Chima. In November, 2003, Mohammed Rizwan Dawrey sent Rs.50,000/- to the A9. In February, 2004, wanted accused Mohammed Rizwan Dawrey and the A3 sent Rs.1,00,000/- through hawala. There is evidence on record that this amount was received by one Smt. Khalida Iqbal Shaikh and handed over to the A9. In the same year and after about 3 to 4 months, wanted accused Rizwan Mohammed Dawrey sent Saudi Riyals 14000 to the A3. In April, 2004, Rizwan Mohammed Dawrey and the A3 sent Saudi Riyals 40000 through hawala to Smt. Khalida Iqbal Shaikh, which was in turn collected by the A9. In the same month, A3 sent Rs.10,000/- to Smt. Khalida Iqbal Shaikh, which was collected by the A9. Sometime in July or August 2004, wanted accused Rizwan Mohammed Dawrey and the A3 sent Rs.20,000/- to Smt. Khalida Iqbal Shaikh for the A9. On 02/07/06 Mohammed Rizwan Dawrey again sent Saudi Riyals 15000 through one Hidaytulla Mehboob Sundke, PW-64, for the A3. Even after the explosions, Mohammed Rizwan Dawrey sent Saudi Riyals 11200 on 14/07/06 through one Afzal of Pune for handing over to Abdul Rehman Dawrey for onward handing over to the A3. Saudi Riyals 15000 mentioned above, were seized during the house search of the A3 at Bandra (W), Mumbai on 28/07/06. Saudi Riyals 11200 sent by wanted accused Rizwan Dawrey as stated above, could not be

delivered to the A3 as he was arrested prior to the delivery of the said amount. This amount was seized on 30/07/06 from Abdul Rehman Dawrey, PW-71, brother of wanted accused Mohammed Rizwan Dawrey. The amounts mentioned above and received by the conspirators, was used by the accused to send others to Pakistan for training and other purposes, to achieve the larger goal of conspiracy as well as for facilitate the escape of those who participated in the bombing operation. As a part of the conspiracy and with a view to gain respectability and status, some of the conspirators fraudulently obtained forged and fake degree/education certificates using which they got gainfully employed even in foreign countries, ostensibly for the purpose of raising funds for the organised crime syndicate and/or for the purpose of siphoning funds from foreign countries for achieving the larger goal of conspiracy.

35. It is alleged that in pursuance of the aforesaid criminal conspiracy, the A3, A2, A1, A9, A10, A11 and A6 went to Pakistan and received training in the handling of arms and explosives in the training camp run by wanted accused Azam Chima. The travel plans were elaborately planned by the conspirators in order to ensure that passports of the accused did not bear the arrival and departure stamps into and out of Pakistan. During the course of investigation, the A3, A9, A10, A11 and A2 have been found in possession of maps showing travel route from Tehran to Pakistan with details, i.e., names and/or phone numbers of persons who could be contacted for making their travel arrangements. Investigation disclosed that the accused persons were trained in the handling and use of arms and explosives. The trainees were repeatedly indoctrinated by their foreign trainers to avenge the alleged atrocities committed on Indian Muslims. The

feelings and sentiments of the accused trainees were exploited to the fullest and they were exhorted to cause wide spread destruction of life and property in India in order to cripple the Indian economy and attain by force and violence an object of a general public nature, i.e., cause bomb blasts, thereby striking directly against the authority of the government. That in pursuance of the aforesaid criminal conspiracy, the accused who underwent training in Pakistan were paid money and were further asked to persuade more Indian Muslim youths to go to Pakistan for undergoing the said training.

36. It is alleged that in pursuance of the aforesaid conspiracy, sometime in the year 2000, wanted accused Azam Cheema on behalf of banned organisation L-e-T alongwith wanted accused Hafiz Zuber and Abdul Rehman, recruited the A1. Accordingly A1 traveled to Pakistan on a fake Nepalese passport on an assumed name Kamal Ahmed Mohd. Munshi through Wagha border. This passport was prepared for the A1 by wanted accused Hafiz Zuber, an Indian national presently based in Nepal. One Khalid Saifulla asked the A1 to motivate and recruit alienated and marginalised Muslim youths. One Ibrahim Rayeen (suspected accused) of Nepal, provided money to the A1 with instructions to send more Muslim youths to undergo training in Pakistan. He accordingly sent his co-brother Anwar Ul Haque to Pakistan for undergoing training in the handling and use of arms and explosives.

37. It is alleged that in pursuance of the aforesaid criminal conspiracy, the A3 went to Pakistan for undergoing training in the handling and use of arms and explosives, firstly, on 01/10/01 and returned to India on 29/11/01 through Wagha border using Indian

passport bearing No. B-5403385 issued on 06/06/01 by RPO, Pune. During his second visit and in order to avoid detection, the A3 left Mumbai for Jeddah on 08/11/03 using the above passport. From Jeddah, he illegally entered Pakistan via Kisham Island, Iran, where he allegedly destroyed his Indian passport. During return, his mentors in Pakistan gave him a fake Pakistani passport on an assumed name Mohammed Akram, using which he returned to Jeddah. While in Saudi Arabia, he was arrested for not possessing a travel document and on 01/12/04 he was deported to New Delhi on an Emergency Certificate. During his both visits, the A3 received training in the handling and use of arms and explosives in a training camp of wanted accused Azam Chima. He also asked A3 to recruit Muslim youths for arms training in Pakistan and also to survey targets for terrorists attacks.

38. It is alleged that in pursuance of the aforesaid conspiracy, on return to India and using the money that he had received from wanted accused Azam Chima, the A3 incited A10 and sent him to Pakistan for undergoing training as stated above. The A10 traveled to Pakistan on 01/11/02 on Indian passport bearing No.E-1185233. In order to avoid detection of his Pakistan visit, the A10 traveled from Mumbai to Tehran on a ziyarat visa and from there infiltrated into Pakistan. A10 too underwent training in the training camp of wanted accused Azam Chima.

39. It is alleged that in pursuance of the aforesaid criminal conspiracy, A6 traveled to Pakistan on 01/02/03 using his Indian passport bearing No.E-1560453 issued by RPO, Mumbai on 13/02/02. He left Chatrapati Shivaji International Airport, Mumbai

and went to Dubai from where he traveled to Karachi and underwent training in the handling and use of arms and explosives.

40. It is alleged that in pursuance of the aforesaid conspiracy and while the A3 was still in Pakistan, he instructed his brother, i.e., the A9 to send some more Muslim youths to Pakistan for undergoing training. Accordingly, the A9 paid and arranged for the travel and training of the A2 in Pakistan. In order to avoid detection, the A2 went illegally to Pakistan via Iran from Chatrapati Shivaji International Airport, Mumbai. The A2 traveled on Indian passport bearing No. B-0099830 issued by RPO, Mumbai on 21/05/04 and underwent training in the training camp of wanted accused Azam Chima.

41. It is alleged that, as a part of the same conspiracy and as instructed by the A3, the A9 illegally traveled to Pakistan via Iran on 09/08/04. But. First he traveled from Mumbai to Tehran and then illegally crossed Iran border into Pakistan. He too underwent training in the militant training camp of wanted accused Azam Chima.

42. It is alleged that on return from training, the A2 induced the All to undergo training in Pakistan to achieve the larger objective of conspiracy. Accordingly, the A2 collected All's passport bearing no. A-1886227 issued by RPO, Mumbai on 12/09/96 and handed it over to the A9 who in turn got the same stamped with ziyarat visa for Iran. The A11 left Mumbai for Tehran on 04/04/05, from where he illegally crossed into Pakistan and received training in the training camp of wanted accused Azam Chima.

43. It is submitted by the investigating officer ACP Patil, PW-186, that members of Shiya sect of Muslim community visit Iran on ziyarat visa. This tour is necessarily for pilgrimage and for the visit of a holy place by name Mashad, where there is a tomb of the 8th religious leader, Imam Raza of Shiya sect. The persons who undertake this pilgrimage usually travel in groups with a proper operator. It is a known fact that members of the Sunni sect of Muslims do not believe in the teachings of Imam Raza and hence do not go to ziyarat pilgrimage to Iran. It is also a known fact that Sunnis are not granted a ziyarat visa to Iran. During visit to Mashad, all pilgrims get holy food known as 'Niyaz'. Before any pilgrim receives Niyaz, his passport is stamped accordingly on the page bearing ziyarat visa. However, A2, A9, A10 and All are all Sunnis. Though they traveled from India to Iran on a ziyarat visa, they did not visit Mashad, but instead crossed the Iran border and went to Pakistan and underwent training in the camp of wanted accused Azam Chima. Though the A2, A9, A10 and All traveled to Pakistan via Iran on a ziyarat visa, their visas are not stamped as required at Mashad. The absence of the stamps/seals on their ziyarat visa page are conclusive proof of the same. Against the regular practice, these accused persons also traveled individually instead of going in a group or with a tour operator.

44. It is submitted by the investigating officer ACP Patil, PW-186, that activities of the organisation Students Islamic Movement of India (SIMI) were banned in India with effect from 27/09/01 by declaring it as an unlawful association under section 3(1) of the UA(P)A. PSI Vijay Bharatrao Mandlik, (PW-145) (Ext.1591), was attached to Kurla Police Station as ASI in 2001. He went with his staff by the Pipeline Road in Kurla (W) on the orders of the Sr. PI and with the help of megaphone

they promulgated the ban by the Government and also pasted copies of the notification of the official gazette, Ext.1592, containing the ban order, at conspicuous places like beat chowkis, madarsa, sewage center of BMC, tahasil office, Pipe Road masjid, etc., and also pasted a copy on the office of the SIMI that was on the Pipe Road. It is alleged by the prosecution that though the SIMI was banned in the year 2001, A13, A3, A2, A4, A10, A11, A7, A8, A6, A9, wanted accused Rizwan Mohammed Dawrey and wanted accused Rahil Ataur Rehman Shaikh, continued to remain members of the said banned organisation and took part in the activities of 'Students Islamic Movement of India', which is a declared terrorist organisation under sections 2(1)(m) and 35 of the UA(P)A and thereby advocated, abetted, advised and incited the Indian Muslim youths against the policies of the Government of India, promoted enmity between different groups on grounds of religion by printing, publishing and circulating seditious, inflammatory and derogatory material and collected funds and subscriptions from others for the achievement of the larger goal of conspiracy. The A4 even distributed receipt books to others and by using the said receipt books, personally collected subscriptions for and on behalf of SIMI under assumed names. Similarly, wanted accused Azam Cheema and the other Pakistani nationals continued to remain members of the banned terrorist organisation 'Lashkar-e-Taiba' and continued to take part in the activities of L-e-T. They thereby advocated, abetted, advised and incited the Indian Muslim youths against the policies of the Government of India. For achieving their objectives, they funded the travel of selected Muslim youths to Pakistan, bore the expenditure for their training in the handling and use of arms and explosives, indoctrinated them in the name of religion and also supplied explosives like RDX. All this was done in order to prepare a group of youths,

Indian as well as Pakistani, to conspire against the Government or civil authorities and wage war by striking terror in the minds of the people or section of people by use of violence or force by causing large scale destruction of life and property in order to cripple the national economy through the disruption of the public transport system, which tantamounts to insurgency. The objective of the conspiracy was to continue unlawful activities within the State of Maharashtra and to overawe the Government by causing disruption of the mass public transport system and thereby undermine the authority of the Government. Mumbai, the economic capital and a soft target was apparently chosen for executing the conspiracy.

45. It is alleged that in pursuance of the aforesaid conspiracy, the said accused persons advocated, abetted, advised and incited the Indian Muslim youths and knowingly facilitated the commission of terrorist act, to wit, to cause bomb explosions in seven first-class compartments of western railway trains in Mumbai on 11/07/06. Accused persons, viz., A13, A3, A2, A4, A10, A11, A7, A8, A6, A9 and Rizwan Mohammed Dawrey and Rahil Ataur Rehman Shaikh continued to be members of 'Students Islamic Movement of India' and remained in contact with wanted accused Azam Chima, commander of L-e-T, both banned terrorist outfits, as declared by the Government of India in the schedule as laid down under section 2(1)(m) and 35 of UA(P)A.

46. It is alleged that the A13 is one of the key conspirators continuously indulging in committing terrorist acts and unlawful activities for and on behalf of SIMI, an organisation banned by the Government of India since 27/09/01. A case under section 153(1) (A) read with 34 of the IPC was registered at M.I.D.C. Police Station,

Jalgaon, Maharashtra vide C. R. No. 178 of 1999 against him in 1999. The Court had taken cognizance of the said case vide C. C. No. 219 of 2001. The A13 was declared as proclaimed offender on 08/03/02. While he was so absconding, another case was registered against him by the M. I. D. C. Police Station, Jalgaon, Maharashtra vide C. R. No. 103 of 2001 under sections 153A, 121, 121-A, 122, 123, 201, 506(II), 120B, 34 of the IPC read with sections 4(a) and 4(b) and 5 of the Explosive Substances Act. In the said case too, A13 evaded arrest and remained absconding till his arrest in this case. The six co-accused in the said case have since been convicted for various terms ranging from 3 years to 10 years vide S. C. No. 126 of 2002.

47. It is alleged that in pursuance of the aforesaid conspiracy, between February and May, 2006, arrested accused persons held several conspiratorial meetings in the house of the A3 at Bandra (W), Mumbai, near Shams Masjid, Mira Road, Dist. Thane and at 101, Saba Parveen Apartment, Pooja Nagar Road, Naya Nagar, Mira Road (E), Thane, i.e., house of the A7. The said meetings were attended by A13, A10, A3, A4, A2, A9, A11, A12, A6 and A7. In the said meetings it was decided to survey and select targets for causing large scale explosions.

48. It is alleged that in pursuance of the aforesaid conspiracy and in order to achieve the object of the conspiracy, wanted accused Azam Cheema asked the A3 during May, 2006 to identify likely targets to cause large scale damage and fear in the minds of general citizens. Accordingly the A3, A11 and A10 surveyed places like World Trade Centre, Mumbai Stock Exchange, Mahalaxmi Temple, Siddhi Vinayak Temple, local trains and some large shopping complexes. Except for the

local trains, the conspirators avoided the other targets as all the said places had tight security arrangements. The A3 informed the wanted accused Azam Cheema that local trains were crowded and soft targets and hence, suitable for causing explosions.

49. It is alleged that in pursuance of the said conspiracy and in order to achieve objectives of the conspiracy, on the evening of 10/07/06, accused persons, viz., A6, A3, A12 and Sohail Shaikh, Pakistani national and one unknown Pakistani national, transported seven rexene bags containing explosive devices from the house of the arrested accused A6, i.e., Plot No.33, T. Line, Room No.2, Shivajinagar, Govandi, Mumbai-43 to Flat No.24, Lucky Villa, Perry Cross Road, Kant Wadi, Bandra (W), Mumbai-50, i.e., the house of the A3 in his Maruti car bearing no.MH-01-V-9568 and one taxi.

50. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, on 11/07/06 between 1500 hours and 1630 hours arrested accused persons, viz., A4, A12, A13, A3 and Al and wanted accused Hafizullah, Aslam, Salim, Ammu Jaan, Abu Umed @ Abu Osama, Sabir and Abu Bakr traveled with the seven bags containing explosives devices from Flat No.24, Lucky Villa, Perry Cross Road, Kant Wadi, Bandra (W), Mumbai-50, i.e., the house of the A3, in different taxies to Churchgate Railway Station on western railways.

51. It is alleged that the Al alongwith wanted Pakistani accused Salim, Hafizullah and Aslam planted explosive device in bogie no. 864A, which blasted at Matunga Railway Station, for which C. R. No. 77 of 2006 was registered at Mumbai Central Railway Police Station. It

is alleged that the A12 alongwith wanted Pakistani accused Abu Umed @ Abu Osama planted explosive device in bogie no. 849A, which blasted in between Santacruz and Khar Railway Stations, for which C. R. No. 87 of 2006 was registered at Bandra Railway Police Station. It is alleged that the A3 alongwith wanted Pakistani accused Abu Bakr planted explosive device in bogie no. 0634A, which blasted at Jogeshwari Railway Station, for which C. R. No. 41 of 2006 was registered at Andheri Railway Police Station. It is alleged that the A13 alongwith wanted Pakistani accused Sabir planted explosive device in bogie no. 935A, which blasted at Borivali Railway Station, for which C. R. No. 156 of 2006 was registered at Borivali Railway Police Station. It is alleged that the A4 alongwith wanted Pakistani accused Ammu Jaan planted explosive device in bogie no. 846A, which blasted at Mira Road Railway Station, for which C. R. No. 59 of 2006 was registered at Vasai Road Railway Police Station. It is alleged that unidentified Indian and Pakistani accused planted explosive devices in bogies no. 528A and 8003A, which exploded at Mahim and Bandra Railway Stations, for which C. R. No. 78 of 2006 and 86 of 2006 were registered at Mumbai Central Railway Police Station and Bandra Railway Police Station respectively.

52. It is alleged that in pursuance of the said conspiracy, the arrested and wanted accused persons planted explosive devices in the first-class compartments of local trains with intent to cause or knowing that it is likely to cause damage or destruction to railway property, i.e., compartments of western railway local trains, station platforms, overbridges, overhead wires, electric poles, etc. The accused persons by causing explosions in running local trains, caused the deaths of 187 passengers and injuries of various gravity to 817 passengers and

generally endangered the safety of passengers traveling by local trains on 11/07/06.

53. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, the arrested and wanted accused procured explosives, detonators, electric circuits and other logistics for achieving the larger goal of conspiracy. During the course of investigation, the A1 came to be arrested on 20/07/06. At the time of his arrest about 500 grams of RDX, which is an explosive, was seized from his house in village Basopatti, Dist. Madhubani, Bihar. Also traces of RDX were recovered from Plot No. 33, T Line, Room No.2, Govandi, Shivajinagar, Mumbai-43 on 29/09/06, i.e., residential premises of the A6. It is alleged that between 08/07/06 to 10/07/06 the conspirators used this very place for assembling the explosive devices. Traces of RDX were also recovered from Maruti car No.MH-01-V-9568 belonging to the A3 on 22/10/06 recovered from the compound of Al Hatim building, Millat Nagar, Andheri (W), Mumbai. This very vehicle was used by the accused to transport the explosive stacked bags from the house of A6 at Govandi, Shivajinagar to the house of A3 at Bandra (W), Mumbai. Traces of RDX were also recovered from Bldg. No.1, 25/B, Kant Wadi, Lucky Villa, Perry Cross Road, Bandra(W), Mumbai-50, on 28/07/06, i.e., the house of the A3. It is alleged that on 10/07/06 after the explosive devices were assembled and kept in black rexene bags, this very place was used by the conspirators to store the explosive devices before they were taken to Churchgate Railway Station on 11/07/06. At the instance of the A13, 2.7 kg. of Ammonium Nitrite powder and 10 detonators were recovered from his house at Poonam Park, 'A' Wing, Flat No.101, Near Lodha Complex, Mira Road, Dist. Thane. Similarly, corrosive materials

namely Sulphuric Acid, Acetone and Hydrogen Peroxide were recovered from the possession of A2. The same, according to expert's opinion, could when mixed in the right proportions, be turned into a deadly mixture called TATP, capable of causing high intensity blasts. Experts have opined that RDX, Ammonium Nitrate, Nitrite and Petroleum Hydrocarbon oil was used in the explosions that took place in the seven first-class compartments of western suburban trains of Mumbai on 11/07/06.

54. It is alleged that in pursuance of the said conspiracy and in order to achieve the objectives of the conspiracy, the arrested and wanted accused, singly or jointly, either as member of an organised crime syndicate or on behalf of such syndicate, conspired, advocated, abetted or knowingly facilitated the commission of an organised crime by use of violence, promoted insurgency by causing explosions on 11/07/06 in seven different compartments of western railway local trains causing damage to property worth Rs. 85,61,039/- and deaths of 187 persons and injuries to 817 others.

55. It is alleged that all the arrested, wanted and two dead accused persons did commit murders by intentionally and knowingly causing the deaths of 187 persons and also did cause injuries of various gravity to 817 persons, with such intention and knowledge and under such circumstances that if by that act all accused had caused the death of such persons, they would have been guilty of murder and that all the accused had done the said illegal acts in furtherance of the common objective of the criminal conspiracy referred to above and also caused damage to public property, to wit, Western Railway local trains, platforms, overbridges, electric poles, overhead electrical wires, etc.

56. It is alleged that all the accused persons mentioned in the report were parties to a criminal conspiracy hatched by holding meetings in Maharashtra and outside India between 1999 and October, 2006, the object of which was to do and cause to be done such illegal acts for achieving the aforesaid objectives of the criminal conspiracy and such illegal acts were done intentionally and knowingly by participating in furtherance of the common objectives of the criminal conspiracy.

57. It is alleged that as a part of the larger conspiracy, while committing various illegal acts, the members of the organised crime syndicate also resorted to obtaining forged documents, to wit, degree certificates and using them as genuine to reflect false educational qualifications, with a view to gain false status and respectability and also for employment and did gain employment on the strength of these forged documents.

58. It is alleged that as a part of the larger conspiracy, while committing various illegal acts, the A3 and the A6 obtained Indian passports from the office of the Regional Passport office, Pune and Mumbai respectively. Both these accused traveled to Pakistan using the said passports. However, in order to obliterate all evidence relating to their visit to Pakistan, they destroyed/disposed off their Indian passports and failed to produce the said passports before police, when directed to do so for the purpose of investigation.

59. It is alleged that as a part of the larger conspiracy and while committing various illegal acts, between May, 2006 and July, 2006, the arrested Indian conspirators, knowing fully well that their Pakistani

counterparts had conspired and had illegally infiltrated into India with explosives for causing bomb explosions, with the intention of screening them from legal punishment, made arrangements for and harboured them. Accordingly, in the month of May, 2006, wanted Pakistani accused, viz., Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Ehsanullah and Abu Hasan entered India through Bangladesh border and were housed in 304, Amrapali Building, Sector-XI, Shanti Nagar 'A', Mira Road(E), Dist. Thane, office/house in the control of A7, A4 and A13. Similarly in the same month accused, viz., Salim (deceased), wanted accused Sohail Shaikh, Abdul Razzak and Abu Umed (deceased) illegally crossed over from Pakistan into India from Kutch border in Gujarat and were harbored in Flat No.24, Lucky Villa, Kant Wadi, Perry Cross Road, Bandra (W), Mumbai-50, house belonging to the A3.

60. As a part of the same conspiracy, wanted Pakistani accused Aslam and Hafizullah entered India through Indo-Nepal border and were harboured in 101, Saba Parveen Apartment, Naya Nagar, Mira Road (E), Thane, house belonging to the A7. Prior to the blasts, two of the wanted accused, who were staying in Flat No.24, Lucky Villa, Kant Wadi, Perry Cross Road, Bandra (W), Mumbai-50, shifted their hide out to a flat in Millat Nagar. After the commission of the bomb blasts, the A4 escorted wanted Pakistani accused, viz., Ammu Jaan and brought him to stay in 202, B Wing, Moonlight Apartment, Opp. Kalsekar College, Kausa, Mumbra, Dist. Thane, which was rented by the A8. Five other Pakistani nationals were also provided shelter in this flat after the bomb blasts. After staying for a while, these accused were provided a safe passage out of Mumbai, by the A.5.

**GIST OF THE PROSECUTION STORY AS EVIDENT FROM
THE DIRECT AND CIRCUMSTANTIAL EVIDENCE FOR
INDIVIDUAL ACCUSED PERSONS**

A.1 - Kamal Ansari

Fir/Arrest/Crime No.

61. To get insights regarding the arrests of the A.1 in relation to his involvement in different blasts, a chart is produced herein below: -

CHART NO. 3

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering into Matunga Railway jurisdiction)	20/07/2006
2.	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	31/07/2006
3.	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	14/08/2006
4.	59/06	Vasai Road Railway Police Station	Mira Road (The train had just departed Mira Road Station - It was between KM Pole no. 40/8 & 41/4)	11/09/2006
5.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	25/09/2006

Investigation-Recovery From A.1

62. PW-176 PI Rathod was assigned CR 77/06 (Matunga blast) on 12/07/06. PW-161 PI Tajne who was an assistant I.O in Cr. No. 77/06, on July 19, 2006, received information from a reliable source implicating Kamal Ansari, a suspect from Basopatti, Bihar. PI Tajne along with API Kolhatkar and PSI Sachin Kadam led to Basopatti and reached Basopatti on 20/07/06 around 2:00 A.M, where they arrested Kamal and Khalid Ansari with the help of PSI Rajan Singh of Basopatti Police Station. During a house search of A.1, they discovered 500 grams of black powder, out of which they took 10 gms of powder as sample in a small plastic bag and sent it to the FSL. Forensic analysis (FSL report Ext. 469) confirmed the powder contained RDX (85%) and charcoal (15%). After Kamal's arrest, PI Tajne conducted further investigations and received confirmation from a cybercafe owner in Madhubani that Kamal frequently used the internet to send emails. The investigation linked Kamal to multiple bomb blasts, including those at Borivali and Bandra stations. The case was eventually consolidated under the MCOC Act due to the larger conspiracy behind the bombings.

Conspiracy

63. Prosecution alleges conspiracy against the nation in which A.1 is involved.

Passenger Of The Train Who Identified A.1

64. PW-57, Subhash Kamlakar Nagarsekar, was a train traveler during the 2006 bomb blast. On July 11, 2006, he boarded a local train at Charni Road for Churchgate travelling in the opposite direction of his intended direction. After reaching Churchgate, instead of getting

down, he continued to Virar (Virar Fast Local 5:57), intending to switch at Dadar. According to him, two men with a large black rexine bag boarded the train at Churchgate and placed it on the luggage rack. When PW-57 got off at Dadar, the two men also got down from the train. He later got to know about the blast on the Western Railway and, in October 2006, saw news reports about the bomb blast and the arrest of suspects. Reports indicated that the bomb was planted on the 5:57 Virar Fast Local. Recognizing the connection to his train journey, he visited the ATS on October 18, 2006, there he met ACP patil and shared his recollection of the events. On 07/11/06, he was called into the ATS office for T.I.Parade. During the TIP held on 07/11/2006, PW-57 identified A.1 - Kamal as one of the men who had placed the black coloured rexine bag on the luggage rack of the train.

A.2 – Tanveer Ansari

Fir/Arrest/Cr. No

65. To get insights regarding the arrests of the A.2 in relation to his involvement in different blasts, a chart is produced herein below: -

CHART NO. 4

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering into Matunga Railway jurisdiction)	23/07/2006
2.	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	03/08/2006

3.	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	17/08/2006
4.	59/06	Vasai Road Railway Police Station	Mira Road (The train had just departed Mira Road Station - It was between KM Pole no. 40/8 & 41/4)	14/09/2006
5.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	25/09/2006

House Search - Seizure Of Passport

66. On 26/07/06, PW-176 PI Rathod (I.O of CR. No. 77/06) searched the residence of A.2 – Tanveer. Post search, which yielded no findings, PW-176 inquired with A.2 about his passport. A.2 disclosed that his passport was with a travel agency in Fort for a visa. PW-176, along with the panchas, visited International Trade Links, where the manager recognized Tanveer and confirmed the passport was submitted for an Iranian visa. PW-176 seized the passport under panchnama Exh. 450, passport contains the stamps of departure and arrival and visa of Iran is pasted on it.

67. On 08/08/06, PW-176 directed API Bavdhankar to take statements from travel agents involved with A.2 – Tanveer and others who traveled to Pakistan via Tehran, gathering pertinent documentation. These were recorded and deposited properly. PW-43, Hafzal Herzi, indicated that A.2's passport processing was through AL Mehndi Tours in 2005, though the ticket was not issued by them.

Recovery from A.2 Brother's House

68. On 01/08/06, A.2 -Tanveer was taken for inquiry where he expressed a desire to show the maps and books that he has hidden in his brother's house, accordingly the memorandum of his statement Ext.484 was written.

69. PW-176 with his staff and panchas followed Tanveer's directions to Momin Pura and arrived at 31, 2nd Floor, BIT Chawl No.4, where he called his mother to obtain the key to his brother's house. A.2 informed them that the building is known Pila Mahal and the house of his brother is on the 2nd floor, which was room no. 35. He opened the lock with the key and entered the house, inside the room, they found a sewing machine table and a Panasonic TV. Tanveer lifted the TV and kept it aside, took out some books and maps from the cardboard, the books were concerning SIMI organization titled 'Atankwad Ke Jimmedar Kaun', one map was of Mumbai and one was an international map showing India, Pakistan, Afghanistan, Tehran, Iran, some places in the map of Mumbai were marked with green and red colour, a route from Mumbai to Muzzafarabad in Pakistan via Tehran, Zahidan, Bhawalpur was drawn on the international map. After completing the panchanama Ext. 485, the room was secured, and the key was returned to Tanveer's mother. Additionally, Panch witness PW-19 R.S. Warang identified the articles in the court recovered from Tanveer's brother's house.

Recovery From Saboo Siddique Hospital

70. PW-176 interrogated A.2 on 12/08/06 while he was in the custody of PI Wadhankar (I.O of Cr. No. 41/06). A.2 voluntary made a statement that he is ready to show bottles of chemicals that he has kept

in the locker of the Sabu Siddhiqui Hospital. A.2's statement recorded in a memorandum (Ext. 457) written by PW-169 PSI Gaikwad (Assistant I.O in CR. No. 77/06), led to a station diary entry (Ext. 1803).

71. As per the directions given by A.2 - Tanveer PW-176 with staff and along with panchas, went to Sabu Siddiqui Hospital, A.2 led them to the ICU department on the 1st floor of the hospital. In the ICU, Dr. Atiya Sayyed and an accounts manager, Salamatullah Khan, were present. A.2 indicated a room adjacent to the ICU, where he retrieved a key from under a mattress and opened a locker revealing three sealed bottles of chemicals: Hydrogen Peroxide, Acetone, and Sulphuric Acid. It has also come in the evidence of Dr. Atiya Sayyed that on 12/08/2006. ATS police had come to the Sabu Siddique Hospital at 4.00 pm for their investigation, an inspector, two panch, two-three other persons had come, that A.2 was with them, that they had come to check his locker, that police took the bottles Arts. 34 to 36 and the key Art.33 and the other articles with them, that the panchanama Ext. 458 bears her signature on the last page.

72. The recovered chemicals were sent for forensic analysis on August 13, 2006. Contents of the FSL report Ext.909 shows that the bottles in CR No. 77/06, contain Hydrogen Peroxide, Acetone and concentrated Sulphuric Acid, that Hydrogen Peroxide is a strong oxidizing agent, Acetone is a highly flammable liquid and as per the literature, concentrated Sulphuric Acid is used as initiator with chlorate in explosive mixture. Due to the hazardous nature of the seized chemicals, the court granted permission for disposal, which occurred on December 16, 2006. A panchanama, empty bottles, and a report were subsequently filed in court.

Link Between Accused Persons - Visit To Pakistan - Connection With SIMI- Conspiracy

73. It was revealed during A.4 - Ehtesham's interrogation that A.2 - Tanveer was going to teach them how to prepare bombs with the help of chemicals. Cases under UAPA and IPC Section 353 were registered against A.2 and A.4 in Kurla; PSI Kshirsagar collected chargesheets (Exts. 462-463). Ext. 462 showed A.2 and A.4 illegally assembled at SIMI office on September 27, 2001. Ext. 463 showed them shouting anti-national and pro-SIMI slogans at Kurla court on September 28, 2001. PW-65 (Hostile witness regarding SIMI activities) named A.2 and A.4 among 24 SIMI activists.

74. PW-176 learned A.2 - Tanveer, A.10 - Suhail, A.11 - Zameer , A.3 - Faisal, and A.9 - Muzzammil went to Pakistan for militancy training and were associated with L-e-T and SIMI. It has come in the evidence of PW-176 that he had obtained true photocopies Regional Passport Office, Mumbai of the application and documents submitted by A.2 Ext.1993 (1 to 13) and A.11 Ext 1992 (1 to 10) alongwith the covering letter Ext. 1991. A.2, A.9, A.11 and A.10 had gone from Mumbai Airport to Tehran, Iran and from there to Pakistan.

75. A.3 - Faisal in his confessional statement before the PW-40 Arvind Singh(Assistant Director of E.D) stated that he had sent A.2 - Tanveer to get training in L-e-T camps via Iran route. Further he stated that A.2 was sent on the reference of A.4 - Ehtesham. A.2 had gone to Pakistan for training in the month of May and June 2004 after resigning his job in Prince Ali Khan Hospital, therefore he wrote a letter (Exh.2445) to the Medical Superintendent of the Prince Ali

Khan hospital, Mazgaon, Mumbai-10 to furnish his service details, the hospital gave reply Ext. 2446 (1 and 2) furnishing the details of resignation.

76. It was alleged that PW-75-Amar Sardar Khan that he met A.2 - Tanveer, A.4 - Ehtesham and A.6 - Mohd Ali in the programs of SIMI that he attended and has identified them all in the court. There used to be aggressive and provocative speeches about jihad at the SIMI programs, that the jihad that they were talking about was in respect of atrocities committed on Muslims. That A.2 and A.4 used to give such speeches. Four or five days before the blast, PW-75 and Ajmeri Shaikh saw A.2 outside A.6's house in Govandi, where they later saw A.2, A.6, A.4, and others with wires and powders. A.2, A.4 and A.6 were supervising the assembling. PW-76 (Vijay Ambekar -PC Crime branch) corroborated this, stating Ajmeri told him about seeing A.2, A.4, A.6, and others with wires and powders at A.6's house.

77. PW-59 saw A.2 - Tanveer, A.4 - Ehtesham, A.3 - Faisal, A.10 - Suhail, A.9 - Muzzammil and A.13 - Asif Khan at A.3's house in February 2006, that they had gathered there for discussion on some special subject, and later in March 2006 A.3 came to meet PW-59 at Mira Road near Shams Masjid with A.3's three friends, A.13, A.2 and A.4. A.3 asked PW-59 to arrange a house for his friends.

78. It has come in evidence of PW-78-Shaikh Noman Ahmedon (hostile witness) that he knew that SIMI was banned in the year 2000. Even after the A.2 - Tanveer, A.3 - Faisal and A.4 - Ehtesham used to go to the office of SIMI. In 2004, A.2 had gone to Pakistan.

79. The acts were committed by an organized crime syndicate and the conspiracy was spread over a large period of time and wanted accused Azam Cheema had arranged for the training of A.2 - Tanveer in the camps of Lashkar-e-Talba situated in Pakistan.

Identification Of The Accused

80. Witness PW-75 Amar Sardar Khan and Ajmeri Shaikh with 6 more witnesses arrived at the ATS office on 07/11/06, accompanied by police and SEOs, who would take them to Arthur Road Jail for identification of the accused persons. The parade conducted by PW-80 SEO Purandare on 07/11/06, the TIP was conducted in two groups, with witnesses PW-75 Amar Sardar Khan and Ajmeri Shaikh identifying A.2 - Tanveer in connection with its role outside and in the house of A.6 - Mohd. Ali on the day when they had gone there.

A.3 - Mohd. Faisal And A.9 - Muzzammil Shaikh

Fir/Arrest/Cr No.

81. To get insights regarding the arrests of the A.3 and A.9 in relation to their involvement in different blasts, a chart is produced herein below: -

CHART NO. 5

Sr. No.	Accused No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	A.3 and A.9	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering into Matunga Railway jurisdiction)	27/07/2006

2.	A.3 and A.9	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	08/08/2006
3.	A.3 and A.9	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	28/08/2006
4.	A.3 and A.9	59/06	Vasai Road Railway Police Station	Mira Road (The train had just departed Mira Road Station - It was between KM Pole no. 40/8 & 41/4)	18/09/2006
5.	A.3	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	28/09/2006
6.	A.9	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	30/09/2006

House Search Of A.3 And A.9

82. On 28/07/06, Sr. PI Rathod, ACP Shengal of ATS, and PSI Kshirsagar, along with staff, conducted a house search at A.3 - Faisal's residence in Bandra. They arrived at the Lucky Villa Building, where A.3 showed them his room on the third floor. Upon entering, they searched the kitchen and living room. In the living room, they found black powder in a cupboard compartment and collected it for analysis, later identified as RDX and ammonium nitrate. During the search, a red handbag was found containing railway tickets, debit cards, licenses, cash, 30 notes of 500 Saudi riyals, vehicle documents, and books of SIMI and book titled "Atankwad ka jimmedar kaun". In the second compartment of the said bag additional items included two maps with marked routes, one was of Mumbai and on the backside Mumbai-

suburbs, there were marks at some places on the map of Mumbai in green and red ink, the other map was an international. map of India, Pakistan, Iran, Muscat, Afghanistan, Tehran, etc, that a route from Mumbai to Tehran, Tehran to Zahidan and Zahidan to Muzzafarabad was drawn on the map, there was some matter in Urdu below the map, an International mobile number and e-mail address as guddu_sir @ yahoo.com, and contact information, along with a Motorola mobile phone. PW-31 Sanford Fernandes (Panch witness) have identified the articles in the court that were seized from the house of A.3.

83. After concluding the house search of A.3 – Faisal, they proceeded to A.9 - Muzzammil's location in Mira Road, who led them to his flat. During house search they found 2 new CPUs and an Echolac company travel bag, the contents of the bag were inspected, they found a CD pouch containing CDs, the name Rahil Shaikh was written on the pouch, they also found a Maxell company hard disk, a passport in the name of A.9, his educational documents issued by Bhartiya Shiksha Parishad, Lucknow, certificates of Higher Secondary Board Examination, Data Core Technology's appointment letter in his name, identity card of Oracle company in his name, red coloured packet containing many cards like internet cards, netwala card, sifi I card, books of SIMI organization and books titled 'Atankwad Ka Jimmedar Kaun', In another compartment of the bag they found two maps, one was of Mumbai and on the backside of Mumbai suburbs, there were marks at some places on the map of Mumbai in green and red ink, the other map was an international map of India, Pakistan, Iran, Muscat, Afghanistan, Tehran, etc., a route from Mumbai to Tehran, Tehran to Zahidan and Zahidan to Muzzafarabad was drawn on the map, there was some matter in Urdu below the map, an international mobile

number and e-mail address as guddu_sir@yahoo.com. PW-31 Sanford Fernandes (Panch witness) have identified the articles in the court that were seized from the house of A.9.

Recovery From The Railway Track

84. On 08/10/06, during the interrogation of A.3 - Mohd. Faisal by ACP Dhawale, PI Deshmukh, and PI Tonapi, A.3 - Mohd. Faisal voluntarily gave a statement (Ext. 1108), that he could show where he discarded some items. He led the officers to a location near Dahisar; he led them from the western railway track towards Mira Road and pointed out the places where he felt that he had thrown the articles. Faisal pointed out to a spot in the marshy land from where the officers recovered a brown plastic bag in mud, containing several items including 7 rubber gaskets, 5 whistles, broken electric wires, a PCB, and plastic bags. These were seized and documented in Panchanama Ext. 1109. The items were cleaned, sealed, and labeled, and Faisal signed the panchanama.

85. FSL reports (Exts. 973 and 974) revealed that Cyclonite (RDX) was detected on plastic bags, indicating their use in explosives. The rubber rings and whistles could be used in cookers, but the electric wires did not match those used in the PCB (printed circuit board). The PCB could act as a triggering device, containing components like a DTMF receiver IC, commonly used in phone circuits. When connected to a mobile phone, the device could be triggered by actions such as receiving a call. FSL report Ext. 2388 further indicated that the rubber gaskets and whistles recovered from Faisal were duplicates, as they did not match the original products from the Kanchan company in terms of markings and physical characteristics.

PW-62 Devendra Lahu Patil (Train Passenger Who Identified A.3)

86. PW-62 Devendra Patil testified that on 11/07/2006, after finishing work at the Custom House, he went to Churchgate station around 5:15 p.m. He boarded the 5:36 p.m. Churchgate-Borivali slow train and stood near the last row of seats in the first-class bogie. Two men boarded the train with a black bag, one of whom tried to place it on the rack but kept it below the seat near the window that was facing towards churchgate. After the train left Jogeshwari, there was a loud explosion, he was thrown down in the train and people fell on him. After some days in the news, he got to know about bomb blasts in the trains and that some persons had kept black bags containing bombs in the train. Therefore, he went to the ATS office on 20/10/2006 and gave his statement about the incident. He identified one of the men, A.3 - Faisal, in a police identification parade on 07/11/2006. In court, he again identified A.3 as the person who had kept the black bag in the train.

PW-77 Rajesh Satpute (Taxi Driver Who Identified A.3)

87. PW-77 Rajesh Satpute testified that on 11/07/2006, he was driving taxi MH-01-J-4066 when two men entered in his taxi near Carter Road, Bandra. One of the men had a black bag, which he placed on the front seat by his side. They asked him to drive to Churchgate. During the drive, there was an instance when the driver applied a brake due to which the bag moved ahead. The man sitting behind grabbed the bag and warned Satpute to drive carefully. Satpute offered to put the bag in the boot, but the other man refused, saying the bag contained valuable items. Satpute described the men, one being around

30-35 years old with a small beard and long hair, and the other about 25-28 years old. The witness identified A.3 - Faisal in the TIP dated 07/11/06 conducted by SEO Barve. Further, he also identified A.3 in Court as one of the passengers in his Taxi.

Handwriting Analysis

88. During the search & seizure, the IOs had obtained some maps which contained handwritten notes. Therefore, PW-176 Sr.PI Rathod collected specimen handwriting from several accused persons, including Tanveer, Muzzammil, Faisal, Zameer, and Suhail, between July 30, 2006, and August 4, 2006. These specimens, along with maps containing handwritten notes, were forwarded to the Additional CP, Crime Branch, CID, Mumbai, for onward submission to the handwriting expert for finding out the author of the writings on the maps. PW-131 Jayant Ahir (handwriting expert) confirmed that the handwriting on the maps matched Faisal's handwriting, specifically the e-mail addresses written on them.

89. The handwriting expert explained the process of analyzing the questioned documents (maps) and the specimen handwriting. He concluded that the writings on the maps (Exhibits 1486 to 1490) showed similarities with Faisal's handwriting (Exhibits 1491, Sheets 1-9). The expert further noted that, despite the presence of Urdu script, the handwriting was similar enough to indicate that the same person wrote the markings on the maps. The Urdu phrases on the maps contained specific names, phone numbers, and references to email addresses.

Recovery From The Car Of A.3

90. A.12 - Naveed voluntarily took police officers, including PW-50 Shrikrushna Pawale (Panch Witness) and PI Khanvilkar (PW-168), to several locations as part of a reconstruction. They traveled from Shivaji Nagar, Govandi, to Lotus Junction, then to Geeta Vikas Beat Police Chowki, where A.12 indicated he had stopped a Maruti 800 car. He claimed A.3 (Faisal), A.7 (Sajid), and two Pakistani nationals had got down from the vehicle there.

91. A.12 then led them to Bandra Perry Cross Road, pointing out Lucky Villa, A.3's residence, and noted that two Pakistanis lived with Faisal in a temporary structure on the terrace. Following his directions, they also went to Millat Nagar, where Naveed indicated a building near Ocaz Shopping Center, stating he dropped A.3 there to meet Pakistani guests.

92. Naveed identified a white Maruti 800 parked at Al Hatim Building as A.3's car. Mohd. Alam (PW-59) testified that A.3 had recently purchased this vehicle. Police found black spots inside the car and collected them with swabs for analysis. ACP Patil sent the swabs and the car to FSL on 26/10/06. The FSL report revealed the presence of RDX, petroleum hydrocarbons, charcoal, and ammonium compounds in the swabs and the vehicle.

Conspiracy - Link Between The Accused - Visit To Pakistan - Connection With SIMI

93. The prosecution alleges A.3 – Faisal and A.9 – Muzzammil, along with other accused, conspired against the nation and participated in train bomb blasts, citing the following reasons:

- i) A.9 and A.3 contacted the wanted accused Azam Cheema of Lashkar-e-Taiba through their associates, Rahil and Rizwan Dawrey, to receive funds. A.3 used this money to facilitate the travel of radicalized youths from India to Pakistan via Tehran.
- ii) Abdul Rehman Dawrey (PW-71) testified about discussions at the SIMI office concerning Muslim issues and identified Faisal, Muzzammil, and others. Literatures connected with SIMI were also found at the houses of A.3 and A.9.
- iii) Following riots in Pune in 2001 and the ban on SIMI, some members used to say that it will not be sufficient only to talk but they should take some training. Faisal traveled to Pakistan for training in 2002, meeting Hafiz Sayyed of LeT, and had traveled through Attari Rail Check-post in 2001.
- iv) PW-95, Tafheem Akmal Hashmi, a former Pakistani Army hawaldar, testified that he joined the Mujaheddin after leaving the army in 1994-95, receiving training in Afghanistan and Azad Kashmir, including Muzaffarabad. He claimed to have met A.3 Faisal at a Lashkar-e-Taiba training camp near Muzaffarabad in June or July 2004.
- v) Training in militancy was reported, with connections to Azam Cheema (chief commander of L-e-T), who funded the accused's training and A.3 had gone to Pakistan twice and had taken training in the camps of Lashkar-e-Taiba.

- vi) PW-59, Mohammed Alam, revealed he was close to Faisal, who changed his name to conceal his identity and admitted training in Pakistan. In February, 2006 once he went to the house of A.3, that at that time he saw 5-6 persons in his house, that they had gathered there for discussion on some special subject.
- vii) Despite SIMI's ban, accused members continued their activities, keeping in contact and sharing shared ideological materials.
- viii) During the course of investigation 26,200 Saudi Riyals were recovered, some from the residence of A.3 and some from witness Abdul Rehman Dawrey, which were meant for A.3, that wanted accused Azam Cheema had asked A.3, A.13 and others to make preparations for bomb blasts strike in the city of Mumbai.
- ix) Investigations revealed a conspiracy dating back to 1999, involving several trips to Pakistan for training in subversive activities.
- x) Evidence indicated 15 kg of RDX was smuggled in by Pakistanis, and explosives were procured locally. Pakistani nationals associated with the accused used multiple residences in Mumbai before the blasts. Investigative officers confirmed that Faisal lived in a rented flat in Bandra, with connections to local and infiltrated individuals.

Links With Wanted Accused Rizwan Dawrey - Foreign Funding

94. On inquiry about wanted accused Rizwan Dawrey, his father informed police that Rizwan was in Saudi Arabia and his other son, Abdul Rehman Dawrey, resided in flat no. 202 of the 'C' wing in the

same building. Police, with panch witnesses, visited Abdul Rehman's flat, where he told that Rizwan had sent 500 and 200 Saudi Riyals for A.3 - Faisal. Abdul Rehman stated that Rizwan informed him via email about sending the money. The police seized the envelope and Riyals, properly labeled and signed.

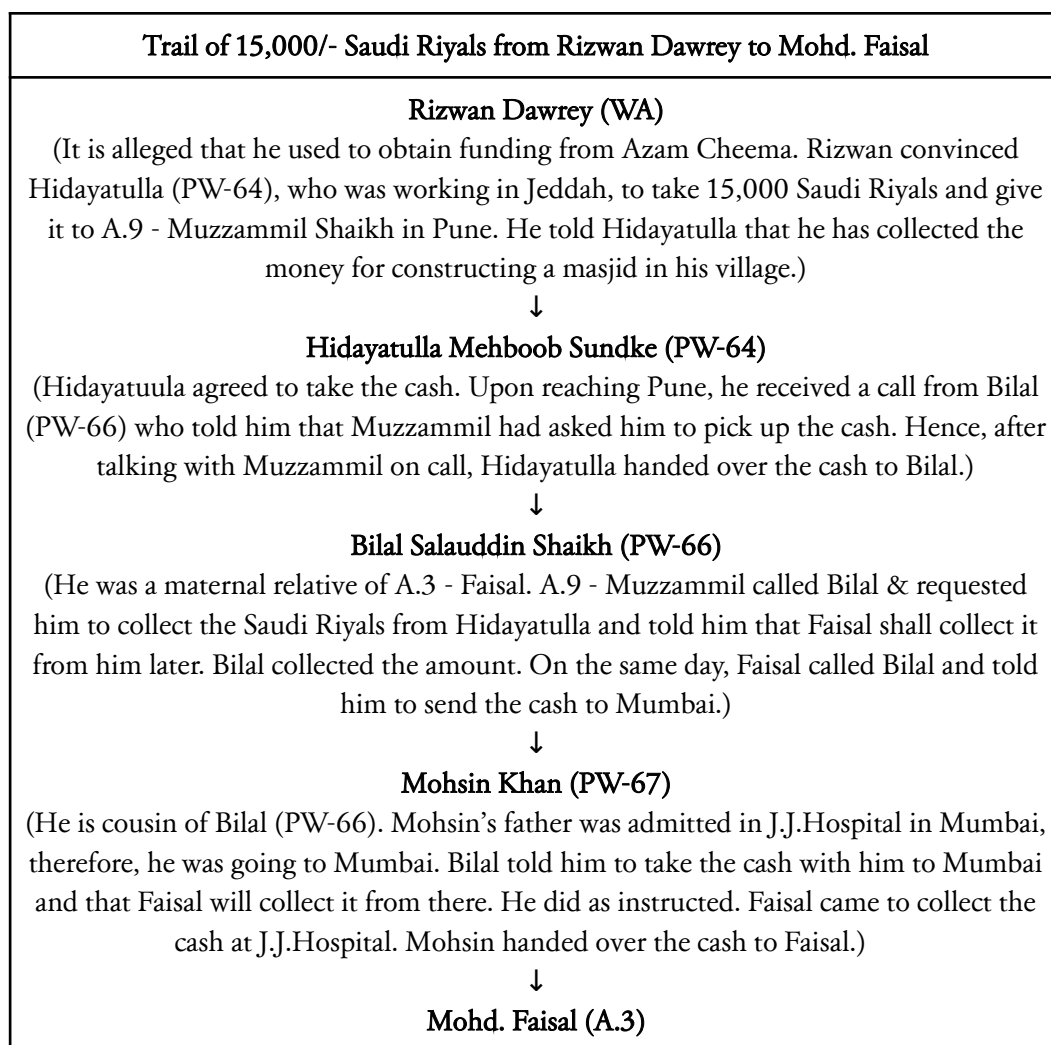
95. Abdul Rehman also shared that A.3 - Faisal and wanted accused Rahil used to visit him in 1996-1997. He knew A.3's brother, A.9 – Muzzammil, and was aware A.3's other name was Mustafa. Abdul Rehman stated that Rizwan went to Jeddah in 2003 and worked as a system administrator. Faisal and Rahil visited him there. At one instance, Faisal showed him his Pakistani passport and suggested sending Rizwan for training in Pakistan, which Abdul Rehman opposed. Abdul returned to India in 2005. Rizwan continued to send 500-600 Saudi Riyals for the expenditure of their father. On 17/07/06, Abdul collected a parcel of medicines, sweets and an envelope containing about 500 Riyals sent by Rizwan.

96. In a conversation on 26/07/06, Rizwan told Abdul that the envelope of 500 Riyals was for A.3 - Faisal and told him to dispose of the envelope and move out from Pune as A.3 was picked up in connection with the 07/11 railway blasts. On 30/07/06, Abdul Rehman handed the envelope over to the ATS when they visited, along with the 500 Riyals and Rizwan's personal computer.

97. In 02/07/2006, Hidayatulla Sundke traveled from Jeddah to Mumbai, carrying 15,000 Saudi Riyals for A.9 - Muzzammil, sent by Rizwan stating that they were for a mosque construction project. Hidayatulla later handed the money to Bilal. Bilal later arranged for

Mohsin Khan to deliver the money to A.3 - Faisal in Mumbai. A.3 was unable to explain the source of 26,200 Saudi Riyals found in his house during the house search, which was linked to funds from Azam Cheema, commander of LeT, Pakistan, sent via Rizwan Dawrey. The investigation revealed these funds were intended for militant activities.

CHART NO. 6



Foreign Travel / Passport Agent / Link Between Accused

98. In 2004, A.3 - Faisal asked PW-46 Mushtaq Ahmed to arrange a visa for his friend, A.2 - Tanveer Ansari, by submitting Tanveer's passport to an agent named Johar Sayyed. Faisal later repeated similar

actions with other individuals, including A.9 - Muzzammil, A.11 - Zameer, and others, using agent Ashik Ali to obtain their visas and tickets for travel to Iran. A.3 - Faisal used to give such work to him every 2-3 months.

99. PW-44 confirmed that he worked with Mushtaq to arrange tickets and visas for these individuals between 2004 and 2006, noting that they were initially going to travel as part of a group but later traveled independently. The ATS later investigated and retrieved the relevant passport records, identifying several individuals, including Muzzammil, Zameer, and others.

100. Further evidence from PW-114, an Immigration Officer, confirmed that passport records linked to Faisal showed his departure to Karachi in 2001. Additionally, PW-115, another immigration officer, testified about an incorrect entry in his records concerning the date of departure for Faisal.

101. Overall, the evidence points to a network of individuals, primarily Faisal, who facilitated the processing of visas and travel documents for various individuals between 2001 and 2006, possibly as part of a broader scheme.

A.4 - Ehtesham Qutubuddin Siddique

FIR/Arrest/Crime No.

102. To get insights regarding the arrests of the A.4 in relation to his involvement in different blasts, a chart is produced herein below: -

CHART NO. 7

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering into Matunga Railway jurisdiction)	12/08/2006
2.	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	25/08/2006
3.	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	08/09/2006
4.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	28/09/2006

Train Passenger Who Identified A.4

103. On 11/07/06, PW-74 Vishal Parmar after the work was over, received a call from his employer who directed him to go to the BMC Bank at Dadar, therefore, at 5:15 p.m., he went to Churchgate Station as he wanted to go to Dadar he went to platform no.3, he waited for the 5:19 p.m. Virar fast train on platform 3. Two men asked him about the train, then boarded ahead of him. One of them, carrying a black rexine bag, unintentionally hit Parmar's leg as they boarded. He sat in a crowded first-class compartment, noticing the bag but not thinking much of it. After stopping at Dadar, the two men exited quickly without the bag.

104. Later, amid reports of bombings involving black bags, Parmar recalled this incident. He approached the ATS police in Bhoiwada, met

Officer Patil, and gave his statement, later identifying accused Ehtesham Siddique during the test identification parade conducted by PW-80 SEO Purandare in Arthur Road jail.

105. PW-80 SEO Purandare adopted the same procedure for another parade. In this parade witnesses PW-75 Amar Khan and Ajmeri Shaikh identified A.4 Ehtesham and accused no.6 Mohd. Ali Alam Shaikh, in connection with their role outside and in the house of Accused no.6 Mohd. Ali on the day when they had gone there.

Link Between Accused - Connection With SIMI – Conspiracy

106. During the interrogation of A.4 - Ehtesham, he disclosed that A.2 - Tanveer, was teaching them how to make bombs with chemicals. Both A.4 and A.2 faced charges under the Unlawful Activities (Prevention) Act and for rioting at Kurla Police Station. PSI Kshirsagar collected and presented the relevant chargesheets (Exts. 462-463). Ext. 462 shows that on 27/09/2001, A.4 and A.2 illegally assembled at the banned SIMI office, while Ext. 463 indicates that on 28/09/2001, they shouted anti-national slogans in support of SIMI near Kurla court.

107. A.3 – Faisal, in his confessional statement, stated before PW-40 Arvind Singh (Assistant Director of E.D) that A.2 and A.11 - Zameer were sent to Pakistan to get training in L-e-T camps via Iran route on the reference of A.4.

108. It has come in the evidence of PW-174 (I.O of Cr. No. 156/2006) that PI Dinesh Ahir had recovered literature connected with SIMI from A.4 - Ehtesham in an LAC case. He was also convinced that, A.4 was involved in the commission of the crime that he was investigating.

109. It has come in the evidence of PW-75 that he met A.4 – Ehtesham in SIMI programs, there used to be aggressive and provocative speeches about jihad at the SIMI programs, that the jihad that they were talking about was in respect of atrocities committed on Muslims, that A.4 used to give such speeches.

110. PW-75 had gone with his friend Ajmeri Shaikh four or five days before the blast to Shivaji Nagar in Govandi at A.6 – Mohd. Ali's house, before entering the house, they saw A.4 - Ehtesham entered the house from outside with a tea kettle. They both entered the house behind A.4, they saw three-four more persons sitting there, one person was doing something with a wire, two- three newspapers were spread in front of the persons, there was white and black coloured powder on the newspapers, that when they greeted them, A.6 said they are busy in some work and they would meet afterwards, therefore they came out of the house.

111. PW-59 saw A.4 - Ehtesham along with A.2 – Tanveer, A.10 – Suhail, A.9 – Muzzammil and A.13 – Asif at A.3's house in February 2006, that they had gathered there for discussion on some special subject, and later in March 2006, A.3 came to meet PW-59 at Mira Road near Shams Masjid with A.3's three friends, A.4, A.13 and A.2.

112. PW-65 Mehboob Qureshi (Hostile witness) had stated in his 161 statement that when A.4 - Ehtesham used to come to Mumbra, he used to meet his brother-in-law (Sadu) A.8 – Abdul Wahid, that in May 2006 when he was in his shop Hamja General Stores, A.4 came to his shop and asked him to give the keys of A.8's house, that thereupon he

gave the keys of the room of the house in which A.8 used to live, i.e., 202 (room no.2), 2nd floor, Moonlite building, B-wing, near Bharat Gear company and Kalshekar college, Kausa, Mumbra, Thane to A.4, at that time A.8 and his wife were not at home and there were five-six other persons with A.4 and during that period A.4 took the keys from him twice and took meetings.

113. It has come in the evidence of PW-186 that it was found that there were cases against A.2 - Tanveer, A.4 - Ehtesham, A.7 - Sajid and A.8 - Wahid, which were of similar nature and were under the provisions of Section 153 A of the IPC or under the provisions of the Unlawful Activities (Prevention) Act.

114. It has come in his evidence of PW-186 that when the investigation came to him, the admissible evidence that was against A.4 - Ehtesham was the evidence about he being member of SIMI, that he was arrested earlier in the offences under Unlawful Activities (Prevention) Act, that at the time of arrest he was found in possession of objectionable books, that he was continuing with the activities of the SIMI even after the ban and collecting funds for the organization, that he was knowing most of arrested accused in this case, etc. Further, A.4, along with A.2 – Tanveer and A.6 – Mohd. Ali were supervising the assembling of bombs.

115. Further, it is the case of the prosecution that the bomb blast that exploded ahead of Mira Road Railway Station was planted by A.4 Ehtesham along with wanted accused Ammujaan.

A.5 - Mohd. Majid**FIR/Arrest/CR No**

116. A.5 was arrested only in one crime; the details are given as under:

CHART NO. 8

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	29/09/2006

Conspiracy – Link Between The Accused

117. PW-70 M. Shakeel, a childhood friend of A.5 - Majid, identified him in court. He has told that A.5 resides nearby, that he knew one of his relatives by name Asif, who stays in Bangladesh. PW-70 recounted meeting Asif in Kolkata in December 2003 during his uncle's wedding and again in February 2006, when Asif came to Kolkata met him and A.5. Asif told to PW-70 that he had come for some secret work about which he cannot tell him and said that he would tell A.5 about the work for which he had come. PW-70 asked A.5 about the work that Asif told him. He said Asif had come to India for doing some work in connection with the plight of Muslims in India and that he also wants to do that work. PW-70 questioned A.5 as to why he is doing that work. A.5 said that he is doing it as he wants to do something for Islam. PW-70 did not feel it good as A.5 was not attentive to the business of spectacles which PW-70 was doing with A.5.

118. One day, A.5 - Majid said that he wants to do some work about jihad and that Asif and some of his friends are going to do some big work for jihad. PW-70 was shocked on hearing this and told A.5 that

he does not want to do that work and he does not want to be concerned with it. While talking with A.5, he came to know that A.5 is in contact with some person of Lashkar-e-Taiba in Mumbai and during the second or third week of May 2006, A.5 told PW-70 that some persons are to be brought from Bongaon on the border of India and Bangladesh, therefore, one day A.5 and PW-70 went to Bongaon by train. At that time, A.5 was talking with Asif and Munna on his mobile. On reaching Bongaon, PW-70 and A.5 went towards the Bongaon market area. After some time, Munna came with six persons. They greeted A.5 and told their names, they were Abu Bakar, Sabir, Kasam Ali, Ammujaan, Abu Hassan and Ehsanulla, all wanted accused.

119. PW-70, A.5 - Majid and the six wanted accused went to a nearby hotel for tea. All of them were between 20 to 30 years of age, all of them gave their passports to Munna. PW-70 could gather from the passports that those persons were from Pakistan as the name Pakistan was written on the covers of the passports. Munna took the passports and left them.

120. PW-70, A.5 - Majid and those six wanted accused persons went by two rickshaws to the railway station. A.5 purchased eight tickets for going back to Kolkata. During their talk, PW-70 came to know that those wanted accused persons are from Pakistan and are sent by wanted accused Azam Cheema, commander of Lashkar-e-taiba in Pakistan. After reaching Kolkata, PW-70 went to his house and the six wanted accused persons went with A.5 to his house. PW-70 told A.5 that he is not ready to do that work as it is not a good work and that he is a small man and has business, but A.5 was not ready to listen.

121. That wanted accused Azam Cheema sent six persons from Bangladesh in May 2006, who were collected by A.5 and brought to Mumbai and handed over to A.13 - Asif, who made arrangements for their stay, that the names of those persons were disclosed as wanted accused Sabir, wanted accused Ammu Jaan, wanted accused Ehsanullah, wanted accused Abu Hasan, wanted accused Abu Bakar and wanted accused Kasam Ali, all of them Pakistani nationals and it was disclosed that wanted accused Ehsanullah had brought about 15 kgs of RDX with him.

122. The six wanted accused persons who had come from Bangladesh border had assembled in the house of A.8 - Wahid, and from there, they were taken away by A.5 - Majid and A.5 dispatched them out of India from the Bangladesh border.

Evidence Of Hotel Manager-(PW-141) (Hotel Heena At Bhendi Bazar)

123. It has come in the evidence of PW-141 Jairam Mahabal Shetty that he was in Mumbai from 2001 to 2007 working at his brother's Hotel Heena in Bhendi Bazar. The ATS police had come to the hotel on 03/11/06 for making inquiries, that they wanted to know whether a person by name Mohd. Majid and four-five persons whose names they gave, had stayed in the hotel, that on seeing the register he saw entry in the name of Mohd. Majid, who had stayed in room no. 401 in the hotel for three days from 04/01/04 upto 06/01/04 and Shami, Asif, Pappu and Mohsin, who had come from Kolkata, had stayed with him.

124. It has come in his evidence that he was present when the entry no. 6 (Exh.1569) was made by A.5, who had signed it.

125. A.5 – Majid had again come on 10/01/04 and stayed in the hotel in room no. 401 along with the same persons, that they had come from Kolkata and stayed upto 14/01/04 and person by name Shami had signed the entry no. 38 (Exh.1570), which was made by A.5 who had signed it and there was a talk between them when the persons left the hotel on 14/01/04, that they said that the lodging charges were less in Bangladesh and Pakistan than in Mumbai. That the photocopies of the said pages of the register were taken by the ATS when he was called to the ATS office, Bhoiwada.

A.6 - Shaikh Mohd. Ali Alam Shaikh

FIR / Arrest / Crime No.

126. A.6 was arrested only for one crime; the details are given as under:

CHART NO. 9

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	29/09/2006

House Search

127. On 29/09/06, the team consisting of ACP Shengal, PI Tajne-PW- 161 (Assistant IO) and staff took the house search of A.6 Mohd. Ali and they came back to the office and handed over the house search panchanama Ext. 716 to him and reported that during the search one Kanchan pressure cooker was seized and they had noticed two black and white spots in the box type cot in the house, that they had taken

swabs of the spots and had seized the swabs and the pressure cooker was kept in a plastic bag and seized, that the packets of the cotton swabs were marked as Exb- A and B and the cooker was marked as Exb-C, that the said articles were deposited in the muddemal room.

128. PW-161 and PW-58(Panch Witness) have identified the A.6 and also identifies the articles that were seized i.e cotton swabs Art 301 and Art. 302, pressure cooker Art 303 and rubber ring Art-337 in the court.

129. Contents of the FSL report Ext. 2383 show that cyclonite (RDX) and charcoal were detected on one swab and ammonium, nitrate and traces of cyclonite (RDX) were detected on the other swab.

Identification Of Accused

130. PW-75 Amar Sardar Khan is a witness who has been examined to establish the conspiracy. All the Accused had assembled at the house of A.6 at Govandi for assembling the bombs which at that particular time the witness did not pursue, but it was only later when his friend Ajmeri Shaikh brought the Mumbai Mirror newspaper to him and he read about the arrest of A.6 and others. That he realized that A.2, A.4, A.6 and others whom he had seen on that particular day all sitting in the house of A.6 with two three newspaper spread in front on them, a black coloured power on the said newspapers and some wires were there. It was thereafter that he approached the ATS and his statement came to be recorded and later in TIP he also identified A.6.

131. The Test Identification Parade was held by PW-80 SEO purandare wherein witnesses PW-75 Amar Khan and Ajmeri Shaikh

identified accused no.6 Mohd. Ali Alam Shaikh and stated that they had seen some persons at the A. 6's house before 4-5 days of the blast and one person was doing something with wires, and they had also seen black-colored powder on the newspapers.

Link Between The Accused - Connection With SIMI/Conspiracy

132. PW-75-Amar Sardar Khan stated that he met accused no.6 Mohd Ali in the programs of SIMI that he attended and has identified him in the court.

133. PW-75 had gone with his friend, Ajmeri Shaikh, four or five days before the blast to Shivaji Nagar in Govandi, that Ajmeri parked the motorcycle outside a lane and they were walking in that lane as A.6's house is in that lane, they were at some distance from A.6's house, they saw A.2 - Tanveer standing outside his house looking around. At that time A.6 came out of the house in a hurry and said something to A.2. Then A.2 and A.6 both went inside the house. At the same time, A.4 - Ehtesham entered the house from outside with a tea kettle. They both entered the house following A.4. There they saw that three-four more persons sitting there, one person was doing something with a wire, two- three newspapers were spread in front of the persons, there was white and black coloured powder on the newspapers, that when they greeted them, A.6 said they are busy in some work and they would meet afterwards, therefore they came out of the house.

134. It has also come in the evidence of PW-76 Vijay Ambekar (PC, Crime branch) that he knew one Ajmeri Shaikh and on 28/10/06 Ajmeri Shaikh came to his house at about 10:00-10:30a.m with his

friend Amar Khan and said he wants to talk to him about something special and confidential. Ajmeri Shaikh looked around to confirm that no one is hearing him and then showed him the issue of Mumbai Mirror dated 01/10/06 Ext, 810 that was with him, that it was in the news item that two or three days before the bomb blasts, bombs were prepared in the house of A.6 Mohd. Ali in the presence of some Pakistani persons, that Ajmeri Shaikh further told him that two or three days before the blasts he and his friend PW-75 Amar Khan had gone to the Shivaji Nagar area in Govandi in the afternoon and had gone to the house of A.6, their friend, as they had not met him since many months.

135. Ajmeri told PW-76 that when they went to A.6 - Mohd. Ali's house, they saw A.2 - Tanveer, A.4 - Ehtesham and three unknown persons present in A.6's house, that he wondered as to how A.6, A.2 and A.4 were together, where Ajmeri saw an electric wire in the hands of one unknown person and that he was joining the wires, there were heaps of black, gray and white powder in front of the other two unknown persons.

136. It has come in the evidence of PW-186 ACP Patil that it was disclosed in the investigation that A.6 - Mohd. Ali was having a passport, that by using the said passport he had gone to Dubai and then to Pakistan for terrorist training, thereafter, he came back to Dubai and from Dubai he went to Nepal and from Nepal he entered in India, that it was disclosed that he had used this route to hide his visit to Pakistan and the passport was not traceable and it was suspected that he had destroyed it.

137. It was found during the investigation that the leaders of the Lashkar-e-Taiba organization made use of the SIMI cadre because their ideologies are similar, that one of the commanders of Lashkar-e-Taiba wanted accused Azam Cheema @ Babaji had played a vital role behind the activities of arrested accused as an organized crime syndicate. Wanted accused Azam Cheema had arranged for the training of A.6 Mohd. Ali, in the camps of Lashkar-e-Talba situated in Pakistan.

A.7 - Mohd. Sajid Margoob Ansari

FIR / Arrest / Crime No.

138. A.7 was arrested only for one crime; the details are given as under:

CHART NO. 10

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	29/09/2006

House Search

139. During the course of investigation, A.7 - Sajid was being interrogated on 23/10/06 at Juhu Unit by PI Tonapi, PI Deshmukh and staff. At that time, A.7 expressed his desire to make a voluntary statement. Therefore, two panchas were called by the staff. PI Tonapi (PW-155) recorded the events chronologically as dictated by PI Deshmukh. PI Tonapi gave his name as 'Sajid Margub Ansari' on being asked before the panchas and made the statement in Hindi Ext. 1479 before them voluntarily disclosing that he would show the place where

the articles used for making timer circuit devices were kept, which he wrote down.

140. PI Tonapi, PI Deshmukh, staff, PW-129 Raju Tapi (Panch witness), one another panch and A.7 - Sajid went to Malvani Gate No. 6 via Link Road. A.7 asked to stop the vehicle near Mother Teresa School. They got down from the vehicle, went ahead, and went through a small lane by the side to a ladder. A.7 was walking in front of PI Deshmukh. They were behind him. There was a board outside the house containing the words in English "Valid Tanjeem". They followed him inside the room on the first floor. An old person was sitting there. There were two parts in that room. The old person was sitting in one part, there were 5-6 computers in the other part.

141. A.7 - Sajid asked the old man to give the keys to his drawer. The old man, i.e. Mushtaq Ali gave him a key, by which he opened one of the drawers of the computer table, took out one plastic bag with the name 'Priya Gold'.

142. A.7 - Sajid took out the articles from the plastic bag and put them on the table. The articles were - one soldering gun, four pieces of soldering wire, soldering paste, one screwdriver, two stainless steel tweezers, one multimeter, one packet of Airtel recharge voucher with a sticker containing Sim number and mobile number and certain electric components like - resistors, capacitors, one coil, transistors, LEDs, diodes, etc. These articles were seized and taken in possession and the panchanama Ext. 1480 was completed.

143. Contents of the FSL report Ext. 2392 show that Art-346 is a 35 watt soldering rod, in working condition and used earlier. Art-347 (1 to 4), the four pieces of soldering wire are used to connect electronic components on PCB and Art-350 is a multimeter in working condition. Art-351 (1 and 2) are two stainless steel tweezers in working condition, Art-352. is a T-6 type screw driver particularly used for mobile repairing in working condition, Arts-354(1 to 22) are resistors of different values in working condition, Arts-355 (1 and 2) are two electrolytic capacitors in working condition, Art-356 is silvery white metallic wire wound on graphite rod, Art-357 (1 to 8) are transistors in working condition, Art-358 (1 to 9) are red coloured Light Emitting Diodes (LEDs) in working condition, Art-359 (1 to 6) are Zener Diodes, generally used as voltage regulator and appeared to be in working condition.

Identification Of Accused/Important Witness

144. PW-80 SEO purandare conducted the Test Identification parade on 07/11/06 at Arthur Road Jail, wherein PW-75 Amar Sardar Khan identified Mohd. Sajid. Amar Khan as the person who was present in the house of A.6 Mohd. Ali and was doing something with a wire. Ajmeri Sheikh, a friend of PW-75, who went to A.6's house at Govandi with PW-75 before 4 to 5 days of the blast, also identified A.7 in the TIP conducted on 07/11/06 by SEO Purandare.

Link Between Accused Persons - Connection With SIMI – Conspiracy

145. It was found that there were cases against A.7 - Sajid, A.2 - Tanveer, A.4 - Ehtesham, and A.8 - Abdul Wahid, which were of

similar nature and were under the provisions of Section 153A of the IPC or under the provisions of the Unlawful Activities (Prevention) Act.

146. Evidence shows that the Pakistani persons were staying at three places in Mumbai, i.e., at the residence of A.3 Faisal at Bandra, at the residence of A.7 Sajid at Mira Road and in the office of SIMI at Mira Road. After the blasts, they went to the residence of A.8 Abdul Wahid at Mumbra.

147. Some of the accused persons had organized a meeting in the month of February 2006 and discussed the proposal of wanted accused Azam Chima, who had promised the accused persons that he would send about 12 people from Pakistan, who would help them in assembling explosive and triggering devices. Wanted accused Azam Cheema had also promised to send high explosives along with those persons. Similarly, wanted accused Azam Cheema sent two persons from the Nepal border and they were collected by A.1 Kamal and brought to Mumbai and handed over to A.7 Sajid, who arranged for their stay. Their names were disclosed as wanted accused Aslam and wanted accused Hafizullah.

148. The wanted accused persons and two dead accused were staying in the safe houses arranged by A.13 Asif Khan, A.3 Faisal and A.7 Sajid.

149. All the accused decided to assemble the explosive devices in the house of A.6 Mohd. Ali, situated at Govandi. Three days prior to the explosions, the explosive devices were assembled by A.7 Sajid and experts in assembling explosive devices, i.e., wanted accused Sohail Shaikh from Pune, who had come from Pakistan and one more Pakistani wanted accused. On the night of 10/07/06, the assembled

explosive devices were transported in the motor car no. MH-01-V-9568 belonging to A.3 Faisal and in one taxi, by A.3 Faisal, A.12 Naveed, A.7 Sajid and the Pakistani nationals and taken to the house of A.3 Faisal and stored there.

150. It has come in the evidence of PW-65 Mehmoob Qureshi (Hostile witness regarding SIMI Activities) that the office of the SIMI was at Kurla Pipe Road where he used to go sometimes. Similar types of programs used to be conducted there. In the year 2000, he had visited Akola for a convention of SIMI. He became acquainted with the workers of SIMI, they were A.8 Abdul Wahid, A.7 Sajid, Irshad Khan, who was the Maharashtra President, etc. PW-65 has identified A.8 Abdul Wahid and A.7 Sajid in the court. PW-65 stated that he knows some SIMI activists, out of which A.7 Sajid is his brother-in-law.

151. PW-78 Shaikh Noman Ahmed (Hostile witness) had stated that there was a program at the house of A.7 Sajid Ansari in 2003 and in that program A.2 Tanveer Ansari, A.4 Ehtesham Siddiqui, Shanu and many others were present.

A.10 - Suhail Shaikh

Fir/Arrest/Cr. No

152. To get insights regarding the arrests of the A.10 in relation to his involvement in different blasts, a chart is produced herein below: -

CHART NO. 11

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering	25/07/2006

			into Matunga Railway jurisdiction)	
2.	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	06/08/2006
3.	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	21/08/2006
4.	59/06	Vasai Road Railway Police Station	Mira Road (The train had just departed Mira Road Station - It was between KM Pole no. 40/8 & 41/4)	16/09/2006
5.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	30/09/2006

House Search Of Suhail Shaikh (A.10), Rizwan Dawrey And Abdul Rehman Dawrey

153. A.10 - Suhail used to reside in Pune. Therefore, A.10's residence in Pune was searched after consulting with ACP Tawde. PW-176 directed API Kadam and PSI Gaikwad went to Pune with A.10 to conduct a search of A.10's house and conduct the search of the house of Rizwan Dawrey; therefore, a house search of A.10 and Rizwan Dawrey was conducted as they were directed.

154. When they entered the house of A.10, his mother, wife and two brothers were present in the house, police started the search, there was a cupboard on the right side, police opened it, in the middle drawer they found four audio cassettes some cassettes were titled 'Al-Quran' and some were titled 'Beauty of Islam, a passport in his name, a Samsung mobile, six books two books were titled 'SIMI, Student Islamic

Movement of India', the address of SIMI's office of Delhi was at the bottom of the front cover, two books were titled 'Tehrik-e-Millat, Atankwad ka jimmedar kaun' and two books were titled 'April-2004' Tehrik-e-Millat;, two maps and one ISD call rate card, two chits stapled to that card on which names and phone numbers were written, two of the books were green coloured, one of the maps was of Asia continent, a route from Salet, Tehran in Iran upto Muzzafarabad in Pakistan was marked on this map, there were some numbers in handwriting and e-mail ID and the other map was titled Map of Mumbai', certain spots in, Mumbai like Veer Savarkar Marg, Dadar, Mahalaxmi Temple, Reserve Bank of India, Zaveri Bazar, etc, were marked in red ink encircled by green ink on this map, a tariff card of ISD calls was found.

155. While searching Rizwan Dawrey's house police received details of Rizwan from his father- Mohd. Hussain that he is in Saudi Arabia, he had gone to Saudi Arabia on 06/04/06 and, found items in his cupboard, including books titled "India's Muslim Problem" "Islamic Directives to Reform the Individuals and Community" and photocopies of passports for Rizwan and his wife, which were seized (Arts. 304-307).

156. Additionally, Rizwan's father informed the police that his elder son Abdul Rehman Dawrey (Rizwan's brother) resides in flat no. 202 of the 'C' wing in the same building. Therefore, they went to flat 202, where Abdul Rehman Dawrey revealed that Rizwan sent money for accused number 3. Abdul rehman Dawrey produced white closed envelope which was opened and they found Saudi Arabian Riyals- 22 notes of 500 riyals and one note of 200 riyals.

Link Between Accused - Connection With SIMI- Visit To Pakistan – Conspiracy

157. It has come in the evidence of PW-71 Abdul Rehman Dawrey that wanted accused Rahil, A.3 - Faisal, A.13 - Asif, Firoz and others whose names he does not remember, used to come to the office of the SIMI, that besides Kuran and Hadis; there used to be discussions about Muslim issues like arrests of Muslims and the atrocities on the Muslims, the persons whose names he told and the persons whose names he does not remember used to make the above discussions. He has identified A.10, A.3 and A.9.

158. A.3 – Faisal, in his confessional statement, stated before the Assistant Director of E.D (PW-40) that out of the amount of Rs.1,80,000/- received by him in July 2002, he had made a payment of Re. 1/- lakh to A.10 – Suhail for sending him to Pakistan for training in L-e-T camp. A.10 have returned from Pakistan after getting training in L-e-T camp and told him that he ie. A.10 would be looking after the L-e-T work and assignments in Pune, that for this work A.3 had been paying Rs. 4000-5000/-occasionally to A.10 and have paid around Rs. 1.5 lakhs to him.

159. Literatures recovered from the house of A.10 are connected with SIMI, A.10 continued working for the said organization and used to take part in the activities of SIMI.

160. A.10 - Suhail had undergone terrorist training in handling of arms and ammunition and explosives in the terrorist camp of Lashkar-e-Taiba (L-e-T) situated at Muzzafarabad in Pak occupied Kashmir

(POK) of Pakistan and A.3 - Faisal had sent A.10, for militancy training in Pakistan.

161. It had come to the notice that A.10 - Suhail had gone to Iran by obtaining Ziyarat Visa and thereafter infiltrated into Pakistan by clandestine way, and had contacted wanted accused Azam Cheema @ Babaji, who is a wanted accused in this case and who is one of the commanders of L-e-T and that had sponsored accused persons training in the training camp of L-e-T at Muzaffarabad.

162. PW-45 (Passport Agent) went to the ATS office on 08/08/06 as the ATS police had telephoned him. Upon reaching there, the ATS officer told him two names, i.e., Suhail Shaikh (A.10) and Firoz Ghaswala and asked him whether these two persons had done the ticketing and visa work from their office. He telephoned his office and asked them to verify. After some time, it was informed that the ticketing and visa work of A.10 - Suhail was done by their office and only visa work of Firoz Ghaswala was done by their office. A.10 had given his passport for visa in 2002.

163. PW-59 saw A.10 Suhail along with Ehtesham, Faisal, Suhail, Muzzammil and Asif Khan at Faisal's house in February 2006, that they had gathered there for discussion on some special subject.

A.11 - Zameer Shaikh

Fir/Arrest/Cr. No

164. To get insights regarding the arrests of the A.11 in relation to his involvement in different blasts, a chart is produced herein below: -

CHART NO. 12

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	77/06	Mumbai Central Railway Police Station	Matunga Railway Station (Between Dadar to Matunga - while entering into Matunga Railway jurisdiction)	25/07/2006
2.	41/06	Andheri Railway Police Station	Jogeshwari Railway Station (Train had just departed from the platform no.1)	06/08/2006
3.	86/06	Bandra Railway Police Station	Bandra Railway Station (Between Km Pole No.15/1 C and 15/6 A)	21/08/2006
4.	59/06	Vasai Road Railway Police Station	Mira Road (The train had just departed Mira Road Station - It was between KM Pole no. 40/8 & 41/4)	16/09/2006
5.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	30/09/2006

House Search Of A.11

165. ACP Tawde directed PI Tonapi on 31/07/06 to conduct the search of the house of arrested A.11 - Zameer. PW- 155 PI Tonapi along with panchas and staff entered the house of A.11. There was a nameplate on the room bearing the description '100-6/7, L Block, Latifur Rehman'. A.11 - Zameer knocked on the door, it was opened by a lady, whom he identified as his mother, A.11 Zameer led them to a loft in that house, there was a wooden cupboard on the western side of the loft, A.11 opened the cupboard, opened a drawer and took out a passport in his name and photograph, they checked the passport, there were stamps of Mumbai Immigration, Mehrabad airport and visa of Iran.

166. There were two booklets, one Tehrik-e-Millat Atankvad Ka Jimmedar Kaun and the second was titled Tehrik-e-Millat Asia 2004, another booklet titled 'Road Map of Mumbai and Navi Mumbai', it was a road map of only Mumbai, certain places in the map were marked, like RBI, Rajabai Tower, CST, Mumbadevi, Mahalaxmi and somewhere near Century Bazar, another map containing portions of India, Pakistan, Afghanistan, Oman and Iran, a route from India to Tehran, Tehrari to Zaidan, Zaidan to Quetta, Quetta to Bahawalpur and Bahawalpur to Muzaffarabad was marked, it also contained an international number 0066 etc in writing, one E-mail ID, 'gudu_sir@yahoo.com'. A.11 produced a black wallet containing some cash, two Canara Bank ATM-cum-debit cards, one in the name of Latifur Rehman and other in the name of Zubair Ansari, one motor driving license in his name and a small pocket diary containing some names and some figures.

Link Between The Accused - Visit To Pakistan - Connection With SIMI - Conspiracy

167. In 2005 or 2006, A.3 - Faisal had given the passport of A.11 - Zameer for obtaining a visa for Iran, which he had given to agent PW-44 Ashik Ali. PW-46 Mushtaq Ali (Passport Agent) said that A.3 used to give such work to him every two-three months. The details of the passport Art-133 are mentioned in the entry in the register Art-617. As per the entry in the register, A.11 was to go to Iran in 2005. On going through the passport Art-133, Ashik Ali stated that A.11 had gone to Iran but not for Ziarat, because persons who go for Ziarat take Niyaz or Prasad and a stamp is put on their passport to show that they had taken the Niyaz and there is no such round stamp on the passport Art 133.

168. A.11 - Zameer had gone to Iran by obtaining ziarat visa and thereafter infiltrated into Pakistan by clandestine way, and had contacted wanted accused Azam Cheema @ Babaji, who is a wanted accused in this case and who is one of the commanders of L-e-T and that had sponsored accused persons training in the training camp of L-e-T at Muzaffarabad.

169. A.3 – Faisal, in his confessional statement, stated before the PW-40 Arvind Singh (Assistant Director of E.D) that he had sent A.11 - Zameer, SIMI activist, in 2004, Feroz Ghaswala and Mohd. Ali Chipa in 2005 and Zulfiquar Faiyaz in 2006 to get training in L-e-T camps via Iran route. He further stated that A.11 was sent on the reference of A.4 - Ehtesham.

170. PW-95 Tafheem Akmal Hashmi (hostile witness) joined the Pakistan Army in 1993 or 1994 and was a hawaldar when he left service and was posted in 637, Infantry in Bimber in Azad Kashmir. He left army for the first time in 1994 or 1995 and joined the Mujahideen thereafter. He had stated that when he was in police custody in Bombay he was kept in lockup, that there were other persons kept in separate lockups, that they were A.3 - Faisal, A.11 - Zameer, A.9 - Muzzammil, Shakil Warsi and A.2 - Tanveer. A.11, while in custody, told him that he had been to Pakistan for training with Lashkar-e-Taiba and that he had taken the training for 10 days.

171. Literatures recovered from the house of A.11 are connected with SIMI. A.11 continued working for the said organization and used to take part in the activities of SIMI.

172. A.11 - Zameer had undergone terrorist training in handling of arms and ammunition and explosives in the terrorist camp of Lashkar-

e-Taiba (L-e-T) situated at Muzzafarabad in Pak occupied Kashmir (POK) of Pakistan and A.3 - Faisal had sent A.11, for militancy training in Pakistan.

173. It was found during the investigation that the leaders of the Lashkar-e-Taiba organization made use of the SIMI cadre because their ideologies are similar, that one of the commanders of Lashkar-e-Taiba wanted accused Azam Cheema @ Babaji had played a vital role behind the activities of arrested accused as an organized crime syndicate. Wanted accused Azam Cheema had arranged for the training of A.11 Zameer and his other co-accused in the camps of Lashkar-e-Taiba situated in Pakistan.

A.12 - Naveed Khan

Fir/Arrest/Cr. No

174. A.12 was arrested only for one crime; the details are given as under:

CHART NO. 13

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	30/09/2006

Involvement Of A.12 - Link Between Accused - Recovery From Maruti Car

175. PI Khanvilkar, his staff, API Dudhgaokar and PSI Sachin Kadam were inquiring with A.12 - Naveed on 22/10/06, arrested in CR. No 05/06 of ATS Police Station, Mumbai. A.12 expressed his desire to disclose certain important information concerning the crime. He gave

the statement (Ext.636) before two panchas, in which he wrote, that he is ready to show the places where he had gone, to show the spot where he had kept the car and to show the person to whom he had given the key of the car on the instructions of A.7 – Sajid.

176. They went to Shivaji Nagar, Govandi and proceeded towards Geeta Vikas Beat Police Chowki and in the lane ahead of the chowki. At some distance, in the lane, A.12 - Naveed asked them to stop the vehicle. A.12 was going to show some places. A.12 led them on foot towards Sandeep Tailor and told them that he had halted the Maruti car there. He told them that A.3 - Faisal, A.7 - Sajid and two Pakistani nationals had got down there. A.12 further told them that he had remained standing near the car.

177. Thereafter, the vehicle was taken to Bandra Perry Cross Road, where the vehicle was stopped as per A.12 - instructions. A.12 - Naveed led them and they followed him and after crossing three 'baithi chawls', A.12 pointed to a building and informed them that it was the Lucky Villa building where A.3 - Faisal used to reside. Then, they went by the staircase to the terrace of the building, there was a temporary structure room on the terrace and A.12 pointed to it and informed them that this was the residence of the A.3 where two Pakistanis used to reside with A.3.

178. Thereafter, as per the direction of A.12 they went to Millat Nagar, Andheri to Khar Danda, Santacruz, Juhu Chowpatty. He led them to a compound in which there was Ocaz Shopping Center. There was a four storied building in front of the shopping center to which he pointed out and informed them that he had dropped A.3 Faisal below

that building and A.3 Faisal had gone to meet the Pakistani guests in that building. There is an iron gate behind the building. A.12 - Naveed informed them that he had halted the Maruti-800 vehicle near that gate and had waited there for A.3 Faisal. On his direction, PSI Sachin Kadam prepared a rough sketch of the spot Ext. 639. Then, A.12 led them to the compound of AL Hatim Building and pointed out a white Maruti 800 car amongst other cars that were parked by the side of the south compound wall and said that it was the car of A.3 Faisal.

179. The car was locked. A.12 - Naveed said that the key of that car is in a building nearby. He led them to that building and to a room on the fourth floor. A police officer knocked on the door. A person opened the door, A.12 told him that he had come with the police and asked him to give the keys of the car. The name of that person was Rizwan Khot. Rizwan gave the keys of the car to him.

180. The police inspected the car by torch, they saw some black spots on the back side of the driver seat; the black spots were wiped by three cotton swabs. There were similar black spots in the boot, they wiped the black spots by three cotton swabs and put them in separate plastic bags, Police seized the car and took the keys. The report of the FSL Ext. 2391 was received and the contents of the report show that cyclonite (RDX), petroleum hydrocarbon oil and charcoal, were detected on three cotton swabs and ammonium, nitrate and nitrite radicals were detected in the other three swabs and cyclonite (RDX), ammonium, nitrate, nitrite, petroleum hydrocarbon oil and charcoal were detected in the car.

Conspiracy

181. Mohd. Alam (PW-59) Stated in his evidence that during the month of June 2006, A.3 - Faisal Shaikh had introduced him to one Rizwan Khot and during that period A. 3 had purchased a white coloured Maruti 800 car. Mohd. Alam, Rizwan Khot, A.12 - Naveed and A.3 - Faisal Shaikh used to go around in that car, which Rizwan Khot used to drive.

182. In June 2006, A.3 - Faisal Shaikh called PW-59 Mohd. Alam and A.12 - Naveed to his house. Then, they all went to a disco bar. As they were at the disco bar upto late hours, they halted at PW-59 Mohd. Alam's house. On the next morning, A.3 - Faisal Shaikh told A.12 - Naveed that because of the guests, his house is congested and that he should make some arrangements for the guests. After some days, PW-59 came to know from A.12 Naveed, that A.12 Naveed had made arrangements of two guests of A.3 Faisal at Millat Nagar, Andheri.

183. All the accused decided to assemble the explosive devices in the house of A.6.Mohd. Ali, situated at Govandi. On the night of 10/07/06 assembled explosive devices were transported in the motor car no. MH-01-V-9568 belonging to A.3 Faisal and in one taxi, by A.3 Faisal, accused no. 12 Naveed, accused no. 7 Sajid and the Pakistani nationals and taken to the house of A.3 Faisal and stored there.

184. It has come in the evidence of PW-186 that it was disclosed in the investigation that the bomb that exploded at Khar subway was planted by accused no. 12 Naveed along with deceased accused Abu

Umed @ Abu Osama @ Mohd. Ali, who was killed in an encounter later on.

A.13 - Asif Khan Bashir Khan @Junaid

Fir / Arrest / Crime No.

185. A.13 – Asif was arrested only for one crime; the details are given as under:

CHART NO. 14

Sr. No.	Cr. No.	Police Station	Place of Blast	Date of Arrest
1.	156/06	Borivali Railway Police Station	Borivali Railway Station (Platform no. 4 of Borivali Railway Station)	03/10/2006

Recovery

186. On 07/10/06, PI Tajne (PW-161) received a memo from the chief IO instructing him to interrogate A.13 - Asif, alongside ACP Tawde and PSI Kadam. During this interrogation on 09/10/06, A.13 made a voluntary statement(Ext. 664) in the presence of panchas, indicating his willingness to reveal additional evidence. He then led the team to Mira Road, stopping near Naya Nagar at Haidar Chowk, where he directed them to a locked flat (no. 101) in A wing, claiming he had lost the key. A keymaker was called to make a duplicate key, which PI Tajne took possession of before entering the flat with A.13 and the panchas.

187. A.13 - Asif led the police and panchas to a bedroom where he retrieved a rexine bag hidden beneath suitcases. Upon opening the bag,

he produced a white plastic bag containing approximately 2.7 kg of white granules. When questioned about the granules, A.13 remained silent. Due to the strong odor of the substances, the police suspected they were explosives and collected two samples of 10 grams each, placing them in separate plastic pouches for further examination.

188. Thereafter, A.13 - Asif took out a blue coloured plastic bag from the other side of the rexine bag, containing 10 aluminum tubes to which wires were joined (20 pieces of white wire). On examination, they found them to be electronic detonators. They carefully kept those detonators in plastic bottles and labels containing his and panchas' signatures on the samples of granules and the plastic bottle containing detonators and sealed them.

189. The rexine bag was having ash coloured, having chain and the words 'Hindustan ki Kasam' on it, that there was a khaki coloured cardboard box in a corner of that bedroom, that police asked A.13 - Asif to open it, There were 23 books in Urdu language and 2 files containing some documents. They noticed one computer set and CPU while searching the hall, a copy of leave and licence agreement of that flat, Reliance electric bills and some newspaper cuttings were in the hall. PI Tajne seized all these articles under panchanama Ext. 665.

190. The report of the FSL (Ext. 2389) was received and the contents of the FSL report show that Cyclonite (RDX), charcoal and petroleum hydrocarbon oil were found in the blackish oily lumps in the rexine bag in the percentage of 82.34%, 8.00% and 9.17% respectively and ammonium and nitrate radicals are detected in the white granulated powder.

Train Passenger Who Identified A.13

191. PW-60 Kishore Popatlal Shah boarded the train going to Virar from Churchgate station at 5:37 PM wherein two boys had boarded the train at Bombay Central Station and kept a black colour bag on the luggage rack. Then they got down at Dadar station and those persons did not have the bag with them when they got down at Dadar. Thereafter, he had gone towards the door on the east side to get down at the next station i.e. Borivali. The train reached Borivali at 6:30 p.m. When it was about to stop, that time the blast had taken place. He along with other passengers who were standing in the door were thrown on the platform.

192. Two days later, on 14/07/06, he reported his injuries and suspicions about the two individuals to the Borivali Railway Police, providing a description; however, police asked him to wait as they were going to call a person who would prepare a sketch. He waited for some time but the person did not come, therefore, he went back.

193. On being called, he went to the ATS office on 07/11/2006 for the purpose of an identification parade, the parade was conducted by PW-82 SEO Barve. When Kishore Popatlal Shah was taken inside the room in Arthur Road jail, he identified a person, i.e. A.13 Asif Khan @ Junaid, standing at the 8th place out of the fourteen persons standing in the row there. He told the SEO that A.13 was the person who had kept the bag in the train on the day of the blast. SEO Barve asked A.13 his name which he told as Asif Bashir Khan.

Taxi Driver Who Identified A.13

194. On the orders of his superiors, PW-175 PI Devram Dagadu Wadmare searched for taxi drivers who may have transported individuals from Bandra to Churchgate on the day of the 11/07/2006 blasts. After 15 days, he located taxi driver PW-57 Santosh Kedar Singh at Hill Road, Bandra. PW-57 told PI Devram that he had a suspicion about two persons. On 11/07/2006, around 3:15 to 3:30 p.m., he picked up two passengers at Perry Road heading to Churchgate. One had a heavy black bag and an umbrella. They asked him to drive carefully as the articles that they had with them were delicate. One passenger was medium-built, aged about 30-35, while the other was thin, aged about 23-25.

195. PW-57 dropped them off at the subway for Churchgate station. The fare was Rs. 180, but they paid with a Rs. 500 note. However, he did not have change to return the the balance amount. Therefore, he told them that he would bring it and they should wait for two minutes. However, those two persons were in a hurry and told him to keep the change and got off the taxi, taking the bag with them.

196. On being called, PW-63 had gone to the ATS office at Bhoiwada on 07/11/06 for the purpose of an identification parade. There, he met ACP Patil (PW-186), who told him that he would be required to go for identifying the persons whom he had taken in his taxi. The parade was conducted by PW-82 SEO Barve. When PW-63 went inside the room in Arthur Road Jail, there were fourteen persons standing there. SEO Barve(PW-82) asked him to look at them and see whether he could identify anyone. He looked at those persons and identified one person,

ie, A.13 Asif Khan as one of the persons who had traveled in his taxi on that day. SEO Barve asked him his name, which he told as Asif Bashir Khan.

Link Between Accused - Connection With SIMI- Conspiracy

197. PW-174 Prasad Khandekar came to know that A.13 - Asif is an active member of the SIMI and there were some cases filed against him at Jalgaon. He told ACP Tawde that he wanted information about the cases, so he sent a letter and then deputed an officer to collect the information. Two crimes were registered against him in jalgaon under the Explosives Substances Act and IPC. PW-180- API Padmakar Pandharinath went to the SP office of Jalgaon and met the concerned officers in the District Special Branch, who were handling the cell of SIMI activists. They showed him the record of SIMI activists. The name of A.13 and his photograph was in the record and there was information in it that he was the President of Jalgaon unit of SIMI and there were two crimes registered against him.

198. In February 2006, once PW-59 (Mohd. Alam Gulam Qureshi) went to the house of A.3 - Faisal. At that time, he saw 5-6 persons in his house. They had gathered there for discussion on some special subject. A.3 introduced those guests to PW-59. One of them was by name Asif Khan (A.13). Thereafter, in March 2006, A.3 came to meet PW-59 at Mira Road near Shams Masjid with his three friends, A.13 - Asif, A.2 - Tanveer and A.4 - Ehtesham.

199. PW-65- Mehmood Qureshi (Hostile witness) had stated to the police that when he had gone to Akola for a convention of SIMI.

Ashraf Jafari and Shahid Badar Falai of SIMI had come there from Delhi. A.13 - Asif and others were present in that convention. He further stated to the police the names of twenty-four SIMI activists and addresses of some and mobile numbers of some, including A.13 - Asif, A.4 - Ehtesham, A.2 - Tanveer, A.7 - Sajid, and A.8 - Abdul Wahid.

200. PW-78 Shaikh Noman Ahmed (Hostile witness) had stated to the police that there was a program at the house of A.7 Sajid Ansari in 2003 and in that program, people were desirous of giving some post in the SIMI organization to A.13 Asif Khan.

201. During the course of investigation, 26,200 Saudi Riyals were recovered, some from the residence of A.3 - Faisal and some from witness Abdul Rehman Dawrey, which were meant for A.3. Wanted accused Azam Cheema had asked A.3, A.13 and others to make preparations for bomb blasts strike in the city of Mumbai.

202. The wanted accused Azam Cheema sent six persons from Bangladesh in May 2006, who were collected by A.5 - Majid and brought to Mumbai and handed over to A.13 - Asif, who made arrangements for their stay. The names of those persons were disclosed as wanted accused Sabir, wanted accused Ammu Jaan, wanted accused Ehsanullah, wanted accused Abu Hasan, wanted accused Abu Bakar and wanted accused Kasam Ali, all of them Pakistani nationals and it was disclosed that wanted accused Ehsanullah had brought about 15 kgs of RDX with him. The wanted accused persons and two dead accused were staying in the safe houses arranged by A.13, A.3 and A.7.

203. It was also disclosed that the bomb exploded at Borivali Railway Station was planted by A.13 - Asif along with wanted accused Sabir. During the investigation, 500 gms black powder was recovered from A.1 - Kamal. Samples of black and white spots were noticed in the houses of A.3 - Faisal and A.6 - Mohd. Ali and in the hand bag recovered at the instance of A.13 - Asif. The CA reports about these articles are received showing similar explosive substances as found at the spots.

PERSONS AFFECTED INCLUDING DIED AND INJURED AND DOCTOR'S EVIDENCE REGARDING POSTMORTEM

(Reproduced from the Trial Court Judgment)

C. R. No. 77 of 2006 of Mumbai Central Railway Police Station:-

204. On the orders of the superior officers, Dadar Railway Police Station and Bhoiwada Police Station officers prepared inquest panchanamas on the dead bodies that were in the KEM hospital and Sion Police Station officers prepared inquest panchanamas on the dead bodies that were in the Sion hospital. These three police stations registered ADRs at zero numbers and sent the inquest panchanamas to Mumbai Central Railway Police Station, on receipt of which, ADRs were registered and the inquest panchanamas were included in the respective CRs. These three police stations had handed over all dead bodies, except one, to the claimants directly. 28 persons had died in the Matunga blast vide inquest panchanamas, memorandum of post-mortem examinations and cause of death certificates, Exts. 854, 856, 865, 866, 873, 874, 878, 1143, 1144, 1157 to 1160, 1163 to 1166, 1871 to 1890. The relevant details thereof are given in the table below:

CHART NO. 15*(Reproduced from the Trial Court Judgment)*

Sr. No.	Name of Deceased	Exhibit numbers of memorandum of post-mortem examinations, cause of death certificates and inquest panchnamas
1	Prabhakar Shantaram Ghume	1157, 1158, 1879
2	Nand Vallabh Sadanand Daundiya	1163, 1164, 1883
3	Rajan Rohidas Naik	1159, 1160, 1885
4	Ramesh Kashinath Raut	1143, 1144, 1886
5	Salim, Pakistani National	1165, 1166
6	Bhairinath Krishna Salvi	1867
7	Manual Kustin D'Souza	874, 1868
8	Nitin Sukhlal Patil	854, 1869
9	Girish Baliram Talpade	873
10	Sojiram Modulal Meena	856, 1870
11	Sumant Dilip Day	865
12	Babulal Durlabhbbhai Waghani	866
13	Jagannathan Narisngappa Gundappa	878
14	Mohammad Salim Kundiwala	1871
15	Suresh Chandra Sarangadhari Pandey	1872
16	Hemant Sakharan Vaidya	1873
17	Manohar Vaman Raut	1874
18	Sandeep Bhavani Zavar	1875
19	Sandeep Hari Bhosale	1876 & 1890
20	Dushyant Madhukar Bhoir	1877
21	Gokul Birdhichand Sharma	1878
22	Cyrus Jehangir Munshi	1880
23	Francis John Louis	1881
24	Ricard Augustine D'Monte	1882
25	Manish Rameshchandra Manihar	1884

26	Sharad Krishna Bobhate	1887
27	Mohd. Javed Naseem Ahmed Shaik	1888
28	Shankar Ramdin Gupta	1889

205. Out of the above, post-mortem examinations were done on 18 bodies at Sion Hospital and on 10 bodies at KEM Hospital. Random post-mortem examinations of two bodies of deceased Nitin Sukhlal Patil and Shojiram Modulal Meena were done, the memorandums of which are at Exts.854 and 856 respectively. The opinions as to the probable causes of deaths mentioned in the memorandums of post-mortem examinations and cause of death certificates were explosive cranio cerebral trauma, terminal cardio respiratory failure due to septicemia in operated case of contaminated grievous facial and left foot injuries, shock due to polytrauma/multiple injuries, haemorrhage and shock due to multiple injuries, head injury as a result of bomb explosion, etc.

206. Dr. Dharendra Shantilal Balsara, (PW-83) (Ext.846), and Dr. Walter Francis Vaz, (PW-84) (Ext.872), of KEM Hospital had performed the post-mortem on the dead body of Nitin Sukhlal Patil and had recovered fragments of shrapnel for metallurgical analysis, Arts. 313(colly), pieces of burnt/partially burnt explosive material, Arts. 314(colly), and blood for grouping and for chemical analysis from the dead body, which he forwarded to the FSL alongwith his forwarding letters, office copies of which are at Exts.848 to 850. Infact HC Shrimant Maruti Jadhav, (PW-90) (Ext.896), took the sample bottles from the hospital on 24/07/06 and reached them to the FSL, Kalina alongwith the forwarding letter of his police station, office copy of which is at Ext.898. The reports of the FSL, Exts. 851 to 853 were

received by the hospital and they were sent to the police station. The reports, Exts.851 and 852, showed that Nitrite (post explosive residue) was detected in the splinters and pieces of burnt/partially burnt explosive material that were recovered from the dead body of Nitin Sukhlal Patil.

207. Both the above doctors had also performed post-mortem on the dead body of Shojiram Modulal Meena and had recovered fragments of shrapnel for metallurgical analysis, Arts.315(colly), pieces of burnt/partially burnt explosive material, Arts.316 (colly), and blood for grouping and chemical analysis from the dead body and had sent them to the FSL alongwith Dr. Balsara's forwarding letter, copy of which is at Exts.857 to 859. HC Jadhav, PW-90, had taken the sample bottles from the hospital and had reached them to the FSL alongwith the forwarding letter of his police station, office copy of which is at Ext.897. FSL reports, Exts.860 to 862, were received by the hospital and sent to the police station. They showed that Nitrite (post explosive residue) was detected in the splinters and brownish material taken out from the dead body of Shojiram Modulal Meena. The cause of death was hemorrhagic shock in a bomb blast, cerebral and spinal concussion and massive bilateral pulmonary contusion as effects of a bomb blast (unnatural) and that all the external and internal injuries were collectively responsible for the death of that person and all the external injuries may have been caused in a high explosive blast and the internal injuries corresponded to the external injuries. Sion Hospital had also forwarded a sealed bottle containing a foreign body that was removed from the body of an injured Kalpesh Raut, alongwith their letter, Ext.900, addressed to the police station. Sr. PI Rathod, PW-176, sent the said sealed bottle alongwith his forwarding letter, office copy of

which is at Ext.899, alongwith HC Jadhav, PW-90, to the FSL, Kalina. Contents of the report, Ext.901, that was received subsequently, showed the result of analysis that traces of Nitrite (post explosion residue) were detected on the metal piece.

208. Dr. Balsara, PW-83, and Dr. Vaz, PW-84, had issued cause of death certificates, Exts.865, 866, 873, 874 and 878 in respect of five dead bodies and Dr. Mukesh Shamrao Ghuge (PW-112) (Ext. 1138) and his junior Dr. Sapna had conducted post-mortem on 15 bodies of the persons who had died in the train blasts at Mahim and other places. They had performed post-mortem on 5 bodies concerning the blast at Matunga and had issued the memorandums of post-mortem examination and cause of death certificates, Exts. 1879, 1157, 1158 and Exts.1883, 1163, 1164 and Exts.1885, 1159, 1160 and Exts. 1886, 1143, 1144. Ext.1165 was of an unidentified dead body.

209. 127 people were injured in the Matunga blast vide injury certificates Exts. 894, 2727 (1 to 3, 5, 6, 8, 13, 14, 15, 17, 18, 20, 21, 23, 27, 29, 32 to 37, 39, 40, 46 to 50, 52, 55 to 57, 59, 79). The relevant details thereof, to show that those persons had sustained injuries, are given in the table below:

CHART NO. 16

(Reproduced from the Trial Court Judgment)

Sr. No	Name of the Injured	PW number or exhibit number of affidavit filed by Injured	Exhibit number of medical certificate
1	Ganesh Shantaram Kadam	Ext. 1260	2727 (1)
2	Mukund Kamlesh Thakkar	Ext. 1261	2727 (2)
3	Zankariprasad Rangnath Joshi	Ext. 1262	2727 (3)
4	Surendrakumar Makhanlal Goyal	—	2727 (4)

5	Ramkrishna Changu Mhatre	Ext. 1263	2727 (5)
6	Keval Janak Doshi	Ext. 1264	2727 (6)
7	Tirumadai Raju Gopal	---	2727 (7)
8	Tejas Chandrakant Pathak	Ext. 1265	2727 (8)
9	Sanjay Baban More	---	2727 (9)
10	Jaspreet Awatar Singh Kalsi	---	2727 (10)
11	Tarachand Laxman Pawar	---	2727 (11)
12	Shrikant Ramrao Jedhe	---	2727 (12)
13	Sharad Shantaram Gorivale	Ext. 1266	2727 (13)
14	Ramsukh Matafer Paasi	Ext. 1267	2727 (14)
15	Ms. Pooja Chandrakant Yendait	Ext. 1407	2727 (15)
16	Mannan Shabbir Husain	---	2727 (16)
17	Vijay Madanraj Jain	PW No. 124, Affidavit Ext. 1268	2727 (17)
18	Dinesh Ambubhai Patel	Ext. 1269	2727 (18)
19	Naved Mohammad Chouhan		2727 (19)
20	Vijay Vasudev Amin	Ext. 1270	2727 (20)
21	Sudhakaran Krishnan Kotian	Ext. 1271	2727 (21)
22	Robinson N. Abraham	---	2727 (22)
23	Kalpesh Suryakant Raut	PW No. 81, Ext. 1272	839
24	Sayyed Imtiaz Mubarak Hussain	Ext. 1273	2727 (23)
25	Robert Luis Miranda	---	2727 (24)
26	Pranav Vidhushekhar Upadhyaya	---	2727 (25)
27	Uday Ramdas Kaikani	---	2727 (26)
28	Parkel Cherian Vergheese	PW No. 132, Affidavit Ext. 1274	2727 (27)
29	Larjaris Khistan Fernandis	---	2727 (29)
30	Tarun Devraj Acharya	Ext. 1410	2727 (29)
31	Manohardutt Bisandutt Fulora	PW No. 125, Affidavit Ext. 1275	2727 (29)
32	Suresh Vilas Mane	Ext. 1276	2727 (29)

33	Thomas Lopez Francis	PW No. 135, Affidavit Ext. 1277	2727 (29)
34	Namamishankar Kaliyaji Nima	---	2727 (29)
35	Radheshyam Rammurthi Dube	Ext. 1278	2727 (29)
36	Bhairavkumar Rambhil Saha	Ext. 1279	2727 (29)
37	Sanjaykumar Ramkisan Baichaliya	Ext. 1280	---
38	Joseph Domnick D'Souza	---	2727 (30)
39	Devendra Sitaram Nimborkar	---	2727 (31)
40	Mohd. Iqbal Jamal Shaikh	Ext. 1280 & 1281	2727 (32)
41	Vimal Laxminarayan Soni	Ext. 1282	2727 (33)
42	Riaz Ali Kasam Ali Lokhandwala	Ext. 1283	2727 (34)
43	Liladhar Jaidutt Sharma	Ext. 2734	----
44	Ajaykumar Nandkishor Yadav	Ext. 1409	2727 (35)
45	Santosh Shankar Patil	Ext. 1284	2727 (36)
46	Rameshwar Haribhau Nandanwar	Ext. 2735	2727 (37)
47	Mahadeo Appanna Naik	----	2727 (38)
48	Dinesh Odhavji Ghamelia	Ext. 1285	2727 (39)
49	Uday Bhagwant Tale	Ext. 1286	----
50	Sandip Devaprasad Roy	Ext. 1412	----
51	Anant Ravikant Surve	Ext. 1287	2727 (40)
52	Laxman Sitaram Adhagale	Ext. 1402	----
53	Suresh Narayan Manoti	----	2727 (41)
54	Kalthumani Shivkrishna Iyer	----	2727 (42)
55	Yogendrakumar Ramdoot Dinkar	----	2727 (43)
56	Arvind Surendra Jain	----	2727 (44)
57	Mohandas Parmanudas Parnikar	----	2727 (45)
58	Rishi Pravin Bobra	Ext. 1408	2727 (46)
59	Vishal Prabhakar Patil	----	2727 (47)
60	Neha Manoj Karve	Ext.1289	2727 (48)
61	Ms. Chandrabai Mahadeo Kharatmal	Ext. 1414	----

62	Chitrasen Singh Dharam Raj Singh	PW No. 121, Affidavit Ext. 1290	2727 (49)
63	Hitesh Rohitkumar Kaveria	Ext. 1288	2727 (50)
64	Anil Sharadchandra Parab	Ext. 1291	----
65	Vilas Shantaram Jawkar	----	2727 (51)
66	Ashish Deviprasad Jain	Ext. 1292	2727 (52)
67	Ramdular Ramkinkar Roy	----	2727 (53)
68	Sambhaji Tatoba Nangre	----	2727 (54)
69	Ashish Rammohan Sharma	Ext. 2736	2727 (55)
70	Nagesh Keshav Mankeshwar	Ext. 1411	2727 (56)
71	Anil Pandurang Gamre	Ext. 1406	2727 (57)
72	Subhash Suresh Kamble	----	2727 (58)
73	Prabhakar Laxman Khamkar	Ext. 2737	2727 (59)
74	Narendra Monajibhai Lodhia	----	2727 (60)
75	Pradip Narayandas Agrawal	----	2727 (61)
76	Jayant Varijvandas Bhansali	----	2727 (62 & 63)
77	Raju Ghanshyamdas Shah	----	2727 (64)
78	M. Karunakaran	----	2727 (65)
79	K. Phalgun Nair	----	2727 (66)
80	Rajendra Atmaram Khedkar	----	2727 (67)
81	Bakulbhai Baslubhai Sawani	----	2727 (68)
82	Ms. Parvati Harischandra Kini	----	2727 (69 & 70)
83	AmrishKumar Harishankar Diwan	----	2727 (71)
84	Vinod Shankar Chawan	----	2727 (72)
85	Rupesh Harkisandas Mestri	----	2727 (73)
86	Maheshkumar Bhagirath Prasad Kumawat	----	2727 (74)
87	Ramjibhai Tulshibhai Kakadiya	----	2727 (75)
88	Sagar Sudhakar Patil	----	2727 (76)
89	Jaisingh Harisingh Rathod	----	2727 (77)
90	Shailesh Tribhuvan Singh	----	2727 (78)

91	Sunil Arjun Halaye	Ext. 1404	2727 (79)
92	Sanjay Ashok Pawar	Ext. 1403	----
93	Tekynath verges Jose	----	2727 (80)
94	Jitendra Vidyashankar Jappi	----	2727 (81)
95	Arvind Malappa Kotik	----	2727 (82)
96	Kishorkumar Surendrakumar Jain	----	2727 (83)
97	Prabhakar Raghunath Mishra	----	2727 (84)
98	Kalpana Dinesh Samant	----	2727 (85)
99	Arvind Gopaldas Oza	----	2727 (86)
100	Mohmad salim sheikh	----	2727 (87)
101	Santosh Filip Rathod	----	2727 (88)
102	Shiban Krishan Kaul	----	2727 (89)
103	Deepak Umakant Naik	----	2727 (90)
104	Jitendra Shreeram Raut	----	2727 (91)
105	Harish Shamlal Pawar	----	2727 (92)
106	Mansinh Gauri Chouhan	----	2727 (93)
107	Kamaljeetsingh Govindsing Verma	----	2727 (94)
108	Nimish Bipin Shah	----	2727 (95)
109	Hitesh Maganlal @ Raju Gandeche	PW No. 89	894
110	N. A. Robinson	----	2732 (18)

C. R. No. 78 of 2006 of Mumbai Central Railway Police Station:-

210. 43 persons had died in the blast at Mahim Railway Station vide inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates, Exts. 863, 864, 867 to 871, 875 to 877, 879 to 881, 1139, 1141, 1142, 1147 to 1151, 1154 to 1156, 1161, 1162, 1167 to 1170, 1891 to 1894, 1897 to 1925. The relevant details thereof are given in the table below:

CHART NO. 17

(Reproduced from the Trial Court Judgment)

Sr. no.	Name of the deceased	Exhibit numbers of memorandum of post-mortem, examinations, cause of certificate and inquest panchnamas
1	Jogarao Mantri Pragada	1169, 1170, 1897
2	Namdeo Chintaman Bhagat	1139, 1140, 1900
3	Raman Kutty Kandy Nair	1151, 1154, 1902
4	Arvind Jammannal Agrawal	1155, 1156, 1906
5	Naval Bhagwandas Mathuriya	1145, 1146, 1907
6	Subhash Chotalal Shah	1147, 1148, 1908
7	Rasiklal Rameschandra Merchant	1141, 1142, 1912
8	Joseph Robert Naron	1161, 1162, 1914
9	Prashant Giridhar Bendale	1149, 1150, 1916
10	Sunil Ganpat Birwadkar	1167, 1168, 1924
11	Vrundesh Ramnirajan Sakeria	1891
12	Zuber Istija Khan	867, 1892
13	Yashwant Prabhakar Badekar	881, 1893
14	Sanfard Tony Diselas	871, 1894
15	Kalubhai Laxman Kasodaria	868, 1895
16	Somnath Pranavkumar Das	879, 1896
17	Anish Vinaykumar Baindur	863
18	Sanjay Mohanlal Jeswani	864
19	Anees Sattar Patel	876
20	Ninad Sudhakar Mahale	870
21	Amritlal Lajibhai Patel	872
22	Chetan Kuldip Sharma	875
23	Mohd. Tariq Ansari	880
24	Anil Lalubhai Shah	869
25	Prashant Yashwant Sawant	1898

26	Yogesh Harirao Phutane	1899
27	Trikamal Keshavlal Pandya	1901
28	Asim Ajit Kumar Bhajan	1903
29	Laxmichand Nanji Gala	1904
30	Naushad Ramaniklal Tejani	1905
31	Maksood Mohd Umar Darvesh	1909
32	Jitendra Maniklal Shah	1911
33	Louis Anthony Siquera	1912
34	Yogesh Mahendrabhai Doshi	1913
35	Niteshkumar Raeshwar Patel	1915
36	Himmatlal Pabhudas Modi	1917
37	Nathmul Dharnraj Saboo	1918
38	Mavjibhai Hairbhai Patel	1919
39	Anuj Navinchandra Kilwala	1920
40	Abhijeet Vilas Ahiwale	1921
41	Parag Vasant Karambelkar	1922
42	Sanjay Dattaram Shirke	1923
43	Chandrakant Mohanlal Mithani	1925

211. These documents show the opinions as to the causes of deaths to be head injury in case of explosion, shock following multiple/polytrauma injuries in case of bomb explosion, haemorrhage and shock due to polytrauma with complete transection of trunk, head injury in bomb blast, terminal cardio respiratory arrest with acute respiratory distressed syndrome following lung contusion following bomb blast, septicemia with bilateral lobar pneumonia due to multiple traumatic injuries as a result of bomb explosion.

212. 96 persons were injured in the blast at Mahim Railway Station vide injury certificates, Exts. 2728 (1 to 96). The relevant details thereof are given in the table below:

CHART NO. 18*(Reproduced from the Trial Court Judgment)*

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Gajanan Shailam Mergu	---	2728 (1)
2	Shivkumar Jagdishprasad Sharma	---	2728 (2)
3	Sushil Jagannath Sawant	Ext. 1416	2728 (3)
4	Giridhar Dejappa Kotiyan	Ext. 2745	2728 (4)
5	Ajay Pravinchandra Parekh	---	2728 (5)
6	Ashok Laxmichand Shah	---	2728 (6)
7	Amjad Nurul Ansari	---	2728 (7)
8	Barka Devka Okate	---	2728 (8)
9	Mahadev Bhagvanji Kadam	Ext. 1415	2728 (9)
10	Parko Tangavel Nadar	Ext. 1405	2728 (10)
11	Kalicharan Kuhari Shetty	---	2728 (11)
12	Umesh Vinayak Naik	---	2728 (12)
13	Mohammad Maharoof Khalil	---	2728 (13)
14	Mohammad Yar Mohd. Sajid	---	2728 (14)
15	Pravin Shankarlal Varma	Ext. 2740	2728 (15)
16	Pankaj Rasiklal Shah	Ext. 2739	2728 (16)
17	Mohammad Salim Mohd. Sharif	Ext. 1418	2728 (17)
18	Rajesh Triveniprsad Ranjan	---	2728 (18)
19	Samir Tulshant	---	2728 (19)
20	Kaushik Uttam Pradhan	Ext. 1293	2728 (20)
21	Aniket Vishwas Joshi	---	2728 (21)
22	Kishan Bugadimal Lakhani	---	2728 (22)
23	Ramesh Khadebhai Goti	Ext. 2738	2728 (23)
24	Smt. Shalini Tukaram Jogdhan	Ext. 2748	2728 (24)
25	Parag Laxman Kadam	---	2728 (25)
26	Vasant Gopinath Totka	---	2728 (26)
27	Ramniwas Pannalal Laddha	---	2728 (27)
28	Kashinath Vasant Shinde	---	2728 (28)
29	Narendra Jayantilal Mehta	---	2728 (29)

30	Umesh Ramesh Shah	---	2728 (30)
31	Vira Raghvan Shriniwasan	---	2728 (31)
32	Dilip Ramchandra Shirke	Ext. 2747	2728 (32)
33	Balkrishna Balram Controllu	----	2728 (33)
34	Dilip Amichand Khandelwal	----	2728 (34)
35	Louis Dagdu Kadam	----	2728 (35)
36	Gautam Bharat Dhanaresha	----	2728 (36)
37	Umesh Pyarelaal Sonar	----	2728 (37)
38	Marutiprasad Hemchandra Prakash	----	2728 (38)
39	Tambi Thomas Lazer	----	2728 (39)
40	Ashok Laxmichand Shah	----	2728 (40)
41	Arjun Sakharam Kalambe	----	2728 (41)
42	Balu Sakharam Kakad	----	2728 (42)
43	Chandravilas Mahadev Gandhi	----	2728 (43)
44	Antonito George Naron	----	2728 (43)
45	J. K. Nair	----	2728 (43)
46	Arvind Manilal Parikh	----	2728 (44)
47	Jaiprakash Chandrashekhar Shukla	----	2728 (45)
48	Prakash Yashwant Samant	----	2728 (46)
49	Laxman Balwant Samant	----	2728 (47)
50	Birju Balkrishna Nayar	----	2728 (48)
51	Sunil Chandrakant Karnik	----	2728 (48)
52	Sandeep Gajendra Zha	----	2728 (49)
53	Chandesh Rasiklal Kothari	----	2728 (50)
54	Rajeev Sumeru Varma	----	2728 (52)
55	Vijay Palni Makwana	----	2728 (53)
56	Babu Maruti Kamble	----	2728 (54)
57	Maheshbhai Shantilal Shah	----	2728 (55)
58	Roystan Abraham D'mello	Ext. 1417	2728 (56)
59	Balkrishna Divakar Patkar	----	2728 (57)
60	Mukesh Sadanand Shenoy	----	2728 (58)
61	Padmachand Mohanlal Gandhi	----	2728 (59)
62	Nilesh Bhogilal Shah	----	2728 (60)

63	Lalji Ramkant Pandey	PW No. 85	2728 (61)
64	Rameshbhai Popatbhai Nathani	----	2728 (62)
65	Manesh Natwarlal Ponda	----	2728 (63)
66	Rajnikant Maganlal Desai	Ext. 2743	2728 (64)
67	Damjibhai Mathurbhai Jadhav	----	2728 (65)
68	Prestan Peter Farnandis	----	2728 (66)
69	Dipak Vasant Kadam	Ext. 2742	2728 (67)
70	Digambar Limbaji Sasane	----	2728 (68)
71	Bismilla Mohammad Sultan	----	2728 (69)
72	Saurabh Vijay Harde	----	2728 (70)
73	Vinod Gajanan Bhatt	----	2728 (71)
74	Sanjeeshkumar Sushilkumar Singh	----	2728 (72)
75	Nikhilkumar Kantilal Mehta	----	2728 (73)
76	Kamal Rajaram Yadav	----	2728 (74)
77	Kamlesh Zabbu Rajbhar	PW No. 25	2728 (75)
78	Vilas Dhaku Pawar	----	2728 (76)
79	Bhimrao Sadhou Kesare	----	2728 (77)
80	Parshuram Rajaram Ingle	----	2728 (78)
81	Chandrakant Shankar Dalvi	----	2728 (79)
82	Sitaram Mangiram Rathi	----	2728 (80)
83	Rakesh Vasant Salunkhe	Ext. 2749	2728 (81)
84	Vinod Yellappa Mendhan	----	2728 (82)
85	Sirajuddin Jaimul Mutaibk Shaikh	Ext. 2746	2728 (83)
86	Ramprakar Vasudeo Sarwate	Aff. Ext. 2744	2728 (84)
87	Navin Kumar Babu Devadiya	Ext. 2741	2728 (88)
88	Mahesh Chotubhai Chavan	----	2728 (89)
89	Prabhakar Dattram Sadekar	----	2728 (90)
90	Challaiah Mallaiah Bodge	----	2728 (91)
91	Mohammad Kaisar Kasim Ansari	----	2728 (92)
92	Laltaprasad Kalika Yadav	----	2728 (93)

93	Chandrakant Basanna Dolgaund	----	2728 (94)
94	Ms. Shantabai Shankar Trimukhe	Ext. 1413	2728 (95)
95	Mohammad Aadil Mohd. Ali	----	2728 (96)
96	Smt. Hirabai Yeshwant Shinde	Ext. 1419	----

C. R. No. 86 and 87 of 2006 of Bandra Railway Police Station:-

213. Dr. Kalpesh Jayantkumar Gajiwala, (PW-69) (Ext.779), a consultant plastic surgeon in the Holy Family Hospital, Bandra, had operated on Devdas Situ Shetty, (PW-23) (Ext.501), an injured in C. R. No.86 of 2006 and had removed the foreign body, Art.94, from the scalp of that patient and had issued the injury certificate, Ext. 781. Dr. Russell Pinto, (PW-56) (Ext.681), consultant surgeon in the Holy Family Hospital at Bandra, had treated Ashok Raghuvir Rao, (PW-27) (Ext.594), an injured in C. R. No.86 of 2006 and had removed the foreign body, Art.93, from the wound on the right side of his chest and had issued the injury certificate Ext.684. He had also treated Vishal Vijaykumar Nagaich, (PW-13) (Ext.445), an injured in C. R. No.87 of 2006 and had removed a triangular shaped foreign body, Art.95, from the right side of his neck and had issued the injury certificate Ext.682.

214. Holy Family Hospital phoned the police station that they had taken out foreign bodies from the bodies of three injured persons. St. PI Kadri, PW-138, sent PSI Pednekar to bring them. PSI Pednekar seized them under the panchanama Ext.504 in the presence of panch witnesses Suresh Dagdu Vandre, (PW-24) (Ext.503), and one more. Sr. PI Kadri, PW-138, sent the foreign bodies/metal pieces in C. R. No. 86 of 2006 to the FSL, Kalina alongwith WPC Savita Raghunath Satav, (PW-87) (Ext.886), alongwith his forwarding letters, copies of which

are at Exts.888(1 and 2). He also sent the foreign body/metal piece taken out from the body of the injured Vishal Nagaich alongwith WPC Satav, PW-87, alongwith his forwarding letters, copies of which are at Exts. 889 (1 and 2). The contents of the FSL. reports, Ext.2434(1) of the metal pieces concerning the injured Devdas Shetty and Ashok Rao and Ext. 2433(1) of the injured Vishal Nagaich, show the result of analysis that traces of Nitrite (post explosive residue) was detected. Exts. 2434(2) and 2433(2) are the FSL reports in respect of analysis of trace elements in the metal pieces.

215. 22 persons had died due to haemorrhagic shock due to 2 polytrauma in the blast occurred near Bandra Railway Station vide inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates Exts.2610 to 2631. The relevant details thereof are given in the table below:

CHART NO. 19

(Reproduced from the Trial Court Judgment)

Sr. No.	Name of the deceased	Exhibit numbers of memorandum of postmortem examinations, cause of death certificates and inquest panchanamas
1	Krishnakumar Parasnath	2610
2	Shashi Shekhar Gangadhar	2611
3	Suresh Shenshadu Pawar	2612
4	Shashikant Sudam Badekar	2613
5	Jignesh Bipinbhai Mehta	2614
6	Dalpat Chabildas Masekar	2615
7	Sudhir Divakar Chimore	2616

8	Dilip Kashinath Kamath	2617
9	Rupesh Rahul Kamble	2618
10	Sanad Madhubahi Badekar	2619
11	Ajay Daulatrao Shevda	2620
12	Hariharan Chidambaram Ayyar	2621
13	Modh. Sohail Sagir Shaikh	2622
14	Sachin Radhesham Khanna	2623
15	Pinaki Mukhopadhyaya	2624
16	Surendraprabhu Ramchandran	2625
17	Sanjay Ramakant Samant	2626
18	Vishwas Ananat Thorat	2627
19	Kantilal Tulshidas Gohil	2628
20	K. Bhujang Shetty	2629
21	Tejas Chandrakant Shah	2630
22.	Hemchandra Vishwanath Mastkar	2631

216. 107 persons were injured in this blast as per the injury certificates, Ext.2729 (1 to 134). The relevant details thereof are given in the table below:

CHART NO. 20

(Reproduced from the Trial Court Judgment)

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Suman Kumar Pappa Raju	----	2729 (1)
2	Rakesh Ramnarayan Pandey	Ext. 1425	2729 (2 & 3)
3	Mukesh Kanhaiyalal Hinduja	Ext. 1300	2729 (4)
4	Anant Sadashiv Raorane	----	2729 (5)
5	Vijay Ganesh Sahasrabudhe	----	2729 (6)

6	Bhagyabat Sardeshwar Rahang	----	2729 (7)
7	Smt. Shobhana Jamunashankar Pandya	----	2729 (8 & 9)
8	Roshanlal Raghunath Sahay	----	2729 (10)
9	Nilesh Chandrakant Maru	----	2729 (11)
10	Mahesh Manoharlal Trivedi	PW No. 8	2729 (12 & 13)
11	Ashok Bhaurao Kulgod	Ext. 1299	2729 (14 & 15)
12	Arun Gunwant Deshmukh	Ext. 1302	2729 (16)
13	Vrishabh Suryakant Pathak	Ext. 1298	2729 (17)
14	Kaushik Uttambhai Pradhan	----	2729 (18)
15	Kalpesh Prakash Mhatre	Ext. 1294	2729 (19 & 20)
16	Sajid Ali Mehbob Ali	Ext. 1295	2729 (21 & 22)
17	Parag Jayant Mahadani	----	2729 (23 & 24)
18	Laxman Vasudeo Parab	----	2729 (25)
19	Morakala Gopalkrishna	----	2729 (26)
20	Vijay Harish Purohit	----	2729 (27)
21	Mukesh Indulal Shah	Ext. 1296	2729 (28 & 29)
22	Kamlesh Mohanlal Shah	----	2729 (30)
23	Ravindra Vasant Saravate	Ext. 1297	2729 (31)
24	Kishor Tuljashankar Shukla	----	2729 (32)
25	Cajetan Dennis Espibeiro	----	2729 (33)
26	Shubendu Shishirkumar Behra	Ext. 1420	2729 (34)
27	Ashok Ramchandra Dayani	----	2729 (35)
28	Vasant Laharchand Gaudani	Ext. 1421	2729 (36)
29	Nagin Lalaji Rathod	----	2729 (37 & 38)
30	Bhaskar Sanayya Kotian	Ext. 1424	2729 (39 & 40)
31	Bhagwandas Phuljibhai Makwana	Ext. 1301	2729 (41)
32	Nikesh Kantilal Rathod	----	2729 (42)
33	Suhas Pandurang Chougule	Ext. 2750	2729 (43)
34	Ramesh Mahadeo Zope	----	2729 (44)
35	Mukeshbhai Narendra Zaveri	Ext. 1422	2729 (45 & 46)

36	Anup Jagdish Saksena	Ext. 1429	2729 (47)
37	Bipin Dattatraya Raut	----	2729 (48)
38	Nishit Sitaram Shrivastav	----	2729 (49)
39	Manveer Singh Rajindra Singh Chandok	----	2729 (50)
40	Kaustubh Rajendra Kulkarni	Ext. 2751	2729 (51)
41	Rajan Kunjbihari Shah	----	2729 (52 & 53)
42	Harish Ramchandra Kundnani	----	2729 (54 & 55)
43	Dinesh Vishwanath Tirodkar	----	2729 (56)
44	Devdas Siddhu Shetty	PW No. 23	780 & 781
45	Suryanarayan Subramanyam Iyer	Ext. 1428	2729 (59)
46	Ashish Rajulal Chauhan	----	2729 (60)
47	Yogesh Natwarlal Adia	----	2729 (61)
48	Sunil Rambhau Sasane	----	2729 (62)
49	Deepak Vasudeo Chhabria	----	2729 (63)
50	Bhaven Manohar Desai	Ext. 1430	2729 (57 & 58)
51	Nitin Anandrao Jawale	Ext. 2752	2729 (64)
52	Amit Ramdas Bante	----	2729 (65 & 66)
53	Sanjay Ishwarlal Desai	----	2729 (67 & 68)
54	Sriram Gowardhandas Lanjewal	----	2729 (69 & 70)
55	Ashok Raghuvir Rao	PW No. 27	2729 (71)
56	Ganpat Chintaman Pimparkar	----	2729 (72)
57	Kiran Anantrao Desai	----	2729 (73)
58	Subhash Chimaji Tawde	Ext. 2753	2729 (74)
59	Sitaram Mahadeo Pandit	----	2729 (75)
60	Lalkumar Kanasanand Tolani	----	2729 (76)
61	Jairajan Kunnikrishnnan Nair	----	2729 (77 & 78)
62	Nitin Rasiklal Shah	----	2729 (79 & 80)
63	Nutan Harilal Prasad	----	2729 (81 & 82)
64	Devendra Kumar Jain	----	2729 (83)
65	Sanjay Satyanarayan Namdeo	----	2729 (84)
66	Parasharan Gangaram Rathod	----	2729 (85 & 86)
67	Subbir Kumar Phanindranath Roy	----	2729 (87)
68	Jaywant Yeshwant Rane	----	2729 (88)

69	Ramesh Mahadeo Manchekar	----	2729 (89)
70	Prasanna Sitaram Prabhu	----	2729 (90)
71	Lakhan Singh Jagram Singh Rajput	Ext. 1423	2729 (91)
72	Maulin Harish Momaya	Ext. 2754	2729 (92 & 93)
73	Rampher Sharda Prasad Mishra	----	2729 (94 & 95)
74	Surendra Pundalik Thavi	----	2729 (96)
75	Murad Mallick Panjwani	----	2729 (97)
76	Prabhakar Dhaku Iswalkar	----	2729 (98)
77	Sunil Kumar Ramesh Chandra Singh	----	2729 (99)
78	Sanjay Nathuji Patil	----	2729 (100 & 101)
79	Vaibhav Pradeep Mittal	----	2729 (102 & 103)
80	Pankaj Ashok Vazirani	----	2729 (104)
81	Avinash Narayan Karve	Ext. 1426	2729 (105)
82	Nishikant Jagannath Gore	----	2729 (106)
83	Suhas Manohar Jadhav	----	2729 (107)
84	Dr. Pankaj Poonamchand Lohia	----	2729 (108)
85	Pundlik Mahadu More	----	2729 (109)
86	Chandrasekhar Vasant Pujari	----	2729 (110)
87	Vivek Rajendra Kumar Tulsiyani	----	2729 (111)
88	Mahendrakumar Ramanlal Parikh	----	2729 (112)
89	Kaushal Suresh Vora	----	2729 (113)
90	Deepak Vishwanath Parab	----	2729 (114)
91	Chetan Anand Bishandas	----	2729 (115 & 116)
92	Nagendra Prasad Koropolu	----	2729 (117 & 118)
93	Kamal Jethmal Pareikh	----	2729 (119)
94	Raju Sethia	----	2729 (120)
95	Urban John Baptist Sequeira	----	2729 (121)
96	Gajanan Sitaram Manjrekar	Ext. 1427	2729 (122)
97	Abdul Karim Khan	----	2729 (123)
98	Ashish Mohan Baktani	----	2729 (124)
99	Saurabh Shantaram Kochrekar	----	2729 (125)
100	G. Harihar Subrayamanyam	Ext. 2755	2729 (126)
101	Mrs. Vinaya Vinayak Palav	----	2729 (127 & 128)
102	Pradeep Indulal Shah	----	2729 (129)

103	Mehul Rajendra Trivedi	----	2729 (130)
104	Siddharth Hindurao Gholap	----	2729 (131)
105	Veena Ganesh Chorat	----	2729 (132)
106	Rajendraprasad Shivdayal Pateria	----	2729 (133)
107	William Baptist Fernandis	----	2729 (134)

217. 9 persons had died due to shock and haemorrhage due to multiple injuries in the Khar Subway blast near Santacruz Railway Station vide inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates, Exts.2632 to 2640. The relevant details thereof are given in the table below:

CHART NO. 21

(Reproduced from the Trial Court Judgment)

Sr. no.	Name of deceased	Exhibit numbers of memorandum of postmortem examinations, cause of death certificates and inquest panchanamas
1	Jitendra J. Thadeshwar	2632
2	Kunal Rajnikant Shah	2633
3	Ramesh Shivrul Kumawat	2634
4	Mohanlal Rataplal Shrawji	2635
5	Himanshu Buddhadev	2636
6	Girish N. Paramanand	2637
7	Manish Mohan Divekar	2638
8	Vinod Ari Kottan Thatiotan	2639
9	Waghela Ashok Ramjibhai	2640

218. 102 persons were injured in the same blast as per the injury certificates, Ext.2730 (1 to 118). The relevant details thereof are given in the table below:

CHART NO. 22*(Reproduced from the Trial Court Judgment)*

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Lalit Kumar Bhagwandas Phanse	----	2730 (1)
2	Pramod Hareshwar Gharat	Ext. 1309	2730 (2 & 3)
3	Parimal Jaggjivandas Gandhi	Ext. 1328	2730 (4)
4	Sheshrnal Bhurmal Jain	Ext. 1307	2730 (5)
5	Gulabrao Ganpat Patole	Ext. 1446	2730 (6)
6	Viraj Narendrabhai Panchal	Ext. 1303	2730 (7 & 8)
7	Suryakant Balkrishna Sawant	Ext. 1311	2730 (9)
8	Ishwaran Tarun	Ext. 1450	2730 (10)
9	Jatin Mafatbhai Waghela	Ext. 1310	2730 (11)
10	Raes Abdul Rauf Choudhary	----	2730 (12)
11	Ketan Dalpatbhai Patel	----	2730 (13 & 14)
12	Hasmukh Narayan Popat	Ext. 1447	2730 (15)
13	Nitin Shivaji Tungare	Ext. 1306	2730 (16)
14	Kunal Manohar Kolge	Ext. 1313	2730 (17 & 19)
15	Lalubhai Puroshattam Gopani	Ext. 1318	2730 (18)
16	Rasik Shantilal Sawala	----	2730 (20)
17	Ashok Hari Kamble	----	2730 (21)
18	Anat Pandurag Ashtekar	Ext. 1343	2730 (22)
19	Chirag Arvind Chauhan	----	2730 (23 & 24)
20	Kunda Vithoba Shinde	Ext. 1304	2730 (25)
21	Narendra Gunwantlal Shah	Ext. 1308	2730 (26 & 27)
22	Sukesh Shekhar Amin	Ext. 1448	2730 (28)
23	Chintan Badresh Gandhi	----	2730 (29)
24	Rajendra Deju Shetty	Ext. 1314	2730 (30)
25	Mangesh Lallan Zha	----	2730 (31)
26	Sunil Krushnamurari Goyal	----	2730 (32)
27	Umesh Jayantilal Maniyar	Ext. 1315	2730 (33)

28	Hemchandra Chandrakant Patankar	Ext. 1316	2730 (34)
29	Narendra Surajmal Khandelwal	Ext. 1441	2730 (35 & 36)
30	Amitprakash Omprakash Singh	----	2730 (37)
31	Chandrakant Narayan Deshmukh	Ext. 1320	2730 (38 & 39)
32	Jaydip Anantrao Vyas	Ext. 1431	2730 (40 & 41)
33	Jayantilal Memribai Kathad	Ext. 1436	2730 (42)
34	Sandeep Suresh Naik	Ext. 2756	2730 (43)
35	Kishor Gopinath Divekar	Ext. 1319	2730 (44)
36	Nimesh Nitin Desai	----	2730 (45)
37	Minrul Anis Ur Rehman Islam	----	2730 (46)
38	Dipti Sitaram Ghadigaonkar	Ext. 1317	2730 (47)
39	Sanjeev Raghvan Chachil	----	2730 (48 & 49)
40	Madhukar Narayan Loke	Ext. 1305	2730 (50)
41	Sachin Prabhakar Pawar	Ext. 1433	2730 (51)
42	Pradeep Kantilal Joshi	Ext. 1324	2730 (52)
43	Vinay Hanumant Patil	Ext. 1321	2730 (53)
44	Vinodkumar Keshavlal Darji	----	2730 (54)
45	Mahendra Babulal Mehta	Ext. 1444	2730 (55 & 56)
46	Anuj Girishkumar Nandawani	----	2730 (57)
47	Madhukar Babulal Zaveri	Ext. 1312	2730 (58)
48	Jacob K Mathew	Ext. 1435	2730 (59)
49	Dhanisharan Ramswarup Jayant	Ext. 1443	2730 (60)
50	Amit Ragnath Punja	---	2730 (61)
51	Minesh Popatlal Munani	Ext. 1342	2730 (62)
52	Rajeshkumar Sarvanarayan Zha	---	2730 (63 & 64)
53	Dhiraj Kuvarji Rathod	---	2730 (65)
54	Narshinha Muddaggiri Kamat	Ext. 1325	2730 (66)
55	Alpesh Ashok Kondalkar	Ext. 1400	2730 (67)
56	Jarad Kalapurekal Mathew	Ext. 1322	2730 (68)
57	Ansub Ramanuj Isthapak	---	2730 (69)
58	Ashok Tukaram Tandale	Ext. 1442	2730 (70)
59	Jagdish Lalji Godia	PW No. 9	2730 (71)
60	Rakesh Jaynarayan Kapoor	---	2730 (72)

61	Clinton George Martin	---	2730 (73)
62	Sundaresan S. Iyer	Ext. 1327	2730 (74)
63	Anles Anant Desai	---	2730 (75)
64	Sarbinder Sing Harbansing	---	2730 (76)
65	Rajendra Manohar Panchal	Ext. 1326	2730 (77)
66	Rohit Jagannath Shetty	---	2730 (78)
67	Prashant Sitaram Rathi	---	2730 (79)
68	Lalit Nikunj Poddar	Ext. 1331	2730 (80)
69	Harshadbhai Trambaklall Shah	Ext. 1333	2730 (81 & 82)
70	Premal Nalin Ajmera	Ext. 1330	2730 (83)
71	Nilesh Ganeshbhai Joshalia	Ext. 1432	2730 (84)
72	Dara B Shroff	Ext. 1329	2730 (85 & 86)
73	Dhananjay Srirang Updekar	---	2730 (87)
74	Ramnathan Sudarshan Iyer	---	2730 (88)
75	Tushar N. Shah	Ext. 1332	2730 (89)
76	Ashish Vinayak Gokhale	Ext. 1445	2730 (90)
77	Ms. Chaya Pankaj Modi	Ext. 1334	2730 (91)
78	Shivaji Arjun Sahinsakhale	---	2730 (92)
79	Anish Kumar Datta	Ext. 1449	2730 (93 & 94)
80	Satish Parshuram Madav	---	2730 (95)
81	Brijeshkumar Suryakant Dubey	Ext. 1335	2730 (96)
82	Dinesh Satyanarayan Lahoti	Ext. 1337	2730 (97 & 98)
83	Ranjit Prataprao Patil	Ext. 1336	2730 (99)
84	Indrakumar Shyamsundar Saraf	Ext. 1341	2730 (100)
85	Ilancheri K. Padmanabhan	Ext. 1339	2730 (101 & 102)
86	Dhawal Ashok Shah	Ext. 1434	2730 (103)
87	Harishbhai Hargovind Shah	Ext. 1451	2730 (104)
88	Manubhai Shankarlal Bhat	---	2730 (105)
89	Tenilapuram Sundaram Mahalingam	---	2730 (106)
90	Rajesh Haridas Biswadia	Ext. 1340	2730 (107)

91	Harish Sumanlal Doshi	Ext. 1439	2730 (108)
92	Sachin Dilip Mahimkar	---	2730 (109)
93	E. K. Kutty	---	2730 (110)
94	Vishal Vijaykumar Nagaiech	PW No. 13	682
95	Vikas Vishwanath Modi	---	2730 (111)
96	Manojkumar Giridharbhai Kheredia	Ext. 1438	2730 (112)
97	Balsubramanyam Sriram	---	2730 (113)
98	Ashfaque Jabbar Khan	---	2730 (114)
99	Anish Pradeep Kelkar	---	2730 (115)
100	Vivek Dattatraya Shirke	Ext. 1437	2730 (116)
101	Lakshman Gopalkrishnan Kamath	Ext. 1323	2730 (117)
102	Umarshi Raimal Mota	Ext. 1338	2730 (118)

C. R. No. 41 of 2006 of Andheri Railway Police Station :-

219. 28 persons had died due to haemorrhage and shock due to polytrauma, and multiple injuries suffered in the blast at Jogeshwari vide inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates, Exts.2641 to 2668. The relevant details thereof are given in the table below:

CHART NO. 23

(Reproduced from the Trial Court Judgment)

Sr. no.	Name of the deceased	Exhibit numbers of memorandum of postmortem examinations, cause of death certificates and inquest panchanamas
1	Narendra Kundandas Rawal	2641
2	Paresh Chotalal Thakkar	2642
3	Lotan Bhila Bediskar	2643

4	Kumud Manubai Shah	2644
5	Chandrsen Champaklal Bangdiwala	2645
6	Tushit Shanmukhanan Shah	2646
7	Yatin Mahendrakumar Mehta	2647
8	Dr. Krushnakumar Dubey	2648
9	Arvind Arjun Chikne	2649
10	Mukundraj Amidar Modi	2650
11	Nandkumar Bhargav Vaidya	2651
12	Amrish Madhukar Sawant	2652
13	Pravinkumar Keshvlal Upadhyaya	2653
14	Shakir Abid Ali Merchant	2654
15	Ashok Gajanan Bapat	2655
16	Mahendra Motilal Mehta	2656
17	Hitendra Purushottamdas Nagar	2657
18	Manoj Mahendrakumar Shah	2658
19	Amitabh Laxminarayan Pai	2659
20	Ashok Gopikishan Ajmera	2660
21	Shashikant Ramniklal Doshi	2661
22	Prataproy Nanchand Vhora	2662
23	Francis Zevier Lobo	2663
24	Lalit Raghunathprasad Kakani	2664
25	Govindji Gulabchandji Dave	2665
26	Madhu Parshuram Pawar	2666
27	Lalit Jayantilal Kanchaliya	2667
28	Sunil Thakkar	2668

220. 115 persons were injured in the same blast as per the injury certificates, Ext.2731 (1 to 110). The relevant details thereof are given in the table below:

CHART NO. 24*(Reproduced from the Trial Court Judgment)*

Sr. No.	Name of Injured	PW No. / Exhibit No. of Affidavit filed by injured	Exhibit No. Of Medical Certificate
1.	Smt. Jasvinder Pradeepkumar Samiyar	---	2731 (1 & 2)
2	Miss. Lata Bhimrao Shirsat	---	2731 (3)
3	Smt. Deepika Arun Chavan	---	2731 (4)
4	Jayprakash Balkrishna Gurav Desai	PW No. 14	2731 (5)
5	Smt. Chhaya Vilas Kothe	----	2731 (6)
6	Chandravadan Maganlal Savla	----	2731 (7)
7	Sunil Kashiprasad Bajaj	----	2731 (8)
8	Smt. Sharda Pramod Tople	----	2731 (9)
9	Nikhil Vasant Khopkar	Ext.1452	2731 (10)
10	Bajirao Bhausahab Desai	----	2371 (11)
11	Ambar Abani Day	----	2731 (12)
12	Miss Aparna Vivek Salvi	----	2731 (13)
13	Nilesh Rohidas Kadam	----	2731 (14)
14	Smt. Shanta Rohidas Kadam	----	2731 (15)
15	Rambharan Tadanandan Mishra	----	2731 (16 & 17)
16	Eshan Bhratkumar Thakkar	Ext. 2757	2731 (18)
17	Hanasraj M. Kanojia	----	2731 (19)
18	Rambhau Vitthal Sadavarte	----	2731 (20)
19	Vilas Maruti Ghoge	Ext. 2758	2731 (21)
20	Smt. Meena Salvi	----	2731 (22)

21	Vasant Abhimanyu Sirsikar	Ext. 2759	2731 (23)
22	Chandrakant Mataprasad Mishra	----	2731 (24)
23	Dilip Keshavji Vora	----	2731 (25)
24	Pintukumar Amir Sarosh	Ext. 2760	2731 (26)
25	Vijay Jagannath Pawar	Ext. 2761	2731 (27)
26	Tushar Rajesh Rawal	----	2731 (28)
27	Sanjay Babu Shigvan	----	2731 (29 & 30)
28	Sabajit Pheku Yadav	----	2731 (31)
29	Smt. Nandubai Saiba Mujmule	----	2731 (32)
30	Mahendra Vilas Pitale	Ext. 2762	2731 (33)
31	Prakash Bhalchandra Wagh	Ext. 2763	2731 (34)
32	Ashwin Ramesh Boricha	PW No. 134, Affidavit Ext. 1453	2731 (35)
33	Smt. Manisha Anant Joshi	----	2731 (36)
34	Ramdas Dhondiba Warange	----	2731 (37)
35	Vijay Pandurang Mestry	----	2731 (38)
36	Arvind Vallabhaji Mahendra	----	2731 (39)
37	Bipin Natwarlal Shah	----	2731 (40)
38	Janak Harshad Upadhayay	----	2731 (41)
39	Harshad Subhash Borgaokar	Ex. 2764	2731 (42)
40	Chandrashekhar Vinayak Joshi	----	2731 (43)
41	Smt. Supriya Baban Kheratkar	----	2731 (44 & 45)
42	Rylan Francis Crasto	----	2731 (46)
43	Vipul Manharlal Halani	----	2731 (47)

44	Ashok Radhakisan Singal	----	2731 (48)
45	Narendra Ghusabhai Rupareliya	----	2731 (49)
46	Smt. Deepjyoti Suprakash Chaterjee	----	2731 (50)
47	Deepak Balmukund Shah	Ext. 2765	2731 (51)
48	Keith Anthony D'Souza	----	2731 (52)
49	Harishchandra Deomal Gandhi	----	2731 (53)
50	Babay Aaba Sodkar	Ext. 1454	2731 (54)
51	Gulab Sriram Yadav	----	2731 (55)
52	Bharat Radheshyam Khatod	----	2731 (56)
53	Rajkumar Bachhan Singh	----	2731 (57)
54	Rajan Govind Nair	----	2731 (58)
55	Shiva Balan	----	2731 (59)
56	Smt. Sushila Vijay Valtati	----	2731 (60)
57	Shivanna A. Shetty	----	2731 (61)
58	Pramodkumar Manager Thakur	----	2731 (62)
59	Kshitij Anil Baldota	Ext. 2766	2731 (63)
60	Shashitant Raghunath Dablekar	----	2731 (64)
61	Sachin Naginaprasad Gupta	----	2731 (65)
62	Abhijit Avadhesh Sharma	----	2731 (66)
63	Dadasaheb Baburao Lokhande	----	2731 (67)
64	Chetan Dwarakdas Mehta	Ext. 1455	2731 (68)
65	Daji Ganpat Naik	----	2731 (69 & 70)
66	Ketan Narendra Rathod	Ext. 2767	2731 (71)
67	Jafar Ali Sayyed Ali Sayyed	----	2731 (72 & 73)

68	Hitesh Shashikant Shah	----	2731 (74)
69	Subash Shankar Khedekar	Ext. 2768	2731 (75)
70	Andrew Gregory Figerado	----	2731 (76)
71	Mangesh Sadanand Mestry	----	2731 (77)
72	Kamlakar Jayram Sankhe	----	2731 (78)
73	Vaibhav Subash Mahale	----	2731 (79)
74	Dinesh Savlaram Nabar	----	2731 (80)
75	Amar Nanaji Solanki	----	2731 (81)
76	Vijay Kumar Narayan Deshpande	Ext. 2769	2731 (82)
77	Jekim John Fernandez	----	2731 (83)
78	Dilip Singh Sugandh Singh Shekhwat	Ext. 2770	2731 (84 & 85)
79	Vinod Koshanan Ayatalla	----	2731 (86 & 88)
80	Ajay Avinash Narse	----	2731 (87)
81	Kamal Kumar Ramavatar Devda	----	2731 (89)
82	Gopal Shyamsunder Chaudhari	----	2731 (90)
83	Jaydeep Keshavji Sampat	----	2731 (91)
84	Vijaykumar Bavanna Raippa	----	2731 (92)
85	Ramkumar Munnar Yadav	----	2731 (93)
86	Amkant Mithailal Yadav	----	2731 (94)
87	Babukumar Basaulkumar Ray	----	2731 (95 & 96)
88	Kum. Foram Jayesh Shah	----	2731 (97)
89	Prashant Gangadhar Shetty	----	2731 (98)
90	Rajneesh Jiten Borkotokhy	----	2731 (99)

91	Amrut Tulshiram Patil	----	2731 (100)
92	Suresh Laxman Sapkal	Ext. 2771	2731 (101 & 102)
93	Sanjay Ghanashyam Pandey	----	2731 (103)
94	Ninad Vishnu Katdare	----	2731 (104)
95	Jagdish Dhirajlal Vyas	Ext. 2772	2731 (105)
96	Kum. Nilam Vishnu Ghegadmal	----	2731 (106)
97	Mrs. Vaijayanti Anirudha Sule	Ext. 2773	2731 (107)
98	Rajendrakumar Mulkraj Mahajan	----	2731 (108)
99	Mr. Mohanlal Damji Pasad	Ext. 2774	2731 (109)
100	Smt. Gayabai Lakshman Narvade	----	2731 (110)

C. R. No. 156 of 2006 of Borivali Railway Police Station :-

221. 26 persons had died because of complications due to head injury with polytrauma, haemorrhage and shock due to multiple injuries in the blast at Borivali Railway Station vide inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates, Exts. 2669 to 2694. The relevant details thereof are given in the table below:

CHART NO. 25

(Reproduced from the Trial Court Judgment)

Sr. No.	Name of deceased	Exhibit numbers of memorandum of postmortem examinations, cause of death certificates and inquest panchanamas
1	Suresh Chunilal Enginner	2669
2	Dipak Ramlakhan Kewat	2670

3	Ravindranath Budhansingh Balhariya	2671
4	Omkarnath Adiyashankar Mishra	2672
5	Bhogilal Ambalal Sarwayya	2673
6	Jaikumar Raman Pilai Nair	2674
7	Kawan Subhash Thakur	2675
8	Naresh Jivajibhai Saliya	2676
9	Ajaj Moin Shaikh	2677
10	Srinivasrao Bhimsenrao Mulbagelu	2678
11	Satyawan Ramchandra Biradar	2679
12	Kirtibhai Sarabhai Shah	2680
13	Harshal Yashwant Bhalerao	2681
14	Anandnath Shambhahari Tiwari	2682
15	Mohanprasad Faujiram Khansali	2683
16	Brij Mohan Prasad	2684
17	Giribau Narsinghrao Nijamapatanam	2685
18	Vitthal Warloji Choudhari	2686
19	Nandini Ramesh Naik	2687
20	Rajnikant Purushottamdas Panchal	2688
21	Subhash Narhari Sawant	2689
22	Hemlata Yadunath Yadav	2690
23	Devesh Satyaprakash Singh	2691
24	Beni Joseph	2692
25	Vikrant Satish Khanvilkar	2693
26	Ramjanali Rajabali Motani	2694

222. 153 persons were injured in the same blast vide injury certificates, Exts.2733 (1 to 152). The relevant details thereof are given in the table below:

CHART NO. 26

(Reproduced from the Trial Court Judgment)

Sr. No.	Name of Injured	PW number or exhibit number of affidavit filed by injured	Exhibit number of medical certificate
1	Rajesh Amborkar	---	2733 (1)
2	Ashokbhai Durgashankar Joshi	---	2733 (2)
3	Prathamesh D. Tawde	---	2733 (3)
4	Ms. Darshana Bhupendra Keni	---	2733 (4)
5	Vijaykumar Narayan Kuroop Nair	---	2733 (5)
6	Sudhir Harinath Upadhyay	----	2733 (6)
7	Santosh Madhukar Vichare	----	2733 (7)
8	Harshad Vivek Tondawalkar	----	2733 (8)
9	Nilesh Amritlal Soni	----	2733 (9)
10	Manoj Jugalkishore Purohit	----	2733 (10)
11	Ms. Vidya Bhaskar Shetty	----	2733 (11)
12	Khalid Abdul Hafij Siddique	----	2733 (12)
13	Avinash Shyamsundar Dhanawat	----	2733 (13)
14	Parth Pratik Shah	----	2733 (14)
15	Arvind Bawarilal Sharma	----	2733 (15)
16	Kamal Ramvilas Parikh	----	2733 (16)
17	Santoshkumar Kutti Narayan	----	2733 (17)
18	Rajaram Sawlaram Chavan	PW-11	2733 (18)
19	Vinay Madanlal Gupta	----	2733 (19)
20	Namdeo Ratnu Rade	----	2733 (20)
21	Bhushan Subhash Kothawale	----	2733 (21 & 22)
22	Kamal Satyanarayan Khemla	----	2733 (23 & 24)

23	Ms. Sheela Kamal Khemla	----	2733 (25 & 26)
24	Dharmendra Atmaram Waghela	----	2733 (27)
25	Shripal Somlal Jain	----	2733 (28 & 29)
26	Chinmay Harischandra Mahajan	----	2733 (30)
27	Kumar Naik	----	2733 (31)
28	Mrs. Gajra Perukumar Khaniya	----	2733 (32)
29	Giridhar Daya Koli	----	2733 (33)
30	Chedilal Kharpatu Yadav	----	2733 (34)
31	Prashant Satish Shinde	----	2733 (35)
32	Sanjaybhai Narayanbhai Luwani	----	2733 (36 to 38)
33	Balakrishna Atayappa Kotian	----	2733 (39)
34	Zakir Usman Khan	----	2733 (40 & 41)
35	Gajanan Jagannath Bhavsar	----	2733 (42)
36	Jathashankar Moreshwar Pande	----	2733 (43)
37	Ms. Neeta Ashok Ranpura	----	2733 (44)
38	Alwin Anthony D'Cunha	----	2733 (45)
39	Ms. Shweta Narayan Ambede	PW-37	576
40	Mahesh Shridhar Sawant	----	2733 (46)
41	Dinesh Tulsibhai Moradia	----	2733 (47)
42	Honabhai Budhabhai Rathod	Ext. 2775	2733 (48)
43	Ashish Chinubhai Shah	Ext. 2776	2733 (49)
44	Piyush Rameshchandra Sharma	Ext. 2777	2733 (50)
45	Suraj Kalikanja Zha	----	2733 (51)
46	Baby George Varghese Mathew	----	2733 (52)
47	Suresh Kamapra Shreyan	----	2733 (53)
48	Vijay Nair	----	2733 (54)

49	Vinit Dilip Patil	----	2733 (55)
50	Brahmesh Shankar Nadkarni	----	2733 (56)
51	Rahul Ram Wankhede	----	2733 (57)
52	Nayan Kantilal Tokle	----	2733 (58)
53	Omkar Prakash Tirodkar	----	2733 (59)
54	George D'Mello	----	2733 (60)
55	Yogesh Devmurat Pande	----	2733 (61)
56	Rajkumar Nabab Singh Chouhan	----	2733 (62)
57	Hemraj Damaji Satpute	----	2733 (63)
58	Ms. Kailashben Ranjitbhai Thakur	----	2733 (64)
59	Aniket Taipanna Shettigar	----	2733 (65 & 66)
60	Suresh Jayawant Prabhu	----	2733 (67 & 68)
61	Sayyad Nasiruddin Muniruddin	----	2733 (69 & 70)
62	Kishore Popatlal Shah	PW No. 60	2733 (71)
63	Sunil Motilal Murde	----	2733 (72)
64	Ms. Shagufa Amir Ansari	----	2733 (73)
65	Jeenank Pareshbhai Dalal	Ext. 2778	2733 (74)
66	Suhas Dattatraya Apte	----	2733 (75)
67	Babu K. Anand	----	2733 (76)
68	Manubhai D. Jasoliya	----	2733 (77)
69	Mohd. Safi Munna Mirza	----	2733 (78)
70	Suresh Shekhar Suvarna	----	2733 (79)
71	Hemant Jangubhai Surti	----	2733 (80 & 81)
72	Prakash Ganesh Bhandare	----	2733 (82)
73	Manish Himmatlal Mehta	----	2733 (83)
74	Jayanti Veljibhai Kokia	----	2733 (84)
75	Deepak Taraprasad Sharma	----	2733 (85)

76	Prabhudas Keshav Goti	----	2733 (86 to 88)
77	Keni Yogesh Pande	----	2733 (89)
78	Ashish Narayan Agaawne	----	2733 (90)
79	Shekhar Chagan Birari	----	2733 (91 & 92)
80	Vivek Mahadeo Deshmukh	----	2733 (93 & 94)
81	Premasukh Bafarlal Khandelwal	----	2733 (95)
82	Ms. Kavita Dilip Shah	----	2733 (96)
83	Pramod Ganpat Narkar	Ext. 2780	2733 (97)
84	Kishor Bapu Gawali	----	2733 (98 & 99)
85	Subhashchandra Jangiram Arora	----	2733 (100)
86	Pravinchandra Natvarlal Shah	----	2733 (101)
87	Girishbhai Bhailal Gandhi	----	2733 (102 & 103)
88	Ajay S. Thakkar	Ext. 2781	2733 (104)
89	Leeladhar B. Kotian	Ext. 2782	2733 (105)
90	Sanjeeva Kariappa Suvarna	----	2733 (106)
91	Ram Ishwarlal Dhawale	----	2733 (107)
92	Pradeep Prabhakkumar Jindani	----	2733 (108)
93	Mani Kanthan Nair	----	2733 (109)
94	Arunkumar Juguraj Prajapati		2733 (110)
95	Mangesh Vishwanath Kolekar		2733 (111)
96	Haridas Ravindranath Puduwal		2733 (112)
97	Rajeshkumar Harkisan Jaiswal		2733 (113)
98	Nitin Vidyadhar Panjari		2733 (114)
99	Santosh Prakash Khanvilkar		2733 (115)
100	Husain Yusuf Singaporwala		2733 (116)
101	Gaurav Rajesh Jain		2733 (117)
102	Jaijeet Jyotindra Sengupta		2733 (118 & 119)

103	Prakash Rajaram Benkar		2733 (120)
104	Amit Bhikaji Padwal	Ext. 2783	2733 (121)
105	Raja Mohamad Akbar		2733 (122)
106	Jude Milton Vholkart		2733 (123)
107	Surendra Chaitram Hirkane		2733 (124)
108	Smt. C. Jaya Bapuji		2733 (125)
109	Dinanath Bhaskar Save		2733 (126)
110	Chandrakant Somabhai Makwana		2733 (127)
111	Siddharam Shantamallappa Nagur		2733 (128)
112	Raju Sadashiv Kamble		2733 (129 to 131)
113	Ramesh Hajiarichand Thakur		2733 (132 & 133)
114	Ramesh Dattatraya Kulkarni		2733 (134)
115	Allwyn Xavier D'Cunha	----	2733 (135)
116	Pawan Karunashankar Chaturvedi	----	2733 (132 & 136)
117	Ravindra Jairam Rawool	----	2733 (137)
118	Haridwar Mahesh Chauhan	----	2733 (138 & 139)
119	Mrs. Kalpana Ashok Pawar	----	2733 (140)
120	Ramesh Devlya Thakre	----	2733 (141)
121	Chimanlal Bhagwandas Wadher	----	2733 (142)
122	Samir Krishnachand Gujrathi	----	2733 (143)
123	Shiva Chandrashekhar Hiremath	----	2733 (144)
124	Dilip Tatoba Naik	----	2733 (145)
125	Manideep Murlidhar Seth	----	2733 (146)
126	Ashok Govind Kini	----	2733 (147 & 148)

127	Saurav Chandrashekhar Wable	----	2733 (149)
128	Rajkumar Roshanlal Chauhan	----	2733 (150)
129	Madhav Manjunath Naik	----	2733 (151 & 152)
130	Johnson @ Jacson Charles Amanna	Ext. 2779	----

C. R. No. 59 of 2006 of Vasai Road Railway Police Station :-

223. 31 persons had died in the blast near Mira Road Railway Station as per the contents of the inquest panchanamas, memorandums of post-mortem examinations and cause of death certificates, Exts.2695 to 2725. One of the injured witnesses by name Amit Dinesh Singh had been admitted in-the Jaslok Hospital after the blast in an unconscious condition and was decerebrating. He died on 03/05/13, i.e., nearly 7 years after the incident, and the prosecution produced his death certificate Ext. 4731 and death summary issued by the Jaslok Hospital Ext.4733. Thus, in all 32 persons have died in this blast. The opinion as probable causes of deaths mentioned in the memorandums of post mortem examinations and cause of death certificates was haemorrhagic shock due to multiple perforating injuries over forehead, chest wall, abdomen, multiple fractures, multiple injuries, and injuries to vital organs of pelvis, haemorrhagic shock due to fracture occipital region of skull vault and multiple fracture of extremities, fractures of right ulna and radius, shock due to amputation of left hand below elbow, amputation of left leg below knee and head injury, fracture of right lower legs, humerus. The relevant details thereof are given in the table below:

CHART NO. 27*(Reproduced from the Trial Court Judgment)*

Sr. No.	Name of the Deceased	Exhibit numbers of memorandum of postmortem examinations, cause of death certificates and inquest panchanamas
1	Mahipal Madanlal Parihar	2695
2	Narottam Damodar Meher	2696
3	Ajit Laxman Pangle	2697
4	Hasmukhlal Pauran	2698
5	Dilip Dattatray Kirale	2699
6	Ashok K. Aail	2700
7	Shamsundar Shivkumar Sharma	2701
8	Rimnya Lalya Thakare	2702
9	Pramod Prabhakar Vispute	2703
10	Rakesh Kailas Richariya	2704
11	Ramdas Pundalik Shirodkar	2705
12	Ramesh Ramchandra Nijai	2706
13	Mickel Augustine Dabare	2707
14	Pratik Nivrutti Patil	2708
15	Kamlesh Ravidas Ashar	2709
16	Govind Khema Solankhi	2710
17	Abhinav Harishchandra Shrivastav	2711
18	Mohanan Takekkara	2712
19	Hasan Siraj Patel	2713
20	Rajendrakumar Ramkrushna Dilod	2714
21	Rammilan Birjlal Prajapati	2715
22	Dineshbhai Dhirajbhai Solankhi	2716
23	Jodel Paskal Farnandis	2717
24	Rohit Surendrakumar Jain	2718
25	Anil Kishorchand Satwani	2719

26	Rajesh Damodar Pandharekar	2720
27	Hriday Vaman Naikwade	2721
28	Swapnil Prakash Oak	2722
29	Jaiprakash Sons	2723
30	Arun Kashinath Patole	2724
31	Subramanyam Krushnan	2725
32	Amit Dinesh Singh	2732 (14), 4731 & 4733

224. 122 persons were injured in the same blast as per the injury certificates, Ext.2732 (1 to 54). The relevant details thereof are given in the table below.

CHART NO. 28

(Reproduced from the Trial Court Judgment)

Sr. No.	Name of Injured	PW/Exhibit Number of Affidavit filed by injured	Exhibit Number of Medical Certificate
1	Abhay Dineshkumar Shrivastav	PW No. 192, Ext. 1461	2732 (1 & 49)
2	Ms. Vrunda Suresh Hegde	Ext. 1370	2732 (2)
3	Sunil Rama Choudhari	Ext. 1372	2732 (3 & 28)
4	Ms. Sonal Xavier Gonsalves	Ext. 1368	2732 (4 & 18)
5	Macwin William D'souza	Ext. 1369	2732 (5)
6	Raju Kosiko Thomas	Ext. 1371	2732 (6)
7	William Sunder Bhasme		2732 (7)
8	Govardhan Udhumji Ingawale		2732 (8)
9	Mohammed Shabbir		2732 (9)

	Mohammed Dinos Khan		
10	Sanjay Thomas Lopes		2732 (10)
11	Prakash Shridharan Kannotikudian	Ext. 1356	2732 (11)
12	William George Joseph		2732 (12)
13	Sanjay Pandurang Sawant		2732 (13, 16 & 17)
14	Kishor Dattatray Mhatre	PW No. 10	2732 (15 & 17)
15	Radheshyam Suraj Prasad Singh		2732 (17)
16	Avadhesh Laxman Thakur		2732 (17)
17	Sachin Somesh Narad	Ext. 1398	2732 (17)
18	Wilfred Walter Naronha	PW No. 130	2732 (17 & 28)
19	Santosh Ramchandra Yadav		2732 (17)
20	Subhash Dharmaj Lad		2732 (17)
21	Manish Vallabhji Gogri		2732 (17)
22	Ashish Anant Borgare		2732 (17)
23	Claudius Wilfred Saldhana	PW No. 147, Ext. 1366	2732 (18)
24	Suresh Krishna Rao		2732 (18)
25	Shailesh Shirish Kawle		2732 (18)
26	Pradeepkumar Mahakant Jha		2732 (18)
27	Ms. Sonal Xavier Gonsalves		2732 (18)
28	PC. Govindan Nambiyar		2732 (18)
29	Ashok Jai Narayan Sabharwal	Ext. 1367	2732 (18)
30	Bajranglal Marhadhin Kyal	Ext. 1386	2732 (18 & 44)

31	Pranav Jayant Ankalesaria	Ext. 1393	2732 (18)
32	Ajay Singh		2732 (18)
33	Kailash Takatmal Mehta		2732 (19)
34	Rishikesh Ratibhai Bhavsar		2732 (20)
35	Hirendra Suresh Barrot	Ext. 1361	2732 (21)
36	Vishnu Trimbak Waghode		2732 (22)
37	Mahendrakumar Tarachand Jain		2732 (23 & 24)
38	Arvindkumar Sheshbahadur Kanaujiya		2732 (24)
39	Prakash Hadkar		2732 (24)
40	Gyanendra Jain		2732 (24)
41	Shivkumar Rambheerji Prasad		2732 (24)
42	Pinesh Kalyanbhai Shah	Ext. 1362	2732 (24)
43	Swadhin Richpal Padiya		2732 (25)
44	Wilfred Rosario Kashta		2732 (26)
45	Dr. Aziz Akbarali Keswani		2732 (27)
46	Manoj Shymdeo Bharadwaj		2732 (28)
47	Yashwant Ramesh Naik		2732 (28)
48	Ramanbhai Hargovinddas Patel		2732 (28)
49	Mahesh Prakash Surve	Ext. 1460	2732 (28)
50	Santosh Izak Nago	Ext. 1354	2732 (28)
51	Pratik Prakash Raut		2732 (28)
52	Sanyo Alizar D'Silva	Ext. 1355	2732 (28)
53	Paresh Vitthaldas Amlani		2732 (28)

54	Gopinath Vitthal Patil	Ext. 1352	2732 (28)
55	Subhash Shivagan	Ext. 1353	2732 (28)
56	Nirbhaynath Ramshiromani Tiwari		2732 (28)
57	Nagesh Gopal Shenoy	Ext. 1350	2732 (28)
58	Umar Hussein Shaikh	----	2732 (28)
59	Sanjay Khobrekar	Ext. 1364	2732 (28)
60	Balam Pushpasen Rane	PW No. 190, Ext. 1351	2732 (28)
61	Jatin Rohit Thakkar	----	2732 (28)
62	Namdeo Keru Surve	Ext. 1373	2732 (29)
63	Ajay Bijay Bahadur Singh	Ext. 1382	2732 (30)
64	Shailesh Shirish Kawle	----	2732 (31)
65	Nameet Kashinath Vanmale	----	2732 (32)
66	Milind Vasudeo Kamankar	----	2732 (33)
67	Dattatray Vasant Choudhari	----	2732 (34)
68	Pommuti Rai	----	2732 (35)
69	Prashant Sanath Pandya	----	2732 (36)
70	Mina Ramesh Maru	----	2732 (37)
71	Parkot Matai Matai	Ext. 1349	2732 (28 & 38)
72	Ajay Gangaram Naik	----	2732 (39)
73	Hastimal Choudamal Solanki	Ext. 1376	2732 (39)
74	Ashish Suresh Chaturvedi	Ext. 1375	2732 (39)
75	Tushar Ramesh Kulkarni	Ext. 1348	2732 (28 & 40)
76	Vrushang Dharmendra Shah	----	2732 (41 &

			43)
77	Vijay Krishna Nair	PW No. 187, Affidavit Ext. 1379	2732 (42)
78	Lalchand Vidyadhar Dubey	Ext. 1384	2732 (45)
79	Rampyare Siddheshwar Lal	Ext. 1391	2732 (46)
80	Chandradras Koragga Karkera	Ext. 1394	2732 (46)
81	Ramesh Manilal Patel	----	2732 (47)
82	Devendra P. Chavan	PW No. 123, Affidavit Ext. 1389	2732 (48)
83	Raghunath Shankar Chindarkar	Ext. 1458	2732 (49)
84	Shankar Siddhu Abhang	Ext. 1374	2732 (49)
85	Asitkumar Vijaychandra Panda	----	2732 (49)
86	Swapnil Rajaram Ambe	Ext. 1377	2732 (50)
87	Dashrath Kantilal Patel	Ext. 1387	2732 (51)
88	Aman Anup Pumvani	----	2732 (51)
89	Eric Fracis Nunis	----	2732 (52)
90	Rahul Milind Kadam	Ext. 1399	2732 (53)
91	Parag Sawant	----	2732(17&54), 2728(83 to 85)
92	Kiran R. Kini	PW No. 191, Ext. 1347	----
93	Umesh Ramanna Shetty	Ext. 1357	2727 (29)
94	Bamsingh Raisingh Khatri	Ext. 1358	----
95	Madhukar Raghu Mistri	Ext. 1359	----
96	Naresh Gajanan Patil	Ext. 1360	----
97	Ramnaval Dhanukdhari Sahani	Ext. 1363	----

98	Chandrikasingh Sarjuram Yadav	Ext. 1365	----
99	Dr. Ajay Jayant Nikam	Ext. 1457	----
100	Satish Narayan Manoti	Ext. 1378	----
101	Balram Kashinath Sankhe	Ext. 1459	----
102	Naresh Maruti Kalokhe	PW No. 126, Affidavit Ext. 1380	----
103	Kaushal Dharamvir Bali	Ext. 1381	----
104	Pritam Dattatray Mhatre	Ext. 1383	----
105	Murarlihar Haridyaji Parekh	PW No. 137, Affidavit Ext. 1385	----
106	Atmaram Vishnu Dalvi	PW No. 136, Affidavit Ext. 1388	----
107	Nandakishore Bajaj	PW No. 127, Affidavit Ext. 1390	----
108	Joseph Anthon Almeida	PW No. 128, Affidavit Ext. 1392	----
109	Habib Chand Shaikh	Ext. 1395	----
110	Hiren Chotelal More	Ext. 1396	----
111	Dhananjay Govind Dighe	Ext. 1397	----
112	Mrs. Swati Ravindra Walinjar	Ext. 1400	----
113	Nilesh Ramvilas Sharma	Ext. 1456	----
114	Kirit Ramanlal Shah	Ext. 1401	----
115	Rajesh Pondrekar	----	2732 (1)

INVOCATION OF MCOCA

225. During the investigation of CR No. 156 of 2006, PW-174 PI Khandekar, who was analyzing the collected evidence, formed the view that the arrested accused (A.2 and A.4) and one absconding accused, were associated with the banned organization SIMI. It further appeared that the present bomb blast was the handiwork of SIMI, aimed at promoting insurgency and committing terrorist acts. Consequently, PW-174 gathered material concerning the A.13 – Asif, and discovered that two charge-sheets had already been filed against him under Section 153A(1) IPC and the Explosives Act in Jalgaon, Maharashtra.

226. Based on the above information, PW-174 concluded that the railway bomb blasts in Mumbai were perpetrated by SIMI. Accordingly, on 17th September 2006, the provisions of the Unlawful Activities (Prevention) Act (UAPA) were invoked in the case. Further, the investigating officer brought to the attention of the chief investigating officer that the case was appropriate for invocation of the MCOCA, and a proposal to that effect was submitted to the Competent Authority through the DCP on 18th September 2006.

227. Subsequently, upon receiving the prior approval from S.K Jaiswal, an officer of the rank of Deputy Inspector General (DIG) on 24th September 2006, the provisions of MCOCA were formally invoked in CR No. 156/2006 of Borivali Railway Police Station. At that point, the investigation, which had been handled by PW-174, was transferred to an officer of the rank of Assistant Commissioner of Police (ACP), namely ACP Sadashiv Patil (PW-186).

228. Thereafter, the sanction under Section 23(2) of the MCOCA was accorded by PW-185 A.N. Roy, Commissioner of Police, Mumbai on 25/11/2006, after recording his subjective satisfaction.

CONFESSSIONAL STATEMENTS

229. As alleged, 11 accused gave confessional statements during the course of investigation. These accused are A.1 to A.7 and A.9 to A.12. These confessions were recorded between the period from 04/10/2006 to 25/10/2006. Total 7 DCPs recorded these confessional statements. After recording of confessional statements of all the accused, the accused persons have retracted their confessional statements before the court. The accused have retracted their confessional statements on the following dates: -

CHART NO. 29

Sr. No.	Name of the Accused	Date of Conclusion of Part-II of Confessional Statement	Date of Retraction Before Court
1.	A.1 - Kamal Ahmed Mohd. Vakil Ansari	05.10.2006	09.10.2006
2.	A.2 - Dr. Tanveer Ahmed Mohd. Ibrahim Ansari	05.10.2006	09.10.2006
3	A.3 - Mohd. Faisal Aatur Rehman Shaikh	06.10.2006	09.10.2006
4.	A.4 - Ehtesham Qutubuddin Siddiqui	07.10.2006	09.10.2006
5.	A.5 - Mohd. Majid Mohd. Shafi	25.10.2006	09.11.2006
6.	A.6 - Shaikh Md. Ali Alam Shaikh	25.10.2006	09.11.2006
7.	A.7 - Mohd Sajid Margub	25.10.2006	26.10.2006

	Ansari		
8.	A.9 - Muzzammil Ataur Rehman Shaikh	05.10.2006	09.10.2006
9.	A.10 - Sohail Mehmood Shaikh	06.10.2006	09.10.2006
10.	A.11 - Zameer Ahmed Latifur Rehman Shaikh	05.10.2006	09.10.2006
11.	A.12 - Naveed Hussain Khan	25.10.2006	09.11.2006

230. We have dealt with the statement, in detail, in the later part of the judgment, while discussing its admissibility in the law.

FILING OF CHARGESHEET

231. ACP Patil, PW-186, filed chargesheet in this court on 30/11/06 on the basis of the investigation conducted upto that date against 13 arrested accused and 15 wanted accused. At that time, he requested the trial court to allow them to conduct further investigation and was permitted.

SANCTIONS UNDER OTHER ACTS

232. PW-186 ACP Patil had submitted proposals to various authorities before filing chargesheet. He submitted proposals to the Addl. Chief Secretary (Home), Government of Maharashtra, Mantralaya, Mumbai to grant sanction to prosecute the accused under the provisions of the UA(P)A and under sections 121A, 122, 123, 124A and 120B of the IPC. Awadhesh Prasad Sinha, (PW-160) (Ext. 1699), Vice-Chairman of the Maharashtra Administrative Tribunal, Mumbai Bench, retired from the Indian Administrative Service on 30/06/07 as Addl. Chief Secretary, Home, Government of

Maharashtra, on which post he was working from 2005 till retirement. He received the proposal sent by ACP Patil, PW-186, through the Commissioner of Police. He studied the entire proposal together with the comments of other officers and departments and after he was *prima facie* and subjectively satisfied about the applicability of the provisions of Chapter III of the UA(P)A, he accorded sanction and then forwarded the file to the minister incharge of the Home Department for consideration of rest of the proposal under the UA(P)A and the Passport Act. He issued the common sanction order Ext.1700 in the first week of January, 2007, under his signature for prosecution under the UA(P)A and the Passport Act.

233. Ruprao Natthuji Deshmukh, (PW-149) (Ext.1602), Jt. Secretary, Home Department, Mantralaya, Maharashtra Government received a proposal from the Jt. CP, ATS for according sanction to prosecute the accused in C. R. No. 5 of 2006 for the offences under sections 121A, 122, 123 and 124A of the IPC. He studied the proposal and discussed it with ACP Patil, PW-186, and after complying with the formalities and the Home Minister giving the approval, he issued the sanction order Ext. 1603 under section 196 of the Cr.P.C. against 13 arrested accused and 15 wanted accused.

234. Sambhaji Sadhashiv Zende, (PW-166) (Ext.1765), was the Collector and District Magistrate, Thane from December, 2006 to September, 2008 and was the competent authority to issue consent for prosecution under section 7 of the Explosive Substances Act as a District Magistrate. He received a proposal in the beginning of March, 2007 from the ATS, Mumbai to issue consent for prosecuting the accused involved in the serial bomb blasts that had taken place in

Mumbai in July, 2006. He had discussions with the Addl. District Magistrate, Tahasildar and ACP Patil, PW-186, and after being subjectively satisfied on the basis of the documents that were sent with the proposal and the discussions that he had with ACP Patil, PW-186, and his staff, that the case was fit for according consent, he accorded consent Ext.1766 on 09/03/07 for prosecuting three accused.

235. Valsa Nair Singh, (PW-151) (Ext.1633), was Collector and District Magistrate, Mumbai City from July 2006 to April 2007. She received a proposal on 02/03/07 from the ATS, Mumbai for consent order for prosecuting six accused in C. R. No. 5 of 2006 regarding the bomb blasts in seven local trains, as required under section 7 of Explosive Substances Act. She went through the proposal, had discussions with ACP Patil, PW-186, scrutinised all the documents and after satisfying herself, issued consent order Ext.1634 on 17/03/07 to prosecute six accused under section 7 of the Explosive Substances Act.

236. Vishwas Mahipati Patil, (PW-165) (Ext.1761), was Collector of Brihanmumbai Suburban District from 15/12/06 to 21/05/10 and had the power to sanction the prosecution under section 7 of the Explosive Substances Act. He got the proposal for grant of sanction to prosecute the accused in this case under the said act in the first week of March, 2007. He scrutinised it and he, the Deputy Collector and Tahsildar went through the proposal and documents sent with it and on perusing the proposal and the documents, and after applying his mind, he was satisfied that the case was fit for granting the sanction for prosecution. Hence he granted sanction Ext.1762 on 15/03/07 for prosecuting nine persons under the Explosive Substances Act.

237. Thereafter, a trial was conducted. The prosecution examined 189 witnesses. At the same time, the defence has also examined total 51 witnesses, including A.2, A.4, A.5, A.6, A.7, A.8, A.9, A.10, A.11, A.12 and A.13. Moreover, the prosecution has filed total 252 affidavits of formal witnesses comprising of injured persons, panch witnesses of inquest panchnamas, person who helped to take the injured and dead bodies to the hospitals, claimants of dead-bodies, and doctors who had treated the injured. Some of them were examined as witnesses of the prosecution.

238. The learned Special Judge, after hearing both the parties and scrutiny of evidence, in detail, passed the impugned judgment and order convicting the accused for the offences as under: -

A.1 - Kamal Ansari : [Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years, Sec. 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) of Prevention of Damage to Public Property Act, 1984.]

A. 2 - Tanveer Ansari : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 9-B(2) Explosives Act, 1884]

A.3 - Mohd. Faisal Shaikh : [Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec.

120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 201 IPC, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 19 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA, 1999, Sec. 3(5) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984)]

A.4 - Ehtesham Qutubuddin Siddique : [Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984), Sec. 9-B(2) (Explosives Act, 1884)]

A.5 - Mohamad Majid Mohamad Shafi : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999]

A.6 - Shaikh Mohd. Ali Alam Shaikh : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1) (ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884]

A.7 - Mohammad Sajid Margub Ansari : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 201 IPC, Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i)

MCOCA,1999, Sec. 3(1)(ii) & 3(2) MCOCA,1999, Sec. 3 (4) MCOCA,1999, Sec. 6 r/w 4(ii) Explosive Substances Act, 1908]

A.9 - Muzzammil Ataur Rahman Shaikh : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA,1999, Sec. 3(4) MCOCA, 1999]

A.10 - Suhail Mehmood Shaikh : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1) (ii) & 3(2) MCOCA,1999, Sec. 3 (4) MCOCA, 1999]

A.11 - Zameer Ahmed Latifur Rehman Shaikh : [Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA,1999]

A.12 - Naveed Hussain Khan Rasheed Hussain Khan : [Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 3(1) (i) MCOCA,1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA,1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2)(e) (Prevention of Damage to Public Property Act, 1984)]

A.13 - Asif Khan Bashir Khan : [Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 201 IPC, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b)

(Explosive Substances Act, 1908), Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984)]

239. A.1, A.3, A.4, A.12, and A.13 are punished with death penalty. Accordingly, this reference under section 366(1) of Cr.PC is made to this Court for confirmation. Accordingly, the confirmation as well as the appeals filed by the accused are heard together.

240. At this juncture, before proceeding, it is beneficial to look into the scope of section 366(1) of Cr.PC.

241. The Hon'ble Supreme Court of India, in the case of *Mohinder Singh v. State of Punjab*, (2013) 3 SCC 294, has held thus :

“10. We are conscious of the fact that in terms of Section 366(1) of the Code,

“when the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.”

The scope and application of the above section is only in cases where a sentence of death has been passed by the Court of Session. The Court of Session should refer the proceedings to the High Court and the High Court can only deal with them as a court of reference. It is the practice of the High Court to be satisfied on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm that sentence. In other words, the High Court has to come to its own independent conclusion as to the guilt or innocence of the accused, independently of the opinion of the Sessions Judge. In a reference for confirmation of death sentence, the High Court must examine the entire evidence for itself independent of the Session Court's views. While confirming the capital sentence, the High Court is under an obligation to itself consider what sentence should be imposed and not be content with the trial court's decision on the point unless some reason is shown for reducing the same. Where, in

addition to an appeal filed by an accused sentenced to death, the High Court has to dispose of the reference for confirmation of death sentence under Section 366 of the Code, the High Court, while dealing with reference, should consider the proceedings in all its aspects and come to an independent conclusion on the material on record apart from the views expressed by the Sessions Judge. The confirmation of death sentence cannot be based only on the precedents and/or aggravating facts and circumstances of any other case.”

242. The Hon’ble Supreme Court of India, in the case of ***Bachan Singh v. State of Punjab***, (1980) 2 SCC 684 has held thus :

157. We may next notice other provisions of the extant Code (corresponding to Sections 374, 375, 376 and 377 of the repealed Code) bearing on capital punishment. Section 366(1) of the Code requires the court passing a sentence of death to submit the proceedings to the High Court, and further mandates that such a sentence shall not be executed unless it is confirmed by the High Court. On such a reference for confirmation of death sentence, the High Court is required to proceed in accordance with Sections 367 and 368. Section 367 gives power to the High Court to direct further inquiry to be made or additional evidence to be taken. Section 368 empowers the High Court to confirm the sentence of death or pass any other sentence warranted by law; or to annul or alter the conviction or order a new trial or acquit the accused. Section 369 enjoins that in every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such court consists of two or more Judges, be made, passed and signed by at least two of them. Section 370 provides that where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be referred to a third Judge.

157-A. In this fasciculus of sections relating to confirmation proceedings in the High Court, the legislature has provided valuable safeguards of the life and liberty of the subject in cases of capital sentences. These provisions seek to ensure that where in a capital case, the life of the convicted person is at stake, the entire evidential material bearing on the innocence or guilt of the accused and the question of sentence must be scrutinised with utmost caution and care by a superior court. (emphasis supplied)

158. The High Court has been given very wide powers under these provisions to prevent any possible miscarriage of justice. In *State of Maharashtra v. Sindhi* [(1975) 1 SCC 647 : 1975 SCC (Cri) 283 :

AIR 1975 SC 1665] , this Court reiterated, with emphasis, that while dealing with a reference for confirmation of a sentence of death, the High Court must consider the proceedings in all their aspects, reappraise, reassess and reconsider the entire facts and law and, if necessary, after taking additional evidence, come to its own conclusions on the material on record in regard to the conviction of the accused (and the sentence) independently of the view expressed by the Sessions Judge.

243. In the teeth of the law discussed hereinabove, about the scope of confirmation, we now proceed to examine the correctness of the impugned judgment and order imposing death penalty to A.1, A.3, A.4, A.12, and A.13 for the purpose of confirmation. At the same time, we will also examine the merit in the appeals filed by the accused.

244. On 11/07/2006, seven bomb blasts had taken place in first class compartments of seven different local trains, resulting in deaths of 187 persons and causing injuries to around 827 persons, is an admitted fact, as it is not disputed by anyone. Thus, the discussion hereinbelow would be to find out an answer to a question whether the accused are the perpetrators of the bomb blasts?

245. The prosecution, while supporting the judgment of the trial court, has relied upon three categories of evidence. The evidence is namely: -

- (1) The eyewitnesses who claim to have seen the accused while taking them to Churchgate station in their taxis, or while planting the bombs in the trains, or while making the bombs, or while hatching the conspiracy. There are total eight such witnesses namely, PW-63, PW-77, PW-57, PW-60, PW-62, PW-74, PW-75 and PW-59.

(2) Recoveries of RDX, granules, detonators, books and maps, CPUs, wires, printed circuit board, soldering gun, pressure cooker, a Maruti-800 car, etc.

(3) The confessional statements of the A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.9, A.10, A.11, and A.12.

246. We have dealt with the above referred evidence independently, category-wise, in the same sequence.

247. The first category of evidence, i.e., evidence of eyewitnesses has been challenged by the defence on numerous grounds, including trustworthiness and credibility of these witnesses, and some of them are either got up witnesses or stock witnesses, etc.

248. The second category of evidence is challenged by the defence on many grounds, including the ground that the recovered articles, including the RDX, were not kept in a proper custody and in a sealed condition throughout, till the time it was sent to the FSL, etc.

249. The admissibility of the confessional statements is also challenged on various grounds, including the grounds namely, validity of prior approval to invoke MCOCA, the voluntariness of the confessional statements, truthfulness/completeness of the confessional statements, extortion of confessional statements by inflicting torture, etc.

250. We accordingly proceed to examine the above referred evidence as under.

EYEWITNESSES**T.I. Parade**

251. The multiple T.I. Parades were conducted in this case on 07/11/2006 and 08/11/2006. Total seven witnesses identified the accused in T.I. Parades and also in the court. Four out of them claimed to have seen the accused planting the bombs in the trains. Two witnesses (taxi drivers) claimed to have ferried the accused to Churchgate Station in their taxis. The seventh one claimed that he saw the accused preparing bombs.

252. Whereas, the eighth witness, who claimed to have witnessed the accused hatching the conspiracy, identified the accused in court. This witness was not called for the T.I. Parade.

253. There is one more witness who was an injured witness, and he claimed to have seen the suspects after they alighted the train. His statement u/s 161 of Cr.PC was recorded within a short span of the incident, and with his help, two sketches of the suspects were prepared, but he was not called for TIP. Though he was examined, he was not asked to identify the accused in the Court.

254. Following table states the names of the above referred eyewitnesses, dates of sighting, the dates of their statements u/s 161 of Cr.PC, and the accused they have identified.

CHART NO. 30

Sr. No.	Name of the Eyewitness	Date of Sighting	Date of S.161 Statement	Accused Identified
1.	PW-60 Kishore Popatlal Shah	11.07.06	14.07.06	A.13
2.	PW-57 Subhash Nagarsekar	11.07.06	18.10.06	A.1

3.	PW-62 Devendra Lahu Patil	11.07.06	20.10.06	A.3
4.	PW-75 Amar Sardar Khan	08.07.06 or 09.07.06	28.10.06	A.2, A.4, A.6 & A.7
5.	PW-74 Vishal Kishore Parmar	11.07.06	02.11.06	A.4
6.	PW-59 Alam Gulam Qureshi	February, March & May 2006	02.11.06	A.2, A.3, A.4, A.9, A.10, A.12, & A.13
7.	PW-63 Santosh Kedar Singh	11.07.06	03.11.06	A.13
8.	PW-77 Rajesh Satpute	11.07.06	03.11.06	A.3
9.	PW-85 Lalji Pande	11.07.06	27.07.06, Supplementary statement - 21.08.06	---

255. Other than these nine eyewitnesses, there are five more witnesses who were the injured passengers. However, none of these witnesses was examined or called for T.I. Parade. It is to be noted that, within a short span of time after the incident, the police recorded their statements u/s 161 of Cr.PC, wherein they claimed to have seen some suspects keeping bag in the trains.

256. One more eyewitness is there who is a shop keeper. According to him, some Kashmiri persons purchased eight cookers from him.

257. The table given herein under will show the names of such witnesses and the dates on which their statements u/s 161 of Cr.PC were recorded.

CHART NO. 31

Sr. No.	Name of the Witness	Date of S.161 Statement
1.	Suresh Suvarna (Injured Passenger in Borivali blast)	15.07.06

2.	Constable Santosh Prakash Khanvilkar (Injured Passenger in Borivali blast)	22.07.06
3.	Ramanand Marutirao Machchevar (Injured Passenger in Mira Road blast)	12.07.06
4.	Prabhakar Dattatray Sadekar (Injured Passenger in Borivali blast)	13.07.06 and Supplementary Statement on 09.08.06
5.	Vijaykumar Babanna Rayappa (Injured Passenger in Jogeshwari blast)	05.08.06
6.	Mohanlal Kumawat (shopkeeper in Santa Cruz East)	28.09.2006

258. In the Chart No. 30 of nine witnesses, the dates of statements under Section 161 of Cr.PC show that, except the statement of PW-60 and PW-85, the statements of all other witnesses were recorded after a delay of 100 or more days, *i.e.*, after more than three months.

259. Similarly, there is a delay of four months in conducting the T.I. Parade, which is one of the common grounds to raise a question to the fairness in conducting the T.I. Parades.

260. These witnesses may be categorized as follows: -

- i) The taxi drivers who took A.3 and A.13 to Churchgate station (PW-63 & PW-77),
- ii) The witnesses who saw the accused planting bomb in the trains (PW-57, PW-60, PW-62, & PW-74),
- iii) The witness to assembling of bombs (PW-75),
- iv) The witness to the conspiracy (PW-59),
- v) The injured witness who saw the suspects while alighting the train. He was not called for T.I. Parade, though with the help of him, two sketches of suspects were prepared. Further, though he was examined, he was not asked to identify the accused in the Court (PW-85), and

- vi) The witnesses, who saw the suspects and gave their statements u/s 161 of Cr.PC within short span of the incident, with the description of the suspects, but were neither called for T.I. Parade nor examined as witnesses (Total 6 witnesses).

261. The T.I. Parades were conducted by two Special Executive Officers (SEOs), namely, Shri. Barve and Shri. Purandare.

262. The T.I. Parades of A.1, A.3, A.12, and A.13 were conducted by Shri. Barve on 07/11/2006, wherein A.1 was identified by PW-57, A.3 was identified by PW-62 and PW-77, A.13 was identified by PW-60 and PW-63, and no one identified A.12. A challenge to the validity of the T.I. Parades conducted by Shri. Barve is raised by the defence on the ground that Shri. Barve was not an SEO on the date of T.I. Parade conducted by him on 07/11/2006, therefore, the T.I. Parades conducted by him vitiate. Since this point goes to the root of the validity of T.I. Parade, we intend to deal with it first.

Authority of Shri. Barve as SEO

263. Learned Counsel Shri. Chaudhary has argued that the appointment of Shri. Barve as SEO expired on 07/05/2005 and his fresh appointment was made on 15/11/2006. Thus, from 07/05/2005 to 15/11/2006, he had no authority to conduct T.I. Parades. Whereas, he conducted T.I. Parades on 07/11/2006.

264. The learned SPP, in reply, has argued that Shri. Barve was continued after 07/05/2005 as SEO and had authority as SEO on 07/11/2006 to conduct the parade. It is further argued that the T.I. Parades held by Shri. Barve were held under the bona fide belief that he

was a duly empowered SEO and all precautions, as required, were duly complied with. It is submitted that it is a settled law that a T.I. Parade is mainly for the guidance of the investigating agency as to whether they are proceeding in the right direction. It is submitted that the witnesses identified these accused in the court also, which is a substantive evidence.

265. It is evident from the record that, Shri. Barve (PW-82) was appointed as SEO vide Government Resolution dated 08th May 2001 (Exh.4307), for four years, and assigned a stamp bearing Sr. No. 631. The aforesaid period of four years expired on 07/05/2005.

266. The government issued GRs dated 22/06/2006 and 23/06/2006 (Exh.4377) appointing SEOs. One Mr. Lakampalli Shamkumar was appointed as SEO, who was assigned the Stamp bearing Sr. No. 631, vide GR dated 23/06/2006.

267. It is pertinent to note that Shri. Barve used the Stamp bearing no. 631, which was assigned to Shri. Lakampalli Shamkumar, while conducting the T.I. Parades of A.1, A.3, A.12, and A.13 on 07/11/2006. In this backdrop, the prosecution failed to bring any evidence on record to show that, after the expiry of period of appointment of Shri. Barve (PW-82) as SEO on 07/05/2005, he was continued till his fresh appointment vide GR dated 15/11/2006.

268. The fact that on the date of T.I. Parade, on 07/11/2006, Shri. Barve (PW-82) was not SEO is fortified by his cross-examination. He deposed that he was appointed as SEO again on 15/11/2006 up to 15/11/2011. However, he showed ignorance about the date of his

appointment as SEO before 15/11/2006 and the date up to which his appointment was.

269. Thus, we have no hesitation to hold that on the date of T.I. Parade, i.e. 07/11/2006, Shri. Barve (PW-82) had no authority to conduct T.I. Parade, and hence, the T.I. Parades of A.1, A.3, A.12, and A.13 conducted by him vitiate and need to be discarded.

270. However, the fact that these accused were also identified in dock identification, cannot be ignored in view of the judgment of the Hon'ble Supreme Court of India in the case of ***Budhsep vs. State of UP*** (1970) 2 SCC 128, wherein it has been held that the identification parades belong to the investigation stage. They are generally held during the course of investigation with the primary object of enabling the witnesses to identify persons concerned in the offence, who were not previously known to them. This serves to satisfy the investigating officers of the bonafides of the prosecution witnesses and also to furnish evidence to corroborate their testimony in Court. It is further held that the identification of the accused in the court constitutes substantive evidence.

271. The Hon'ble Supreme Court of India, in the case of ***Bollavaram Pedda Narsi Reddy v. State of A.P.***, (1991) 3 SCC 434, has held thus: -

“8. The evidence given by the witnesses before the court is the substantive evidence. In a case where the witness is a stranger to the accused and he identifies the accused person before the court for the first time, the court will not ordinarily accept that identification as conclusive. It is to lend assurance to the testimony of the witnesses that evidence in the form of an earlier identification is tendered. If the accused persons are got identified by the witness soon after their arrest and such identification does not suffer from any infirmity that circumstance lends corroboration to the evidence given by the

witness before the court. But in a case where the evidence before the court is itself shaky, the identification before the magistrate would be of no assistance to the prosecution.”

272. Thus, it is incumbent upon the Court to exercise caution while scrutinising the evidence of the witnesses who identified A.1, A.3, and A.13 in the Court, as if there is no T.I. Parade.

273. Let us, therefore, first reiterate the law as regards dock identification in absence of T.I. Parade.

274. In the case of **Dana Yadav v. State of Bihar**, (2002) 7 SCC 295, the Hon’ble Supreme Court of India has held that, if a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence.

275. However, there are exceptions to this general rule, one of which is where the court is impressed by a particular witness on whose testimony it can safely rely, without such other corroboration, as held by the Hon’ble Supreme Court of India in the case of **Budhsep (supra)**.

276. The other exceptions as carved out in the following authorities are as under: -

- i) The Hon’ble Supreme Court of India, in the case of **State of Maharashtra v. Sukhdev Singh** (1992) 3 SCC 700, laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of

identification of an accused in court for the first time, conviction can be based.

- ii) The Hon'ble Supreme Court of India, in the case of ***Ronny vs. State of Maharashtra*** (1998) 3 SCC 625, has observed that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held

277. The Hon'ble Supreme Court of India, in the case of ***Bollavaram Pedda (supra)***, has held that the credibility of the evidence relating to the identification depends largely on the opportunity the witness had to observe the assailants when the crime was committed and memorize the impression. The visibility of the light at the place of occurrence and proximity to the assailants had a clear vision of the action of each one of the accused persons in order that their features could get impressed in their mind to enable them to recollect the same and identify the assailants even after a long lapse of time.

278. Thus, it is evident that to the general rule that if a witness identifies the accused in Court for the first time, the probative value of such uncorroborated evidence becomes minimal, the exceptions are :-

- i) Where the Court is impressed by a particular witness,
- ii) If a witness had any particular reason to remember about the identity of an accused,
- iii) The witness had a chance to interact with the accused, and

- iv) The witness had an opportunity to notice the distinctive features of the accused.

279. In the teeth of above referred observations, let us now revert back to the facts of the present case.

First Category of Witnesses

The taxi drivers who took A.3 and A.13 to Churchgate
(PW-63 & PW-77)

280. We have already categorized the witnesses in six categories. Witnesses PW-63 and PW-77 fall in the first category, *i.e.*, the taxi drivers who took A.3 and A.13 to Churchgate in their taxis on the day of the incident. We, therefore, first proceed to scrutinize and examine the evidence of PW-63 and PW-77.

281. Learned defence counsel submits that till 02/11/2006, PW-63 and PW-77 did not think that they had any important information about the bomb blast. It is argued that as PW-63 and PW-77 had no reason to remember the passengers they took to Churchgate, it strains credence and is unbelievable that they remember and can accurately identify the passengers. It is submitted that PW-63 admits that after about a week, it is difficult to remember a passenger and it becomes more difficult after a month.

282. Learned SPP, while justifying as to how do PW-63 and PW-77 remember so much about that particular day, submitted that the human tendency is such that we recollect the memories of special days. It is

submitted that both the witnesses have stated about such special events in their evidence, because of which, they both could recollect the description of A.3 and A.13.

283. In light of the above referred rival submissions, on perusal of record, it is evident that though PW-63 and PW-77 claimed to have taken A.13 and A.3 respectively, in their taxis on 11/07/2006, they remained silent till 02/11/2006 and did not disclose anything to anyone about it.

284. The statements of these witnesses under Section 161 of Cr.PC were recorded on the same day, i.e., 03/11/2006 (after 116 days of sighting).

285. PW-63 identified A.13 in Court on 17/01/2011. Whereas, PW-77 identified A.3 on 16/03/2011. Thus, the dock identification of both the accused is after more than a period of four and half years.

286. As we have seen the exceptions to the general rule of identifying the accused first time in the Court without corroborated evidence of T.I. Parade, namely, 1) if a witness had any particular reason to remember about the identity of an accused, 2) the witness had a chance to interact with the accused, and 3) the witness had an opportunity to notice the distinctive features of the accused, let us thus, examine the impact on memory with the passage of time.

287. There are many psychological and neurological studies that support the idea that memory fades over time, but can be re-triggered

or recalled under certain conditions. It is known as ‘memory retrieval through cues’ or ‘cue-dependent memory’. There is another study involving emotional memory triggers, which helps explain why we vividly remember emotionally intense events sometimes even years later.

288. There are two theories. One is decay theory. The other one is cue-dependent theory. Decay theory suggests memory fades simply with time. However, cue-dependent theory says that the memory isn’t gone. It is just inaccessible until the right trigger or cue occurs. Sensory cues, contextual cues, emotional states, words, phrase, or conversation are stimuli that help bring a memory to the surface.

289. At the same time, it would be beneficial to refer the judgment of the Hon’ble Supreme Court of India in the case of **Pargan Singh vs. State of Punjab** reported in (2014) 14 SCC 619, wherein it has observed on the theory of ‘memory’ as under: -

“18. Before entering upon the discussion on this aspect specific to this case, we would like to make some general observations on the theory of “memory”. Scientific understanding of how memory works is described by Geoffrey R. Loftus while commenting upon the judgment dated 16-1-2002 rendered in Javier Suarez Medina v. Janie Cockrell [Case No. 01-10763, decided on 16-1-2002 (5th Cir 2002)] by the United States Court of Appeals. He has explained that a generally accepted theory of this process was first explicated in detail by Neisser (1967) and has been continually refined over the intervening quarter-century. The basic tenets of the theory are as follows:

18.1. First, memory does not work like a video recorder. Instead, when a person witnesses some complex event, such as a crime, or an accident, or a wedding, or a basketball game, he or she acquires fragments of information from the environment. These fragments are then integrated with other information from other sources. Examples of such sources are: information previously stored in memory that leads to prior expectations about what will happen,

and information—both information from external sources, and information generated internally in the form of inferences—that is acquired after the event has occurred. The result of this amalgamation of information is the person's memory for the event. Sometimes this memory is accurate, and other times it is inaccurate. An initial memory of some event, once formed, is not “cast in concrete”. Rather, a memory is a highly fluid entity that changes, sometimes dramatically, with the passage of time. Every time a witness thinks about some event—revisits his or her memory of it—the memory changes in some fashion. Such changes take many forms. For instance, a witness can make inferences about how things probably happened, and these inferences become part of the memory. New information that is consistent with the witness's beliefs about what must have happened can be integrated into the memory. Details that do not seem to fit a coherent story of what happened can be stripped away. In short, the memory possessed by the witness at some later point (e.g. when the witness testifies in court) can be quite different from the memory that the witness originally formed at the time of the event.

18.2. Memory researchers study how memory works using a variety of techniques. A common technique is to try to identify circumstances under which memory is inaccurate versus circumstances under which memory is accurate. These efforts have revealed four major categories of circumstances under which memory tends to be inaccurate. The first two categories of circumstances involve what is happening at the time the to-be-remembered event is originally experienced, while the second two categories of circumstances involve things that happen after the event has ended.

18.3. The first category of circumstances involves the state of the environment at the time the event is experienced. Examples of poor environmental conditions include poor lighting, obscured or interrupted vision, and long viewing distance. To the degree that environmental conditions are poor, there is relatively poor information on which to base an initial perception and the memory that it engenders to begin with. This will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.4. The second category of circumstances involves the state of the observer at the time the event is experienced. Examples of sub-optimal observer states include high stress, perceived or directly inflicted violence, viewing members of different races, and diverted attention. As with poor environmental factors, this will ultimately result in a memory that is at best incomplete and, as will be described in more detail below, is at worst systematically distorted.

18.5. The third category of circumstances involves what occurs during the retention interval that intervenes between the to-be-remembered event and the time the person tries to remember aspects of the event. Examples of memory-distorting problems include a lengthy retention interval, which leads to forgetting, and inaccurate information learned by the person during the retention interval that can get incorporated into the person's memory for the original event.

18.6. The fourth category of circumstances involves errors introduced at the time of retrieval i.e. at the time the person is trying to remember what he or she experienced. Such problems include biased tests and leading questions. They can lead to a biased report of the person's memory and can also potentially change and bias the memory itself."

290. In the case at hand, since we are dealing with identification of accused by the witnesses either in T.I. Parade or in dock identification, which mainly relates to face recognition, it is relevant to know about face recognition.

291. Studies show that face recognition is primarily handled by a specific part of the brain. It processes and stores facial features as complex visual patterns. If you met the person regularly before the break, you are more likely to recognise them later. A single brief encounter may not leave a strong imprint unless it was emotionally or contextually significant. Faces associated with emotionally impactful or unique events are remembered better. For example, you might remember a person you met during a crisis more than someone from a routine meeting. Unusual features (hairstyle, facial structure, voice) aid recognition. Generic or familiar looking faces are harder to recall precisely after some time. Seeing the person in a similar context, for example, same office, same spot acts as a cue.

292. The Hon'ble Supreme Court of India, in the case of *Lal Singh v. State of U.P.*, (2003) 12 SCC 554, has held that where there is an inordinate delay in holding a test identification parade, the court must adopt a cautious approach so as to prevent miscarriage of justice. In case of inordinate delay, it may be that the witnesses may forget the features of the accused put up for identification in the test identification parade. It is further held that this, however, is not an absolute rule because it depends upon the facts of each case and the opportunity which the witnesses had to notice the features of the accused and the circumstances in which they had seen the accused committing the offence. Where the witness had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously. Where, however, the court is satisfied that the witnesses had ample opportunity of seeing the accused at the time of the commission of the offence and there is no chance of mistaken identity, delay in holding the test identification parade may not be held to be fatal. It all depends upon the facts and circumstances of each case.

293. As it is the case of the prosecution that A.3 and A.13 traveled in the taxis of PW-77 and PW-63, respectively to go to Churchgate, it was a brief and single encounter and there was no previous acquaintance. These witnesses, as we have noted, identified A.3 and A.13 in dock identification after four and half years of sighting. In case of such inordinate delay, an exception to the rule of a possibility that the witness may forget the features of the accused is that, the witness had ample opportunity of seeing the accused at the time of commission of offence.

294. In the present matter, there was a single encounter of the witnesses PW-63 and PW-77 with A.13 and A.3, respectively. Therefore, it is important to ascertain whether, in this case, both these witnesses had ample opportunity of seeing the accused to recollect their faces after such a long delay.

295. It is a matter of common knowledge that the taxi drivers in Mumbai operate in a manner distinct from many of the cities across India. Therefore, to appreciate the evidence of both these witnesses in right perspective, it is necessary to understand how the taxis operate in Mumbai.

296. It is a matter of general public knowledge and common experience for anyone who travels by taxi in Mumbai that, prior to commencing the journey, there is no need for elaborate instructions or negotiations with the driver. The passenger simply states the intended destination, upon which, the driver either agrees or declines by a simple gesture or verbal response. Many times a passenger first boards the taxi and then tells the destination.

297. With respect to the fare, there is no opportunity or practice of bargaining, as the fare is calculated strictly in accordance with the fare meter installed in the taxi. This meter automatically determines the total payable amount based on the distance travelled and displays the fare upon reaching the destination.

298. Furthermore, upon arrival at the destination, it is customary for the driver to inform the passenger of the fare without getting down

from the vehicle. The fare is received by the driver while he remains seated in the driver's seat.

299. From the above discussion of the manner in which taxi drivers operate in Mumbai, it can be certainly said that, in normal circumstances, there is hardly any chance for any taxi driver to have long interaction with any passenger and to have sufficient and ample opportunity to notice and observe the passengers and their faces, and to store the same in the memory for long period, unless there is some special reason. PW-63 fairly admits in his deposition that it is difficult to remember a passenger after a week and it becomes more difficult after a month. Although this ability to recall a human memory appears general, it is specific in respect of such ability of PW-63, because the said admission is applicable to him, which is important here.

300. If a witness identified an accused, it means the witness identified the accused by his face. Hence, identification in TI parade and court refer to facial recognition. Therefore, memory involved must relate to the person, not just the event. A witness' memory must link to actual person, predominantly through facial recognition. Let us, therefore, scrutinize the evidence of PW-63 and PW-77 to ascertain what opportunity both the witnesses had, to notice and observe A.13 and A.3, and their faces.

301. However, before making such scrutiny, it is also important to note few important aspects, other than the delay in identification, which demand to have a cautious approach while appreciating the evidence of these witnesses. Such aspects are namely: -

- i) Both these witnesses PW-63 and PW-77 did not go to police on their own till 03/11/2006 (for 116 days). According to them, they did not think they had any important information.
- ii) As per the prosecution, police had undertaken search for 15 days to find out taxi drivers who had taken the accused by taxis to Churchgate. There are no station diary entries to this effect to establish the said fact.
- iii) Both these witnesses were searched by the police on the same day, i.e., on 03/11/2006. There is no case diary entry showing that on 03/11/2006 police went for search of taxi drivers at some particular location/s.
- iv) The police could search them only after retraction of the confessional statements by the accused.
- v) According to the defence, these witnesses are got up witnesses.
- vi) Constable P.N. Salvi, who searched PW-77, did not enter into the witness box.

PW-63 Santosh Kedar Singh

302. While narrating an incidence of encounter of PW-63 with A.13, PW-63 deposed that, at about 3.15 to 3.30 p.m., two passengers came for Churchgate. One of them had a black heavy bag and an umbrella. They sat in his taxi on the back seat, keeping the bag in between them. He took them to Churchgate. En route they told him to drive the taxi carefully as the articles that they had with them were delicate. They asked him how much time it would take. He told them that it would take about one hour and if required more than that.

303. In this part of his narration, admittedly, PW-63 nowhere states about any interaction taken place between them before A.13 sat on the back seat of the taxi. In this part, there is also no mention about anything unnatural found by PW-63 relating to the behaviour or anything of the accused.

304. PW-63 further deposed that he left them at the subway by which one can go to Churchgate station. The fare was Rs.180/-. They gave him a note of Rs.500/-. He did not have change to return the balance amount to them. He told them that he would bring it and they should wait for two minutes. However, they were in a hurry and they told him to keep the change. They got down taking the bag with them. This was his first experience about passengers keeping such a big amount of change. He deposed that, normally, before they take passengers, they look at the passengers. En route one of the passengers was talking in Mumbai-Hindi language and the other was talking somewhat in Punjabi language. One of the passengers was medium built aged about 30-35 years and the other was thin aged about 23-25 years.

305. In this subsequent part of PW-63's narration, again there is no mention about any interaction with accused, which facilitated him to have sufficient opportunity to notice and observe A.13 and his face.

306. From his own version, it is evident that A.13 paid the fare amount while sitting in the back seat of the taxi before they alighted. In absence of any contrary evidence, it can safely be presumed that PW-63 accepted the amount while sitting in his driver seat.

307. Thus, the encounter of A.13 with PW-63 can be said to be a brief encounter. And, there was no sufficient opportunity for PW-63 to observe and notice A.13 and his face and store it in his memory.

308. As far as triggering of memory of PW-63 is concerned, it is tried to be canvassed before this Court by the prosecution that it was his first experience that some passenger gave him Rs. 500 for a fare of Rs. 180.

309. This possibility, as suggested by the prosecution, may not be ruled out. However, it would help PW-63 to trigger his memory to recollect the events relating to this incidence or events prior to or after this incidence. But, we are ascertaining the possibility of recollection of face of A.13 after a huge gap, that too in absence of any evidence brought on record for justifying the reasons to recollect the face of A.13. No one will have any quarrel on the point that identification of an accused by a witness, either in identification parade or in dock identification, means that the witness identified the accused by his 'face'.

310. Therefore, having held that PW-63 had no sufficient opportunity to interact with A.13 or to observe and notice him minutely, it can be said that an exception to the rule that if a witness identifies the accused in Court first time, the probative value of such uncorroborated evidence becomes minimal, is absent. In that view of the matter, the manner in which PW-63 got to the police as the witness and considering the fact that the present matter pertains to capital punishment, we are of the opinion that it is highly unsafe to rely upon the evidence of PW-63 to hold A.13 as guilty.

PW-77 Rajesh Satpute

311. Similar is the quality of evidence of PW-77, another taxi driver who claimed to have taken A.3 in his taxi on the date of incident from Carter Road, Bandra to Churchgate.

312. However, before scrutinizing the evidence of PW-77, there is one important question raised by the defence that no T.I. Parade was conducted. In his statements u/s 313 and 314 of Cr.PC, A.3 states that he was taken out from the *Anda* Cell at around 1:30 pm and he was put back at 1:50pm and no TIP was held

313. This submission made by the defence requires us to look into the *Awak-Jawak* Register (Ingress-Egress Register) maintained in the Arthur Road Jail and referred by the defence.

314. The entries taken in such *Awak-Jawak* Register, in relation to the T.I. Parade of A.3, held on 07/11/2006, are as under: -

CHART NO. 32

Register at Arthur Road Jail (Exh. 2474)		TIP Memo SEO: PW 82 - Shashikant Barve	
Outward	Inward	Panchnama Start	Panchnama End
07/11/2006, 1:30 pm	07/11/2006, 1:50 pm	07/11/2006, 1:30 pm	----

315. From the above referred chart, it can be seen that A.3 was taken out of the barrack at 1:30 pm and was put back at 1:50 pm, indicating that he was outside for only 20 minutes. In view of the specific allegation made by A.3 that no T.I.Parade was conducted, it is imperative to exercise caution while appreciating the evidence of PW-77.

316. Let us now examine the evidence of PW-77. In his oral testimony, he deposed that two persons came there from the left side of his taxi and asked him whether the taxi is empty. He said yes to them. They sat in the back seat in the taxi.

317. PW-77, in his cross-examination, states that he was in his seat reading a newspaper when those two persons came. He did not get down from the seat till the time they sat in the taxi and he started the taxi.

318. The above referred deposition of PW-77 shows that when the said two passengers came, PW-77 was sitting in his driver seat and was reading newspaper and there was no interaction between them, except an inquiry made by the passengers whether the taxi is occupied or empty. The evidence further shows that both the passengers sat in the back seat.

319. Then, PW-77 deposed that one of them had a black bag with him. He kept it on the front seat by his side. When he started the taxi, he asked them where to take it. They told him to take the taxi to Churchgate. He was required to apply the brakes when they had gone some distance, at that time, the bag moved ahead slightly. The person behind caught the handle of the bag at that time and told him to drive the taxi carefully, he asked him whether he should keep the bag in the boot. Thereupon, the other person said that there are valuable articles in the bag and said that the bag should remain there.

320. In this part of evidence of PW-77, he does not refer or mention any unnatural thing. Moreover, in this part of evidence, he does not say

that he saw A.3 and that he had sufficient opportunity, or any reason, to observe or notice him minutely or otherwise, or to store his face in his memory for any particular reason. As far as interaction took place in between them relating to the bag or otherwise, at that time, PW-77 was in his driver seat and A.3 was on the back seat. Therefore, though there was conversation between them, it was without looking at each other's faces or eye contacts with each other.

321. PW-77 further states that he stopped the taxi near a subway at Churchgate station. The persons asked him about the fare and he told them that it was Rs. 140/- They gave him two notes of Rs.100/- each and he returned Rs.60/- to them. They gave back Rs. 10/- to him. Thereafter, they went towards the subway.

322. Here again, there is nothing to suggest that before alighting the taxi, there was any long interaction between them. On the contrary, in cross-examination, PW-77 says that there was no waste of time when he reached the passenger at Churchgate subway except the talks that they had about the fare. He states that he was not required to get down since the time they sat in his taxi upto Churchgate. He states that when they got down, he was sitting in his seat.

323. Thus, the gist of the evidence of PW-77, as regards his encounter with A.3, is that when A.3 came, PW-77 was reading a newspaper sitting in driver seat of the taxi. The passengers asked him whether his taxi is available. After this brief interaction, A.3 sat along with a person accompanying him in the backside of the taxi. After reaching Churchgate subway, the passengers did not speak except asking the fare. The passengers paid the amount while PW-77 was

sitting in his seat. He did not get down from the taxi right from the time when they boarded till the time they got down from the taxi.

324. In the whole evidence, PW-77 does not speak about any sufficient opportunity he could get to notice or observe A.3 or his face. He nowhere states about the reason for triggering of his memory and to recollect the face of PW-77 after a long period. He does not speak about any unnatural thing or special thing to give reason for storing A.3's face in his memory. Moreover, in the evidence which we have discussed, there is nothing which would trigger the memory of PW-77 and to recollect A.3's face.

325. According to the prosecution, the reason for triggering the memory of PW-77 was that, he had been to his sister in law's house on that day for lunch.

326. As suggested by the prosecution, this may be the reason to trigger his memory, but, it would help PW-77 to recollect the events, and not the faces of all the passengers who traveled in his taxi or the strangers who met him on that day.

327. But, for the sake of convenience, we again say that, here we are ascertaining the possibility of recollection of face of A.3 after a huge gap. When PW-77 identified A.3, he identified him by his face. Thus, it is doubtful, in absence of any evidence brought on record for justifying the reasons to recollect the face of A.3.

328. Therefore, we are of the opinion that it is highly unsafe to rely upon the evidence of PW-77 to hold A.3 as guilty.

329. In the backdrop of the above observations we have recorded, let us see the relevant portion of the observations made by the Learned Special Court while accepting the evidence of PW-63 and PW-77, which read thus: -

Observations relating to the evidence of PW-63:

“474. In my humble opinion it is clear from the above discussion that the evidence of Santosh Singh, PW-63, is a cogent and convincing evidence and his credibility has not been impeached during his cross-examination. The most important fact is that he has no criminal antecedents, no history of he having acted as a panch or a witness in any other case and no contact with the police, which rules out the possibility of he being a pliable police witness. Therefore, it will have to be held that he is not at all got up witness and his evidence is not fabricated. He is surely a total independent witness and his evidence inspires confidence. I have, therefore, no hesitation in accepting his testimony as a truthful. Hence, it will have to be held that by his evidence prosecution has proved that on 11/07/06 the A13 alongwith one more person had traveled in a taxi from Perry Cross Road, Bandra at about 3.15 to 3.30 p.m. to a subway of Churchgate Railway Station, reaching there at about 4.45 to 5.00p.m. and that they were carrying a black heavy bag with them. This is the circumstance no. 2 proved by the prosecution against the accused. It is the first circumstance against the A13. “

Observations relating to the evidence of PW-77:

“456. It will have to be held that Rajesh Satpute, PW-77, has given a very straightforward evidence, it is not artificial, it is not articulated or decorated with any fantasies or falsehood and he has not made any tall claims. To my mind, if the investigating machinery, i.e., the ATS wanted to fabricate such type of evidence practically at the end of investigation, because the chargesheet was filed on 30/11/06, it would not have stopped at only two taxi drivers. Nothing prevented them from creating such type of evidence of taxi drivers to give evidence against some more accused. The ATS could have done this earlier also. Why wait till 03/11/06? This shows the naturalness. Hence, it will have to be held that by the evidence of Rajesh Satpute, PW-77, the prosecution has proved that on 11/07/06, the A3 alongwith one more person had travelled in a taxi from Carter Road, Bandra at 3.30 to 4.00 p.m. to a subway of Churchgate Railway Station, reaching there at about 5.00 p.m. and that they

were carrying a black coloured bag with them which was of rexine. This is the first circumstance proved by the prosecution against the accused. It is the first circumstance against A.3.”

330. Having held that it is highly unsafe to base conviction on the evidence of PW-63 and PW-77 for the reasons recorded, we are of the considered view that the above referred observations of the Trial Court are perverse and are contrary to well settled principles of law.

Second Category of Witnesses

The witnesses who saw the accused planting bomb in the trains
(PW-57, PW-60, PW-62, & PW-74)

331. Moving further to the second category of witnesses namely, the witnesses who saw the accused planting bombs in the trains. These witnesses are the passengers who were traveling in the trains wherein the blasts had taken place. These witnesses are PW-57, PW-60, PW-62, and PW-74.

332. Except PW-60, the witnesses PW-57, PW-62 and PW-74 remained silent for 100 or more, and thereafter, they approached the police and gave statement under Section 161 of Cr.PC.

333. In the T.I. Parades held on 07/11/2006, PW-57 identified A.1, PW-62 identified A.3, and PW-74 identified A.4. All these witnesses further identified the above referred accused in the court too, after more than four years from the date of sighting of the accused.

334. PW-57, PW-62, and PW-60 identified A.1, A.3, and A.13 respectively in T.I. Parades held by Shri. Barve. We have already held that on 07/11/2006, Shri. Barve had no authority as SEO to conduct T.I. Parades. Therefore, the T.I. Parades conducted by Shri. Barve, wherein PW-57, PW-62, and PW-60 have identified the above referred accused, vitiate. The effect of the same will be that there were no identification parades identifying A.1, A.3, and A.13 by PW-57, PW-62, and PW-60 respectively, but only dock identification is there.

335. One more factor, other than delay, which needs to be kept in mind while scrutinizing the evidence of these witnesses, is that they all have given their statements under Section 161 of Cr.PC after retraction of confessions by the accused namely A.1, A.3, and A.4. Furthermore, according to the defence, PW-57 and PW-62 are got up witnesses, whereas, PW-74 is a stock witness.

336. There is another reason for the defence to say that these witnesses are either got up or stock witnesses, i.e., there were five injured passengers who were traveling in the trains in which the blasts had taken place. These five injured passengers were Suresh Suvarna, Constable Santosh Prakash Khanwilkar, Ramanand Marutirao Machchewar, Prabhakar Dattatray Sadekar, and Vijaykumar Babanna Rayappa. They all claimed that they saw the suspects of the blasts and gave description of the suspects in their statements u/s 161 of Cr.PC which they gave within a short span of the incident, and much prior to invocation of MCOCA. Despite this, none of them was examined as witness or called for T.I. Parade.

337. As far as PW-60 is concerned, he gave his statement under Section 161 of Cr.PC on 14/07/2006, *i.e.*, on the fourth day of the incident. However, despite the fact that the first arrest was made on 20/07/2006 and further arrests were continued till 03/10/2006, PW-60 was not called for T.I. Parade till 07/11/2006.

338. Thus, the factors which prompt us to be cautious are, namely: -

- i) Not calling PW-60 for identification for more than three and half months from the date of recording of his statement u/s 161 of Cr.PC, despite the fact that the first arrest was made on 20/07/2006,
- ii) A huge delay of 100 or more days in approaching the police for giving statement u/s 161 of Cr.PC, by PW-57, PW-62, and PW-74,
- iii) Delay of four months in conducting T.I. Parade, wherein PW-74 identified A.4,
- iv) The witnesses who have given their statements u/s 161 of Cr.PC within a short span of the incident and much before invocation of MCOCA, were not examined or called for T.I. Parade,
- v) One Mohanlal Kumawat who claims that some Kashmiri people purchased eight cookers from his shop in the month of May 2006. Though his statement is relevant from the point of view of the prosecution story that the bombs were packed in cookers by the accused, he was not examined or called for T.I. Parade, and

- vi) According to the defence, these witnesses are either got up witnesses or stock witnesses.

339. Learned Counsel Shri. Chaudhary submits that it is almost impossible for someone to be attentive to a stranger. Virar bound trains are always crowded and there is a heavy rush on them in the evenings. It is very difficult to get down at Dadar on a fast train, because as soon as the train stops at Dadar, a rush of persons enters the train. It is, thus, difficult to believe that he remembered a complete stranger whom he saw in such strenuous circumstances, remembered his bag so many days after the incident, and remembered the type of bag for four years, and identified that person who he claimed to have seen just for few moments.

340. On the other hand, the learned SPP argues that the reason for triggering their memory has come in the evidence of these witnesses. He, accordingly, submits that these witnesses are trustworthy and can be made basis for conviction.

341. In the above referred backdrop, let us now examine the evidence of witnesses PW-57, PW-60, PW-62, and PW-74.

PW-57 Subhash Nagarsekar

342. PW-57 claims that he saw A.1 – Kamal keeping a big rexine bag on the luggage rack of 5:57 PM virar Fast train on 11/07/2006. However, he remained silent till 18/10/2006 (i.e for 100 days) and on that day, he gave his statement under section 161 of Cr.P.C. He identified A.1 in TI parade held on 07/11/2006 (i.e after four months of the sighting). Therefore, the defence has questioned his credibility.

343. Before scrutinizing the evidence of PW-57, there is one important question raised by the defence that no T.I. Parade was conducted. It is argued that A.1, in his 313 statement, states that he was taken out from the *Anda* Cell at around 1:30pm and put back at 1:50pm. He further states that no T.I. Parade was held.

344. This submission made by the defence requires us to look into the *Awak-Jawak* Register maintained in the Arthur Road Jail and referred by the defence. In the said register, whenever any accused goes outside and comes inside, on both occasions, the entries are made as regards the name of the accused and the time of going outside and coming inside the barrack.

345. The entries in such *Awak-Jawak* Register in relation to the T.I. Parade of A.1, held on 07/11/2006 are as under : -

CHART NO. 33

Register at Arthur Road Jail (Exh. 2474)		TIP Memo SEO: PW 82 – Shashikant Barve	
Outward	Inward	Panchnama Start	Panchnama End
07/11/2006, 1:30 pm	07/11/2006, 1:50 pm	07/11/2006, [Time not mentioned]	07/11/2006, 3:25 pm

346. However, PW-57, who identified A.1 in the fourth round, which according to him, took place at around 2:15 pm. Whereas, we have in the above referred chart that A.1 came out at 1:30 and went back in the Barrack at 1:50pm.

347. At the same time, PW-82 Shri. Barve, who conducted the T.I. Parade wherein PW-57 identified A.1, has stated in cross-examination that the parade started at about 2:30 pm and was over at about 3:15 pm.

348. The above referred discrepancies, are serious and have not been explained by any satisfactory explanation. Therefore, it can be said that the relevant entries in the *Avak-Javak* Register, maintained in the Prison, are contrary to the contents of Panchnama of T.I. Parades. Moreover, panchas to this panchnama are not examined.

349. We now proceed to examine the evidence of PW-57. According to PW-57, it was Guru Pournima, therefore, he wanted to go for *darshan* to the Saibaba Temple in Vartak Nagar, Thane.

350. As per prosecution, for PW-57, the reason for triggering his memory as regards his encounter with A.1, is that on 11/07/2006, there was Guru Pournima and he went for *darshan* to SaiBaba Temple in Vartak Nagar, Thane.

351. This possibility, as suggested by the prosecution, may not be ruled out. Therefore, it would help PW-57 to trigger his memory to recollect the events relating to this incidence or events prior to or after this incidence. But, we are ascertaining the possibility of recollection of face of A.1 after a huge gap, that too in absence of any evidence brought on record for justifying the reasons to recollect the face of A.1. Identification of an accused by a witness, either in identification parade or in dock identification, means he identified the accused mainly by his face.

352. PW-57 deposed that at about 5.15 to 5.30 p.m., he started from his house and went to the Charni Road Station. He sat on the fast train going towards Churchgate. He was in the first class compartment, which was the first from Virar side. He was sitting inside the compartment by the window side, facing towards Virar. He did not get down at Churchgate as he wanted to go to Dadar and then to Thane.

353. PW-57 further deposed that at Churchgate station, people entered the compartment. Some people kept their bags on the racks. At that time two persons entered the train from the left side door, with a big rexine bag. They kept it on the rack above him. As there was more crowd, he asked his neighbour as to which train it was. He told him that it was the 5.57 p.m Virar fast train. It had halted at platform no.3 at Churchgate. The bag was blackish in colour. The two persons stood in the passage.

354. From this part of narration, it is evident that, at Churchgate station people entered the compartment. It is further evident that some people kept their bags on the racks. At that time, PW-57 noticed two persons enter the train from the left side door with a big rexine bag.

355. While referring to these two persons, he has not given any reason to attract his attention towards these two persons. Thus, these two persons entered into the train like other passengers. Similarly, these persons entered with a bag and kept their bag on the rack like other passengers.

356. If the big rexine bag was the reason to attract the attention of PW-57 towards these two people, he could not give the description of the bag.

357. However, in absence of such description, if we consider the prosecution story that the bombs were packed in the cookers, and therefore, if we try to ascertain the possible size of the bag on the basis of the size of the cooker, then we need to undertake an exercise on the basis of two pieces of evidence available on record.

358. From the evidence on record, we can ascertain both, the diameter of the gasket and the capacity of the cookers used. The first relevant piece of evidence is the House Search Panchnama of A.6 (Exh.716). This Panchnama reveals that the pressure cooker recovered from the residence of A.6 had a capacity of 5 litres. This supports the conclusion that the cookers employed in the offence were of 5-litre capacity.

359. The second relevant piece of evidence concerns the diameter of the gaskets used in the cookers. Seven gaskets, claimed to be of the cookers used for the bombs, were recovered under Panchnama Exh.1108 (Recovery Panchnama of leftover bomb materials at the instance of A.3), which shows the outer diameter of the gasket as 220 mm (approximately 8.661 inches). This measurement is consistent with the standard dimensions of a 5-litre pressure cooker.

360. It is pertinent to note that the typical dimensions of a 5-litre pressure cooker, irrespective of the manufacturer, are approximately 41 cm in width and 20 cm in height (equivalent to 16.14 inches in width, including handles, and 7.874 inches in height).

361. Therefore, the size of the cookers used can be stated to be approximately 16.14 inches in width and 8 inches in height. To put this in perspective, if these dimensions are compared with a standard A4-size paper (used for Court proceedings) which measures 8.27 inches in width and 11.69 inches in height, it can be observed that the height of the cooker is nearly equal to the width of an A4 sheet, while its width exceeds the height of an A4 sheet by approximately 4 inches. This comparative visualization aids in comprehending the physical dimensions of the cookers used in the offence.

362. This exercise we have done just to find out the size of the bag required for putting a cooker. From the above referred discussion, as regards size of 5-litre cooker, it is now certain that the bag required to put such cooker will be of a normal size and in any case it will not be of an abnormal size, which would attract anybody's attention, including the attention of PW-57, and give cue for triggering memory.

363. PW-57 then, deposed that the train started at 5.57 p.m. It was slow upto Bombay Central. As he wanted to get down at Dadar, before Bombay Central he went towards the left door and stood there. The train started from Bombay Central. There was a heavy rush at Dadar, therefore, at Dadar from the corner he got down immediately and stood by the side wiping his face by his handkerchief. At that time he realized that the person who had kept the bag there had also got down along with him at Dadar. Two persons were with him when he got down.

364. PW-57 in this part of his narration states that there was heavy rush at Dadar therefore from the corner he got down. Further, in cross-

examination, he states that he was the first person to get down when the train was about to stop which suggests that he got down in a moving train. Though he again speaks about these two persons who got down along with him at Dadar Station, but he could not tell in the cross-examination how many persons got down behind him or their, age group or the people who were trying to get in and get out of the train.

365. From the above referred evidence of PW-57, it can be safely said that the accused was seen by him in the train barely for a very short time in the middle of crowd, which makes it impossible for him to clearly view or record the face of the accused.

366. Furthermore, PW-57 did not give any special reason for remembering A.1 and his face, even after about 100 days. Such explanation is required in the backdrop that PW-57 in his cross deposed that, he was not paying much attention to the persons entering the coach and was not in a position to tell any description of any other passenger. The train became crowded at Churchgate.

367. It is important to note that, when PW-57 claims that he can identify and describe A.1, he could not describe the person who was sitting beside him in the train to whom he asked about the train. In cross-examination, he failed to tell the age of that person or his clothes. He also failed to tell the description of the person who was sitting in front of him. He could not tell the number of person standing in the passage. Though he saw people keeping their briefcases, small bags on the racks, he could not tell the make and the colour of those bags. He

could not describe the persons who were standing beside him in the passage when he stood there at the Bombay Central Railway Station.

368. In these circumstances, the evidence of this witness creates doubt about the trustworthiness and credibility of this witness.

369. As far as his silence for about 100 days, PW-57 states that he realized in the first week of October that a bomb blast had taken place in the first class compartment of the train in which he had traveled and that it was 5:57 pm train. At the same time he deposed that he told his wife when he returned home on 11/07/2006 that he traveled in the 5:57 Virar train, and also saw in the news that the blast had taken place in the 5:57 Virar Train.

370. Thus, it is evident that from day one he knew that the blast had taken place in the 5:57 Virar Fast train. Therefore, the case of the prosecution that he first time realized in the first week of October 2006 that the bomb blast had taken place on the train in which he had traveled, cannot be accepted.

371. Thus, in the circumstances, if the evidence of PW-57 is considered in totality it doesn't inspire confidence for basing the conviction on his evidence. The credibility and trustworthiness of this witness itself is thus doubtful for the reasons recorded herein above.

372. Let us see the observations made by the Learned Special Court while accepting the evidence of PW-57 which read thus: -

“509. ... Thus, it will have to be said that the evidence of Subhash Nagarsekar, PW-57, in respect of the incident in question, is unimpeached and is a cogent evidence. He has withstood the test of cross-examination and nothing material has been brought on record

to discredit his version. That the witness is a totally independent witness, is absolutely clear from the most important fact that he has no criminal antecedents and no prior connection with the police either as an accused or a witness or a panch. This rules out the possibility about he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. I have, therefore, no hesitation in accepting his testimony as truthful. **This is the circumstance no. 3 proved by the prosecution against the accused.** Hence, it will have to be held that by his evidence prosecution has proved that on 11/07/06 the A1 had kept a big rexine bag in the first-class compartment of the 5.57 p.m. Virar fast train at Churchgate and he was accompanied by a person, who did not get down at Dadar. It is against the A1.”

373. In light of the findings recorded by us, we have no hesitation to hold that the Learned Special Court committed a grave error on placing reliance on the evidence of PW-57.

PW-60 Kishore Popatlal Shah

374. PW-60 Kishore Popatlal Shah identified A.13 in T.I. Parade held on 07/11/2006. He claims that he saw A.13 keeping a black bag on the luggage rack of 5:37pm Virar Fast train (621 DN) on 11/07/2006. The explosion in the said train occurred at 06:28pm while the train was at Platform no. 4 of Borivali Railway Station.

375. It is pertinent to note that we have already held that the T.I. Parades held by Shri. Barve vitiate for the reason that on the date of T.I. Parade, he had no authority as SEO. Thus, the T.I. Parade, in which PW-60 identified A.13, is to be discarded as it was conducted by Shri. Barve.

376. Despite this, even if for a moment, if we consider the T.I. Parade, in which PW-60 identified A.13, it is evident that the T.I.

Parade was held after four months of the alleged sighting of A.13 by PW-60. It is to be noted that the first accused was arrested on 20/07/2006 and the last accused was arrested on 03/10/2006. If the ATS had no knowledge to whom PW-60 had seen keeping a black bag in the train, ATS ought to have called PW-60 immediately after the first few arrests, for T.I. Parade.

377. In addition to this factor, we have already discussed the factors as regards the witnesses of second category which prompt us to be cautious while scrutinizing the evidence of PW-57, PW-60, PW-62, and PW-74.

378. There is one more reason to be cautious as regards PW-60, and that is the evidence brought on record by way of cross-examination by the defence to the effect that PW-60 was called in Bhoiwada Police Station in the last week of October 2006 and at the same time A.13 was also kept in Bhoiwada Police Station. Therefore, it is argued by the defence that A.13 was shown to PW-59, PW-60, and PW-63 in the last week of October 2006.

379. PW-60 identified A.13 in the court on 04/01/2011, i.e., after a period of about more than four and a half years from the alleged date of sighting.

380. It is argued by the defence that PW-60 deposed that he would not have recognized any of the dummies in the T.I. Parade if they were repeated in the subsequent parade. Thus, it is submitted that PW-60 does not have an unusual memory, or an eye for detail or remembering faces. If he would not have recognized the dummies, whom he had a

chance to see carefully, there was no reason for him to remember the passenger with the bag.

381. Learned Counsel Shri. Choudhary submitted that the IO PW-144 states that the description given by PW-60 was not sufficient for identifying any person. Even the IO PW-174 states that the statement of PW-60 was insufficient to identify the culprit.

382. Learned SPP, on the other hand, submits that this witness had identified the accused in TIP. However, on coming to know that the police had visited his house repeatedly he went to Bhoiwada ATS office. This explains that there has not been any delay.

383. Before we peep into the evidence of PW-60, let us reiterate the law as to why holding T.I. Parade without unreasonable delay is necessary. The Hon'ble Supreme Court of India, in the case of ***Gireesan Nair vs. State of Kerala***, (2023) 1 SCC 180, has held that it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. It is further held that if identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless.

384. In the case at hand, PW-186 Chief I.O. Shri. Patil admits that A.13 was in Bhoiwada lock-up in the last week of October 2006. And at the same time, PW-60 himself and PW-186 Shri. Patil both admitted that PW-60 was called to the ATS, Bhoiwada office in the last week of October 2006.

385. In the said backdrop, it is important to note that A.13, in his complaint dated 09/11/2006, has stated that while he was in police custody he was shown to some persons. He said 'some persons' because on the date of complaint he was unaware of their names. However, after PW-59, PW-60 and PW-63 entered into witness box, he got to know their names. He, therefore, in the statements under sections 313, 314 of Cr.PC and in his oral evidence on oath, stated that he was shown to PW-59, PW-60 and PW-63 in the last week of October 2006.

386. The evidence of PW-60 will show that he has not given a special reason for triggering of his memory and to recollect the face of A.13 at the time of dock identification. Therefore, possibility of showing A.13 to PW-60 in Bhoiwada prison in the last week of October 2006 is difficult to rule out.

387. In the above referred backdrop, let us scrutinize the evidence of PW-60. According to PW-60, he boarded the 5.37 p.m. Virar fast local. He was standing in the middle of the two doors. About two minutes before the departure time of the train, two persons entered the compartment and said that they wanted to go inside. He moved aside to let them go inside and they went inside and kept their bag on the luggage rack. Thereafter, they came and stood near him. Out of the two men, one was slightly fat and one was medium-built. The bag was in

the hand of the medium built person. The bag was black coloured having chain. He does not know whether it was of rexine. There was more crowd in the compartment at Marine Lines. After Bombay Central, the train was to directly halt at Dadar. At that time those two persons tried to go towards the door and they had some exchange of words with other passengers who asked them where they wanted to get down. The two persons told them that they want to get down at Dadar. The other passengers asked them as to why they were standing so much inside in the compartment and that there were many trains for going to Dadar and why they caught the Virar train. He also thought that why they had boarded that train and troubled others.

388. From this part of narration of PW-60, it is evident that the train was crowded and therefore, according to PW-60, A.13 had some exchange of words with other passengers who asked them as to why they were standing so much inside in the compartment and there were many train for going to Dadar and why they caught the Virar train. At that time, PW-60 also thought that why they boarded that train and troubled others.

389. If this part of the narration is the reason to trigger the memory, there is nothing unusual in exchange of words between the passengers in the crowded local trains in Mumbai. Such incidences happen everyday. Even if this is so, and it is accepted that this was the reason for triggering of memory, this would help to recollect this event even after lapse of time, but unless a special reason is mentioned about imprinting of face of accused in his mind, it is difficult to accept that PW-60 could recollect the face of A.13 after such a long gap. There is one more reason to say so as he has not given description of the

accused, except stating that one was slightly fat and one was medium built (Whereas, in his statement under Section 161 of Cr.PC, he described both the persons as medium built).

390. PW-60 further deposed that thereafter they got down at Dadar. He went towards the opposite door as he wanted to get down at Borivali and he was waiting for the platform no. 4 to come. The train reached Borivali at about 6.30p.m. When the train was about to stop, there was a loud explosion and he along with the other persons who were standing in the door were thrown on the platform. He lost his spectacles, purse, mobile and a handbag of clothes and his pant was torn. He sustained injuries on his forehead, lips, both elbows and legs.

391. Then he states that a policeman approached him and told him that he is injured and he would take him to the Bhagwati Hospital. He told him that he did not want to go to the hospital and asked him to engage an autorickshaw for him so that he can go home. A couple was going by an autorickshaw, the policeman asked them to come out and made him sit in that rickshaw and then he went home. When he went inside his home, even his wife could not recognize him as his face had blackened and there were injuries and blood on his face. Then he went and took treatment from Dr. Gohil, who is his family doctor. In the same night he also went to an ENT doctor, who advised him to take rest.

392. He further states that after about two days, i.e., on 14/07/2006, he went to Borivali Railway Police Station. He told the police that he was injured in the bomb blast and he had a doubt about two persons. Police took his statement about the incident. He gave some description

of the two persons, but the police asked him to wait as they were going to call a person who would prepare a sketch. He waited for some time but he did not come, therefore, he went back.

393. He further states that in between police visited his house two or three times to meet him but he was not at home. Thereafter, in the last week of October, 2006, he went to the ATS office behind Bhoiwada Police Station to inquire as to why they (police) had come twice or thrice. He was taken to officer Patil. Officer Patil told him that they had caught some persons and asked him whether he could identify the persons about whom he had stated in his statement. He told Officer Patil that if they are brought before him, he can identify them.

394. Then, PW-60 was called by PW-186 on 07/11/2006 for the purpose of identification parade. In a parade conducted by Shri. Barve, he identified a person standing at the 8th place out of the fourteen persons standing in the row there. He told Shri. Barve that he was the person who had kept the bag on the train on the day of the blast. Shri. Barve asked him his name and he told it as Asif Bashir Khan (A.13).

395. In cross-examination, PW-60 deposed that the police did not ask him to describe the size of the bag. He states that it is not unusual for people to board trains with bags and keep them on the luggage racks. Even the persons who get seats, keep their bags on the luggage rack.

396. He further states that except describing the two persons as medium built and slightly fat, he did not give any other description as the police did not ask him. He did not give any other description as the

police asked him whether he would help them in preparing sketches and he said yes.

397. Whereas, PW-144 (PI Satish Ahir), who recorded the statement of PW-60, states that the description given by PW-60 was not sufficient for identifying any person. He deposed that he wrote down the description of the suspects as per PW-60's version. He did not give more description than that he gave. PW-144 further admits that he did not make any query to him about the description. The description that he (PW-60) gave was not sufficient for identifying any person. He did not ask him further questions about the description as they had other sources like preparing sketches, showing photographs of the person. He did not get any sketch prepared. He further states that witness (PW-60) had not stated to him that one out of two persons was slightly fat.

398. Admittedly, the sketch of A.13 was not prepared for whatsoever reasons.

399. Similar is the statement of IO PW-174 who deposed that the statement of PW-60 was insufficient to pin point the identity of the culprit.

400. The evidence of PW-144 and PW-174 sufficiently make it clear that the description given by PW-60 about the person who kept the bag was not sufficient to identify the accused. Thus, the description given by PW-60 within four days of the incident is said to have not sufficient to identify the accused. This fact strengthens the submission made by the defence that A.13 was shown to PW-60 in Bhoiwada lock-up.

401. Having held so, the evidence of PW-60 loses its credibility and is not safe to place reliance upon for conviction of A.13.

402. Let us see the observations made by the Learned Special Court, while placing reliance on the evidence of PW-60, which read thus: -

“622. It is clear from the above discussion that the evidence of Kishore Shah, PW-60, is an unimpeached and cogent evidence and as is alleged by the defence, it cannot be said that he is a got up witness, because he went to the railway police station on 14/07/06, i.e., two days after the incident when the ATS was not investigating the crime. He has no criminal antecedents, he had not acted as a panch witness or a witness in any previous case thereby having no contact with the police. I have, therefore, no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A13 had kept a black coloured bag having chain in the first-class compartment of the 5.37 p.m. Virar fast local at Churchgate and he was accompanied by one more person. This is circumstance no. 6 proved by the prosecution. It is against the A13. It is the second circumstance against the A13.”

403. In light of the observations and the findings recorded by us as regards the evidence of PW-60, we have no hesitation to hold that the Learned Special Court committed a grave error on placing reliance on the evidence of PW-60.

PW-62 Devendra Lahu Patil

404. PW-62 Devendra Lahu Patil identified A.3 in T.I. Parade held on 07/11/2006. He claims to have seen A.3 keeping a black coloured bag below the seat near the window on the 5:36 pm Borivali Slow train (619 DN) on 11/07/2006. The explosion in the said train occurred at 06:24 pm at Jogeshwari Railway Station.

405. Learned Sr. Counsel Nagamuthu submitted that, more than 101 days after the incident, PW-62 thought that he had seen a person keeping a bag on the train and therefore, his S.161 statement was recorded on 20/10/2006. He identified A.3 as the said person in TIP on 07/11/2006, i.e., 119 days after the incident. He also identified A.3 in Court. This delayed disclosure of almost 101 days in his 161 statement in itself renders his evidence unreliable.

406. Learned Sr. Counsel Shri. Nagamuthu argues that PW-62, in his statement under section 161 of Cr.PC, does not describe the men that he saw with the bag. He also does not describe the bag to the police. PW-62's statements in chief regarding where the two men went upon entering and that they kept the bag under the seat comes by way of omission.

407. It is argued that in his evidence in court, PW-62 attempts to explain this delay by stating that he found out the fact about the use of bags only on 17th or 18th October 2006. However, this contradicts his S. 161 statement which was earlier in time and more likely to be accurate.

408. On the other hand, Learned SPP argued that PW-62 has given cogent evidence and he has no criminal antecedents or connection with police as a panch witness. It is argued that his testimony is truthful and his credibility nowhere has shaken in cross examination. It is further argued that the Learned Special Court has rightly placed reliance on his evidence for conviction of A.3.

409. It is evident from the record that PW-62 remained silent till 20/10/2006, i.e., for 102 days and gave a statement under section 161 of Cr.PC on 20/10/2006 and the T.I. Parade was conducted on 07/11/2006. However, it is pertinent to note that Shri. Barve conducted the said T.I. Parade. We have already held that the T.I. Parades held by Shri. Barve vitiate for the reason that on the date of T.I. Parades he had no authority as SEO. Thus, the T.I. Parade in which PW-62 identified A.3 is to be discarded, and only dock identification needs to be considered keeping in mind the value of dock identification without corroborative evidence of T.I. Parade. At the same time, the factors which we discussed in the beginning which suggest us to be cautious, also need to be kept in mind while scrutinizing the evidence of this witness.

410. According to PW-62, he had some work at about 3.00 p.m. at the Custom House in Fort. Therefore, he had gone there. The work there was finished in one and a half hours and then he wanted to go to Goregaon-Malad. He went to Churchgate station. When he reached the platform, the Churchgate-Borivali 5.36 p.m. slow local was coming to the platform. He boarded the first class bogie that was fourth from the motorman cabin. He stood near the last row of seats in between the gap of the two rows of seats. Some people were sitting and there were some vacant seats. A person had boarded the train along with him. He had a black coloured bag with him. There was another person with him. The person who had the black bag with him, tried to keep the bag on the rack. As there were some small bags already on the rack, he could not keep his bag there. Therefore, he kept his bag below the seat near the window that was facing towards Churchgate. He sat on that seat. The other person stood in between the two rows of the seats.

411. PW-62 further states that at the two-three stations thereafter, the crowd in the bogie increased. He could not see those persons thereafter. He was pushed back because of the crowd. The train reached Jogeshwari after about 6.15 p.m. After the train started from Jogeshwari, there was a loud explosion.

412. PW-62 further states that after some days it was in the news that some persons had kept black bags containing bombs in the trains and the blasts had taken place. He thought that he had seen the person keeping a bag in the train and therefore, he should go to the police. Therefore, he went to the ATS office, Bhoiwada on 20/10/06. He met ACP Patil there and told him that he wanted to give some information about that incident. He gave him the information about the incident in the train that had taken place in his presence. They wrote his statement. He described the two persons whom he had seen.

413. We have already discussed, in detail, what would be the size of the bag used for keeping the pressure cookers loaded with bomb while discussing the evidence of PW-57. And after a detailed discussion, and after ascertaining the possible size of the bag used for keeping such cookers, we have held with certainty that a bag could not be of an abnormal size but it would be of a normal size which could not be the reason to attract anybody's attention.

414. Therefore, it is difficult to accept that on a reference in the news, about a 'black bag' containing bomb, PW-62 recollected the event and went to the police. Even if it is accepted for a moment, it will help PW-62 to recollect the event, and not the face of A.3. It is to be noted that in a statement given under Section 161 of Cr.PC, no description of the accused is given by PW-62.

415. Moreover, PW-62 has not given any special reasons for storing the face of A.3 in his memory. In absence of such evidence, one may recollect the event, but it is difficult to accept that he can recollect the face of A.3 after such a long gap.

416. PW-62 identified A.3 in the court and stated that he was the same person whom he had identified in the T.I. Parade on 07/11/2006 as the person who had kept the black bag in the train on 11/07/2006.

417. Similarly, in his statement under section 161 of Cr.PC, PW-62 claims that he works as a customs clearing agent and on 11/07/2006, i.e. on the date of blasts, he had gone for customs clearing work to Fort and after completing the work he had gone to Churchgate station. However, in the cross examination, he admits that he had not gone there for customs clearing work. He further admits that he did not have any work in custom house on that day.

418. PW-62 claims that from Fort he boarded the train at Churchgate in order to travel to Goregaon. However, he is unable to give any reason as to why he had to go to Goregaon. He claims that he was going to Goregaon to meet some parties for customs work, but he is unable to name them or even state their office address. He is also unable to state any of the details of the parties for whom he deposited custom duty with bank. He admits that he has never obtained any challan from the customs office for payment of custom dues. He is also unable to name any party he had worked for on 11/07/2006. Therefore, the evidence of PW-62 creates doubt about the credibility of this witness.

419. A.3, in his statements under section 313 and 314 of Cr.PC, states that on 07/11/2006 he was taken out at 1:30 pm from the lock up and put back at 1:50 pm and no T.I. Parade was held. This fact is corroborated with the jail register (Exh.2474) which shows that A.3 was taken out at 1:30 pm and put back at 1:50 pm. Whereas, according to PW-82, the parade started at around 12:10 hrs. and ended at 2:30 hrs.

420. Thus, the identification of A.3 goes on the ground of truthfulness and on the ground that Shri. Barve SEO had no authority on 07/11/2006 to conduct TI Parade of A.3.

421. In the circumstances, in absence of any cogent evidence to show that there was some special reason for PW-62 to recollect the face of A.3 after such a long gap, it will be hazardous to rely upon this witness to convict A.3.

422. Let us see the observations made by the Learned Special Court while placing reliance on the evidence of PW-62, which read thus: -

“536. In view of the above discussion, it will have to be held that Devendra Patil, PW-62, has given cogent and convincing evidence. Considering the fact that no criminal antecedents or his connection with the police of he having acted as a panch or witness or as an accused in some case have been brought on record, it will have to be held that he is an independent witness. This rules out the possibility of he being a pliable police witness and a got up witness and it will have to be held that his evidence is not fabricated. I have, therefore no hesitation in accepting his testimony as truthful. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A3 had kept a black coloured bag in the first-class compartment of the 5.36 p.m. Churchgate-Borivali slow train at Churchgate and he was accompanied by one more person. This is circumstance no. 4 proved by the prosecution. It is against the A3. It is the second circumstance against the A3.”

423. In light of our findings, it can be said that the Trial Court committed a grave error on placing reliance on the evidence of PW-62.

PW-74 Vishal Parmar

424. PW-74 Vishal Parmar identified A.4 in T.I. Parade held on 07/11/2006. He is claiming to be an eyewitness who saw A.4 with a black rexine bag at the time of boarding 607 DN Virar Fast train on 11/07/2006. He further claims that when A.4 got down at Dadar with one more person said bag was not with them. The explosion in the said train occurred at 06:23 pm when the train had just departed from Mira Road Station.

425. However, after the incident, he remained silent for 115 days and gave a statement under section 161 of Cr.PC on 02/11/2006. His evidence came to be challenged on various grounds including a ground that he is a stock witness and has acted as a Panch in at least four cases other than the present case. It is further challenged on the ground that he is an employee of one Mukesh Rabadiya who is also a stock witness of the police and who acts regularly as a panch witness for the police and has acted as RDX seizure panch in the present case.

426. Learned Counsel Shri. Chaudhary argues that PW-74 did not visit ENT Hospital to meet one Baban Rankhambe, therefore, the whole story is falsehood.

427. Whereas, the Learned SPP submits that there is a strong probability that the witness might have stated incorrect name because of similar phonetic, it was mistakenly understood by the typist as 'Baban Rankhambe' instead of 'Baban Rongya Kamble'.

428. Learned SPP opposed the connection of Mukesh Rabadiya with the police on the ground that he has not been examined as a witness in this case. He further submits that on the ground that Mukesh Rabadiya was panch witness in three cases, the evidence of PW-74 cannot be discarded.

429. Learned Counsel Shri. Chaudhary further pointed out that even a story that PW-74 on the date of incident, had gone to meet one Lalit Waghela at BMC Bank is also false as the said person was on leave.

430. There is one more challenge raised by the defence in relation to the discrepancies in the jail register and timing mentioned in the TIP Panchnama. This submission by the defence requires us to look into the *Avak-Jawak* Register. A comparative chart of the timings mentioned in the jail register as well as the TIP Panchnama can be seen in the chart herein under.

CHART NO. 34

Register at Arthur Road Jail (Exh. 2474)		TIP Memo SEO: PW 80 – Kirti Purandare	
Outward	Inward	Panchnama Start	Panchnama End
07/11/2006, 12:35 pm	07/11/2006, 12:40 pm	07/11/2006, 12:55 pm	07/11/2006, 1:30 pm

431. PW-80, in cross, while referring to Exh.835 (short notes taken by PW-80 during TIP), stated that he conducted the TIP between 11:55 am to 1:30 pm. Learned Counsel states that, as per PW-80, the accused were outside the barracks for this entire duration.

432. As early as his complaint on 09/11/2006, A.4 states that he was taken into an open ground for a few minutes and were shown to

witnesses who were inside a room and further that proper dummies were not selected. A.4 has stated that he was taken out of the barrack for 5 minutes and no T.I.Parade was held. The so called T.I.Parade was conducted within 5 minutes, three witnesses identified him on the pointing of the officers. This fact, in addition to the earlier observations, brings the truthfulness of this witness under shadow of doubt.

433. PW-74 Vishal Parmar has deposed that he had gone to ENT hospital in front of Hutatma Chowk at 4.30 pm on 11/07/06. After the work there was over, he got a call from his employer who directed him to go to the BMC Bank at Dadar.

434. This part of the deposition of PW-74 relates to the prior events before boarding the train. According to PW-74, as he stated in cross-examination, he went to ENT Hospital to meet one Baban Rankhambe. Whereas, the information obtained by the defence under RTI (**Exh.3808**) shows that there is no person 'Baban Rankhambe' working in the ENT Hospital. As per the information obtained by the prosecution from ENT Hospital vide Exh.3929, it is revealed that one Mr. Baban Rongya Kamble was an employee in ENT Hospital. According to Learned Counsel Shri. Chaudhary, the whole story of PW-74 is false because no such person was working. However, Learned SPP argues that there is a strong probability that the witness might have stated the name as 'Baban Rongya Kamble' but because of the similar phonetic, it was wrongly typed as 'Baban Rankhambe'.

435. Even if the argument of learned SPP is accepted, the RTI information (**Exh.4391**) shows that Baban Rongya Kamble was

supposed to be on night shift on the date of the incident, however, he was absent. Thus, it creates doubt about the veracity of the evidence of PW-74.

436. PW-74, in his oral evidence, further deposed that at 5.15 p.m., he went to Churchgate Station as he wanted to go to Dadar. He went to platform no.3. He stood near the first class bogie that was in front. The indicator on the platform was showing a train of 5.19 p.m. going towards Virar. Two persons came there and asked him whether Virar fast train would go from there. He looked at the indicator and told them that such a train is going from there. Thereupon they stood there. After two or three minutes the train came there. Out of those two persons, the person other than the person who had asked him about the train and the time, had a black rexine bag with him.

437. From this part of the narration, it is evident that there was a brief interaction while making inquiry about the train, between the witness and the accused. In this part, there is a reference to black bag, about which, we have made detailed discussions while considering the evidence of PW-57. With the evidence available on record, we also recorded our finding as regards the probable size of the bag and at the end of the said discussion, we observed that the bag in any case could not be of an abnormal size which will attract anybody's attention.

438. PW-74 further deposed that they had started to board the train before him and when he was boarding the train, the rexine bag hit his leg. He wanted to catch a window seat, but he did not get it. He sat on the seven-seater long bench, facing Churchgate, at the third seat from Hutatma Chowk side. Those two persons stood in the passage in

between at some distance. After the train started, he looked at the bag and thought that it was a big bag being carried in the first class compartment.

439. Here, in this part, PW-74 refers to hitting of black bag to his legs, and further he deposed that though it was a big bag, it was being carried in first class compartment. If the incident of hitting of the bag to his leg is the cue to triggering his memory, then unless PW-74 specifically states that he noticed the face of the accused or stored the same in his memory for certain special reasons, such cues would, at the most, help the witness to recollect the event, and not the face of the accused, that too after a long gap of 120 days.

440. PW-74 further deposed that at Bombay Central, the bogie became crowded. After Bombay Central, the train stopped at Dadar. After the train had passed the Elphinstone Station, he started moving towards the door as he wanted to get down at Dadar. He got down at Dadar. The two persons got down in front of him at Dadar and were walking fast empty handed. As he was engrossed in the thought of his work, he did not think much about the persons walking away without taking their bag with them. At Dadar he went to the BMC Bank in front of Plaza Cinema and met the client. After about half an hour there was a talk in the public that there were blasts in the trains.

441. In this part of the narration, he has stated that after alighting the train at Dadar, he went to the BMC Bank, in front of the Plaza Cinema and met the client. PW-74, in his cross-examination, stated the name of the person as Lalit Waghela, to whom he went to meet in BMC Bank. However, no person named 'Lalit Waghela' is employed at the said

bank as disclosed in Exh.2911 (RTI Information obtained by A.4). Furthermore, one Sukhlal Ambadas Rathod was examined as defence witness no. 24. DW-24 was working as assistant head supervisor. He refers to Exh.3083 which shows that one Lalit Waghela was working as motor loader in BMC. However, on 11/07/2006, he was on leave.

442. Thus, the gist of the above observation is that there was no Lalit Waghela in BMC Bank, Dadar. One Lalit Waghela was there in BMC, but he is a motor loader. In the circumstances, even if it is considered that PW-74, on the date of incident, went to meet this Lalit Waghela, who was working as a motor loader in the BMC, he was on leave. Though, the Learned SPP tried to raise a question regarding the correctness of the information obtained via RTI Act vide Exh.3083, it will not help the prosecution in absence of any positive and cogent evidence to support its own case that on the date of incident, PW-74 went to meet one Lalit Waghela.

443. The above referred observations create a doubt about the veracity of the evidence of PW-74, and also whether he traveled in the said train on the date of incident. There are further reasons for such doubt, which are mentioned herein under.

444. It is to be noted that PW-74 had acted as a Panch witness in four crimes, and interestingly, out of four crimes, three crimes were related to DCB CID police station. PW-74 acted as a seizure panch in CR. No. 11/2006 (CC 675/PW/2006) of DCB CID Police Station, in which a gun and a cartridge was recovered on 11/03/2006. (Exh.4554), just four months before the incident dated 11/07/2006.

445. He further acted as a Panch in the following cases: -

- i) Acted as a TIP Panch in Panchnama dated 17/03/2011 in FIR No. 27/2011 of DCB CID Police Station for the offences punishable under S.302 of IPC r/w S.325 and S.327 of Arms Act. (Exh.3828)
- ii) Acted as a TIP Panch in panchnama dated 03/09/2011 in CR No. 105/2010 of DCB CID Police Station for the offence punishable under S.307, S.34 of IPC r/w S.3, 25 and 27 of Arms Act. (Exh.3827)
- iii) Acted as a TIP Panch in panchnama dated 21/01/2010 in Cr. No. 107 of 2011 of Crime Branch for the offences punishable under S.394, 395 of IPC r/w S.35 of Arms Act r/w S.37(1)(a), 135 of Bombay Police Act r/w S.3(1)(ii), 3(2), 3(4) of MCOC Act. (Exh.3826)

446. PW-74, in his deposition, has stated that one Mukesh Rabadiya is his employer. The Learned Counsel for A.4 has pointed out that Mukesh Rabadiya is also a stock witness and he acted as a panch witness in the present offence in the house search of A.6.

447. Mukesh Rabadiya is a money lender and it is pointed out that he has acted as a search and seizure panch in Cr. No.256/P/203 of DCB CID Unit-II Police Station (Exh.3295) in which Shri. Kolhatkar (PW-18) & Shri. Tajne (PW-161) were the investigating officers. In Spl. LAC 03/2006 (Exh.4812), ACP Shengal (DW-51), Shri. Tajne (PW-161) were the officers. And in LAC No. 01/2006, PW-161 and PW-168 were the officers in the investigation team.

448. Let us now look at the law as regards stock witnesses.

449. The Hon'ble Supreme Court of India, in the case of *Tarseem Kumar vs. Delhi Administration*, reported in (1994) SCC Cri 1735, it is held that many witnesses who can be said to be the stock witnesses of the police, have been produced on behalf of the prosecution to prove important circumstances. In this background, the court has to be very cautious about the investigation done by the police in such case.

450. In light of the above referred law and considering the fact brought on record that PW-74 acted as a panch witness in many cases, it appears that he is a stock witness, and therefore, on this count also, his evidence creates doubt about the truthfulness of his evidence.

451. The learned Special Court, while placing reliance upon the evidence of PW-74, has observed thus: -

“583. ...In respect of the incident in question the evidence of Vishal Parmar, PW-74, unimpeached and a cogent evidence and looking at the facts and circumstances of the case it cannot be said that he is a got up witness or that his evidence is fabricated. I have, therefore, no hesitation in accepting his testimony. Hence, it will have to be held that by his evidence the prosecution has proved that on 11/07/06, the A4 had a black rexine bag with him when he boarded the first-class compartment of the 5.19 p.m. Virar train at Churchgate and he was accompanied by one more person and when they got down at Dadar, they did not have the bag with them. This is circumstance no. 5 proved by the prosecution. It is against the A4.”

452. In light of the above referred observations and findings recorded by us, as regards the evidence of PW-74, it can be said that the learned Special Court committed a grave error in placing reliance on the evidence of PW-74.

Third Category of Witnesses

The witness to assembling of bombs (PW-75)

453. Moving further to the third category of witnesses namely, the witness who saw the accused assembling bombs. This witness is PW-75 Amar Sardar Khan.

454. PW-75 Amar Sardar Khan identified A.2, A.4, A.6, and A.7 in TIP conducted by SEO Purandare on 07/11/2006 and also in Court. Though, according to him, he saw A.2, A.4, A.7 at A.6's house 4-5 days before the incident, he gave statement to the police under section 161 of Cr.PC on 28/10/2006, i.e. after about 112 days from the date of sighting. It is important to note that PW-75 himself was a suspect in this case and he was repeatedly called by police for inquiry immediately after the incident. However, he did not disclose anything to the police at that time about the preparation of bomb at the house of A.6 by the accused. One more important aspect which needs to be considered is that he gave statement u/s 161 of Cr.PC after the retraction of confessions by the accused. The above referred factors suggest us to be cautious while examining the evidence of PW-75.

455. Before scrutinizing the evidence of PW-75, there is one important question raised by the defence that no T.I. Parade was conducted. It is argued that A.2, in his 313 statement, states that he was taken out of the barrack to an open area with other co-accused A.4 & A.7 at 12:35 pm and after 5 minutes he was again sent back with co-accused A.4 and A.7. He was forced to stand in an open ground and then he was forced to stand with some other inmate of the jail, and he was shown to some persons.

456. Further, it is argued that A.7, in his 313 statement, states that he was taken out at 12:35 pm for a few minutes and made to stand in an open ground and no TIP took place.

457. This submission made by the defence requires us to look into the *Awak-Jawak* Register maintained in the Arthur Road Jail and referred by the defence.

458. The entries in such *Awak-Jawak* Register (Exh.2474) in relation to A.2 & A.7 on 07/11/2006, i.e. the date of T.I. Parade disclose the entries of date and time of outward and inward, given in the chart herein below: -

CHART NO. 35

Acc. No.	Register at Arthur Road Jail (Exh. 2474)		TIP Memo SEO: PW 80 – Kirti Purandare	
	Outward	Inward	Panchnama Start	Panchnama End
A.2	07/11/2006, 12:35 pm	07/11/2006, 12:40 pm	07/11/2006, 11:55 am	07/11/2006, 12:50 pm
A.7	07/11/2006, 12:35 pm	07/11/2006, 12:40 pm	7.11.06, 11:55 am	07/11/2006, 12:50 pm

459. PW-75, who identified A.2 and A.7 during the first round of the TIP, in cross-examination, stated that he may have gone inside the parade room on the first occasion on 07/11/2006 at about 11:45 am to 12:00 pm.

460. PW-80 SEO Purandare, in cross, while referring to Exh.835 (short notes taken by PW-80 during TIP), stated that he conducted the TIP between 11:55 am to 1:30 pm.

461. On perusal of the above referred entries in the *Avak-Javak* register and in view of the contention of the defence that no T.I. Parade was conducted, since it creates doubt about holding T.I.Parades, it is imperative to exercise caution while scrutinising the evidence of PW-75.

462. According to PW-75, he met Dr. Tanveer (A.2), Ehtesham Siddique (A.4) and Mohd. Ali (A.6) in the programs of SIMI that he attended.

463. PW-75 further states that they used to give provocative speeches about jihad at the SIMI programs. The jihad that they were talking about was in respect of atrocities committed on Muslims. A.2 and 4 used to give such speeches. However, it was his view that they should not talk like this. Yet, they used to say that, if they want to do something, they will take the help from outside and will do anything. He states that he had a long-standing friend by name Ajmeri Shaikh, he used to meet him often and states that Ajmeri Shaikh had also come with them for the programs of SIMI.

464. He deposed that Ajmeri Shaikh used to do the work of plaster of paris (POP) and interior decorator and for the purpose of purchasing the material required for POP he used to go on his motor cycle to Govandi. He used to accompany Ajmeri on Ajmeri's motorcycle. He had so gone with him four or five days before the blast to the Shivaji Nagar in Govandi. He parked the motorcycle outside a lane and they were walking in that lane. A.6's house is in that lane. Ajmeri said that we would go to his house as we had not met him since many days and would greet him and then go to our work. They were at some distance

from his house. At that time, they saw A.2 standing outside his house, and looking around. At that time, A.6 came out of the house in a hurry and said something to A.2.

465. Then they both went inside the house. At the same time A.4 entered the house from outside with a tea kettle. They both entered the house behind him. They saw three-four more persons sitting there. One person was doing something with a wire. Two-three newspapers were spread in front of the persons. There was white and black coloured powder on the newspapers. He further states that when they greeted them, A.6 said that they are busy in some work and that they will meet afterwards. Therefore they came out of the house.

466. From the above referred narration of PW-75, it can be seen that he saw 3-4 more persons other than A.2, A.4, and A.6. He then states that they greeted them and A.6 said that they are busy in some work and they will meet afterwards. Therefore, they came out of the house. Thus, it is evident that PW-75 did not get sufficient time even to see whether there were 3 persons or 4 persons inside the room other than A.2 and A.6. Therefore, a question arises, if he did not get sufficient time even to notice the exact number of persons present in the room, he could see the face of A.7 minutely, with whom, admittedly, he had no acquaintance, to identify him after more than four months of sighting him.

467. He further deposed that in Mumbai Mirror dated 01/10/06 a photograph of A.6 was published concerning the blasts. Ajmeri had read the said newspaper and he had come and told him about it. At that time he and Ajmeri thought that they should tell someone about the

incident that they saw four-five days before the blasts at the house of the A.6, so that the real accused would be caught. After thinking it in deep, on 28/10/06 Ajmeri said to him that they would tell about this to one police constable Vijay Ambekar.

468. Thereupon, PW-75 was called for T.I. Parade on 07/11/2006 and he identified A.2, A.4, A.6 and A.7. At the same time, he identified the above referred accused in the Court.

469. According to PW-75, it was probably on Sunday when he had gone with his friend Ajmeri Sheikh to pick up Plaster of Paris material, and passed A.6's house in Govandi. However, the record from Saboo Siddique Hospital shows that A.2 was at the hospital from 11:41 am till 10:58 pm on Sunday, i.e., 09/07/06 (Exh.2932). Thus, this document falsifies the claim of PW-75 that when PW-75 allegedly visited A.6's house, A.2 was present there.

470. PW-75 knew A.4 from previous SIMI meetings. PW-75 states in his chief that he saw A.4 entering A.6's house with a kettle and that he saw A.7 joining wires inside A.6's house. However, during TIP (Exh.833), he identified A.4 as the person who was joining wires.

471. In cross-examination, PW-75 admits that he did not go inside the house and see anything but merely repeated what Ajmeri Shaikh had told him. Thus, it is clear that PW-75 did not himself see what he deposed in chief.

472. In his examination in chief, PW-75 stated that he and his friend Ajmeri Shaikh used to go on Ajmeri's motorcycle to Govandi, and that

PW-75 used to accompany Ajmeri on his motorcycle. He further stated that before 4-5 days of the blast, he had gone to Govandi with Ajmeri. However, later in his cross-examination, PW-75 stated that Ajmeri did not have a motorcycle in 2006, and that PW-75 had taken his own motorcycle, driven it and parked it on that day. Further PW-75 states that Ajmeri does not know how to drive a motorcycle. He also stated that what he stated in the examination-in-chief was not correct.

473. During cross-examination, PW-75 admits that he was called to the Park Site Police Station one or two days after the blast, and the police had inquired with him, but it was not for four-five hours. His statement was recorded at that time. He had not stated about his visit to Govandi four-five days before the blasts to the police officer at that time, because at that time he was not knowing its relevance. He came to know only when he saw the photo in the Mumbai Mirror.

474. The gist of the evidence of PW-75 is that he was a suspect in the present case and he was called by police immediately after the blast, and at that time though his statement was recorded, he did not disclose anything about alleged making of bomb at the house of A.6. According to him, he did not know the relevance of it. He then suddenly realised its relevance and went to ATS after 112 days just on seeing photo of A.6 in the newspaper. That apart, he saw the photo on 01/10/2006, however, he went to the police station delayedly on 28/10/2006.

475. PW-75 identified A.7, who was stranger to him. Whereas, in fact, he could not get sufficient opportunity to even see whether there were three persons or four persons other than A.2, A.4, and A.6. He further changed his version of going to A.6's house on a motorcycle of

Ajmeri as a pillion rider, and stated in the cross-examination that Ajmeri had no motorcycle in 2006, he did not know how to drive motorcycle. Most importantly, he said in the cross-examination that he did not enter into the room but Ajmeri told him about the presence of the accused in the room and their suspected activities. Admittedly, Ajmeri has not been examined as a witness by the prosecution.

476. PW-75 says that a few days prior to the blast he went to the house of A.6 and several accused were present there including A.2, A.4, A.7, and A.6. At that time, they were preparing something. Later, he realised that it must be a bomb. However, he says that some papers, materials, chemicals, wires were there and they were doing something. He is not sure whether what was made by them or prepared by them was a bomb.

477. Thus, it can be said that the evidence of PW-75 has been completely shattered in the cross-examination. And considering his cross-examination, it can be said that he is not a trustworthy and credible witness to rely upon his evidence. There are further reasons to discard his evidence. The same are discussed herein below.

478. PW-75 states that Ajmeri and his statements were recorded by PW-153 API Alaknure in ATS Bhoiwada office between 2-3 pm on 28/10/2006. However, the station diary entry dated 28/10/06 (Exh.3322) shows that API Alaknure returned to Crime Branch Office at 1:45 pm. There is no entry of leaving of PW-153 from the crime branch officer thereafter.

479. PW-153 though initially states that he does not remember whether he had recorded the statement of PW-75, but on going through the case diary, admits that he did record the statements of PW-75 and Ajmeri Shaikh on 28/10/06, but the time is not mentioned in the station diary.

480. Ajmeri Shaikh also identified A.2, A.4, A.6 and A.7 in TIP dt. 07/11/06 conducted by PW-80 Shri. Barve. However, he was not examined in this case. Therefore, a question arises here is that, if he was an important witness to bomb making in A.6's house, then why did he not enter into the witness box.

481. Amar sardar Khan and Ajmeri Sheikh were also used as witnesses in the Ghatkopar blast. The list of witnesses in that case shows that Amar sardar Khan and Ajmeri Shaikh are cited as witnesses at sr. no. 169 and 170.

482. Thus, there are numerous grounds to discard the evidence of this witness.

483. The Learned Special Judge, while relying on the evidence of PW-75, has recorded its conclusion to accept the evidence, as under: -

“884. ... It will have to be held that the prosecution has not proved that Amar Khan, PW-75, saw some persons including the A7 in the house of the A6 a few days before the blasts. However, it will have to be held that by the cogent evidence of Amar Khan, PW-75, PC Ambekar, PW-76, and PI Alaknure, PW-153, prosecution has proved that Amar Khan, PW-75 had gone to the house of the A6 a few days before the blasts and had seen the A2, A4 and A6 outside his house. This is the circumstance no. 18 proved by the prosecution. It is against A2. A4 and A6. It is the second circumstance against the A2, A4 and A6.”

484. Having held that PW-75's evidence is not trustworthy and credible, the reliance placed by the Learned Special Judge on such evidence is nothing but a grave error committed by the Learned Trial Court.

Fourth Category of Witnesses

The witness to the conspiracy (PW-59)

485. Let us now examine the witness who falls in the fourth category, and who claims that he is a witness to the hatching of conspiracy.

486. PW-59 claims to be a close friend of A.3 and A.12 and met A.2, A.4, A.9, A.10, and A.13 through A.3. He identified A.2, A.3, A.4, A.9, A.10, A.12, and A.13 in the Court. The prosecution examined this witness to establish the conspiracy and also his acquaintanceship with the above referred accused.

487. PW-59 gave his statement under section 161 of Cr.PC on 02/11/2006 after retraction of confessional statements of A.2, A.3, A.4, A.9, and A.10. He states in his oral evidence that if the police would not have called him, he would not have gone and given his statement. It is to be noted that the statements under Section 161 of Cr.PC of PW-59 and PW-74 were recorded on the same day, i.e., on 02/11/2006.

488. Learned SPP states that PW-59 is an important witness as he is not somebody who is a stranger to the accused persons but he is conversant with the some of the accused. He is a friend of A.3 and A.12 and also well acquainted with A.2, A.4, A.9, A.10, A.11 and A.13. It is submitted that A.9 is the brother of A.3, and A.3 was a close friend of

PW-59. Therefore, he has unmistakably identified A.9 to be present in the conspiracy meeting and there is no reason to discredit his evidence.

489. It is further argued by Learned SPP that PW-59 knew A.3's name as 'Sameer' which, according to PW-59, A.3 used to use the said name to hide his identity. It is argued that though cross examination of this witness was made by multiple counsels, no contradiction could be brought on record which would go to the root of the matter branding this witness as a liar.

490. Before scrutinizing the evidence of PW-59 on the point of conspiracy, it would be beneficial to reiterate the law as regards conspiracy. The Hon'ble Supreme Court of India in the case of *Yogesh v. State of Maharashtra*, (2008) 10 SCC 394, has held thus: -

“**20.** The basic ingredients of the offence of criminal conspiracy are : (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in *Shivnarayan Laxminarayan Joshi v. State of Maharashtra* [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

21. In *Mohd. Usman Mohammad Hussain Maniyar v. State of Maharashtra* [(1981) 2 SCC 443 : 1981 SCC (Cri) 477] it was observed that for an offence under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do and/or cause to be done the illegal act, the agreement may be proved by necessary implication.

22. In *Kehar Singh v. State (Delhi Admn.)* [(1988) 3 SCC 609 : 1988 SCC (Cri) 711] the gist of the offence of the conspiracy has been brought out succinctly in the following words [Ed. : Quoted

from Russell on Crime (12th Edn., Vol. I, p. 202).] : (SCC p. 731, para 271)

“271. ... ‘The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.’ ”

23. Again in *State of Maharashtra v. Som Nath Thapa* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820] a three-Judge Bench of this Court held 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.

24. More recently, in *State (NCT of Delhi) v. Navjot Sandhu* [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , making exhaustive reference to several decisions on the point, including *State v. Nalini* [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] Venkatarama Reddi, J. observed thus : (*Navjot Sandhu* case [(2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , SCC p. 689, para 97)

“97. Mostly, conspiracies are proved by circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in *Nalini* case [(1999) 5 SCC 253 : 1999 SCC (Cri) 691] at p. 516). The well-known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and ‘the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible’ (*Tanviben Pankajkumar* case [*Tanviben Pankajkumar Divetia v. State of Gujarat*, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] , SCC p. 185, para 45). G.N. Ray, J. in *Tanviben Pankajkumar* [*Tanviben Pankajkumar Divetia v. State of Gujarat*, (1997) 7 SCC 156 : 1997 SCC (Cri) 1004] observed that this Court should not allow suspicion to take the place of legal proof.”

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well

settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.”

491. In light of the above referred well settled principle of law, let us examine and scrutinize the evidence of PW-59.

492. According to PW-59, in February 2006, once he went to the house of A.3. At that time, he saw 5-6 persons in his house. They had gathered there for discussion on some special subject. After the namaj, A.3 introduced them to him. One of them was by name Asif Khan (A.13), Dr. Tanveer Ahmed (A.2), Ehtesham Siddique (A.4), Suhail Shaikh (A.10), and Muzzammil Shaikh (A.9). They were sitting together. Asif Khan took a Quran and asked all to keep their hands on it and to take the oath that whatever discussion they had there will be secret. Asif Khan asked about him. Faisal told him, he was his best friend and he should not take tension about him. Asif Khan asked him to take the oath but he did not take it as he did not have any knowledge about the subject matter of the meeting. Afterwards, he asked Faisal about that meeting but he did not tell him anything.

493. PW-59 further deposed that thereafter in March 2006, A.3 came to meet him at Mira Road, near Shams Masjid with his three friends Asif Khan (A.13), Dr. Tanveer (A.2), and Ehtehsam (A.4). A.3 asked him whether he could arrange for a house for 6-7 months for his friends. Then he asked him to phone A.12 – Naveed and call him. Accordingly he phoned A.12 and told him to come near Shams Masjid in the restaurant where they were sitting. After some time, A.12 came there. Faisal asked him to leave that place saying that he wanted to talk with A.12.

494. PW-59 further states that in May 2006 once or twice he went to A.3's house. He saw the guests in his house. He told him that they are his guests from Pakistan and they have come for the good work of religion. A.3 told him the names of those guests as Abdul Razzak, Abu Umed, Sohail Shaikh, and one Salim. PW-59 states that in June 2006, A.3 called him and Naveed (A.12) to his house. On the next day morning, A.3 told A.12 that because of the guests, his house is congested and he should make some arrangements for the guests. After some days, he came to know from A.12 that he had arrangements of two guests of Faisal at Millat Nagar, Andheri. During that month, A.3 had introduced him to one Rizwan Khot. During that period, A.3 had purchased a white colored Maruti-800 car. PW-59 then deposed that he and Rizwan Khot, A.12 and A.3 used to go around in that car. Rizwan Khot used to drive the car. He met A.3 lastly on 02/07/2006. After some days he came to know from the news that A.3 and A.12 were caught by the police as they were involved in the blasts.

495. In cross examination, PW-59 states that the police did not ask him to describe any person. He did not describe any person to police on his own. The ATS police did not ask him any identification mark on any accused or person, and he did not tell the police on his own. The police did not prepare a sketch of any person with the help of any expert in his presence.

496. According to PW-59, when he went to A.3's house, he saw 5-6 persons in his house. They had gathered there for discussion on some special subject. PW-59 gave the names of who were there, including Pakistanis. He saw the accused in the month of February and March 2006, and the incident took place on 11/07/2006. However, he was

quiet for 170 days and gave his statement under section 161 of Cr.PC on 02/11/2006.

497. PW-59 claims that A.3 had made an extra-judicial confession to him in January 2006 that A.3 was a Jihadist and had gone to Pakistan for arms training by the L-e-T. Despite such anti-nation and serious disclosure by A.3, PW-59 did not think of immediately alerting the police nor he disclosed that fact to anyone till October 2006, even after knowing that A.3 had been arrested in connection with the bomb blasts a few days after the incident. Thus, this inordinate delay in disclosure, in itself, renders PW-59 as a wholly unreliable witness and so his testimony.

498. According to PW-59, in May 2006, he went to A.3's house where he saw guests from Pakistan, namely Abdul Razzak, Abu Umed, Sohail Shaikh, and one Salim. PW-59 had never met those four Pakistani accused before. Some special reasons are required to recollect the names heard on a single solitary instance. It, therefore, creates doubt that PW-59 could recollect all these names with full name and surnames, more particularly when he himself claims that there was nothing unnatural and that he did not have any knowledge about the subject matter of the meeting. He admits that even A.3 did not tell him about the meeting.

499. At the same time, he could not recollect the name of a particular dancer, with whom he had a close relationship for over a month in the same year. He does not even remember the name of the policeman who had called him on 02/11/2006.

500. Furthermore, the prosecution does not seem to have done any investigation to corroborate PW-59's claim regarding having met the accused at Shams Masjid or at A.3's house. The prosecution could have produced the CDR of either PW-59 or the accused to establish the their location.

501. PW-59 did not approach the police himself and claims that the police approached him for the first time on 02/11/2006 by a call from a landline number to his mobile number. The prosecution did not produce any CDR. On the contrary, when the defence made an application to call the CDR of two mobile numbers used by PW-59 for the period of February to June 2006, it was strongly objected as frivolous. Therefore, PW-59's statement is shrouded in doubt.

502. It is further pointed out that his statement was recorded by ACP Patil (PW-186) at Chandan Chowki. However, the certified true copy of the log book (Exh.4299) of the Bolero MH-01-SA-131 shows that ACP Patil had not even gone to Chandan Chowki on 02/11/2006.

503. A.4 was a stranger to PW-59. At best, PW-59 had only a brief glimpse of A.4 sitting along with other persons and had no reason to remember him. T.I. Parade was therefore necessary to be conducted. However, it was not conducted. PW-59 did not describe any of the persons he saw, in his statement under Section 161 of Cr.PC, nor did the investigating officer ask for any identifying features. In the circumstances, a T.I. Parade ought to have been conducted for identification of A.4 and the other unknown accused.

504. Furthermore, when a photograph of Salim (Pakistani national) was shown to PW-59, he said that it is of Abu Umed. At the same time, he could not identify A.11 in the court. Therefore, it again creates a doubt as to how could PW-59 remember the full names of all those persons without any reason to remember their names, that too after so many months.

505. Learned Sr. Counsel Shri. Nagamuthu submits that PW-59 was in China in the period from February to May 2006. It is submitted that PW-59's elder brother Parvez had business at China of Chinese products.

506. It is submitted by Learned SPP that although an attempt was made by the defence to show that PW-59 was not in India but was in China at the relevant time, the defence could not succeed in establishing the said fact.

507. Though, in the cross-examination, PW-59 denies the suggestions regarding his trip to China, on being asked to produce his passport, he refused to produce the same with an excuse that it had gone missing in his house in 2006.

508. Moreover, PW-59 has deposed that he had no knowledge about the subject of discussion between the accused, and A.3 did not tell him. In these circumstances, in absence of direct evidence of conspiracy, as per the well-settled principle of law, a chain of events has to be completed from which a conclusion of guilt of the accused can be drawn. The said chain, in this case, could not be completed having found the other seven witnesses as unreliable. In these circumstances,

the evidence of PW-59 in the above referred backdrop, is of no consequence or help to the prosecution to establish hatching of conspiracy by the accused.

509. The learned Special Judge, while relying on the evidence of PW-59, has recorded its conclusion to accept the evidence, as under: -

“951. In my humble opinion, the submissions by the learned SPP are very much valid for appreciating the evidence of all types of witnesses. Applying, these tests to the evidence of Mohd. Alam, PW-59, I have no hesitation to hold that he is an impeccable witness. He has no criminal antecedents, no connection with the police either as a witness or panch or accused and no animosity against any of the accused. Thus, I have no hesitation in accepting his evidence as truthful. Hence, it will have to be held that by his evidence the prosecution has proved: (i) that the A3 was concerned with the atrocities being committed on Muslims and was of the view that the only way to solve their problems was by way of jihad, (ii) that the A3 had gone to Pakistan twice and had taken training in the camps of L-e-T, (iii) that wanted accused no. 1 Azam Cheema rendered financial assistance to the A3, (iv) that the A3 was commander of L-e-T in Mumbai (v) that the A2, A4, A9, A10 and A13 had assembled in the house of the A3 in February, 2006, (vi) that the A2, A3, A4, A12 and A13 had assembled near Shams Masjid in Mira Road in March, 2006 and (vii) that wanted accused no. 5 and 14 and deceased accused no. 1 and 2 were in the house of the A3 in the second or third week of May, 2006 and later on they were shifted to the house of the A3 at Millat Nagar in Andheri (W), Mumbai. This is the circumstance no. 19 proved by the prosecution. It is against the A2, A3, A4, A9, A10, A12 and A13. It is the third circumstance against the A2. It is the sixth circumstance against the A3. It is the third circumstance against the A4. It is the first circumstance against the A9. It is the first circumstance against the A10. It is the second circumstance against the A12. It is the fourth circumstance against 15 the A13.”

510. Having held that PW-59’s evidence is not trustworthy and credible, the reliance placed by the Learned Special Judge on such evidence is nothing but a grave error committed by the Learned Trial Court.

Fifth Category of Witnesses

The injured witness who saw the suspects after they alighted the train, but not called for T.I. Parade, though with his help two sketches of suspects were prepared. Further, though he was examined, he was not asked to identify the accused in the Court (PW-85).

511. PW-85 Lalji Ramakant Pande boarded Borivali semi-fast 5:54 pm train from Churchgate. As the train left Mahim Station, there was a loud explosion in which he sustained injuries on the back, head, hands, stomach, legs, etc. He was operated in the hospital. He was discharged from the Sion Hospital on 24/07/2006. Police took his statement on 27/07/2006 at his house and again on 21/08/2006 at ATS Office.

512. In cross, PW-85 deposed that he saw two persons getting down hurriedly and they looked frightened, therefore, he became suspicious. He looked at them carefully. He described the two persons, their features, age, appearance, body structure, and the clothes worn by them. He had stated about mustache and beards that they had. He told the police about the features of the two persons that he remembered. Police prepared sketches of the two persons on the basis of their description that he gave. According to PW-85, police prepared the sketches correctly as per the description that he gave.

513. He further deposed that the description of one of the persons that he gave was that he was around 27-28 years old, height 5 '10", wheatish complexion, a longish face, medium build, clean-shaven, with a small mustache, wearing a half shirt and full pants. He had described another suspect as being around 28-30 years old, height 5'7" tall, with

a sallow complexion, a round face, slim build, clean-shaven, with a small mustache, wearing a checked full shirt and full pants.

514. It is evident from the evidence of PW-85 that he gave detailed description of the accused and helped the police to prepare sketches of the suspects. He found that the sketches were correctly prepared. The reason for giving detailed description was that he looked at the suspects carefully as he became suspicious about them.

515. His statement u/s 161 of Cr.PC was recorded immediately after he was discharged from the hospital. Thus, it can be said that when everything was fresh in his memory namely, the occurrence, faces of the suspects, and their other description, his statement was recorded and the sketches were prepared. Despite the said fact, he was not called for T.I. Parade. Furthermore, he was even not asked to identify the accused in the Court. This conduct of the prosecution speaks volume, in absence of any explanation offered by the prosecution for the same, and an adverse inference needs to be drawn for not calling him for T.I.Parade and also not asking him to identify the accused in Court.

Sixth Category of Witnesses

The witnesses who saw the suspects, and gave their statements under Section 161 of Cr.PC within short span of incident with the description of the suspects, but were neither called for T.I. Parade nor examined as witnesses. (Total 6 witnesses)

516. It is argued by the defence counsel that injured and material eye-witnesses whose statements were recorded within 2-4 days of the blast were not called for TIP. Learned Counsel Ms. Roy states that

immediately after the blasts, various investigating officers recorded statements of a number of injured witnesses who claimed to have seen suspicious travellers or passengers in the bogie in which the blasts happened. It is submitted that these witnesses gave detailed descriptions and features of the people they saw; sketches were also made on the basis of their descriptions. However, none of them were called for TIP.

517. It is further submitted that considering the fact that the first 7 accused persons were arrested in the month of July itself, the investigating agency should have immediately put the arrested accused persons for a TIP & called the injured witnesses to identify them. However, no such thing was done.

518. It is further submitted that instead of calling the injured witnesses who gave description, and whose S.161 statements were promptly recorded within few days of the blast, the investigating agency called those witnesses whose statements were recorded after more than three months after the blast, who were not injured, and who gave no description. It is further submitted that, except the statement under Section 161 of Cr.PC of PW-60 Kishore Popatlal Shah and PW-85 Lalji Pande, statements of all other witnesses who were called for TIP were recorded more than three months after the train blasts.

519. Learned SPP, on the other hand, submits that the submission of the defence is baseless. It is submitted that the I.Os and Chief I.O. have explained the reasons for not examining them.

520. Learned SPP submits that the contention of the defence is that some of the persons who were the eyewitnesses like Ramanand Machchewar, Prabhakar Dattatray Sadekar, Vijay Kumar Rayappa and constable Khanvilkar had been held back and were not called for TIP. Learned SPP further submits that one of the injured witness Khanvilkar is from police department and if it was really the intention of the investigating agency to falsely fabricate the evidence or to falsely implicate anyone then this witness would have been best available to the police. However, the prosecution has been transparent, and ACP Patil has given straight forward answers.

521. In light of rival contentions, we perused the record in this regard, wherefrom it is evident that there are five witnesses who claimed to have seen the suspected passengers planting bombs. Sixth witness claims that some Kashmiri persons purchased eight pressure cookers from his shop. These six witnesses were not examined. Furthermore, none of these six witnesses was called for TIP.

522. Before, scrutinising the evidence of the I.O.s and the police officers as to why these witnesses were not called for T.I. Parade or examined as prosecution witnesses, let us first see the law as regards adverse inference.

523. The Hon'ble Supreme Court of India, in the case of *Takhaji Hiraji v. Thakore Kubersing Chamansing*, reported in (2001) 6 SCC 145, has held thus : -

“19. ...It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not

examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself — whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. ...”

524. In the present case, the statements given by these six witnesses under section 161 of Cr.PC, shows that five of the said witnesses are the injured witnesses and they gave the description of the suspicious passengers.

Prabhakar Dattatray Sadekar

525. An injured passenger in the Borivali blast named Prabhakar Dattatray Sadekar, whose statement u/s 161 of Cr.PC was recorded on 13.7.06 by IO PW 140 PI Godbole. IO PW 162 PI Iqbal Shaikh further recorded the supplementary statement on 09.08.06.

526. Learned Counsel Ms. Roy argues that the witness described the suspects, including the apparels on their body. Sketches of the suspects were prepared on this description. It is further argued that even though IO PW-140 admits that he was an important witness, he was not called for T.I.Parade.

527. PW-140, in his cross, admits that statement under Section 161 of Cr.PC of Prabhakar Dattaram Sadekar was taken on 13/07/2006. He further states that he cannot say whether Prabhakar Dattaram Sadekar was an eyewitness.

528. PW-162 Iqbal Shaikh (I.O. of Cr. No 78/2006), in his cross-examination states that on going through the case papers he realized that there were two eye-witnesses by name L. R. Pandey (PW-85) and Prabhakar Dattaram Sadekar and they had been injured.

529. On a question put to him as to whether he had informed PW-186 ACP Patil that these two eye-witnesses (L. R. Pandey and Prabhakar Dattaram Sadekar) would be required to be called for identification parade, he answered that no planter was found in CR No. 78/06, therefore, he did not inform accordingly to ACP Patil.

530. PW-162 further states that ACP Patil did not call and inquire with the two witnesses in his presence. No planter was detected in CR No. 78/06 upto 13/10/06. He does not know whether these two witnesses were not called for identification parade. He had read the final report filed by ACP Patil it is true that it is written in the final report that as per his investigation in CR No. 78/06, the Indian and Pakistani accused in that CR were unknown and their total number was not revealed.

Suresh Suvarna

531. Suresh Suvarna, who was injured in the Borivali blast, in his statement dated 15.7.06 stated that he had seen a suspect, who was approximately 25 years old, wearing a pathani dress, sallow

complexion, slim, 5'6" height, having a slight beard, hurriedly getting down from that train at Bandra.

532. Learned Counsel Ms. Roy submits that even though the IO PW-174 PI Khandekar admits that he was an important witness, Suresh Suvarna was not called for TIP.

533. PW-174 Khandekar (I.O. of Cr. No. 156/2006) in his cross-examination states that on reading the statement of Suresh Suvarna, initially he felt that he was an important witness. It is not true that he had given facial description along with describing the wearing apparel, height and beard. He had described the suspects as wearing Pathani dress, approximate height and that they had beards. He had stated approximate age. He does not remember whether he had mentioned about sallow complexion and slim built. He denied that when they take description they inquire about description, they record only the height, built, complexion, average age and whether the suspect has beard. He did not record the supplementary statement of the witness Shri. Suvarna when he met him. He did not get any sketch prepared with his help. Only one statement of this witness was recorded. It was on 15/07/06. He was one of the injured in that case. He did not think it necessary to call him for identification parade. He further states that the reason for not calling Suresh Suvarna for identification parade, according to him is the statement given by him about the alleged suspect boarding at Bandra without any luggage and getting down at Andheri.

Constable Santosh Prakash Khanvilkar

534. Santosh Prakash Khanvilkar was injured in the Borivali blast and gave his statement under Section 161 of Cr.PC on 22/07/2006. He described a suspect's complexion, age, height and dress and that the suspect boarded the train at Bandra and rushed out at Andheri.

535. Learned Counsel Ms. Roy argues that IO PW-174 is unable to explain why Santosh Khanvilkar was not called for TIP despite giving a detailed description of a possible suspect.

536. PW-174 Khandekar in his cross-examination stated that he had gone through the statement of Santosh Prakash Khanvilkar. On going through his statement he did not think that he was an important witness. He did not think on going through his statement that he could fix the identity of the culprits.

537. PW-186 in his cross-examination, states that he does not remember whether we had got a witness by name Santosh Prakash Khanvilkar, claiming to be an eye-witness in the Borivali blast. He remember having discussion about witness Suresh Shekhar Suvarna, who was claiming himself to be an eye-witness in the Borivali blast. He was not found to be reliable. He denied that all these witnesses were deliberately not called for the test identification parades.

Ramanand Marutirao Machchewar

538. Ramanand Marutirao Machchewar who was injured in the Mira Road blast, gave his statement on dt.12.7.06. Machchewar described a suspect who boarded his bogie at Andheri Railway Station as 30-35 years, medium built, wheatish complexion, height about 5'4", clean

shaven face, high cheek bones and hollow cheeks, appearing old and weak. He further stated that the suspect was holding a small green coloured bag when he boarded the train, kept the bag on the luggage rack, but left the train at Mira Road Station without the bag.

539. Learned Counsel Ms. Roy submits that though PW-150 API Shelke and PW-173 PI Agrawal both admit that he was an important and material witness, he was not called for TIP. Learned counsel further stated that PW-173 PI Agrawal claims that Ramanand Machewar was not called for TIP as the subsequent investigation revealed that the green bag that he had spotted belonged to an injured witness Kailash Mehta. He further states that it was subsequently returned to Kailash Mehta's brother. The counsel further submits that there is no evidence of the fact that the person to whom the bag was returned was Kailash Mehta. This explanation given by PW-173 has come by way of omission and is wholly uncorroborated and without any contemporary record.

540. PW-150 API Shelke, who recorded the statement of Ramanand Machchewar on 15/07/06, in his cross-examination states that he cannot say when identification parades were arranged and who took the initiative for arranging them. As far as his knowledge is concerned, Ramanand Machchewar was an important and material witness so far as the blast is concerned.

541. PW-173 PI Agrawal (IO of Cr. No. 59/2006) in his cross-examination states that Ramanand Machchewar boarded the train at Bandra Railways Station, when the train came at Andheri Railway Station, he saw a person boarding the same bogie holding a small green

coloured bag, which was passed through other commuters to be kept on the luggage rack; that he suspected this as he thought that the small bag could be held in hand and there was no necessity of keeping it on the luggage rack; that moreover, at Mira Road Station, the witness saw that person alighting from the train without the bag. He checked the unclaimed baggage and articles and found a small green coloured bag; that, on opening it was found to contain a telephone diary, bunch of keys and some money; that, the telephone diary showed that it was belonging to one Kailash Mehta who was admitted in Kasturi Hospital; that, he took that bag and came back to his office; that, he showed the bag to the witness and he confirmed that it was the same bag. He states that the four articles that were handed over to him as per the receipt are not the articles described at Sr. No. 24 in the panchnama. HE admits that bunch of keys, telephone diaries and cash amount of RS.80/- is not mentioned in the articles described at Sr. NO. 24 in the panchnama. He further admits that the articles described at Sr. no. 24 in the panchnama are not returned to Kailash Mehta as per the receipt (Exh.1838).

Vijaykumar Babanna Rayappa

542. Learned counsel stated that PW 167 and PSI Umesh Kadam recorded S.161 statement of Vijaykumar Babanna Rayappa who was injured in the Jogeshwari blast on 05.08.06. He described two persons reading an Urdu newspaper whose movements were suspicious. However, he was not called for T.I.Parade.

543. PW-167 initially attempts to deny that Vijaykumar Rayappa was an eye witness and had travelled in the same bogie as where the blast took place.

544. PW-167, in his cross-examination, states that he had inquired with the witness. He denied that it was revealed that the witness was traveling in the same bogie in which the blast took place. He was traveling in the same train. It was revealed during his interrogation that he had seen two travelers, looking like Muslims having Urdu newspaper with them and whose movements were suspicious. He had given the description of those persons. He did not feel that the information given by the said witness was important. He had informed his superiors about the witness in the discussion with ACP Patil and ACP Tawde. They did not tell him to bring the witness before them for inquiry. They did not opine that he is not an important witness. He did not feel it necessary to take the identification parade with the help of this witness.

545. PW-186 stated, in his cross-examination, that they had a witness by name Vijaykumar Babanna Rayappa, claiming himself to be an eye-witness in the Jogeshwari blast. They had a discussion about him and they found that he was not reliable to be called for the identification parade of the arrested accused.

Mohanlal Kumawat

546. PSI Yadav recorded statements on 28.9.06 of three shop keepers in Santa Cruz East, Arvind Umarshi Shah, Mahendrabhai Dedhia and Mohanlal Kumawat who state that two Kashmiri looking men had bought 8 pressure cookers and loaded them into a white Santro car in May 2006. These witnesses had given detailed descriptions of those two Kashmiris and their sketches were prepared. The witnesses stated that the suspects had made many calls.

547. PW-167 Shri. Wadhankar (I.O of Cr. No. 41/2006) states in his cross-examination that PSI Yadav recorded the statement of Mohanlal Kumawat, shop owner on 28/09/06, from whose shop the pressure cookers were purchased. It was revealed from this witness that the persons had kept the cookers in white coloured Santro car and he had given the description of the persons. Sketch was prepared. It was not circulated for finding that person. He had informed his superiors about the information that they gave. He did not think of calling them for the identification parade and they were not called. It was revealed from the statements of these three witnesses that eight pressure cookers were purchased and loaded in white Santro car.

548. The above referred explanations by the IOs go against the prosecution and show that till the confessional statements were recorded, there was no evidence worth showing the involvement and complicity of the accused. The prosecution has examined only two witnesses PW-60 and PW-85, who had given their statement under section 161 of Cr.PC within a short span of the incident, like the witnesses of sixth category.

549. These witnesses, who claim to have seen the suspects and gave their statement immediately after the incident, have given detailed description of the suspects in their S.161 statements. Their memory was fresh when the statement was given. If these statements are compared with the statements given by the accused, subsequent to the retraction of the statement, i.e. after 100 or more days of the incident, the statements of the witnesses of the sixth category appear to be more helpful to identify the accused. Despite the same, for no valid reason, they were not called for T.I. Parade or examined as prosecution

witnesses. Therefore, we are of the opinion that an adverse inference needs to be drawn against the prosecution for not examining the material and important witnesses.

550. Now, we will proceed to the second category of evidence, i.e., recovery of RDX, detonators, granules, and other recoveries.

RECOVERIES

551. We have examined and scrutinised the evidence of eye-witnesses. The other evidence, on which the prosecution has placed heavy reliance while trying to bring the guilt at home against the accused, is the recoveries made from the accused.

552. Following are the recoveries made from the respective accused.

A) A.1 – Kamal (Exh.500)

One Plastic bag containing 500gms black coloured powder. (As per CA Report: 1) Cyclonite (RDX - used as high explosive) and charcoal are detected in the exhibit. 2) Exhibit contains about 85% RDX and 15% Charcoal.)

B) A.2 – Tanveer

- a) Hospital Search (Exh.458) :** Three bottles recovered from Tanveer's hospital locker situated in ICU:
 - i.** One black plastic bottle having label of 'Hydrogen Peroxide Solution' of 500 ml, ingredients, manufacturer's name etc.
 - ii.** One brown glass bottle having the label of 'Acetone' of 500 ml, ingredients, manufacturer's name, etc.
 - iii.** One brown glass bottle having the label of 'Sulphuric Acid' of 500 ml, ingredients, manufacturer's name, etc.

b) House Search of his brother's house (Exh.485):

- i. 3 books having name Tehrik-E-Milat: Atankvaad ka zimmedaar kon,
- ii. One book related to SIMI having name - 'April 2004, Tehrik-E-Millat, Ashiya, Shaikh Ahmed Yasin sukoon se so gye, Israeli kabhi sukoon se nahi reh sakenge – Hamas,
- iii. One book named 'Sahi Disha Me Shatra Shakti: SIMI Sangarsha Yatra Ke 25 Varsh',
- iv. One book- related to SIMI,
- v. One local map of Mumbai wherein on the left side 'Map of Mumbai' and on the right side 'Tourist map of Mumbai' was written. (Some places were marked with green and red ink on the map),
- vi. One International Map - shows the countries - Iran, Afghanistan, India, Muscat, and Oman. This map is a Xerox copy. (Map has one telephone no. i.e. 00966507551451 and one email ID - gudu_sir@yahoo.com)

c) Passport Agent Office Search (Exh.450): Passport of Tanveer Ansari recovered from travel agent**C) A.3 – Faisal****a) House Search (Exh.533):**

- i. Cardboard box,
- ii. a plastic bag in which there is cotton on which there is black powder-like substance (As per the CA Report: Cyclonite (RDX – used as high explosive) and charcoal are detected in the exhibit.),
- iii. A black coloured rexine pouch containing:
 - A train ticket from Howrah to Mumbai dated 20/05/2006.
 - Two train tickets from Howrah to Mumbai dated 22/05/2006.
 - ATM Card of ICICI Bank
 - One learning licence and one driving licence,
 - Currency notes of Rs. 1000/
 - 30 notes of denomination of 500 Saudi Riyals (15,000 Saudi Riyals)

- A train ticket from Mumbai to Howrah dated 14/05/2006
- iv. Letter of Oriental Insurance Co. in the name of insured Nizamoddin Abdul Siddhique,
- v. Motorcycle Documents. The registration book of Bajaj pulsar motor cycle no. MH-01-TA- 9542 in the name of Mohd. Muzamil Aatur. Certificate of insurance of New India Assurance Co. in the same name,
- vi. One leave and license agreement,
- vii. Two books titled 'April 2004, Tehrik-E-Millat, Ashiya, Shaikh Ahmed Yasin sukoon se so gye, Israeli kabhi sukoon se nahi reh sakenge – Hamas', and two books titled 'Tehrik-E-Millat Atankwad ka jimmedar kaun',
- viii. Four books, two having green cover and two having pink cover titled SIMI, Sangharsh yatra ke pachis varsha,
- ix. Xerox copy of the map of part India, Pakistan, Afghanistan, Iran etc., (Some places were marked with green and red ink on the map),
- x. The receipt dated 10/01/05 of Bajaj choice center for Rs. 59500,
- xi. Key of the flat of Mohd. Faisal bearing the words china,
- xii. Motorola, reliance and Sony Ericson mobile handsets, sim cards , batteries, etc.

b) Recoveries from Railway Track (Exh.1108): One Plastic bag was recovered which is copper-brown in colour, damaged and torn at some places measuring 30cm × 45 cm covered in mud. Inside the plastic bag, another thin white plastic bag torn at one place and covered in mud. That plastic bag contained:

- i. 7 black rubber gaskets labeled as 'Kanchan' in white colour and soaked in mud,
- ii. 5 pressure cooker whistles of stainless steel fitted with black plastic cap. Kanchan is marked on the surface of the plastic cap,
- iii. 5 pieces of electric wire with red and white coloured PVC insulation. The length of the pieces of wires are 12cm, 28 cm, 28 cm, 60cm and 82 cm,
- iv. Printed Circuit board with wire and other material. There also a black wire attached to the circuit with intermediate

black switch with NOKIA marking - cylindrical in shape and terminating in a pin generally used for headphone connection of a mobile,

- v. Copper Brown and white coloured plastic bag (Cyclonite (RDX) is detected)

D) A.6 – Mohd. Ali

House Search (Exh.716):

- i. Plastic pouches and cotton swabs taken during house search,
(As per CA Report, Cyclonite(RDX) and Charcoal are detected on the Blackish stained cotton swab in a polythene bag, and Ammonium Nitrate and traces of cyclonite (RDX) are detected on the cotton Swab in a polythene bag)
- ii. Pressure cooker of 5 litre with the lid, whistle and steam plate, the khaki wrapper with label, two seals and white thread.

E) A.7 – Sajid

Office Search (Exh.1480):

- i. One torn plastic bag with Priyagold and Magic-Gold written on it
- ii. One soldering gun- old & used of MAXGOLD Co.
- iii. 4 pieces of Soldering wire
- iv. Round metallic 'dabbi' of soldering paste of Quick fix company.
- v. One printed Circuit board,
- vi. One multimeter of UNI-T company, Model No. DT830D having two wires-one red & one black . On black of the sad multimeter 3030598732 is paste,
- vii. 2 tweezers made of steel.
- viii. 1 screwdriver with green handle,

- ix. One white packet- empty with title Easy Recharge Card-Airtel printed on front. On the backside a sticker is affixed with following particulars: Mob no. 9867244681 SimNo. 899192000003206618F
- x. Electrical components consisting of - 22 resistors, 2 capacitors, 1 coil, 8 transistors, 9 LEDs, 6 Diodes.

F) A.9 – Muzzammil

House Search (Exh.534):

- i. Three CPUs
- ii. One hard disk
- iii. One mobile phone, sim card and battery.
- iv. One airtel company sim card
- v. one pouch containing 30 DVDs
- vi. one 80GB Hard Disk
- vii. Map of Mumbai,
- viii. two books titled April 2004, Teherik-E-Milat, and Atankwad ka jimmedar kaun,
- ix. one book having green cover titled SIMI sangarsh yatra ke pachis varsh,
- x. the statement of marks and passing certificate in the name of Muzzamil, one driving licence, brown leather purse, identity card of Oracle Co.(Two pieces), a white blank plastic card, ICICI Bank card, the plastic bag with label, brown paper outer envelope, passport, blank identity card of ALL India Association of Unani Medical Colleges, two blank identity cards of Z.V.M Unani Medical College and hospital.

G) A.10 – Suhail Shaikh

House Search:

- i. Indian Passport of A.10,
- ii. 6 books - Two books were titled 'SIMI, Student Islamic Movement of India'. The address of SIMI's office of Delhi was at the bottom of the front cover. Two books were titled 'Millat-e-Tehrik, Atankwad Ka Jimmedar Kaun' and two books were titled 'April-2004 Tehrik-e-Millat',
- iii. 4 audio cassettes (Art. 253 1 to 4) - Some cassettes were titled 'Al-Quran' and some were titled 'Beauty of Islam'.
- iv. Mobile phone of A.10 (Art. 252),
- v. One map of the Middle East showing half of India. (Art. 250). A route from Salet, Tehran in Iran up to Muzaffarabad in Pakistan was marked on this map. There were some numbers in handwriting and e-mail Ids.
- vi. One map (Art. 248) was titled 'Map of Mumbai'. Certain spots in Mumbai - Veer Savarkar Marg, Dadar, Mahalaxmi Temple, Reserve Bank of India, etc. were marked in red ink encircled by green ink on this map.
- vii. ISD Rate Card (Art. 248B)

H) A.11 – Zameer Shaikh

House Search:

- i. One Passport (Art. 133)
- ii. One xerox map containing part of India, Pakistan & Afghanistan. There was a number, an email id and some other thing written on the map in Urdu. (Art. 134)
- iii. One Book titled Tehrik-e-millat, Atankwad ka jimmedar kaun (Art-135).
- iv. One book titled Tehrik-e-millat, Asia, April-2004 (Art-136).
- v. One map of Mumbai which had markings on it with red and green ink. (Art. 137)
- vi. A booklet titled 'latest road map of Mumbai & Navi Mumbai'. (Art. 138)
- vii. A black leather purse. (Art. 139)

- viii. A driving license no. MH-01-97 50299 in the name of Zameer Ahmed Latif-ur-rehman Shaikh. (Art. 140),
- ix. An ATM Card of Canara Bank in the same name. (Art-141).
- x. An ATM of Canara Bank in the name of Mohd. Zubair Ansari NY. (Art-142)
- xi. A pocket diary (Art-143)
- xii. 3 visiting cards and two chits of Sun-n-Sand. (Art-144 1 to 5)
- xiii. Currency notes - 6 currency notes of Rs.100/-, 10 currency notes of Rs.50/-, 3 currency notes of Rs.10/- and 1 currency notes of Rs.5/- . total Rs.1135/-. (Art. 145 colly)

I) A.12 – Naveed Khan

Recovery of Car (Exh.641):

Six packets were sealed by ATS in envelopes having labels containing the description of the contents:

- i. Three cotton swabs (प्रदर्शित "अ", "अ-१", "अ-२") are described as cotton swabs from the back of the driver seat (As per CA Report, Cyclonite (RDX), Petroleum hydrocarbon oil and Charcoal are detected)
- ii. three cotton swabs ("ब", "ब-१", "ब-२") from the dash board in the boot (dikki). (As per CA Report, Ammonium Nitrate and Nitrite radicals are detected)
- iii. Documents of car no. MH-01-V-9568: xerox copy of certificate of insurance issued by National Insurance Company valid from the period from 28/ 11/ 05 to 27/ 11/ 06, PUC certificate issued on 09/ 06/ 06 and bill of M/ s Sai Services dated 09/ 06/ 06).

Three audio cassettes seized from the from dashboard of car no. MH-01-V-9568.

J) A.13 – Asif Khan

House Search (Exh.665):

- i. An ash coloured rexine bag having the name 'Hindustan ki Kasam' - Art-279, inside a khaki wrapper with label - Art-279A and the outer wrapper with seals Art-279B.
- ii. Slight white powder inside a pouch - Art-280

- iii. 20 white pieces wires - Art-281 colly, Aluminium pieces -Art-282 colly., small plastic pouch containing the aluminum pieces Art-282A, Pieces of red sticking tape Art-282B, The bigger pouch which contains above articles- Art-282C, Opened brown sealed packet which contains bigger pouch Containing seals on both sides- Art-282D
- iv. Plastic Pouch- Article 283A: The slight white powder inside the pouch Article 283
- v. White granules(Article 284)
- vi. Twenty- two (22) books and the spiral binded book in Urdu- Art-285 (1 to 23) Book in english - Article 286 Outer cover of Frontline weekly- Article 287, Pamplet of Vector Classes- Art- 288, Visiting card of Bombino-collection- Article 289
- vii. A file containing educational and other documents in the name of Ansari Mohd. Imran of School and polytechnic of Indore and Bhopal - Art 290 (1 to 26),
- viii. Urdu Newspaper- Article 290A
- ix. Plastic Bag bearing the name Japan store, Lucknow containing Urdu and English newspapers, some magazines, four CDs- Art-292 colly.
- x. 2 CPUs from Article 293 to Article 294.
- xi. One printer - Art 295
- xii. One monitor- Art 296
- xiii. The application for NOC to society/information to police along with agreement of leave and license- Art- 297 colly
- xiv. Reliance energy bill- Article 298

553. From the above referred recoveries from the respective accused, it is evident that from five accused, i.e. A.1, A.3, A.6, A.12, and **A.13** RDX was seized. From A.1, 500gms of RDX was allegedly recovered, whereas, from the other accused, the RDX was allegedly collected on cotton swabs. The other recoveries from the accused are books and maps (A.2, A.3, A.9, A.10, & A.11), detonators and granules (A.13), CPUs (A.9 and A.13), wires (A.3 and A.7), printed circuit board (A.3 and A.7), soldering gun (A.7), pressure cooker (A.6), a Maruti-800 car (A.12), etc.

554. Since recovery of RDX, white granules, detonators and electronic components and equipment are connected with the bomb blasts, we will deal with these recoveries first. As books, maps, computer CPUs, etc. are not directly connected with the bomb blasts, but such evidence is brought on record as circumstances connecting the accused with the bomb blast, we will discuss the same in later part of this section.

RECOVERY OF RDX & ABSENCE OF PROPER SEALING

A.1 - Kamal Ansari

555. A.1 was arrested on 20/07/2006 from Basupatti, Bihar. As per the case of the prosecution, A.1 was one of the planters in the present case, who planted the bomb in 645DN Virar Fast train. After arresting A.1, PI Tajne (PW-161) took him for his house search on 20/07/2006. During the said house search, the police found one plastic bag containing 500gms black coloured powder. As per the CA Report, the powder was detected to be 85% Cyclonite (RDX - used as high explosive) and 15% charcoal. The police seized the powder.

556. Learned Counsel Shri. Chaudhary submitted that, in the present case, there was a complete absence of sealing in seizures & recoveries of RDX. The seizures are eminently vulnerable to manipulation and tampering and therefore, must be closely scrutinized.

557. It is further argued that RDX was allegedly seized from five (5) accused persons. In the case of A.3 & A.6, DW-51 ACP Shengal was personally present and supervised the seizure of RDX. In the case of A.1, he received the black powder from Tajne, which he kept it with

him and then after a few days sent it for FSL examination. So, DW-51 ACP Shengal is directly connected with three of the seizures i.e A.3, A.6 and A.1. It is argued that DW-51 Shengal has played a vital role in this case in falsely implicating the accused. The selection of the accused and the hoisting of evidence in this case has been done largely by him.

558. Learned SPP Shri. Thakare argues that it is not disputed that PW-161 visited Basupatti and if the seal is considered, the purpose is that no one should tamper this seal and the article seized. It is argued that the panchas to the seizure of RDX are from Bihar and it is not possible to take their signature after tampering, if any. It is thus, submitted that the argument raising a doubt about the sealing of RDX is baseless and has no substance.

559. Upon considering the rival contentions, it can be seen that the challenge raised to the recovery of RDX mainly revolves around sealing of the same while it was recovered from the accused. Thus, before proceeding to consider the evidence as regards recovery of RDX from individual accused, it would be appropriate to refer to the relevant provisions under Bombay Police Manual and the law relating to sealing of seized articles.

560. Rule 148 (2) of the Bombay Police Manual, 1959 (Vol III, Appendix XXIV) reads as follows:

“(B) Other precautions - Special care should be taken to avoid the following faults:- The integrity of exhibits and control samples must be safeguarded from the moment of seizure up to the completion of examination in the laboratory. This is best done by immediately packing, sealing and labelling and to prove the continuity of the integrity of the samples, the messenger or bearer will have to testify in Court that what he had received was sealed and delivered in the same condition in the laboratory. The laboratory must certify that

they have compared the seals and found them to be correct. Articles should always be kept apart from one another after packing them separately and contact be scrupulously avoided in transport also.”

561. Rule 150 (3) of the Bombay Police Manual, 1959 (Vol III, Appendix XXV) reads as follows:

“Rule 150 (3) - Instructions for sending material to the Director Forensic Science Laboratory...

(6) All exhibits should be properly sealed with sealing wax and impressed with official device and not with a coin, buttons keys and other similar common device. Exhibits bearing only paper seals with or without Panchas signatures on them and those, which do not bear proper device on their seals, will not be considered as sealed samples. In addition to the Panchas paper seals, if any, there must be official seals with sealing wax.”

562. Rule 271 of Bombay Police Manual (Vol II, Chapter VIII) reads as follows:

“271. Muddemal Register:

(1) All properly passing through the hands of the Police must be brought to account either in the "Register of property passing through the hands of the Police" commonly known as the "Muddemal Register" (Form No. PM. 8 1) or in the register known as the "Book of ornaments and wearing apparel taken from prisoners on admission to the lock-up," commonly called the "Lock-up Register" (Form No. P. M. 87).

(2) (a) Property such as ornaments and wearing apparel, left on the person of a prisoner by the investigating Police Officer and taken from him as a preliminary measure by the officer in charge of the lock-up before the prisoner is put into the cell, must be entered in the "Lock-up Register."

(b) All other property received at the station must be entered in the "Muddemal Register."

(3) (a) Columns 3 and 4 of the Muddemal Register should be filled in very carefully so as to enable each article to be identified easily with the help of information in those columns.

(b) The register should be renewed at the commencement of each calendar year, the entries regarding property remaining undisposed of at the end of the year being carried forward to the new register for the following year.

(c) The Sub-Inspector or Inspector-in-charge of the Police Station should check the entries in the register at the end of each month and

sign it in token of his having satisfied himself about their correctness. (I.G.'s No. 9069-B, dated 16th August 1918)”

563. Thus, the standard procedure is that when articles are seized during investigation, its integrity must be safeguarded from the moment of seizure upto the completion of examination in the laboratory. This be achieved by immediately packing, sealing and labeling and placing in the muddemal room. An entry is to be made in the muddemal register.

564. PW-140, Assistant IO, ATS, admits that the muddemal is required to be deposited in the muddemal room after taking entry in the muddemal register. The carrier collects the sample from the muddemal room in order to take the sample for FSL and corresponding entries are made in the register. In this way a clear chain of custody can be established.

565. While stating the importance of sealing of seized articles, the investigating officers in the present matter deposed as under: -

- (i) PW-161 PI Tajne states that there was a prescribed procedure for sealing articles seized during investigation to rule out tampering. He also states that as a routine practice they carry lac seal with them whenever they go for search.
- (ii) PW-42 Sachin More (FSL Carrier) says that as a police officer, he knows that it is necessary that a packet is sealed with lac seal to prevent tampering.
- (iii) PW-140 PI Godbole says the purpose of sealing is to prevent the article from being tampered.

- (iv) PW-152 PI Bhavdhankar states that articles that are seized under panchanama are required to be sealed using lac seal and brass seal.
- (v) PW-189 Balu Daundkar, Dy. Director FSL, Kalina, also states that sealing is a necessary precaution to be taken to prevent tampering.

566. The Division Bench of this High Court, in the case of *Ashraf Hussain Shah vs. State of Maharashtra*, reported in 1996 Cri. LR (Bom) 206, has held as under: -

“14. First of all we would like to observe that the learned trial judge was perfectly justified in rejecting the evidence of recovery of blood stained clothes and knife at the pointing out of the appellant, primarily on the ground that there was no evidence to indicate that after seizure these articles were sealed. A Division Bench of this Court to which one of us (Vishnu Sahai J) was a party in the case of *Deoraj Deju Suvarna v. State of Maharashtra*, reported in 1994 Cri LJ 3602, after considering a large number of authorities has held that not only should the prosecution adduce evidence that after seizure the articles were sealed but should also lead link evidence to the effect that till being sent to the Chemical Analyst they were kept throughout in a sealed condition. This is done to eliminate the suspicion that blood might not have been put on the articles subsequent to the recovery and prior to being sent to the Chemical Analyst.”

567. Then, in the case of *Lalchand vs. State of Maharashtra*, reported in (2000) 3 Mah LJ 438, the Division Bench of this Court has held as under: -

“25. In this connection, it would be pertinent to refer to para 8 of the Division Bench decision of the Rajasthan High Court in *State of Rajasthan v. Motia* [State of Rajasthan v. Motia, 1953 SCC OnLine Raj 51 : AIR 1955 Raj 82] accused, wherein Wanchoo, CJ, (as he then was) observed thus:
‘... 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 bloodstains 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...'

568. Then, in the case of *Mohd. Iqbal alias Munna vs. State of Maharashtra*, reported in (2016) 3 AIR Bom R(cri) 596, the Division Bench of this High Court has held as under: -

"46. Though the query report was received on 13th of November, 2009, Muddemal articles like the clothes of the accused and the weapons were sent to Chemical Analyzer by Investigating Officer under requisition (Exh.107) on 2nd of February, 2010 vide Outward No. 246 of 2010. Now, from 13th of November to 2nd of February, 2010 where these articles were lying? Whether they were kept in proper sealed condition? Whether they were in proper custody?. There is no prosecution evidence to answer the aforesaid questions. The prosecution was obliged to adduce the evidence to show that after the articles seized were properly sealed and they were in proper custody and were kept throughout in a sealed condition i.e. right from the time of recovery till being sent to the Chemical Analyzer. The prosecution evidence is clearly wanting on the said aspect. Therefore, in our view, the learned Senior Counsel has rightly placed his reliance on dictum of this Court reported in 1995 Cri LJ 1432 (State of Maharashtra v. Prabhu Barku Gade) for extending benefit in favour of the appellants."

569. Similarly, in *Sanjay Devaji Ramteke vs. State of Maharashtra*, reported in 2020 SCC OnLine Bom 431, the Division Bench of this Court has held thus: -

"32..Contemporary document, recovery panchanama (Exh.-28) is conspicuously silent in respect of "sealing" of the clothes on the spot. Evidence of Fulchand (PW6) does not show that steps were taken by the investigating officer to seal the clothes of the appellant. Evidence of the investigating officer Sohansingh (PW4) is also silent on this aspect. He did not depose that after seizure, he applied seal to the bundle of clothes. Seizure form (Exh.-28A) regarding clothes of the appellant is also not having specimen of seal as given in format. Ultimately, during cross-examination, the investigating officer was required to admit that inadvertently it remained. Contemporaneous documents and evidence of the prosecution

witness Fulchand (PW6) and even the evidence of investigating officer does not show that clothes of appellant were sealed after those were seized from the spot. In *Tulshiram Bhanudas Kambale v. State of Maharashtra*; reported in 2000 CRI.L.J. 1566 and *Mohd. Iqbal alias Munna s/o Abdul Sattar v. State of Maharashtra*, through PSO P.S. Lakadganj, Nagpur; reported in 2016 All MR (Cri) 4530, it is the direction of the Court that where evidence of the investigating officer shows that after effecting recovery of articles he did not affix the lac seals on them, no evidentiary value can be attached to said recovery.

33. Similarly, on earlier occasion also, in *Lalchand Cheddilal Yadav v. The State of Maharashtra*, reported in 2000 (3) Mh. L. J. 438, this Court discarded scientific evidence when it was noticed that articles stained with blood were not sealed.”

570. From the above referred observations of this Court, it is evident that the prosecution should establish that after effecting recovery of articles, the articles were sealed and they were kept throughout in sealed condition and were kept in proper custody till being sent to the chemical analyst. This is to be done to eliminate the suspicion that the articles were tampered.

571. Coming back to the facts of this case. A.1 – Kamal was arrested on 20/07/2006 from Basupatti, Bihar. 500 gms of RDX was allegedly recovered from his house. Let us examine the evidence in this regard.

572. A.1 – Kamal was arrested by PI Shri. Tajne (PW-161). PW-161, deposed that after the serial bomb blasts, different teams were formed for making the investigations into the blasts. He was also assisting the investigating officer in Cr. No. 77/2006 of Mumbai Central Railway Police Station. He gathered information from a reliable source on 19/07/2006 that the user of mobile number 9934610679 namely Kamal, hailing from Basupatti, Bihar is having his complicity in Mumbai Central Railway Police Station.

573. Superiors, thereupon, directed PW-161 to proceed for investigation to Patna. He, along with API Kolhatkar and PSI Sachin Kadam, left Mumbai for Patna, Bihar. They along with PSI Rajan Singh arranged a trap near the Prasad Cinema Hall in Basupatti after preliminary inquiry. They noticed two persons at about 3:50 a.m. coming towards the city from outside. PSI Rajan identified one of them as the suspect Kamal.

574. A.1 was found in possession of Nokia make mobile handset during his personal search. PW-161 prepared a detailed panchnama and, after it was over, A.1 led them to his residence on foot.

575. During search, they noticed old clothes, empty oil boxes kept below the wooden cot. They noticed a plastic bag behind these articles. It was taken out and they found that the plastic bag was containing black coloured powder weighing about 500 gms. They suspected that the powder was an explosive substance. Hence, they took out about 10 gms. powder as sample in a small plastic bag, wrapped it in a khaki paper, remaining powder was kept in a plastic jar. It was also packed in a khaki paper. It was tied with thread and a label containing signatures of panchas and PW-161's signature was pasted on the jar. The sample was also tied with the thread and a label containing PW-161's signature and that of the panchas was pasted on it. The packet containing the sample was sealed. The jar was marked as Exh.A and the sample was marked as Exh.A1. The jar was tied across the top and bottom by thread and a label was pasted across the lead covering the said part of the jar, so that it could not be opened. All the above articles were taken into possession under the panchnama (Exh.500).

576. PW-161 deputed API Kolhatkar to carry the seized explosive powder by road as they wanted to come back to Mumbai by air. He reported to the Chief IO ACP Shengal about their arrest on returning to the ATS office.

577. In cross examination, PW-161 deposed that API Kolhatkar came by road transport and reached on 22/07/2006. He handed over the black powder to the Chief IO ACP Shengal. No panchanama was drawn at that time about handing over the plastic jar and sample.

578. After the arrest of A.1, Jaijeet Singh, Addl. CP, ATS, Mumbai, Maharashtra wrote a letter to the S.P of District Madhubani, Bihar for transfer of offence for registration and investigation. And thereby a request was made for registration and investigation of the offence of possessing explosive powder by A.1, without any valid license, in contravention of Section 4 & 5 of Explosive Substances Act 1908 r/w S.5, 6, 9(B) of Explosive Act 1884, which falls in the jurisdiction of Basupatti Police Station.

579. Thereafter, in view of the order dated 05/04/2007 (Exh.2450(2)) of the Hon'ble Supreme Court of India, the FIR No. 102/2006 before the Basupatti Police Station, Dist. Madhubani, Bihar was transferred to the designated court constituted under the MCOC Act 1999 at Mumbai.

580. At the time of arrest of A.1 by PW-161, Rajan Prasad Singh, PSI attached to SPF Patna (PW-107) was present. In his oral evidence, he corroborates the evidence of PW-161 as regards arrest of A.1, his house search, seizure of black powder, drawing of sample and sealing of the same with the remaining powder.

581. In cross examination, PW-107 has deposed that the ATS police officers from Mumbai did not ask for the official seal on 20/07/2006. He said that he knew about the procedure of affixing official seal by lac seal when any article is sealed during investigation. He further states that Mumbai police did not ask for lac seal from him. They had brought their own seal they used their seal to seal the articles that they had seized. They used the seal at the house of the accused at the time of seizure of the articles. Mumbai Police had seized and taken away the polythene bag in which the black powder was found. The polythene bag with the powder in it was kept in a plastic jar. Mumbai police did not take the signature of any police officer of Bihar present there on the labels that were affixed.

582. A panch, in presence of whom the mobile phone, cash and RDX was seized, was examined at Exh.499 as PW-22. In cross examination, PW-22 states that the sample powder of approximately 10 gms was put in a polythene bag, then it was wrapped in a khaki paper, tied with a thread, and then sealed.

583. Shri. Tajne (PW-161), in his evidence, referred Shri. Shengal as the Chief Investigating Officer at the initial stage. The prosecution did not examine him though his name was shown as a witness in the list of witnesses in the chargesheet at Sr. no. 330. Therefore, the defence made an application for examining him as a prosecution witness which was opposed by the prosecution on the ground that it is the prerogative of the prosecution to whom to examine. The application to examine Shri. Shengal as a court witness was also opposed and ultimately, before the High Court, the prosecution conceded to examine Shri. Shengal as

a defence witness. Accordingly, Shri. Kishan Narayan Shengal is examined as DW-51 at Exh.4342, who was declared hostile. And then he was cross examined by the defence.

584. In his deposition, DW-51 states that PI Tajne and PSI Kadam met him at Kalachowki ATS office at 9 pm when they returned. He states that they did not show brass seal to him. The sealed mobiles were produces. The lac seal was not affixed, but packets were sealed with labels of panchas. Kolhatkar (PW-18) produced articles that were pasted with labels of panchas and tied with white thread. He admits that there was no lac seal on the articles that were brought from Bihar.

585. DW-51 then states that the articles that were produced before him was in plastic jar and the sample was in a plastic pouch. He did not send the plastic jar to the FSL. He told the I.O. PI Rathod to take it in custody and keep it in the safe custody. He had sent the sample to the FSL through PI Rathod. PI Rathod did not tell him that he had got the lac seal affixed on it. As per him, lac seal was not affixed on the sample at the ATS office.

586. It is, thus, abundantly clear that 10 gms RDX powder sample was taken in a plastic bag, the same was wrapped in a khaki paper tied with threads and a label containing signatures of PW-161 and panchas, were pasted on it. Whereas, remaining powder was kept in a plastic jar tied with thread and label containing signature of panchas and signature of PW-161, was pasted on the jar. Thus, none of the witness speaks about use of any seal, whether lac or brass seal, while packing the 10 gms sample or the remaining RDX.

587. At this stage therefore, it is imperative to find out whether the sample was put in a tamper-proof condition.

588. The prosecution examined one Mahadev Avati (Exh.595) as PW-41, a head constable who was asked by Tajne to take sealed packet and forwarding letter to FSL Kalina. PW-41 deposed that on 31/07/2006 he was on day duty. At about 9 am, PI Tajne called him and gave him a sealed packet and a forwarding letter and asked him to reach the same to the Forensic Science Laboratory at Kalina, Santacruz. He checked the lac seal and the brass seal on the packet and the signature on the letter and its copy. The packet was in a sealed condition.

589. In cross examination, he deposed that the ATS Malkhana, Muddemal room was in the ATS police station at Kalachowki. There were five units of the ATS in Mumbai. They are at different places. When he gave his statement, he did not state at which unit PI Tajne gave him the sealed packet and the forwarding letter. He further states that he did not take the packet from the muddemal room and he does not know since when it was with PI Tajne. He further states that, in July 2006, they were using the seal of Kalachowki police station because there was no seal for ATS.

590. DW-51, after perusing the Exh.2009 case diary entry dated 07/07/2006, admits that the Station Diary Entry shows that the constable has carried brass seal of the Kalachowki police station to the ATS office. He states that generally such type of entry is required to be made when the brass seal of a police station is given outside for use and

is received back. He then claimed ignorance on what date the impression of lac seal was put on the letter Exh.596 (a forwarding letter of RDX seized from A.1, to FSL). He admits that the description in the column where the seal impression is put in Exh. 596 shows that the seal impression was used to seal a sample of 10 gms. He further admits that impression of brass seal that is used to seal an article is required to be sent to the FSL on the forwarding letter. The impression of the brass seal in Exh.596 has been used in his opinion as described in column above it. He further states that he does not know when the lac seal impression was put on the 10 gms. sample.

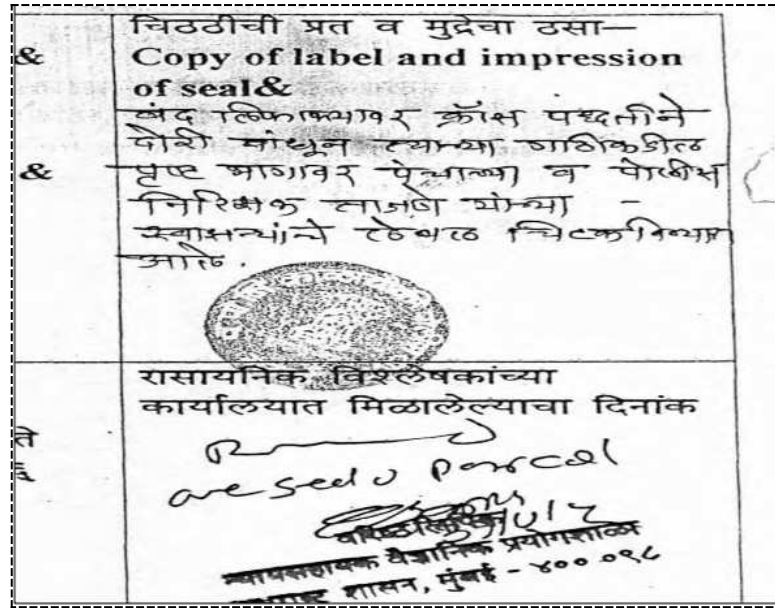
591. From the above referred evidence, the things which got clarified are that the RDX which was seized from A.1, was packed in Khaki paper and tied with thread and a label containing signatures of panchas and PW-161, was pasted on the sample of 10gms and remaining RDX packed in the jar separately. The evidence of PW-161, PW-107, and PW-22 do not refer about sealing of the above referred articles. It is, thus, evident that no brass seal or lac seal was used.

592. It is further evident from the evidence of PW-41 and DW-51 that PW-41 received the sealed packet from PW-161 Shri. Tajne with forwarding letter and not from Muddemal room. DW-51 admits the fact of having impression of brass seal on the samples sent to the FSL and further he showed ignorance when the lac seal impression was put on the sample.

593. PW-189 Balu Daundkar (Chemical Analyst), in his ocular evidence, admits that the impression of seal was of Kalachowki Police Station and it was tallying with the seal of the packet.

594. Before going further, let us see the seal to which PW-41 and DW-51 are referring to. The image of the relevant portion of Exh.596, which is a forwarding letter sent to FSL along with 10gms sample of RDX seized from A.1, is reproduced here under: -

Image No. 1



595. From the above referred image, it can be seen that the lower portion of it relates with acknowledgment given by FSL. It is dated 31/07/2006. It mentions receipt of one sealed packet. The seal, which is referred in the acknowledgment, is in the middle portion of the image. The said seal depicts the copy of label and impression of seal on the sample. The seal is of Kalachowki Police Station. Whereas, the evidence of PW-161, PW-107 and PW-22 do not refer to such seal, on the contrary, they only state that the sample was kept in small plastic bag, wrapped in khaki paper, which was tied with thread. Thereupon, a label containing signature of panchas and PW-161 was pasted.

596. Admittedly, the sample was seized from A.1 on 20/07/2006, it was forwarded with the forwarding letter dated 29/07/2006 to FSL and

received by the FSL on 31/07/2006. The prosecution has not brought on record any evidence to show where the sample was between 20/07/2006 to 30/07/2006 and in what condition, particularly whether it was in a tamper-proof condition. Whereas, the above discussion does not even slightly suggest that it was kept in proper custody and was in a tamper-proof condition throughout.

597. For the sake of convenience, we repeat that it is a settled position of law that the prosecution should establish that after effecting recovery of articles, the articles were sealed and they were kept throughout in sealed condition and were kept in proper custody till being sent to the chemical analyst. This is to be done to eliminate the suspicion that the articles were tampered.

598. In light of the above referred findings recorded and well settled principles of law, no evidentiary value can be attached to the said recovery of RDX from A.1.

A.3 – Faisal Shaikh

599. A.3 – Faisal was arrested on 28/07/2006 in Cr. No. 77/2006. According to the prosecution, A.3 was the in-charge of the entire conspiracy and execution of the bomb blasts, acting under the instructions of the L-e-T commander, Azam Cheema (wanted accused). Additionally, the prosecution asserts that A.3 was the individual who planted the bomb on the DN 619 Borivali Slow train.

600. After his arrest, the police took A.3 for his house search on 28/07/2006. During the said house search, the police found black powder on the floor of the upper compartment of a cupboard, which was made of cardboard. The powder was wiped with the cotton swabs. As per CA Report, it was cyclonite (RDX – used as high explosive) and charcoal. These swabs and some other articles were seized. We will now examine the evidentiary value of the seizure of RDX from A.3.

601. Learned Sr. Counsel Nagamuthu submitted that it is the prosecution's case that a few specks of black powder were seen in A.3's cupboard and collected in 3 cotton swabs on 28/07/2006. ACP Shengal was present during the seizure (Exh.533). As per the seizure panchnama, the three swabs of black powder were put in a khaki envelope tied with a thread and sealed with a label containing the signature of the panchas and police officials. The panchnama does not mention the use of lac seal. It is an admitted position that FSL Kalina returned the swabs seized from A.3's house on 03/08/2006, six days after it was seized, as they were not in a sealed condition. The same was then sealed and resent to FSL on 04/08/2006. This shows that from the date of seizure on 28/07/2006, till the date of dispatch to the FSL on 03/08/2006, the swabs were in an unsealed condition and vulnerable to tampering.

602. On the other hand, learned SPP submitted that it has already been clarified that in 2006 the ATS did not have its own seal and the panch witness has very candidly stated that the packing was done in such a manner that, after tying the thread, the label bearing the signatures of the Panchas and the police officer was affixed in such a

manner that, without cutting the thread or without tearing the label, the substance inside cannot be tampered with.

603. In light of the rival contentions, let us see whether the evidence brought on record indicates that the RDX was sealed in a tamper-proof condition after being seized.

604. PW-176 PI Rathod IO of Cr. No. 77/2006, in his deposition, stated that on 28/07/06, he, ACP Shengal, PSI Kshirsagar and staff along with A.3 - Faisal and A.9 - Muzzammil went to the house of A.3 in Bandra. A.3 showed them a room on the right side and informed that he lives there. In the living room, there was a cupboard. On inspecting the upper compartment minutely, they noticed black powder on the floor of the compartment, which was of cardboard. The powder was wiped with the cotton swabs. The swabs were put in a polythene bag and the bag was put in a cardboard box that was there, the box was wrapped with a khaki paper, tied with thread and a label containing his and panchas signatures was affixed on the knot of the thread and taken in custody.

605. PW-31 Sanford Fernandes (Panch witness) deposed that in one corner of the upper compartment, there was black powder. The officer took the powder on the cotton bundle and put it in a plastic bag, put the plastic bag in a cardboard box, wrapped it with brown paper, tied the box with a thread and took their signatures on a piece of paper and pasted it on the box.

606. From the evidence of IO PW-176 and panch witness PW-31, it is evident that the swabs, by which black powder was wiped and

subsequently certified by FSL as RDX, was kept in the box which was wrapped with khaki paper tied with thread and a label containing signature of PW-176 and panchas was affixed on the knot.

607. Thus, it is further evident that the swabs were not sealed. This fact is further fortified by the evidence that the packets containing these cotton swabs were returned by FSL on the ground that it was not in a sealed condition. The FSL asked to put the lac seal of any police station and send it back.

608. Thereupon, PC More was sent to Kalachowki on 04/08/2006 to put the lac seal on the said packet. He did as directed and took the sample with forwarding letter dated 03/08/2006 (Exh.598), signed by him on 04/08/2006 after making the suitable correction by mentioning that the seal of Kalachowki police station is affixed.

609. The above referred evidence sufficiently establishes that the swabs in question were not sealed and in proper custody to eliminate the suspicion that it was in a tamper-proof condition.

610. At this juncture, it is important to note that the swabs were collected on 28/07/2006 from a flat alleged to be in possession of A.3 on the date of house search. But as per the story of the defence, A.3 vacated the flat on 20/06/2006. This is evident from the leave and license agreement (Exh.537). No evidence is brought on record by the prosecution to show that on the date of house search, A.3 was in possession of the said flat on the basis of any legal document. Thus, it also creates doubt about the house search and recovery.

611. In light of the above referred findings recorded and well settled principles of law, no evidentiary value can be attached to the said recovery of RDX from A.3.

A.6 - Mohd. Ali

612. A.6 was arrested on 29/09/2006. As per the case of the prosecution, bombs were prepared at his house in Shivaji Nagar, Govandi. After his arrest, the police took him for his house search on 29/09/2006. During the said house search, the police noticed black and white spots on the inner side of a bed, which was wiped with cotton swabs. As per CA Report (Exh.2383), cyclonite (RDX) and charcoal were detected on one swab and ammonium, nitrate and traces of cyclonite (RDX) were detected on the other swab.

613. As regards seizure of RDX from A.6, the learned counsel for the defence submitted that on 29/09/2006, while searching A.6's house, ACP Shengal spotted black and white stains in the inner compartment of the bed and scraped the stains with two cotton swabs. PW-161 states that there was a black patch and a white patch each about 2-3 inches. PI Tajne PW-161 and stock panchas PW-58 and Mukesh Rabadiya were present for this seizure. Both the panch and PW-161 mention that the swabs were sealed with paper labels but do not mention that lac seal was used. Panchnama only mentions that it was sealed with paper labels containing the signature of the panchas and police.

614. Learned Sr. Counsel Shri. Nagamuthu submitted that the seizure of RDX from A.6's house was done in the presence of ACP Shengal and PW-161, who assisted ACP Shengal in the Malegaon

investigation, and hence, the possibility of tampering and fabrication cannot be ruled out.

615. Learned Sr. Counsel Shri. Nagamuthu further submitted that the panchas to the present seizure were PW-58 and Mukesh Rabadiya (PW-74 Vishal Parmar's employer) who have both been used as panchas previously by ACP Shengal. This shows that the seizure is a charade enacted only to implicate the accused. Further, PW-72, the carrier who took the RDX seized from A.6's house to FSL, has stated that PW-186 ACP Patil called him to his office and handed over the packet to him there. It is, therefore, clear that the sample was kept in the IO's personal custody and not in the muddemal room, and hence, the possibility of tampering cannot be ruled out.

616. Learned SPP argued that the panch witness has clearly stated that the packing was done in such a way that, after securing the thread, the label with the signatures of the Panchas and the police officer was attached in a manner that prevented any tampering with the contents inside, unless the thread was cut or the label was torn.

617. Learned SPP further submitted that unnecessary criticism has been made by the defence about Mukesh Rabadiya (panch witness of A.6's house search) only because he was the employer of PW-74 (the eyewitness who identified A.4 – Ehtesham). The defence's argument is that it cannot just be a coincidence that the employer is the panch witness and the employee is the eyewitness in the same case and therefore, both of them are planted by police. Learned SPP submitted

that Mukesh Rabadiya has not been examined in this case because he was not alive at the relevant time, and therefore, it would not be just and proper to condemn Mukesh Rabadiya as he is not available to clarify under what circumstances and what reasons he was a panch witness in this case.

618. In light of the rival contentions, let us examine the evidence available on record regarding seizure of RDX from A.6's house.

619. PW-161 PI Tajne (Assistant IO) deposed that he, along with panchas and A.6 Mohd. Ali, entered the house. They took the search of a wooden box that was in the hall and found it to contain old clothes, suitcase and one Kanchan pressure cooker, that it was taken out for inspection, that on further minute observation of the bed, they noticed black and white spots on the inner side of the bed. They suspected the spots to be of some explosive substance, therefore, they wiped those white and black spots with the help of clean and dry separate cotton swabs, put the cotton swabs in small plastic bags, wrapped the bags in khaki paper, affixed label containing their and panchas signatures and sealed it at the spot. The pressure cooker was kept in a plastic bag and seized.

620. PW-186 ACP Patil states that he sent the cotton swabs to the FSL for analysis under a forwarding letter (Exh.796) with PC-27844. The report of the CA (Exh.2383) reported that cyclonite (RDX) and charcoal are detected on one swab and ammonium, nitrate and traces of cyclonite (RDX) were detected on the other swab.

621. PW-58 Pritam Mhatre (Panch Witness) deposed that inside the wooden bed, the officer saw white and black stains, the officer scraped the stains by two separate cotton swabs, put the cotton swabs in separate plastic pouches, the cotton swabs were first wetted and then the stains were scraped. The plastic pouches were packed in khaki packets and sealed and their signatures were taken.

622. From the evidence of PW-161 and PW-58, it can be seen that during the house search of A.6, inside the compartment on the floor of the bed, police saw some white and black stains, which were scraped by two separate cotton swabs. The cotton swabs were put in separate plastic pouches, which were then wrapped in khaki paper, affixed label containing their and panchas signatures and sealed it at the spot.

623. From the evidence of above referred witnesses PW-161 and PW-58, the swabs were put in separate plastic pouches which were wrapped in khaki paper and thereon label was affixed containing signature of PW-161 and panchas. There is no mention of sealing of the packet in which the swabs were put in.

624. In light of the above referred evidence, it cannot be said that the prosecution has established that the swabs which were sent to FSL for chemical analysis, were kept throughout in proper condition and sealed condition, i.e. in a condition to avoid tampering of the same.

625. For the sake of convenience, we reiterate a settled position of law that the prosecution shall establish that after effecting recovery of articles, the articles were sealed and they were kept throughout in sealed condition and in proper custody till being sent to the chemical analyst.

This is to be done to eliminate the suspicion that the articles were tampered.

626. Having held that the prosecution failed to prove swabs were not kept in proper custody and sealed condition, no evidentiary value can be attached to the alleged recovery of RDX from A.6.

A.12 - Naveed Khan

627. A.12 – Naveed was arrested on 30/09/2006 in Cr. No. 156/2006. As per the prosecution, A.12 was one of the bomb planters in the present case. During his police custody, on 22/10/2006, A.12 allegedly volunteered to disclose the location of A.3's Maruti-800 car, which they used for transferring the bombs from A.6's house to A.3's house on the night of 10/07/2006. Accordingly, a Maruti-800 car was recovered by the police, in which they saw blackish spots in the boot compartment, and in between the driver seat and the rear seat. These spots were wiped with cotton swabs. As per the CA Report (Exh. 2391), cyclonite (RDX), petroleum hydrocarbon oil and charcoal were detected on three cotton swabs taken from the backside of the driver seat, and ammonium, nitrate and nitrite radicals were detected in the other three swabs taken from the boot (dikki), and cyclonite (RDX), ammonium, nitrate, nitrite, petroleum hydrocarbon oil and charcoal were detected in the car.

628. Learned Sr. Counsel Nitya Ramakrishnan argued that ATS claims that A.12 led them to a place in a block of flats where the car was found parked and told them that the key would be found with one Rizwan Khot. Upon going to Rizwan Khot and getting the key from

him and opening the car, the ATS claims that some black spots in the boot and between the front and back seats were found, of which smears were taken, later found by FSL to be smears of RDX. It is submitted that the car was standing in public place and these recoveries were shown to be made after more than three months. Therefore, much weightage cannot be given to the recoveries.

629. On the other hand, learned SPP submitted that the evidence of recovery of Maruti 800 car has been criticized on the ground that 1) it was found parked in an open public space and therefore it will not come within the ambit of recovery under Section 27, and 2) the key of the car was found with Rizwan Khot who was not examined. However, it is submitted that what is relevant is the fact that A.12 took the police upto that car. And the house of Rizwan Khot being pointed by A.12 from where the key of the car was taken.

630. In light of the rival contents, let us examine the evidence regarding the recovery of car from at the instance of A.12.

631. PW-168 PI Khanvilkar in his deposition states that A.12 led them to the compound of Al Hatim Building and pointed out to a white Maruti 800 car amongst other cars that were parked by the side of the south compound wall and said that it was the car of A.3 - Faisal.

632. The car was opened with the key that was given by Rizwan Khot. He searched and minutely examined the vehicle and in the boot compartment he saw blackish spots, that similar spots were there in between the driver seat and the rear seat, that he wiped the spots from three places in the boot with the help of cotton swabs that were in the

investigation kit, put them in three separate plastic pouches wrapped them in separate khaki papers, affixed labels containing the description of the contents of the pouches and his and panchas signatures and sealed them with the ATS seal, marked the pouches on the labels as Ex. A (v), A1 (v1) and A2 (v2) in Marathi.

633. PW-50 Pawale (Panch witness for recovery of car) stated that police inspected the car by torch, they saw some black spots on the back side of the driver seat; the black spots were wiped by three cotton swabs out of the cotton that was, with the police in the stationery articles, that they put the cotton swabs in separate plastic bags, that there were similar black spots in the boot, they wiped the black spots by three cotton swabs and put them in separate plastic bags, put all the plastic bags in separate khaki covers, covers were pasted close and their signatures were taken on the labels that were pasted on the khaki covers, that police seized the car and took the keys.

634. PW-157 Mahesh Digambar Bagwe (FSL Carrier), in his deposition, stated that on the instructions of ACP Patil on 26/10/2006 he went to the FSL, Kalina taking with him a letter address to the FSL, Kalina, six sealed packets from the muddemal section and Maruti 800 car no. MH-01-V-9568, which was in the compound of the ATS office at Kalachowki. He deposited the six sealed packets, obtained acknowledgement on the copy of the letter, office copy of which is at Ext, 1686.

635. PW-186 ACP Patil, in his deposition, states that the report of the FSL Ext. 2391 was received and the contents of the report show that

cyclonite (RDX), petroleum hydrocarbon oil and charcoal, were detected on three cotton swabs and ammonium, nitrate and nitrite radicals were detected in the other three swabs and cyclonite (RDX), ammonium, nitrate, nitrite, petroleum hydrocarbon oil and charcoal were detected in the car.

636. As per the prosecution's case, A.12 parked the car from where it was seized on a public road on 10/07/2006. Admittedly, the search was made on 22/10/2006, i.e. after more than three months. The car was accessible and visible to anyone since it was parked on the public road. Moreover, keys were with one Rizwan Khot, who has not been examined in this case.

637. The Hon'ble Supreme Court of India, in the case of *Himachal Pradesh vs. Jeet Singh* (1999) 4 SCC 370, has held thus: -

638. "26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others." It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. **Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others.** If it is not, then it is immaterial that the concealed place is accessible to others." [Emphasis Supplied]

639. In the present matter, it is not the case of the prosecution that the car was not visible to the others. Since the car was on a public road,

it was visible to everyone. Furthermore, considering the period lapsed in between, which is more than three months, such recovery creates doubt about its genuineness.

640. The arguments made by the defence that in the panchnama there is no mention of lac seal, however, it has first time came in the evidence of PW-161, is contrary to record.

641. However, from panchnama, it can be revealed that the panchas have stated that after the signature of them were taken, a seal was put on the same. The panchas might not have said it in clear terms that the seal was a lac seal, but the statement in the panchnama suggests that it was the same seal which has been referred in the oral testimony of PW-161.

642. However, in light of the above referred findings recorded and well settled principles of law as regards the recovery under section 27 of Indian Evidence Act and a recovery made from a place which is easily visible, no evidentiary value can be attached to the said recovery of RDX from A.12.

A.13 - Asif Khan Bashir Khan

643. A.13 was arrested on 03/10/2006 in Cr. No. 156/2006. As per the prosecution, he was the planter who planted bomb in DN 621 Virar Fast train. During his police custody, on 09/10/2006, he volunteered to show the place where he had hidden some remaining articles used for preparing the bombs.

644. Learned Counsel Chaudhary states that neither the panch, nor the investigating officer mentions the presence of any 'black oily lumps', RDX or any powder in their oral substantive evidence. PW-55 Panch witness states that he had seen the rexine bag from inside but does not mention seeing any 'black oily lumps'. It is submitted that whereas in the CA Report there is a mention of black oily lumps. Mentioning of black oily lumps were found. This creates doubt about the recovery of bag having black oily lumps.

645. It is further argued that the sealed packets were handed over to the carrier PW-164 by ACP Patil (PW-186) and not from muddemal room. It is further pointed out that the malkhana is at Kalachowki whereas, packets were handed over to PW-164 at Bhoiwada police station, which shows that it was not in proper custody and in tamper proof condition.

646. The bag having alleged black oily lumps, granules and detonators were seized by putting label on it to the signature of panchas and PW-16. It is argued that no lac seal was used. It is, therefore, argued that on the ground of not having proper seal and not keeping the above referred articles in proper custody, this seizure cannot be relied upon.

647. Learned SPP submitted that, as regards the allegations that the material recovered from A.13's flat was planted by the investigating agencies, states that 23 Books, wires, granules, detonators were found at the Mira Road flat. If we think of all these items collectively, we can imagine its link to the case. Further Learned SPP argues whether it can even occur to anyone that we must collect such-such things and plant

them at the flat so that it will look like the residing people were planning a bomb blast. Learned SPP submits that if at all the materials were planted, they would have been planted in such a manner that would provide a concrete link furthering the case of the prosecution. Irrelevant things would not have been planted. Further, Learned SPP states that as the Panch witness has been examined, the theory of planting is not tenable.

648. Further, Learned SPP states that no case is perfect. There is always some or the other lack in the procedure. Little allegations such as ATS officials did not visit Mira Road flat, the key maker was not called, the panchanama was not recorded, the panch witnesses were not with them, etc. will not go to the root of the matter of this stature.

649. Shri. Tajne (PW-161), in his deposition, stated that he was interrogating A.13 along with ACP Tawde, PSI Kadam and staff on 09/10/2006. A.13 expressed his desire to make a voluntary disclosure.

650. PW-161 further states that, after reaching to his flat, A.13 took them and the panchas to the bedroom and took out one rexine bag (Art.279) that was kept below suitcase and other bags in the bedroom. A.13 opened the zip of the rexine bag and took out one white plastic bag (Art.284A). On examining the contents of the plastic bag, they found white granules (Art.284) in it. It was weighing about 2.7 kgs. They asked the accused about the granules, but he did not give any reply. The smell of the granules was strong. They suspected them to be explosive, hence they took out two samples of 10 gms each and put them in small separate plastic pouches. Thereafter, A.13 took a blue

coloured plastic bag from the other side of the rexine bag. It was containing 10 aluminium tubes to which wires were joined. On examination, they found them to be electronic detonators. They carefully kept those detonators in plastic bottles. PW-161 pasted labels containing his signature and Panchas' signature on the samples of the granules and the plastic bottles containing detonators and sealed them. The rexine bag was also seized.

651. PW-55 then narrated the story after reaching the flat of A.13. He states that A.13 took them inside to a bedroom on the left side. An attache and a rexine bag were in the room. The accused opened the rexine bag and took out articles that were in a transparent bag. There was white powder in the transparent bag. In the corner of the rexine bag, there was a blue carry bag. From the carry bag, he produced 20 pieces of white wire, each about 5-6 inches long, two of which were attached to an aluminum head that was about one and half inches long. The powder was weighed and found to be 2.700 kgs. Two 10 gm samples were taken from the powder in separate bags. The remaining powder was packed in a khaki paper seal and their signatures taken. The wires were wrapped in cotton, put in plastic bottle that was in the kitchen, a label was pasted on it, and they were asked to sign. The samples were in khaki papers, sealed, and their signature were put on label. The rexine bag was ash colored, having chain, and the words 'Hindustan ki Kasam'. PW-55 had seen the bag from inside.

652. PW-55 further states that they went back to the ATS office at Kalachowki, that the officer told them that he would have to call the dog squad for examining the articles that were seized. The packet of 10

gms. white powder was opened and it was placed before the dog, that when the dog smelt it, it started barking, the dog squad police said that the powder is explosive. The dog squad police lighted the powder which caught fire and gave a bad odour and it was cracking, that the remaining powder was kept in the packet and resealed.

653. PW-161, in cross examination, admits that there used to be a station diary entry when seal was taken out. There is no such entry on 09/10/2006 about taking the seal outside. There is no entry about he or his staff depositing the seal and sealing material at the Kalachowki unit on that day. No separate seal movement register was maintained.

654. PW-150 Assistant IO, who was present for the recovery panchanama of A.13, in cross examination, deposed that only one brass seal was provided to the ATS and it was at Kalachowki. He personally did not take the seal out of the office at any time. He had not seen anyone taking out the seal from the office. He had not seen any one bringing the seal at the spot when any panchanama was in progress.

655. From the cross examination of PW-161 and PW-150, it is evident that there is no evidence brought on record by the prosecution that at the time of seizure of bag having black oily lumps, granules and detonators, lac seal was with PW-161. In these circumstances, the only conclusion about the word 'seal' used in the panchnama can be drawn as a seal by label affixed on the packets in which the articles were put in and such label was signed by the panchas and PW-161.

656. Moreover, it has come in the evidence that A.13 was taken from Bhoiwada police station, whereas, admittedly the seal was available at Kalachowki police station. No evidence is brought on record to show that the seal was taken from Kalachowki while going for house search of A.13.

657. PW-161, in his evidence, stated that lac seal was used while sealing the packets of articles recovered from the house of A.13. The FSL report also corroborates the same. However, as we have observed that there is no evidence to carry seal to the house of A.13, the question arises when such seal was put on the packets.

658. In the above referred backdrop it is also important to note here that PW-164 was handed over a forwarding letter for FSL along with the packets by PW-186 ACP Patil. The packets were not collected by PW-164 from malkhana, which was at Kalachowki. There is nothing to show that when the said packets which were handed over to PW-164, were taken out from the malkhana and brought to Bhoiwada police station. Thus, it is difficult to say that the articles were in proper custody and in a tamper-proof condition.

659. In light of the above referred findings recorded and well settled principles of law, no evidentiary value can be attached to the said recovery of RDX from A.13.

660. As regards the recovery of printed circuit boards. It is pertinent to note that there is a technical report of the circuit board recovered

from A.7 – Sajid. The report reads thus “the electronic circuit in exhibit (4) contains Dual Tone Multi-Frequency (DTMF) receiver integrated circuit (IC) MT8870DE along with mobile wire, power wire and other components. These type of ICs are commonly used in the telephone circuits. It converts DTMF (tone) signal into its equivalent Binary Coded Decimal (BCD) code. A mobile phone or a specially built receiver circuit must be used along with the electronic circuit in exhibit (4) to provide the necessary trigger for the detonator. Any action in the mobile phone like call form other phone (landline or mobile), alarm feature of mobile phone... etc can trigger the detonator. Also most mobile phones can be set to emit a special ring tone when a call comes in from a specific phone number. The ringing of that tone can trigger the detonator.”

661. However, the prosecution has not brought on record what type of bombs were used in the present case. There is no evidence to show that the above referred circuit board was required for type of bomb used in the present case. Therefore, the recovery of circuit board will be dealt with in the second category of recovery, i.e. recovery other than the RDX, granules and detonators.

Recoveries Other Than RDX, Granules, & Detonators

662. The relevance of the recoveries other than RDX, granules, detonators and circuit boards, and its evidentiary value will be dealt with and considered at the end of the part relating to the confessional statements.

CONFESSION**Prior Approval To Invoke MCOCA**

663. In this case, the prior approval was granted by Addl. C.P. Shri. Jaiswal for invocation of provisions of MCOCA on a proposal of Shri. Khandekar (PW-174).

664. It is the case of the prosecution that, Shri. Khandekar (PW-174) was informed by Jaijeet Singh, Addl. C.P., ATS Mumbai, that, the DGP has transferred the investigation of the bomb blasts to ATS and ordered him to conduct the investigation of Crime No. 156 of 2006.

665. Then, PW-174 conducted the investigation parallel with investigation in the other crimes. Thereupon, PI Agrawal and PI Kadam received an information that Asif Khan Bashir Khan (A.13) is an active member of SIMI and he is involved in the railway blasts.

666. PW-174 also got to know from his sources that Asif Khan (A.13) had played a vital role in the Borivali Blast. He then passed on this information to DCP Bajaj, who thereupon, directed PW-174 to gather more information from his sources and other IOs and make a comprehensive report about it.

667. Subsequently, PW-174 came to know that there were some cases filed against A.13 at Jalgaon. He, therefore, asked ACP Tawde to collect information about those cases. ACP Tawde, accordingly, deputed an officer viz. PSI Padmakar Deore (PW-180) to collect the information regarding whereabouts of A.13 and cases, if any, lodged against him.

668. Whereupon, PW-180 along with PC Santosh Chorge went to Jalgaon, where they went to the SP office and met the concerned officers who were handling the cell of SIMI activists. There, they found the photograph of A.13 in the record and the information that he was the President of Jalgaon Unit of SIMI and there were two crimes registered against him with MIDC Police Station, Jalgaon, namely, (1) CR. No.178/1999 for the offences punishable under Sections 153-A(1) of IPC read with section 34 of IPC, and (2) CR No.103/2001 for the offences punishable under Section 153-A(1) of IPC read with Section 4 and 5 of the Explosive Substances Act, 1908 and Section 120-B of IPC, investigated by Local Crime Branch, Jalgaon.

669. PSI Deore (PW-180) and PC Chorge collected the photocopies of the FIR and other papers of both the crimes from the Police Station. To obtain further information, they went to the CJM Court and submitted an application seeking copies of the relevant papers of the above referred crimes against A.13.

670. PSI Deore (PW-180) then called PW-174 on phone and informed him the information he gathered, i.e., two crime numbers, sections of the offences, the date of order of conviction, etc. PW-174, thereupon, wrote down all the given information, upon which he realized that A.13 had more than one offences registered against him during the last 10 years.

671. PW-174 at the same time was also convinced that the A.1, A.2 & A.4 were involved in the commission of the crime that he was investigating.

672. This information, according to PW-174, disclosed to him that though SIMI was banned, it was operating as an illegal criminal organization, i.e., an organized crime syndicate and the accused A.2, A.4, and A.13 were continuing with the unlawful activities under that syndicate and promoting insurgency and obtaining pecuniary gains.

673. PW-174, therefore, prepared a proposal for invocation of provisions of MCOCA to the Crime No. 156/2006, which he was investigating.

674. On 18/09/2006, PW-174 sent the proposal for prior approval to DCP Naval Bajaj, ATS, Mumbai for onward submission. DCP Bajaj forwarded the proposal to Additional CP/ DIG Moffusil Shri S.K. Jaiswal.

675. Addl. CP Shri. Jaiswal granted prior approval on 24/09/2006 by recording his satisfaction that A.4 and A.2 are the active members of an organized crime syndicate/unlawful association, of which A.13 is a key member and they had been indulging in continuing unlawful activities which have been prohibited by the law for the time being in force. And which are cognizable offences punishable with the imprisonment of three years or more and have continually conspired for promoting insurgency to overawe the Government by criminal force.

676. The defence has raised challenge to the prior approval on numerous grounds. And after hearing both the parties, the following points emerged, which need to be discussed and answered. The points are namely: -

- (1) Whether Shri. Jaiswal, who granted prior approval, had jurisdiction to grant prior approval to invoke MCOCA?

- (2) Whether there was proper proposal seeking the prior approval?
/ Whether relevant documents and material were available before the sanctioning authority to reach a subjective satisfaction?
- (3) Whether the authority has applied its mind while granting prior approval?
- (4) Whether the fact that Shri. Jaiswal did not enter into the witness box, invalidate the prior approval on the ground that the same is not proved?
- (5) PW-174 identified the signature of Shri. Jaiswal, whether such identification of the signature will be sufficient to prove the contents of prior approval?
- (6) Whether a presumption under section 114 illustration (e) of Indian Evidence Act that the official acts performed by the public servants have been regularly performed will be applicable to the prior approval in question?
- (7) Whether the two chargesheets against A.13, which have been relied upon for grant of prior approval, satisfy the pre-requisites to constitute 'continuing unlawful activity'?

677. Let us now proceed to deal with each of the points referred herein above raised in respect of validity of prior approval.

Point no. 1: - Whether Shri. Jaiswal, who granted prior approval, had jurisdiction to grant prior approval to invoke MCOCA?

678. It is argued that as Shri. Jaiswal was working as an Additional CP Moffusil, and hence he did not have authority to grant prior approval as all the seven blasts took place within Mumbai City and not within his jurisdiction.

679. The Station Diary Exh.2546 shows that, on 18/09/2006, proposal for obtaining prior approval under Section 23(1)(a) of the MCOCA to invoke the provisions of MCOCA to Borivali Railway Police Station Crime No.156 of 2006 was submitted through DCP (Mumbai), ATS to the Additional CP, ATS, Mumbai and the prior approval was accorded by Additional CP, ATS, Moffusil. Thus, it is submitted that Shri. Jaiswal had no jurisdiction to grant prior approval in the present matter.

680. It is submitted that Shri. Jaiswal, being Addl. CP Moffusil, granted prior approval for the Malegaon Blast Case within Nashik district. It is submitted that a classification is created through separate posts, and therefore, there are two separate posts, one is having jurisdiction over Mumbai and another will have jurisdiction over rest of the Maharashtra. It is stated that rank of 'Addl. CP' is equivalent to the rank of 'DIG'. It is submitted that Shri. Jaijeet Singh was Addl. CP, ATS for Mumbai City, whereas, Shri. Jaiswal was Addl. CP, ATS for Moffusil/ rest of Maharashtra. Therefore, Shri. Jaiswal had no authority in this case to grant prior approval.

681. Learned SPP submits that the prior approval granted by Shri. Jaiswal is under section 23(1)(a) of MCOCA wherein the expression 'rank' is used, which means a class or category which encompasses multiple posts. It is, therefore, argued that since there is no dispute that Shri. Jaiswal is of the rank of DIG, the arguments about the jurisdiction of Shri. Jaiswal as made by the defence are contrary to the law and liable to be rejected. To buttress his arguments, he has placed reliance on *Zakir Abdul Mirajkar v. State of Maharashtra*, (2023) 20 SCC 408.

682. PW-174 in his oral evidence states that there were two Additional CPs in the ATS at that time. One was Jaijeet Singh, who had the charge of Mumbai and one was Jaiswal who had the charge of remaining Maharashtra.

683. The Government Order dated 8th July 2004 (Exh.1611) relates to constitution of Anti-Terrorist Squad (ATS). By the said notification, 26 posts were created under the ATS. Two posts out of the same were for Deputy Inspector General. One Deputy IG for Mumbai and another for rest of Maharashtra/Moffusil.

684. PW-186 states that, for the sake of convenience, one Additional CP was looking after the work of Mumbai and other was looking after the work of Moffusil.

685. Admittedly, Shri. Jaiswal granted prior approval under section 23(1)(a) of MCOCA which says that no information of the commission of an offence of organised crime, shall be recorded by a police officer without the prior approval of the police officer not below the rank of Deputy Inspector General of Police.

686. Thus, from the language of section 23(1)(a) of MCOCA, the police officer who is competent to grant the prior approval shall not be below the rank of Deputy Inspector General of Police. It is to be noted that the expression used is 'rank'. The Hon'ble Supreme Court of India had an occasion to deal with the scope of the expression 'rank' in the case of **Zakir Abdul Mirajkar (supra)**. The Hon'ble Supreme Court of India has held thus: -

“70. It is our view that the expression “rank” must be understood as a class or category which encompasses multiple posts. The posts of SP, Additional SP, and DCP all fall within the same rank as they exercise similar functions and powers and operate within similar

spheres of authority. Every person within a particular rank will not be of the same seniority. Officers of the same rank may have been in service for a different number of years. At times, this may even bear on the post to which they are appointed but their rank remains undisturbed. A difference in the seniority of a particular officer is not the same as a difference in their ranks. The insignia on officers' uniforms denote, in this case, their seniority as well as their designations."

687. From the above referred exposition of law, it is evident that the expression 'rank' must be understood as a class or category which encompasses multiple posts. Every person within a particular rank remains undisturbed while exercising similar functions and powers. Thus, in absence of any dispute that Shri. Jaiswal was of the rank of Deputy Inspector General of Police, we do not find any merit in the argument that merely because he was not Addl. CP of Mumbai, but of Mofussil, the prior approval will vitiate. PW-186 has rightly pointed out that it is for the sake of convenience that one Addl. C.P. was looking after the work of Mumbai and other of Mofussil. In the circumstances, we reject the submission of the defence and it is held that Shri. Jaiswal had authority to grant prior approval to invoke MCOCA in the present matter.

Point No. 2 to 6

688. Before discussing points no. 2 to 6, it will be beneficial to reiterate the law as regards prior approval. We have considered hosts of authorities on this point, namely, ***Fuleshwar Gope ..vs.. Union of India***, reported in 2024 SCC OnLine 2610, ***Central Bureau of Investigation ..vs.. Ashok Kumar Agrawal***, reported in (2014) 14 SCC 295, ***Prakash Singh Badal ..vs.. State of Punjab***, reported in (2007) 1 SCC 1, ***State of Karnataka ..vs.. S. Subbegowda***, reported in (2023) SCC OnLine SC 911, ***Vijay Rajmohan ..vs.. Central Bureau of***

Investigation, reported in (2023) 1 SCC 329, *State of M.P. ..vs.. Harishankar Bhagwan Prasad Tripathi*, reported in (2010) 8 SCC 655, *State of Punjab ..vs.. Mohd. Iqbal Bhatti*, reported in (2009) 17 SCC 92, *Mohd. Iqbal M. Shaikh ..vs.. State of Maharashtra*, reported in (1998) 4 SCC 494, *State of Bihar ..vs.. P.P. Sharma*, reported in 1992 Suppl. (1) SCC 222, *Mansukhlal Vitthaldas Chauhan. ..vs.. State of Gujarat*, reported in (1997) 7 SCC 622. The principles which could be culled out from the above referred authorities are as under: -

A) The validity of sanction, which decides the competence of the Court trying the accused, is based on the process followed while granting of sanction. The process of grant of sanction is not an idle formality or acrimonious exercise, but a solemn and sacrosanct act. 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. Therefore, independence of the authority granting approval/sanction is *sine-qua-non*, without which, it would have lost its entire purpose.

B) Invalidity of sanction, where sanction order exists, can be raised on diverse grounds like (1) non-availability of material before the sanctioning authority or all the relevant material was not placed before the authority, (2) the authority has not applied its mind to the material placed before the Authority, (3) insufficiency of material, (4) the order of sanction having been passed by an authority not authorized or competent to grant such sanction, (5) bias of the sanctioning authority. The list is only illustrative and not exhaustive.

C) The validity of the sanction would 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 material placed before it. It is desirable that the facts should be referred to on the face of the sanction.

D) Where the sanction order does not speak for itself, and in case the facts constituting the offence charged are not shown on the face of the sanction, it should be proved by leading evidence that all the particulars and facts were placed before the Sanctioning Authority for due application of mind. In case the sanction speaks for itself, then the satisfaction of the sanctioning authority is apparent by reading the order.

E) So long as the sanction is by a Competent Authority and after applying its mind to all materials and the same being reflected in the order, the sanction would hold to be valid. When an order does not so indicate, it would not render the order of approval or sanction to be invalid unless the prosecution fails to adduce evidence aliunde of the person who granted the sanction and that would be sufficient compliance. The Court would then look into such evidence to arrive at a conclusion as to whether application of mind was present or absent.

F) In every individual case, the prosecution has to establish and satisfy the Court by leading evidence that the entire relevant facts had been placed before the Sanctioning Authority and the Authority had applied its mind on the same and that the sanction had been granted in accordance with law.

G) As regards the grant/non-grant of sanction, it is what sets in motion, the machinery of strict laws, such as MCOCA or UAPA. Given the severity of these laws and the nature of activities with

which they are associated, the effect that they have on the person accused thereunder is not only within the realm of law, but also drastically affects social and personal life. Therefore, the procedure *qua* sanction provided in the legislation are meant to be followed strictly, to the letter more so to the spirit. Even the slightest of variation from the written word may render the proceedings arising therefrom to be cast in doubt.

H) The stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete, i.e., at the stage of final arguments in the trial. Such issue could be raised before the Court in appeal, revision or confirmation.

689. In light of the above referred well settled law, we now proceed to deal with each of the points referred herein above raised in respect of validity of prior approval.

Point No. 2: - Whether there was proper proposal seeking the prior approval? / Whether relevant documents and material were available before the sanctioning authority to reach a subjective satisfaction?

690. Learned Sr. Counsel Nitya Ramakrishnan submitted that the prior approval cursorily refers to pre-existing chargesheets against A.13 without even mentioning the crime numbers. Prior approval is said to be based on 'documents'. No documents have been listed, and there is no record of any documents being sent apart from the proposal. As per PW-174, apart from the 2.5 pages long proposal, no documents were sent with the proposal. PW-174's proposal was based only on a

telephonic conversation with PSI Deore (PW-180), who had gone to investigate A.13's antecedents at Jalgaon Police Station, and was made without reading the chargesheets.

691. Learned Sr. Counsel Nitya Ramakrishnan further stated that there is no case diary entry regarding PW-174 receiving copies of FIR, order on charge, etc. or sending it forward to Addl. CP Jaiswal, though he claims that he sent these documents 'subsequently'. Moreover, as per PSI Deore (PW-180), who had been tasked with obtaining the chargesheets from Jalgaon, received copies of documents relating to Crime No. 103/01 only on 29/09/2006, i.e. five days after the issuance of prior approval and thus, these could not have been perused by Shri. Jaiswal while issuing his order.

692. It is argued that, at the stage of grant of prior approval, the material which was collected by the prosecution did not justify the grant of prior approval.

693. On the other hand, learned SPP Shri. Thakare submits that there is no format laid down for the manner in which the prior approval has to be given. It is submitted that PW-174 PI Khandekar has categorically deposed that, after sending the proposal, he has personally discussed the material with Shri. Jaiswal giving details of the information he received about the crimes pending against A.13. It is argued that Shri. Jaiswal relied upon such information which was procured through public servant.

694. It is further argued that the material taken into consideration by Shri. Jaiswal is fortified by the record produced in evidence and it is not

contradicted. Therefore, even if physically, the certified copy of the previous charge-sheet against A.13 was not before Shri. Jaiswal, it does not vitiate his subjective satisfaction to grant prior approval.

695. In light of rival contentions on above referred point no. 2, it will be appropriate to first refer to the letter of prior approval issued by Shri. S.K.Jaiswal, DIG/Addl.C.P., ATS, Mumbai, which reads thus: -

“No.1490/Addl.C.P./ATS/2006
Office of the Dy. Inspector General of Police &
Addl. Commissioner of Police,
Anti Terrorism Squad, Mumbai.
Date: 24/09/2006

PRIOR APPROVAL

Reference: 1) Papers of investigation in Borivali Railway Police Station, Mumbai C.R. No. 156/2006 U/secs. 302, 307, 326, 436, 427, 120 (B), 121 (A), 123, 124 r/w 34 /PC r/w 3, 4, 5, 6, Indian Explosive Act, r/w 3 & 4 of Prevention of Damage to the Public Property Act, r/w 150, 151, 152, 153, 154, of Indian Railways Act r/w 10 & 13 of UAPA Act

2) Report Dt. 18/09/2006, initiated by P.I., P.M. Khandekar, the I.O. in above case & submitted by D.C.P., ATS, Mumbai.

I have perused the proposal submitted by Dy. Commissioner of Police, ATS, Mumbai Shri Nawal Bajaj, along with the documents sent up by the Investigating Officer P.I., P.M. Khandekar in Borivali Railway Police Station, Mumbai C. R. No. 156/2006 U/secs. 302, 307, 326, 436, 427, 120 (B), 121 (A), 123, 124 r/w 34 IPC r/w 3, 4, 5; 6, Indian Explosive Act, r/w 3 & 4 of Prevention of Damage to the Public Property Act, r/w 150, 151, 152, 153, 154, of Indian Railways Act r/w 10 & 13 of Unlawful Activities (Prevention) Act, 1967, pertaining to acts of insurgency and indulging in continuing unlawful activities consisting of criminal acts designed to overawe the Government by criminal force.

On going through the documents and report placed before me I am satisfied that the persons namely Ehtesham Qutubuddin Siddique (25) and Dr.Tanveer Ahmed

Mohammed Ibrahim Ansari (33) are the active members of an Organised Crime Syndicate/Unlawful Association of which one Asif Khan s/o Bashir Khan @ Junaid @ Abdullah is a key member. The said Asif Khan @ Junaid as also his associates namely Ehtesham Qutubuddin Siddique (25) and Dr. Tanveer Ahmed Mohammed Ibrahim Ansari (33) have been indulging in continuing unlawful activities, which have been prohibited by the law for the time being in force and which are cognizable offences punishable with the imprisonment of three years or more and have continually conspired for promoting insurgency to overawe the Government by criminal force. The two charge sheets filed against said Asif Khan s/o Bashir Khan @ Junaid @ Abdullah have been taken cognizance by the Competent Court, as defined in section 2 of Maharashtra Control of Organised Crime Act, 1999, as reflected from the report submitted by the I.O.

From the evidence on record, I am also satisfied that, there is sufficient evidence to prove continuous unlawful activities of the Organised Crime Syndicate/Unlawful Association and also that during the past ten years there have been two cases registered against both Ehtesham Qutubuddin Siddique and Dr. Tanveer Ahmed Mohammed Ibrahim Ansari for indulging in criminal activity of similar nature, prohibited by law for the time being in force and punishable with - imprisonment of three years and more.

I am further satisfied that Mohd. Faisal Aatur Rahman Shaikh (32) and Kamal Ahmed Mohd. Vakil Ansari (32) have also abetted and knowingly facilitated the continuing unlawful activities of the said Organised Crime Syndicate/Unlawful Association by rendering financial and other assistance and indulging in various acts preparatory to commission of organised crime.

Therefore, I, S. K. Jaiswal, Deputy. Inspector General of Police/Addl. Commr. of Police, Anti Terrorism Squad, Mumbai, in exercise of the power vested in me under section 23 (1) (a) of the Maharashtra Control of Organised Crime Act, 1999, hereby grant prior approval for recording information about the commission of an offence and for applying the provisions of section 3 (1) (i), 3 (2) & 3 (4) of Maharashtra Control of Organised Crime Act, 1999, to Borivali Railway Police Station, Mumbai C. R. No. 156/2006 U/secs. 302, 307, 326, 436, 427, 120 (B), 121 (A), 123 124 (A) r/w 34 IPC r/w 3, 4, 5, 6, Indian Explosive Act, r/w 3 & 4 of Prevention of Damage to the Public Property Act, r/w 150, 151, 152, 153, 154, of 10 Indian Railways Act r/w 10 & 13 of Unlawful Activities (Prevention) Act; And in consonance with section 23 (1) (b) I hereafter appoint Shri Sadashiv Laxman

Patil, Asstt. Commissioner of Police, Anti Terrorism Squad, Mumbai, to investigate the case.

Asstt. Commissioner of Police Shri Sadashiv Laxman Patil, should obtain previous sanction of the Commissioner of Police, Mumbai, under the provisions of section 23 (2) of the MCOC Act 1999 before submitting the charge sheet in the case.

*Given under my signature and seal
today i.e. on*

Sd/- 24/9/2006

(S.K.JAISWAL)

*Dy. Inspector General of Police/
Addl. Commissioner of Police,
Anti Terrorism Squad, Mumbai.”*

696. On perusal of the prior approval, it is evident that it refers to 1) Papers of investigation in Borivali Railway Blast (CR No. 156/2006), and 2) Report dated 18/09/2006, submitted by PI Khandekar (PW-174).

697. It is important to note that, though PW-174, the author of the report dated 18/09/2006, was examined and he referred to it in his ocular evidence, the report was not produced on record by the prosecution. No explanation or justification is provided by the prosecution for not bringing the said document on record.

698. In the circumstances, it is difficult to ascertain the contents of the report and the information, or material submitted along with it by PW-174. In turn, it is further difficult to ascertain the material considered by Shri. Jaiswal while granting the prior approval.

699. In this backdrop, a note of certain facts needs to be taken. The bomb blasts took place on 11/07/2006. Whereas, the report for invocation of provisions of MCOCA was submitted on 18/09/2006, i.e. after more than two months of the incident.

700. PW-174 deposed that there was no confession, recovery, discovery from any accused, and no accused had been arrested and no test identification parade had been conducted in his crime (Cr. No. 156/2006). He further states that there was no evidence in his crime for sending chargesheet against any accused.

701. Thus, we can say that, even after the investigation for about 67 days, no evidence in his crime (CR. No. 156/2006) was found by PW-174 worth sending chargesheet against any accused.

702. Thus, to find out what material could have been submitted by PW-174 along with his report, we will have to consider, what was the material available with PW-174 on 18/09/2006, i.e., on the date of submission of the report.

703. It can be seen from the record that PW-174, after receiving the information of involvement of A.13 – Asif in the Borivali Blast (CR. No. 156/2006), forwarded it to DCP Bajaj, who directed him to gather further information. Thereupon, ACP Tawde deputed PSI Padmakar Deore (PW-180) to collect the information.

704. PW-180 deposed that in July 2006, he was attached to Azad Maidan Police Station as a PSI and, as per the order of the Commissioner of Police, he was then attached to the ATS. In the middle of September, ACP Tawde asked him to take information of Asif Khan Bashir Khan, SIMI Activist, resident of Jalgaon, as to his whereabouts and whether there are any cases lodged against him at Jalgaon. Accordingly, he, along with PC Santosh Chorge, went to

Jalgaon immediately on the same day and reached Jalgaon the next morning. They went to the SP Office and met the concerned officers who were handling the cell of SIMI activists. There, they found the name and photograph of A.13 – Asif in the record, and the information that he was the President of the Jalgaon Unit of SIMI and that there were two crimes registered against him with the MIDC Police Station, Jalgaon, namely, 1) C.R. No. 178/1999 for the offence u/s 153A(1) of IPC r/w section 34 of IPC, and 2) C.R. No. 103/2001 for the offences u/s 153A(1) of the IPC r/w sections 4 & 5 of the Explosive Substances Act and section 120B of the IPC.

705. The first crime had been investigated by the MIDC Police Station, in which, RCC No. 219/2001 was registered in the Court, and it was disposed off. The second crime was being investigated by the LCB, Jalgaon in which, a chargesheet had been sent in the Sessions Court. They collected the photocopies of the FIR and other papers of both the crimes from the police station. To obtain further information, they went to the CJM Court where they found that A.13 – Asif was shown as a proclaimed offender in March 2002. Then, they moved an application seeking copies of the relevant papers on the same day itself; but they were told that the copies would be available in 2-3 days. PW-180 then called PW-174 on phone and informed him about all the information that he had gathered, i.e., the two crime numbers, sections of the offences, date of proclamation, date of order of conviction, etc. PW-174 wrote down all the given information.

706. The next day, PW-180 and PC Chorge tried to collect information about A.13 - Asif by making a confidential inquiry in the areas where the accused used to be. The next day, both of them went to

the Sessions Court to verify the details of the second crime. The staff told them that the files of that case have been sent to the High Court as one of the convicted accused had filed an appeal.

707. Thereafter, both of them went to the CJM Court and collected the certified true copies of the documents of which the application had been given earlier. Upon receiving the certified copies, PSI Deore called ACP Tawde and told him about the receipt of the certified copies. As per the instructions of ACP Tawde, PSI Deore sent the documents with PC Chorge to the ATS Office and asked him to hand over the documents to ACP Tawde.

708. This is how PW-180 received the following six documents from Jalgaon relating to the cases against A.13: -

- (i) Roznama in RC No.219/2001 (CR 178/1999) (Exh.1506),
- (ii) Charge framed in RC No.219/2001 (Exh.1507),
- (iii) Judgment in RC No.219/2001 (Exh.1508),
- (iv) FIR in CR No.178/1999 and Supplementary Charge-sheet (Exh.1509),
- (v) Charge framed in CR No.103/2001 (Exh.1510) and
- (vi) FIR in CR No.103/2001 (Exh.1511).

709. Admittedly, PW-180 received the document no. (iii) on 21/09/2006, document nos. (i), (ii) and (v) on 22/09/2006 and document nos. (iv) and (vi) on 29/09/2006.

710. PW-174, in his oral evidence, admits that he received these documents only after 22/09/2006. He admits that documents no. (ii), (iii), (v), & (vi) were received by him on 23/09/2006 or in the morning

of 24/09/2006. He further admits that document no. (iv) was received by PW-180 on 29/09/2006.

711. Thus, without the slightest doubt, it is clear that on the date of submission of report by PW-174, i.e. on 18/09/2006, none of the above relevant and material documents was with PW-174. Therefore, there is no question of these documents being a part of the report dated 18/09/2006.

712. PW-174 admits that he had not sent the charge-sheets with the proposal and did not have copies when the report for prior approval was sent. In cross-examination, he states that he sent these documents subsequently to Shri. Jaiswal. However, he did not specify the date of sending these documents to Shri. Jaiswal. Furthermore, no case diary entries are produced in support of it.

713. Admittedly, there is no reference or mention about the receipt of these documents by Shri. Jaiswal in the prior approval. Moreover, the prior approval does not suggest, that, these documents were considered and were made the basis for invocation of MCOCA. Hence, it can safely be said that Shri. Jaiswal had no occasion to apply his mind to these documents to reach to a subjective satisfaction required for grant of prior approval.

714. PW-174 admits that only two previous cases at Jalgaon were relied upon for invoking the provisions of the MCOCA. Thus, two charge-sheets at Jalgaon were the only basis for showing continuous unlawful activities. He further admits that rest of the cases, referred in his evidence, were not considered for prior approval.

715. From the above referred evidence and discussion, it is evident that till the time the prior approval was granted, Shri. Jaiswal could not peruse and consider the above referred two chargesheets. However, the same were vaguely and without details, referred in the prior approval and made basis to grant prior approval.

716. It is further evident from the evidence of PW-174 that, he received the information of the said two chargesheets on telephone from PW-180 and he forwarded the same orally to Shri. Jaiswal. Thus, it can safely be said that, on the basis of telephonic information about the two chargesheets, Shri. Jaiswal without looking into the documents and without verifying its veracity, granted the prior approval for invocation of MCOCA.

717. It is a settled law that the validity of sanction would 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. In the circumstances, we have no hesitation to hold that the relevant and material documents were not supplied to Shri. Jaiswal before grant of prior approval by him. Therefore, Shri. Jaiswal had no occasion to apply his mind to such documents and material, including two chargesheets, which are made basis for grant of prior approval.

Point No. 3: - Whether the authority has applied its mind while granting prior approval?

718. Learned Sr. Counsel Nitya Ramakrishnan submits that Shri. Jaiswal claims to have satisfied himself that two chargesheets were filed against A.13. However, he does not even refer to the case numbers. The

prior approval order does not disclose that the necessary facts were considered by Shri. Jaiswal. Nor has any other evidence been brought to prove the same.

719. Learned Sr. Counsel Nitya Ramakrishnan further stated that the only provision similar to S.23(1)(a) of MCOCA in Indian law, was S.20A(1) of TADA. The Supreme Court has held that prior approval under S.20A(1) of TADA, must be given only after proper application of mind, which involves checking the veracity of allegations by enquiring into the records relating to the same. In the absence of such verification, the prior approval is neither proper nor valid, and proceedings are vitiated. A reliance has been placed for this purpose on the judgments of the Hon'ble Supreme Court in the case of *Anirudhsinhji Karansinhji Jadeja v. State of Gujarat* reported in (1995) 5 SCC 302 and *Ashrafkhan v. State of Gujarat* reported in (2012) 11 SCC 606.

720. It is submitted that the relevant ingredients and conditions for invocation of MCOCA did not exist when prior approval was granted. And, from the contents of the letter of prior approval, it is evident that no information is disclosed satisfying the relevant ingredients and conditions for invoking the provisions of the MCOCA.

721. It is argued that in the prior approval, except the fact that seven blasts have taken place, no details about the offences are given. Though there is a use of term 'organisation', it does not disclose the basic information of such organisation. The word 'SIMI' is not used in the prior approval, which shows that Addl. CP Jaiswal had no knowledge about which organisation is involved. Though the names of A.4 –

Ehtesham, A.2 – Tanveer, A.3 – Faisal, and A.1 – Kamal are mentioned in the prior approval, the two charge-sheets against A.13 - Asif have been relied upon for the purpose of grant of prior approval.

722. Learned SPP submits that, under Section 23(1)(a) of the MCOCA, what is required to be seen is that the accused are continuously indulging in the activities prohibited by law, which are cognizable offences punishable with imprisonment of three years or more and, in respect of which, more than one charge-sheet shall be filed in the Court of competent jurisdiction within the preceding period of ten years and, of which, Competent Court has taken cognizance. It is submitted that, since the prior approval is based on the subjective satisfaction, it cannot be tested by the objective circumstances.

723. We have already held at the time of grant of prior approval by Shri. Jaiswal that, he was not supplied with relevant documents and material which would require for subjective satisfaction. In the said backdrop, let us examine whether the prior approval *ex facie* discloses consideration of the relevant ingredients for invocation of provisions of MCOCA. The prior approval was granted under Section 23 of MCOCA.

724. Section 23 of MCOCA broadly deals with:

- i) recording of information about the commission of an offence,
- ii) investigation of an offence, and
- iii) taking cognizance of an offence by the Special Court.

725. More specifically, Section 23(1)(a) speaks about recording of information and mandates that no information about the commission

of an offence of organized crime under the Act shall be recorded by a Police Officer without the prior approval of the Police Officer not below the rank of Deputy Inspector General of Police.

726. Sub-Section 1(b) of Section 23 provides that no investigation of an offence under the Act shall be carried out by a Police Officer below the rank of the Deputy Superintendent of Police.

727. Sub-Section (2) of Section 23 talks about previous sanction to take cognizance of offence by the Special Court and commands that no Special Court shall take cognizance of any offence under the Act without the previous sanction of the Police Officer not below the rank of Additional Director General of Police.

728. At this stage, it would be beneficial to refer to the definitions of 'organised crime', 'continuing unlawful activity' and 'organised crime syndicate'.

729. '**Organised Crime**', as referred in Section 23(1)(a) of the MCOCA, is defined under Section 2(e) of the MCOCA and means, any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency.

730. The definition of “Organised Crime” makes it clear that, to constitute organised crime, following relevant ingredients and conditions are necessary: -

- i) Any continuing unlawful activity;
- ii) by an individual, singly or jointly, either as a member of organized crime syndicate or on behalf of such syndicate;
- iii) by use of
 - (a) violence or
 - (b) threat of violence or
 - (c) intimidation or
 - (d) coercion or
 - (e) other unlawful means;
- iv) with the objective of
 - (a) gaining pecuniary benefits or
 - (b) gaining undue economic or
 - (c) other advantage for himself or any other person or
 - (d) promoting insurgency.

731. From the above referred definition of organised crime it is further evident that to constitute organised crime the foremost condition is to have continuing unlawful activity by syndicate or on its behalf, as specified in Section 2(e) of the MCOCA.

732. ‘**Continuing unlawful activity**’ is defined under Section 2(d) of MCOC Act, which means an activity prohibited by law for the time being in force, which is cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate, in respect of which more than one charge-sheets have

been filed before a Competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.

733. Following are the relevant ingredients for constituting “continuing unlawful activity”: -

- (i) an activity prohibited by law for the time being in force;
- (ii) which is cognizable offence punishable with imprisonment of three years or more;
- (iii) undertaken either singly or jointly as a member of an organised crime syndicate or on behalf of such syndicate;
- (iv) in respect of which more than one charge-sheets have been filed before a Competent Court;
- (v) within the preceding period of ten years; and
- (vi) that Court has taken cognizance of such offence.

734. ‘**Organised Crime Syndicate**’ is defined under Section 2(f) of the MCOC Act, which means a group of two or more persons who, acting either singly or collectively, as a syndicate or gang indulged in activities of organized crime.

735. The relevant ingredients of ‘organised crime syndicate’ thus are as under: -

- (i) a group of two or more persons
- (ii) who acting either singly or collectively as a syndicate or gang;
- (iii) indulged in activities of organized crime.

736. It is thus, amply clear that while granting prior approval, under Section 23(1)(a), the authority under Section 23(1)(a) of MCOCA

shall have to reach to a subjective satisfaction of existence of above referred relevant ingredients or condition of 'organised crime'.

737. Having perused the prior approval and on appreciating its contents, following facts emerge from it, which are stated in the chart given herein under.

CHART NO. 36

Sr. No.	Relevant ingredients required for invocation of MCOC Act	Contents of Prior Approval Letter
1.	an activity prohibited by law for the time being in force;	It is stated that accused Asif Khan as also his associates viz. Ehtesham and Dr. Tanveer have been indulging in continuing unlawful activities, which have been prohibited by law for the time being in force. (No details or information of any such activity is given)
2.	Such activity which is cognizable offence punishable with imprisonment of three years or more;	It stated that, accused Asif Khan, Ehtesham and Dr. Tanveer have been indulging in continuing unlawful activity which are cognizable offences punishable with the imprisonment of three years or more. (No information disclosed of the FIR Number, the offence for which such crime was registered and the punishment prescribed for such offence)
3.	Such activity undertaken either singly or jointly as a member of an organised crime syndicate or on behalf of such syndicate, which is indulged in activities of organised crime.	It is stated that, accused Ehtesham and Dr. Tanveer are the active members of an organised crime syndicate/ unlawful association of which accused Asif Khan is a key member. (No details are given about the organised crime syndicate, whether such activity was undertaken either singly or jointly as a member or on behalf of organised syndicate.)

4.	with the objective of (i) gaining pecuniary benefits or (ii) gaining undue economic or (iii) other advantage for himself or any other person or (iv) promoting insurgency.	-- -- -- It is stated that, Asif Khan, Ehtesham and Dr. Tanveer have continually conspired for promoting insurgency to overawe the Government by criminal force. (No details or information satisfying such observation is reflected in the prior approval.)
5.	by use of (i) violence or (ii) threat of violence or (iii) intimidation or (iv) coercion or (v) other unlawful means;	-- -- -- -- By rendering financial and other assistance and indulging in various acts preparing to commission of organised crime. (No supporting details are mentioned)
6.	in respect of which more than one charge-sheet have been filed and cognizance of such offence have been taken by a Competent Court;	It is stated that two charge-sheets filed against accused Asif Khan have been taken cognizance by the Competent Court, as reflected from the report submitted by the IO. (No such report of the IO is placed on record and proved.) (No details are given about the said two charge-sheets, including the name of the Competent Court, the date on which the cognizance was taken, the nature of offence, the date on which the cognizance was taken, etc.)

7.	within the preceding period of ten years.	He states that he is satisfied that there is sufficient evidence to prove continuous unlawful activities of the organised crime syndicate/ unlawful association and also that during the past 10 years there have been two cases registered against both Ehtesham Qutubuddin Siddique and Dr. Tanveer Ahmed Mohd. Ibrahim Ansari for indulging in criminal activities of similar nature... (No dates of FIR, charge-sheet, or date of taking cognizance is mentioned to say that it is within the preceding period of ten years.) (It is to be noted that the two chargesheets which are referred to satisfy this condition are not of A.13 but are related to A.2 & A.4. Whereas, it is the case of the prosecution that they only relied upon the chargesheets against A.13 for the purpose of prior approval.

738. From the above referred comparative chart, it can be seen that, except reproduction of relevant part of language of definitions of ‘organised crime’ and ‘continuing unlawful activity’, no necessary details *ex facie* disclosing the satisfaction of requirement for invocation of provisions of MCOCA, is provided.

739. Mere reproduction of some expressions, used in the definition of ‘organised crime’, ‘continuing unlawful activities’ or ‘organised crime syndicate’ to show the compliance, cannot be said to be in tune with the letter and spirit of the law relating to grant of approval for invocation of the provisions of the MCOCA.

740. In the prior approval, Shri Jaiswal has stated that he perused the proposal submitted by Deputy Commissioner of Police ATS, Mumbai

along with documents sent up by the I.O. Khandekar (PW-174) in Borivali Railway Police Station CR No.156/2006. Then, he mentions Sections relating to the offences under various Acts alleged to have been committed. Then, he states that the said offences are pertaining to acts of 'insurgency' and indulging in continuing unlawful activities consisting of criminal acts designed to overawe the Government by criminal force.

741. There is a distinction between act of 'insurgency' and act of 'promoting insurgency'. The act of insurgency falls in List-I of Schedule VII of the Constitution of India, i.e., in Union List. Whereas, 'promoting insurgency' comes under MCOCA which falls in List-III. Because of the above referred distinction, for the act of insurgency, MCOCA cannot be applied.

742. The Hon'ble Supreme Court of India, in the case of *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra* (2010) 5 SCC 246, has held thus: -

"45...After examining this provision at length, we have come to the conclusion that the definition of "organised crime" contained in Section 2(1)(e) of Mcoca makes it clear that the phrase "promoting insurgency" is used to denote a possible driving force for "organised crime". It is evident that Mcoca does not punish "insurgency" per se, but punishes those who are guilty of running a crime organisation, one of the motives of which may be the promotion of insurgency.

79. The concept of insurgency under Section 2(1)(e) of Mcoca, if seen and understood in the context of the Act, is a grave disturbance of the public order within the State. The disturbance of the public order, in each and every case, cannot be said to be identical or similar to the concepts of terrorist activity as contemplated respectively under Section 2(1)(o) and Section 15 of UAPA. Moreover, what is punishable under Mcoca is promoting insurgency and not insurgency per se."

743. It, therefore, can be said that Shri. Jaiswal has not applied his mind to find out whether act of insurgency is covered under the MCOCA.

744. Furthermore, the term ‘promoting insurgency’ and ‘overawe government by criminal force’ have been used with reference to the two previous chargesheets. However, no previous chargesheet is under section 121A of IPC, or has anything to do with promoting insurgency. ‘Overawe government by criminal force’ is an offence punishable under section 121A of IPC. There was no such offence charged against A.13.

745. It is a settled law that where the grant of sanction relates to the strict laws such as MCOCA or UAPA, considering the severity of these laws and the nature of activities with which they are associated, the effect that they have on the accused thereunder is not only within the realm of law but also drastically affects social and personal life. Therefore, the procedure of sanction provided in the legislation are meant to be followed strictly, to the letter, more so to the spirit. Even the slightest of variation from the written word may render the proceedings arising therefrom to be cast in doubt.

746. Having observed that Shri. Jaiswal, without applying his mind to the pre-requisites to constitute ‘continuing unlawful activity’, whether act of insurgency would be covered by the provisions of MCOCA, and whether there was any offence registered against A.13 under section 121A of IPC, in most mechanical manner, by reproducing the language of definition of ‘organised crime’ and ‘continuing unlawful activity’ given under MCOCA, without application of mind and without subjective satisfaction, granted prior

approval. Thus, it vitiates on the ground of complete non-application of mind.

Point no. 4: - Whether the fact that Shri. Jaiswal did not enter into the witness box, invalidate the prior approval on the ground that the same is not proved?

747. Learned Counsel Shri. Chaudhary vehemently argued that the prosecution has not examined Shri. Jaiswal, who granted prior approval under Section 23(1)(a) of the MCOCA. He further argues that a document must be proved by examining the maker.

748. It is further argued that, before invocation of provisions of the MCOCA, one of the safeguards provided to prevent abuse of powers by the Police is to obtain prior approval of an officer not below the rank of DIG. Therefore, to explain all the details in relation to relevant ingredients and conditions of invocation of provisions of the MCOCA, it was a bounden duty of the prosecution to examine Shri. Jaiswal, which the prosecution failed to do. It is, therefore, submitted that in absence of such evidence, it cannot be said that the prior approval is proved.

749. It is further submitted that the prosecution has deliberately prevented Shri. Jaiswal's evidence from coming on record on a pretext that he was not available, for the reason that it would have undermined the prosecution's case on most fundamental aspects viz. absence of necessary preconditions for invocation of MCOCA and grant of prior approval.

750. It is submitted that the prosecution has examined six sanctioning officers who have granted sanctions. It is pointed out that PW-185 was examined as Sanctioning Officer under MCOCA, PW-160 for UAPA, PW-149 for Waging War under the IPC, PW-165 for Explosive Substances Act, Mumbai Suburban, PW-166 for Explosive Substances Act for material recovered from A.13, and PW-26 under the Explosive Substances Act for RDX seized from A.1. It is, therefore, submitted that, except Shri. Jaiswal, all other sanctioning authorities have been examined.

751. On the other hand, learned SPP argues that since prosecution has examined PW-174, who had submitted proposal for grant of prior approval, and PW-174 has also identified the signature of Shri. Jaiswal, the prosecution has proved the document of prior approval. It is submitted that PW-174 has deposed that he communicated the necessary information to Shri. Jaiswal. PW-174, in his evidence, brought on record, the information provided by him to Shri. Jaiswal. Therefore, non-examination of Shri. Jaiswal will not affect the evidence of prosecution in establishing or proving the prior approval.

752. It is amply clear that the prior approval *ex facie* does not disclose satisfaction of necessary ingredients for invocation of provisions of MCOCA. And once it is held so, in view of the well settled law, the prosecution has to establish and satisfy the Court, by leading evidence, that the entire relevant facts and particulars had been placed before the sanctioning authority and the authority had applied its mind to the same and that the sanction had been granted in accordance with the law.

753. It is further well settled principle of law that, when an order does not indicate application of mind, it would not render the order of approval or sanction to be invalid, unless, the prosecution fails to adduce evidence aliunde of the person who granted the sanction and that would be sufficient compliance.

754. In the present matter, admittedly, Shri. Jaiswal, who granted prior approval, did not enter into the witness box to prove the prior approval.

755. On 23/12/2011, when the defence applied to defer the cross-examination of PW-174 till Shri. Jaiswal would be examined, it was informed to the Court that he was travelling abroad and would not be available for the next two months. Thus, on the ground of non-availability of Shri. Jaiswal, he was not examined.

756. It is to be noted that, the record shows that the charge was framed on 06/08/2007, and the evidence of the prosecution was closed on 04/04/2012. The above referred dates show that after framing of the charge, it took about five years for the prosecution to conclude its evidence. Furthermore, the defence requested to examine Shri. Jaiswal on 23/12/2011, and thereafter on 04/04/2012, i.e. after a period of more than three months, the prosecution evidence was closed. As per the reply given to the court on 23/12/2011, Mr. Jaiswal would not be available for two months. Whereas, the evidence of prosecution was closed much after the lapse of the said period of two months.

757. Even otherwise, the prosecution had ample time of five years to examine Shri. Jaiswal. However, no justification has been offered for

not examining Shri. Jaiswal, particularly in the background that the prior approval *ex facie* does not disclose necessary ingredients for invocation of MCOCA and application of mind.

758. Whereas, the prosecution examined all other sanctioning authorities. The prosecution has examined six sanctioning officers, namely, PW-185 for the sanction under MCOCA, PW-160 under UAPA, PW-149 under IPC for waging war, PW-165 under the Explosive Substances Act (Mumbai Suburban), PW-166 under the Explosive Substance Act, and PW-26 for prosecution under the Explosive Substance Act for RDX from A.1.

759. In the circumstances, we are of the opinion that examination of Shri. Jaiswal was necessary in this case to prove prior approval, particularly in the backdrop of the facts, namely,

- (1) PW-174 admits that, on the date of submission of proposal dated 18/09/2006, the chargesheets (which were made basis for invocation of MCOCA) were not with him,
- (2) PW-174 admits that he received the relevant documents between 23/09/2006 and 24/09/2006 and sent all the documents to Shri. Jaiswal, subsequently,
- (3) There is no case diary entry of sending documents subsequently to Shri. Jaiswal, and
- (4) There is no mention or consideration of such documents in the prior approval.

760. Thus, Shri. Jaiswal could have established the fact of receiving the documents after submission of report by PW-174 and before issuance of prior approval, and that he considered the same to reach to

a subjective satisfaction for invocation of MCOCA, by entering into the witness box, but the prosecution has failed to do so.

761. In the circumstances, we are of the considered view that the prosecution has failed to establish that Shri. Jaiswal received the relevant documents, including the two charge-sheets against A.13, before grant of prior approval, by not entering Shri. Jaiswal into the witness box.

Point No. 5: - PW-174 identified the signature of Shri. Jaiswal, whether such identification of the signature will be sufficient to prove the contents of prior approval?

762. It is a settled law that in every individual case, where the order granting prior approval *ex facie* does not disclose application of mind, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind and the sanction had been granted in accordance with law.

763. The prosecution, without any justifiable reason, failed to examine Shri. Jaiswal. In the circumstances, the prosecution tried to prove the prior approval by examining PW-174, who identified the signature of Shri. Jaiswal.

764. It is argued by the defence that identifying the signature on the document does not mean that its contents are proved. To substantiate this argument, a reliance has been placed on the judgments of the Hon'ble Supreme Court of India, in the case of *Gangamma &*

Others..vs.. Shivalingaiah, reported in (2005) 9 SCC 359 and *Harendra Rai ..vs.. State of Bihar and Others*, reported in (2023) 13 SCC 563.

765. On the other hand, the learned SPP submits that PW-174 identified the signature and also gave all the necessary details about the material placed before Shri. Jaiswal and also the information provided to him during discussion before grant of prior approval. It is, therefore, argued that the submission of the defence that the contents are not proved is baseless and liable to be rejected.

766. The Hon'ble Supreme Court of India, in the case of *Gangamma (supra)*, has held thus:

"8. ...We may furthermore notice that even if a formal execution of a document is proved, the same by itself cannot lead to a presumption that the recitals contained therein are also correct. The mere execution of a document, in other words, does not lead to the conclusion that the recitals made therein are correct, and subject to the statutory provisions contained in Sections 91 and 92 of the Evidence Act, it is open to the parties to raise a plea contra thereto."

767. The Hon'ble Supreme Court of India, in the case of *Harendra Rai (supra)*, has held thus:

"100. This Court in *Narbada Devi Gupta v. Birendra Kumar Jaiswal*, in para 16 has held as follows: (SCC p. 751)

'16.... The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'

101. In this view of the matter, the marking of a piece of evidence as "exhibit" at the stage of evidence in a trial proceeding is only for the purpose of identification of evidence adduced in the trial and for the convenience of the court and

other stakeholders in order to get a clear picture of what is being produced as evidence in a trial proceeding.”

768. The Hon’ble Supreme Court of India, in the case of ***Ramji Dayawala & Sons (P) Ltd. Vs Invest Import*** reported in 1981 (1) SCC 80, has held that mere proof of the handwriting of a document would not tantamount to proof of all the contents or the facts stated in the document. If the truth of the facts stated in a document is in issue, mere proof of the handwriting and execution of the document would not furnish evidence of the truth of the facts or contents of the document. The truth or otherwise of the facts or contents so stated would have to be proved by admissible evidence, i.e., by the evidence of those persons who can vouchsafe for the truth of facts in issue.

769. In a case ***Madholal Sindhu vs Asian Assurance Co. Ltd & others***, reported in AIR 1954 Bom 305, Justice Bhagwati has observed that Section 67, Evidence Act only permitted the proof of the signature or handwriting of the person signing or writing the document to be given and considered it to be sufficient in those cases where the issue between the parties was whether a document was signed or written wholly or in part by that person. It did not go so far as to say that even if it was proved that the signature or the handwriting of so much of the document as was alleged to be in the handwriting of the person, was in his handwriting, it would go to prove the contents of that document.

770. Similarly, in the case of ***Chandan Ramesh Chandra Choudhry vs. State of MP*** 2009 SCCOnLine MP 676, the Division Bench of the Madhya Pradesh High Court has observed in clear terms that, mere marking of exhibit and proving signature of witness on inquest report, its contents would not become admissible in evidence. Thus,

identification of signature of Shri. Jaiswal by PW-174 is not sufficient to hold that the contents of prior approval are duly proved.

771. From the above observations, it is evident that even if a formal execution of a document is proved, the same by itself cannot lead to a presumption that the recitals contained therein are also correct. Mere execution of a document, in other words, does not lead to the conclusion that the recitals made therein are correct. It is further evident that the marking of piece of evidence as exhibit, at the stage of evidence in a trial proceeding, is for the purpose of identification of evidence adduced in the trial and for the convenience of the court and other stakeholders in order to get a clear picture of what is being produced as evidence in a trial proceeding.

772. In light of the above referred exposition of law, and having found that why the examination of Shri. Jaiswal by the prosecution was necessary in this case, merely identifying the signature of Shri. Jaiswal by PW-174, in this case, will in no way prove the contents of the letter of prior approval. Thus, it can safely be said that the contents of the letter of prior approval are not proved by the prosecution.

Point no. 6: - Whether a presumption under section 114 illustration (e) of Indian Evidence Act that the official acts performed by the public servants have been regularly performed will be applicable to the prior approval in question?

773. It is the case of the prosecution that Shri. Jaiswal relied upon the information which was procured through one of the public servants and that there is a presumption under illustration (e) to section 114 of

Indian Evidence Act that the official acts performed by the public servants have been regularly performed.

774. This argument cannot be accepted as the validity of the sanction, which decides the competence of the court, is based on the process followed while granting sanction, which is a solemn and sacrosanct act. Its validity would depend upon the material placed before the sanctioning authority. So, the requirement is to have all the material before the sanctioning authority at the time of applying his mind to reach to a subjective satisfaction. If certain relevant material was not submitted to the authority while considering the proposal of invocation of MCOCA, it would amount to non-application of mind to such material. After grant of prior approval, production of such material first time in the court to justify grant of approval, would make the case of prosecution worse and strengthens the case of the defence that the relevant material was not available with the authority at the time of granting prior approval. Such case would squarely fall within the ambit of expression 'non-application of mind'.

775. In the circumstances, not producing the documents relevant for grant of prior approval before the authority and producing it subsequently on the record of the trial court will not establish validity of the prior approval.

776. At this juncture, it is imperative to note that no justification is provided by the prosecution for submitting the proposal/report for invocation of provisions of MCOCA without waiting for few days to receive the relevant material/documents, particularly when the chargesheet was filed on 30/11/2006.

777. It is argued by the learned SPP that there would be a presumption under illustration (e) to Section 114 of the Indian Evidence Act that Shri. Jaiswal has performed his official act while granting prior approval, properly.

778. Illustration (e) to S.114 of Indian Evidence Act says that judicial and official acts have been regularly performed. It is, thus, evident that the presumption under the said provision is a discretionary one.

779. The division bench of Allahabad High Court in the case of *Swadeshi Cotton Mills Co. Ltd. Vs. State Industrial Tribunal, U.P. & ors.* reported in AIR 1956 All 689 and the Single Bench of Rajasthan High Court in *State vs. Bhanwar Lal Bansal* reported in 1973 Cri L J 1749 have held that the illustration (e) to S.114 of IEA permits a presumption to be drawn in the matter of procedure. This provision does not permit a presumption to be drawn where the question does not relate to the manner of doing an official or judicial act but goes to the root of the validity of the order.

780. Here, the challenge is raised to the validity of prior approval which goes to the root of the validity of the act and it does not relate to a matter of procedure. In the circumstances, no presumption, as asked to be drawn under illustration (e) to S.114 of the Indian Evidence Act, can be drawn. Accordingly, the argument in this regard made by the learned SPP cannot be accepted.

781. The above referred observations would lead us to only and definite conclusion that the prior approval suffers from non-application of mind.

Point No. 7: - Whether the two chargesheets against A.13, which have been relied upon for grant of prior approval, satisfy the pre-requisites to constitute 'continuing unlawful activity'?

782. Admittedly, the two chargesheets against A.13 for the offences committed at Jalgaon, which have been relied upon for the purpose of grant of prior approval, were under section 153A(1) of IPC.

783. The punishment for the offence punishable under Section 153A(1) of IPC is imprisonment which may extend to three years or with fine or with both. Whereas, to constitute 'continuing unlawful activity' the requirement is to have an activity prohibited by law for the time being in force which is cognizable offence punishable with imprisonment of three years or more.

784. It is argued by the defence that the requirement is that the offence punishable with imprisonment of 'three years or more' indicates that the punishment of three years is the minimum punishment. It is further pointed out that the punishment of three years as prescribed for the offence punishable under section 153A(1) of IPC is the maximum punishment. It is, therefore, argued that the offence under section 153A(1) of IPC would not fulfill the requirement as stated for the constitution of 'continuing unlawful activity'. It is, therefore, submitted that the prior approval vitiates.

785. On the other hand, learned SPP argues that section 153A(1) will satisfy the condition of constituting 'continuing unlawful activity' as the punishment of the offence under section 153A(1) of IPC is imprisonment upto three years. It is submitted that the plain

interpretation of definition of 'continuing unlawful activity' is that the imprisonment for three years is also included as it is separated by the word 'or' and thereafter comes the word 'more'. If the intention of the legislature had been otherwise, the wording would have been 'imprisonment of more than three years'. To substantiate his argument, he has placed reliance upon *Piyush Subhashbhai Ranipa vs. State of Maharashtra* reported in 2021 Cri LJ 2155 and *Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar and Anr.* reported in (2001) 2 SCC 562.

786. The MCOCA came to be enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang, or for matters connected there with or incidental thereto. Under MCOCA, stringent punishments are prescribed for a person or gangs operating as a syndicate. At the same time, MCOCA has also given more stringent powers to prosecuting agencies, including to attach the property of an accused or any other person possessing wealth on behalf of a member of an organised crime syndicate.

787. The statement of objects and reasons of MCOCA states that organised crime has for quite some years now come up as a very serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortion, smuggling in contrabands, illegal trade in narcotics, kidnapping for ransom, collection of protection money, and money laundering, etc. The illegal wealth and black money generated by the organised crime is very huge and has serious adverse effects on our economy. It is seen that the organised crime syndicates make a common cause with terrorist gangs

and foster narco-terrorism which extends beyond the national boundaries.

788. It further makes it clear that the MCOCA was enacted on finding that the existing legal frame, i.e., the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organised crime.

789. The punishment under section 153A(1) of IPC is imprisonment up to three years, means 'three years' is the maximum punishment. Whereas, the requirement to constitute 'continuing unlawful activity' is of having offence punishable with imprisonment with three years or more, which indicates the offence must be of having minimum punishment of three years.

790. Under the IPC, the punishments for the offences has been provided under the benchmark of minimum and maximum punishment as a yardstick between which the punishment could be awarded. As far as minimum punishment is concerned, the court has no discretion to exercise while imposing punishment, however, when the question comes to impose punishment more than the minimum punishment, the court has to consider certain factors and aspects. Such factors would be gravity of offence, the offender's criminal record, whether the offender had shown remorse or co-operated with the authorities, the potential of rehabilitation of the offender, manner of commission of the crime, age and the sex of the accused, etc.

791. In the circumstances, we are of the considered view that the offences for which the maximum punishment of three years is

prescribed, will not fall in the category of the offences punishable with minimum punishment of three years, which is required to constitute 'continuing unlawful activity'.

792. The prosecution has relied upon the judgment of the Single Judge of this Court passed while deciding an anticipatory bail application in the case of *Piyush Subhashbhai Ranipa (supra)*, wherein it is held thus: -

"8. First of these was a judgment of single Judge of this court passed in the case of **Ramrao Marotrao Budruk v. The State of Maharashtra** reported in 1994 SCC OnLine Bom 407. In that case the court was deciding whether section 2 of the Prevention of Insults to National Honour Act, 1971 makes offence under that Act; bailable or non bailable. In that context, paragraph Nos. 3 and 8 of that Judgment are important. Those two paragraphs are reproduced as follows:—

"3. Section 2 of the Prevention of Insults to National Honour Act, 1971 (hereinafter referred to as 'the Act' for the sake of brevity) runs thus:

"whoever in any public place or in any other place within public view burns, mutilates, ... or otherwise brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

.....

8. Section 2 of the Act empowers the Court to sentence an accused upto 3 years and it is a maximum sentence but permissible. Therefore, it makes no difference by the fact that the imprisonment for such an offence can also be less than 3 years. To put in figures, for an offence under section 2 of the Act, the imprisonment for 2 years and 365 days can be inflicted or ever less than that. As such, it would be an offence punishable with imprisonment for 3 years which would make it as a non bailable one. If the punishment is upto 2 years and 364 days it would be an offence punishable with imprisonment for less than 3 years so as to make it a bailable one under category No. 3 of the said classification. If the offence therefore, falls within the corners of category No. 2 of the said classification, an application under section 438, Cr. P.C. for a relief anticipatory bail would be maintainable as the offence would be a non bailable one. The learned 2nd Additional Sessions Judge, therefore, committed an

error in treating the offence under section 2 of the Act as a bailable one.

10. A Division Bench of this court also had an occasion to deal with this issue in the case of **Mahesh Shivram Puthran V The Commissioner of Police, Thane, Dist. Thane and others**; reported in 2011 SCC OnLine Bom 389. In that case the court was considering whether offences under sections 43 and 52 of the M.R.T.P. Act, 1966 were cognizable or non cognizable.....

.....

In Paragraph 14 the Division Bench recorded it's conclusion thus:

‘As the maximum punishment provided in terms of Section 52 of the Act, which has been applied to the case on hand, being up to three years, at best, the second category of cases specified in Part II of Schedule I would be attracted. It would necessarily follow that the offence under Section 52 of the Act is a cognizable and non-bailable offence.’”

793. The other judgment which the prosecution has relied upon, i.e. *Intelligence Officer, Narcotics C. Bureau (supra)* also relates to bail in the case of Narcotic Drugs and Psychotropic Substances Act. In the said matter, the Hon’ble Supreme Court of India has held thus: -

“4. Learned Additional Solicitor General submitted that order passed by the High Court is on the face of it against the statutory mandate provided under Section 37. As against this, learned counsel appearing for the respondents submitted that the interpretation given by the High Court is justified, particularly because it affects personal liberty of a citizen who is yet to be tried. For appreciating the rival contentions we would refer to Sections 20 and 37 of the said Act which read thus:

“20. *Punishment for contravention in relation to cannabis plant and cannabis.—Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,—*

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

shall be punishable,—

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term

which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail.”

5. The scheme of Section 37 reveals that the exercise of the power to grant bail by the Special Judge is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante clause. The operative part of the said section is in negative in prescribing (sic proscribing) the enlargement on bail of any person accused of commission of an offence under the Act unless two conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application and the second is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates. As per the mandate of Section 37, no person accused of an offence punishable for a term of imprisonment of 5 years or more under the Act can be released on bail unless the conditions mentioned in sub-clauses (i) and (ii) of clause (b) are satisfied. Precondition for application of clause (b) would be that the offence is punishable for a term of imprisonment of 5 years or more. Plain reading of the above said

clause makes it clear that in case where the person is accused of an offence punishable for a term of imprisonment of 5 years then he cannot be released unless the conditions mentioned therein are satisfied. In case of offence punishable under Section 20(b)(i), maximum punishment is for a term of imprisonment of 5 years and a fine which may extend to Rs 50,000. There is no justifiable reason to hold that maximum term of imprisonment is to be excluded for the purpose of interpretation and Section 37 would not cover in its fold offence punishable under Section 20(b)(i).

6. Further, even if we consider the legislative intent in context of other provisions which provide for punishment it would be clear that Section 37 would cover in its fold the offence punishable under Section 20(b)(i). Provisions empowering the court to impose punishment can be divided into four parts, namely, (i) less than five years, (ii) up to five years, (iii) more than five years, and (iv) providing death penalty. Sections 26, 27 and 32 provide for imprisonment for a term which may be less than five years. Section 25(a) provides that the imprisonment may extend up to ten years. Other sections, namely, Sections 15, 16, 17, 18, 19, 20(b)(ii), 21, 22, 23, 24 and 25 provide that punishment shall not be “for a term less than ten years”. Except Section 20(b)(i), there is no provision which prescribes that imprisonment may extend to five years. For the offence punishable under the said section, in appropriate cases, the court may impose maximum punishment of five years. Therefore, there is no reason to exclude the said clause from the operation of Section 37.”

794. In the case of *Piyush Ranipa (supra)*, the Single Bench of this Court held that offences punishable with the imprisonment of three years as maximum punishment is to be considered as non-bailable one. In the case of *Intelligence Officer (supra)*, the Hon’ble Supreme Court of India held that for the reason that there is no justifiable reason to hold that the maximum term of imprisonment is to be excluded for the purpose of interpretation under section 37 would not cover in its fold offence punishable under section 20(b)(i) of NDPS.

795. We have already observed the object and purpose of enacting the MCOCA. Further, considering that the grant/non-grant of sanction is what sets in motion the machinery of strict laws such as MCOCA,

and the severity of this law and the nature of activities with which it is associated and the effect that it has on the person accused thereunder, construing the definition of 'continuing unlawful activity' in a way to bring the offences with maximum punishment of three years into the ambit of offences intended to constitute 'continuing unlawful activity' i.e., offences with minimum punishment of three years, will be contrary to the intention of the legislature and purpose of enacting the MCOCA. We shall not go beyond the purpose sought to be achieved.

796. However, the Hon'ble Supreme Court of India, while dealing with a case under MCOCA in the case of **State (NCT of Delhi) v. Brijesh Singh (2017) 10 SCC 779**, has categorically held in Para 33 that only an unlawful activity which is cognizable offence punishable with **minimum** sentence of three years or more would be a 'continuing unlawful activity' under section 2(1)(d) of the Act.

797. In the circumstances, the argument made by the learned SPP that if the intention of the legislature had been otherwise, the wordings of definition of 'continuing unlawful activity' would have been 'imprisonment of more than three years' cannot be accepted.

798. In the circumstances, since both the chargesheets against A.13, which were filed and relied upon for the purpose of prior approval, are for the offence punishable under Section 153A(1) of IPC, under which, the punishment prescribed is upto three years, which is the maximum punishment and not the minimum punishment, the chargesheets in C.R. No. 178/1999 and CR. No. 103/2001 registered against A.13 at Jalgaon, cannot be relied upon and taken into account to constitute 'continuing unlawful activity'. Hence, on this count also, the prior approval goes.

CONFESSIONAL STATEMENTS

799. In the matter at hand, total 11 accused allegedly gave their confessional statements under section 18 of MCOCA. Total seven DCPs recorded these confessional statements. The confessions recorded by these DCPs are to be equated with a confession recorded by a Judicial Magistrate under section 164 of Cr.PC. Therefore, no breach of procedure, safeguards and accepted norms of recording a confession, can be entertained to avoid any hyper criticism that the authority has obtained an invented confession as a source of proof, irrespective of the truth and credibility.

800. These confessional statements were recorded between the period 04/10/2006 to 25/10/2006. A challenge is raised to the veracity of each of the confessional statements on the point of the non-adherence to procedural safeguards and accepted norms to be followed by the DCPs. If the challenge is considered in totality, the following topics emerge to delve upon, which can be set out as under: -

- I) Identical Part-I and Part-II of the confessional statements.
- II) Variations in mentioning the names of A.4 and A.9 in correspondence made by DCPs and Part-I and Part-II of the confessional statements.
- III) Absence of certificates under Sub-rule 6 of Rule 3 of the MCOC Rules at the bottom of the confessional statements of A.1, A.3 and A.10.
- IV) Though certificates are appended at the bottom of the confessional statements of A.2, A.4, A.5, A.6, A.7, A.9, A.11, & A.12, they do not serve the purpose as contemplated under Sub-rule 6 of Rule 3 of the MCOC Rules.

- V) Not making the accused aware about the right to have legal/lawyer's services.
- VI) No enquiry made by the DCPs of the reason why the accused wanted to confess.
- VII) Sufficient cooling off period was not given to the accused.
- VIII) The concerned DCPs did not look into the medical reports of the accused concerned, before recording their confessional statements.

801. We will deal with each of the above referred aspects in the same sequence.

I) Indistinguishable And Identical Part-I And Part-II Of The Confessional Statements

802. It is argued by the defence that in Part-I and Part-II of the confessional statements of the accused, identical words and sentences can be found. In some of the Part-I and Part-II, the question and answers are same and identical, as if the same have been copied. It is argued that, during cross-examination, full opportunity was given to the concerned DCPs to provide an explanation to the same. They have denied having received any questionnaire or proforma for recording Part-I and Part-II of the confessions. It is, thus, argued that it creates doubt about fairness of the procedure followed by all the DCPs while recording the confessional statements of the accused and there is every possibility that already typed Part-I and Part-II were provided to the DCPs along with the confessional statements and they only signed the same.

803. Learned Sr. Counsel Shri. Muralidhar submits that there are several similarities between confessions. The portion that precedes the questions in Part I of the confessions of the A.3, A.4, A.5, A.6, A.9, A.10 and A.12, are exactly the same with only the names of officers and the accused changed. Additionally, each paragraph is beginning and ending in the same manner. The questions asked to ascertain voluntariness are the same across DCPs containing the same phrases and words. Paragraphs 2 and 3 in the beginning of Part-II of the confessions, containing questions to be asked to the accused persons, match word to word across the confessions of A.3 to A.7 and A.9 to A.12.

804. Further, Learned Sr. Counsel stated that the questions asked for A.3, A.5, A.7, A.9, A.10 are exactly the same in the same sequence. Further, A.2 has exactly the same first 7 questions, while A.12 has 8. It is impossible that there is such similarity across DCPs with respect to the questions that were asked. In case of A.4 as well, the questions are similarly worded and only the sequence of questions has been changed and all confessions make the same mistake in terms of the working of the certificate.

805. Learned Sr. Counsel Shri. Muralidhar submits that the DCPs have to contemporaneously record the confession proceedings, because at some later point in time, some court is going to review it. It is not enough that the DCPs are satisfied. Otherwise a DCP may not record anything and claim that he was satisfied. The court will not accept it. Because the court will peruse the record. That record should speak for itself.

806. On the other hand, Learned SPP submits that the doubt expressed by the defence about fairness of the procedure followed by the concerned DCPs while recording confessional statements of the accused, and further possibility of copying Part-I and Part-II or it was already provided and the concerned DCP merely signed it, is baseless and has no substance in the same.

807. The Hon'ble Supreme Court of India, in the case of **Kartar Singh vs. State of Punjab**, reported in (1994) 3 SCC 569, while dealing with legal position vesting authority on higher police officer to record the confession, has held thus: -

“254. In view of the legal position vesting authority on higher police officer to record the confession hitherto enjoyed by the judicial officer in the normal procedure, we state that there should be no breach of procedure and the accepted norms of recording the confession which should reflect only the true and voluntary statement and there should be no room for hyper criticism that the authority has obtained an invented confession as a source of proof irrespective of the truth and creditability as it could be ironically put that when a Judge remarked, "Am I not to hear the truth", the prosecution giving a startling answer, "No, Your Lordship is to hear only the evidence."

808. The Hon'ble Supreme Court of India, in the case of **Raja Alias Ayyappan vs. State of Tamil Nadu**, reported in (2020) 5 SCC 118, has held thus: -

“22. It is also necessary to state here that the confession recorded by the police officer is undoubtedly equated to a confession recorded by a Judicial Magistrate under Section 164 Cr.P.C. Thus, the said confession is a substantive piece of evidence. Therefore, all the safeguards which are to be followed by a Magistrate should have been followed by the police officer also. It is wellsettled that the satisfaction arrived at by the Magistrate under Section 164 Cr.P.C. is, if doubtful, then, the entire confession should be rejected.”

809. In the teeth of the above referred well settled principles of law, we will advert to the facts of the present case.

810. It can be seen from the record that before and after recording of confessional statements of the accused, each DCP has prepared eight different documents, including Part-I and Part-II, relating to confession. The documents are as follows: -

- i) DCP's letter to the IO for production of accused for recording confessional statement.
- ii) DCP's letter to the IO informing him of having taken the custody of the concerned accused.
- iii) Part-I of the confession.
- iv) DCP's letter to the local police station after the conclusion of Part-I to keep the accused in lock up of local police station.
- v) Part-II of the confession.
- vi) DCP's letter to the CMM for production of accused whose confessional statement has been recorded u/s 18 MCOCA.
- vii) DCP's letter to the local police station for production of the accused before Learned CMM.
- viii) DCP's letter to the I.O informing the transfer of custody of the accused to ATS.

811. The argument made by the defence, in short, is that, in Part-I and Part-II of the confessional statements of the accused, identical words and sentences can be found, including questions and answers, as if they have been copied.

812. On perusal of the record of the confessional statements of all the accused, admittedly, in all eight documents were prepared by concerned

DCPs relating to each accused. Therein, we noticed variation in mentioning of offences. Similarly, we found that Part-I of A.3, A.5, and A.10 are identical, including questions and answers. As regards A.4, A.6, A.9, & A.12, the preceding part of questions and answers are identical verbatim. Then, we noticed missing of stamp of DCP at the bottom of Part-I of the statements of A.3 and A.10, even though there is a mention that it bears the office stamp. We noticed similarity in questions and answers in Part-II of A.3 and A.5 and also similarity in putting dots in the subject of the letter correspondence made between DCPs and Chief I.O. Shri. Sadahiv Patil. Thus, we will deal with each of this topic separately herein under.

In All The Eight Documents Prepared By Concerned DCPs Relating To Each Accused, There Is A Variation In Mentioning Of Offences.

813. It is to be noted that all the FIRs, except Cr. No. 41/2006, relating to Andheri Railway Police Station, contains section 34 of IPC. However, on perusal of the above referred eight documents prepared by the concerned DCP, in each case, before or after recording of confessions of A.1 to A.4 and A.9 to A.11, between 03rd and 07th October 2006, except Part-I and Part-II of the confessional statements, all the other six documents contain section 34 of IPC. However, Part-I and Part-II of the confessional statements do not contain section 34 of the IPC. Similarly, there is no mention of sections 3 & 4 of the Prevention of Damage to Public Property Act in all the eight documents in relation to A.1 to A.4 and A9 to A.11. Whereas, it is mentioned in respect of the other accused.

814. At the same time, in the Part-I and Part-II of the confessional statements of A.5 to A.7, and A.12, which were recorded on 24/10/2006 and 25/10/2006, as well as in all remaining six documents, there is no mention of section 34 of IPC.

815. The prosecution has failed to provide any explanation for not having mentioned section 34 of IPC in Part-I and Part-II. Whereas, it is there in all the other six documents relating to accused A.1 to A.4 and A.9 to A.11, and further, in all the eight documents, including Part-I and Part-II of the accused A.5 to A.7 and A.12.

816. In this case, there are seven DCPs who recorded the confessional statements of eleven accused persons. The above referred discrepancy in two sets of confessional statements, one set consisting of A.1 to A.4 and A.9 to A.11, and second set of confession of A.5 to A.7, and A.12 give rise to a suspicion whether it is inadvertent, coincidence, or as argued by Learned Counsel Shri. Chaudhary, that the above referred 8 documents were not made by the DCPs but were made by different people at different time.

Part-I Of A.3, A.5, And A.10 Are Identical, Including Question And Answers, Whereas, As Regards A.4, A.6, A.9, & A.12, The Preceding Parts Of Question And Answers Are Identical Verbatim.

The confessional statement of A.3 was recorded by DCP Brijesh Singh (PW-117), A.5's by DCP Phadtare (PW-93), and A.10's by DCP Dumbre (PW-118). Thus, it is evident that all the aforesaid three confessional statements were recorded by three different DCPs. But, on comparison of Part-I of the confessional statements of A.3, A.5, and

A.10, it will be revealed that there is not only similarity in them but they are identical. The comparative chart given herein under will make the things further clear.

CHART NO. 37

A.3 - Mohd. Faisal Ataur Rehman Shaikh (recorded by PW-117 DCP Brijesh Singh) (Exh.1057)	A.5 - Mohd. Majid Mohd. Shafi (recorded by PW-93 DCP D.M.Phadtare) (Exh.934)	A.10 - Suhail Mehmood Shaikh (recorded by PW-118 DCP Ashutosh Dumbre) (Exh.1246)
2. The accused Faisal Ataur Rahman Shaikh @ Mustafa @Amin @Samir aged 32, Occ: Nil, Res/o 24, Lucky Villa, Perry Cross Road, Bandra (West), Mumbai, has been arrested by Anti Terrorism Squad, Mumbai in Borivali Railway Police Station CR.No. 156/06 U/secs. U/s. 3 (1) (i), 3 (2), 3 (4) of MCOC Act 1999 r/w secs. 10 & 13 U.A. (P) Act, r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B IPC, r/w Sec. 6, 9 (b) Indian Explosives Act, r/w Sec. 3, 4, 5 Explosives Substances Act, r/w 151, 152, 153, 154 Indian Railways Act. was produced in veil before me by PI Sunil Deshmikh attached to Anti Terrorism Squad, Mumbai, today i.e. on 03/10/2006 at 11.00 hrs, at my office to record the confessional statement of said accused as per the provisions laid down in sec. 18 (1) of M.C.O.C. Act. 1999.	1. The accused Mohammad Majid Mohammad Shafi Ansari, Age 28 yrs. occ-Bussiness, Raja Foot Wear, Add- 17/2, H/6, Canal west Road Near Narkel Danga Police Station Kolkata - 9, has been arrested in A.T.S. Pst. CR. No. 05/06, u/s 3(1)(i). 3(2), 3(4) of MCOC Act, 1999 r/w secs. 10 & 13 of UA (P) Act r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B IPC r/w secs. 6, 9(b) Indian Explosive Act, r/w secs. 3, 4, 5 Explosives Substances Act, r/w secs. 3 & 4 of Prevention of Damage to Public Property Act, r/w 151, 152, 153, 154 Indian Railway Act was produced before me by API Alaknure, attached to the Anti Terrorism Squad, Mumbai today i.e. on 24/10/2006 at 1030 hrs., at my office to record the confessional statement of said accused as per the provisions laid down in sec. 18 (1) of MCOC Act 1999.	1. The accused Shaikh Suhail Mehmood Age 38 yrs, occ danner. Address:- 1538, street no. 16, central street, Bhimpura camp. pune-1 has been arrested by Anti Terrorist Squad, Mumbai in Borivali Railway Police Station CR. No. 156/06, u/secs. 3(1)(i), 3(2), 3(4) of MCOC Act, 1999 r/w secs. 10 & 13 of UA (P) Act r/w sec 6, 9(b) of the Indian Explosive Act, r/w sec 3, 4, 5 Explosives Substances Act, r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A 120-B of the IPC r/w secs. 151, 152, 153, 154 of the Indian Railway Act was produced before me by PI Deshmukh attached to the Anti Terrorism Squad, Mumbai today at 12:10 hrs. on 05/10/2006, at my office to record the confessional statement of said accused as per the provision laid down in sec. 18 (1) of MCOC Act 1999.
3. I have ascertained the facts that the above mentioned offence was committed in the jurisdiction of the Maharashtra State limits i.e. on 11/07/2006.	2. I have ascertained the facts that the above mentioned offence was committed in the jurisdiction of Maharashtra State limits i.e. on 11/07/2006.	2. I have ascertained the facts that the above mentioned offence was committed in the jurisdiction of the Maharashtra State limits on 11/07/2006.

4. The accused was taken in my personal custody and PI Sunil Deshmukh and staff of ATS were asked to go out of my room and there were no police officers or police men present anywhere, from where the proceedings of recording the confession could be seen or heard. I asked him to remove the veil which he did.	3. The accused was taken in my personal custody and API Alaknure and staff of ATS were asked to go out of my room and there were no police officers or police men present anywhere, from where the proceedings of recording the confession could be seen or heard. I asked him to remove the veil which he did.	3. The accused was taken in my personal custody and PI Deshmukh and staff of the ATS were asked to go out of my room and there were no police officers or/and men present anywhere from where the proceedings of recording the confession could be seen or heard. I asked him to remove the veil which he did.
1. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded below in Hindi.	4. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded by me in Hindi.	4. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded below in Hindi.
Q.1 सवाल- मैं पोलीस उप आयुक्त यानी डी.सी.पी. हूँ, क्या तुम जानते हो? जबाब:- हाँ, मैं जानता हूँ।	Q.1 सवाल- मैं पोलीस उप आयुक्त यानी डी.सी.पी. हूँ, क्या तुम जानते हो? जबाब:- हाँ, मैं जानता हूँ।	Q.1 सवाल- मैं पोलीस उपायुक्त याने डी.सी.पी. हूँ, क्या तुम जानते हो? जबाब:- हाँ, मैं जानता हूँ।
Q.2 सवाल :- तुम्हारा नाम क्या है और क्या करते हो? जबाब :- मेरा नाम मोहंमद फैसल अताउर रहेमान शेख उर्फ मुस्तफा उर्फ अमिन उर्फ समीर है, मेरी उमर ३२ साल है। मैं २४ लकी व्हिला कांत वाडी पेरी क्रॉस रोड, बांद्रा, पश्चिम मुंबई, यहाँ रहता हूँ। फिलहाल मैं कुछ काम धंदा नहीं करता।	Q.2 सवाल :- तुम्हारा नाम क्या है और क्या करते हो? जबाब:- मेरा नाम मोहम्मद माजीद मोहम्मद अन्सारी है मेरी उम्र २८ साल है। मई ७३ डॉ एम एम चेटर्जी सरानी राजा बाजार कोलकत्ता - ९ यह पर राजा फुटवेअर और न्यु स्टार फुटवेअर नाम के जूतोंकी दुकान चलाता हूँ। मैं १७/२ एच/६ केनल वेस्ट रोड नार्कल डागा पोलीस स्टेशन के नजदीक कोलकत्ता- ९ यहाँ पर रहता हूँ।	Q.2 सवाल :- तुम्हारा नाम क्या है और क्या करते हो? जबाब :- मेरा नाम सुहेल महेमुद शेख, उमर ३८ साल , धंदा - कपडे को रफू करने का. मैं १५३६, गल्ली न. १६. सेंट्रल स्ट्रीट भीमपुरा- कॅम्प-पुना-१ में रहता हूँ और पुना में ही, कपडे को रफू करने का धंदा, जो मेरे नाना चलाते थे, उन्नीका धंदाकरता हूँ।
Q.3 सवाल - तुम्हारी पढ़ाई लीखाई कहाँ तक और कोनसी भाषा में हुयी है। जबाब :- मेरी पढ़ाई ११वी सायन्स तक हुयी है। मैं हिन्दी भाषा अच्छी तरह से पढ़ना, लिखना और बोलना जानता हूँ।	Q.3 सवाल - तुम्हारी पढ़ाई कहाँ तक और कोनसी भाषा में हुयी है। जबाब :- मेरी पढ़ाई ९ वी कक्षा तक मोहम्मद जान हायर सेकेंडरी हायस्कूल कोलूटोला कोलकत्ता-७३ में हुयी है। मैं हिंदी भाषा अच्छी तरह से पढ़ना, लिखना और बोलना जानता हूँ।	Q.3 सवाल - तुम्हारी पढ़ाई-लिखाई कहाँ तक और कोनसी भाषा में हुयी है। जबाब :- मेरी पढ़ाई दसवी कक्षा तक हुयी है और मैं हिंदी भाषा अच्छी तरह से पढ़ना, लिखना और बोलना जानता हूँ।
Q.4 सवाल :- क्या पुलीसेने तुम्हे मार-पिट कि है? जबाब :- नहीं, पुलीसेने मुझे मार-पिट नहीं कि है।	Q.4 सवाल :- क्या पुलीसेने तुम्हे मार-पिट कि है? जबाब :- नहीं, पुलीसेने मुझे मार-पिट नहीं कि है।	Q.4 सवाल :- क्या पुलिस ने तुम्हे मार-पीट कि है? जबाब :- नहीं, पुलिस ने मुझे मार-पीट नहीं कि है।
Q.5 सवाल :- क्या पुलीस के किसी आदमी ने तुम्हे डराया-धमकाया था या	Q.5 सवाल :- क्या पुलीस के किसी आदमी ने तुम्हे डराया-धमकाया था या	Q.5 सवाल :- क्या पुलिस के किसी आदमीने तुम्हे डराया-धमकाया था या

कोई लालच दि है? जबाब :- नहीं, मुझे किसी ने भी डराया धमकाया नहीं, या कोई लालच नहीं दिखाई।	कोई लालच दि है? जबाब :- नहीं, मुझे किसी ने भी डराया धमकाया नहीं, या कोई लालच नहीं दिखायी।	कोई लालच दी है? जबाब :- नहीं, मुझे किसीने भी डराया धमकाया नहीं, या कोई लालच नहीं दिखाई।
Q.6 सवाल :- क्या पुलिस के किसी आदमी ने तुम्हें बयान देने के लिये केसमे से बाहर निकालनेका या सजा कम दिलवाने का या सरकारी गवाह बनाने का वादा किया है? जबाब :- नहीं, किसीने भी ऐसा कोई भी वादा नहीं किया है।	Q.6 सवाल :- क्या पुलिस के किसी आदमी ने तुम्हें बयान देने के लिये केसमे से बाहर निकालनेका या सजा कम दिलवाने का या सरकारी गवाह बनाने का वादा किया है? जबाब :- नहीं, किसीने भी ऐसा कोई भी वादा नहीं किया है।	Q.6 सवाल :- क्या पुलिस के किसी आदमीने तुम्हें कबुली बयान देने के लिये केसमे से बाहर निकालनेका या सजा कम दिलवाने का या सरकारी गवाह बनाने का वादा किया है? जबाब :- नहीं, किसीने भी ऐसा कोई भी वादा नहीं किया है।
Q.7 सवाल :- तुम्हे बयान देना जरूरी नहीं है। या बयान देने कि जबरदस्ती नहीं है। और फिर भी तुमने बयान दिया तो वह बयान अदालात में सबूत के तौरपर तुम्हारे खिलाफ लाया जायेगा, क्या तुम ये जानते हो? जबाब :- हाँ मैं ये जानता हूँ।	Q.7 सवाल :- तुम्हे बयान देना जरूरी नहीं है। या बयान देने कि जबरदस्ती नहीं है और फिर भी तुमने बयान दिया तो वह बयान अदालात में सबूत के तौरपर तुम्हारे खिलाफ लाया जायेगा, क्या तुम ये जानते हो? जबाब :- हाँ मैं ये जानता हूँ।	Q.7 सवाल :- तुम्हे बयान देना जरूरी नहीं है। या कबुली बयान देने कि जबरदस्ती नहीं है। और फिर भी तुमने कबुली बयान दिया तो वह कबुली बयान अदालात में सबूत के तौर पर तुम्हारे खिलाफ लाया जायेगा. क्या तुम ये जानते हो? जबाब :- हाँ मैं ये जानता हूँ।
Q.8 सवाल :- तुम्हे बयान देने से पहले सोचने के लिये २४ घंटे का समय देता हूँ। इस दौरान तुम्हारे उपर तुम्हे पकड़नेवालो का या जाच करनेवालो का कोई दबाव नहीं रहेगा, क्या तुम्हे ये समझ में आया है? जबाब :- हाँ, ये बात मेरी समझ में आयी है।	Q.8 सवाल :- तुम्हे बयान देने से पहले सोचने के लिये २४ घंटे का समय देता हूँ। इस दौरान तुम्हारे उपर तुम्हे पकड़नेवालो का या जाच करनेवालो का कोई दबाव नहीं रहेगा, क्या तुम्हे ये समझ में आया है? जबाब :- हाँ, ये बात मेरी समझ में आयी है।	Q.8 सवाल :- तुम्हे बयान देने से पहले सोचने के लिये २४ घंटे का समय देता हूँ। इस दौरान तुम्हारे उपर तुम्हे पकड़नेवालो का या जाच करने वालो का कोई दबाव नहीं रहेगा, क्या ये बात तुम्हारे समझ में आयी है? जबाब :- हाँ, ये बात मेरी समझ में आयी है।
	मुझे ऊपर पूछे गए सवालोंका जवाब मैंने हिंदी में दिये वह मैंने पढ़कर देखे। और वह सही तरीकेसे दर्ज किये गए हैं.	मुझे ऊपर पूछे गए सवालों के जवाब मैंने हिंदी में दिए वह मैंने पढ़कर देखे। वह सही तरीके से दर्ज किये गए हैं.
The above questions and answers recorded in Hindi were read over to accused and found to be correctly recorded. The accused was again informed that he will be produced before me after completion of 24 hrs i.e. on 04/10/2006 at 17.00 hrs. Till that time he will be in the lock up of Azad Maidan police station. The first part of recording of confessional statement commenced at 17.00 hrs and concluded at 19.30 hrs.	The questions and answers during enquiries with accused Mohammad Majid Mohammad Shafi Ansari age 28 yrs recorded by me in Hindi were read over to accused and found to be correctly recorded. The accused was again informed that he will be produced before me after completion of 24 hrs i.e. on 25/10/2006 at 1100 hrs. Till that time he will be in the lock up of Mahim Pst. The first part of recording of confessional	The questions and answers during enquiries with accused were recorded. The accused was again informed that he will be produced before me after completion of twenty four hours i.e. on Fifteen hundred hours (15.00 hrs) on 06/10/2006. Till that time he will be in the lock up of the L.T. MArg Police Station. The first part of recording of accused statement regarding confession had commenced at 12.15 hrs and

This part of the confessional statement of the above accused is sealed bearing my signature and office stamp.	statement commenced at 1040 hrs and concluded at 1155 hrs. This part of the confessional statement of the above accused is sealed bearing my signature and office stamp.	concluded at 1345 hrs. This part of the confessional statement of the above accused is sealed bearing my signature and office stamp.

817. From the above referred comparative chart of Part-I of the confessional statements of A.3, A.5, and A.10, it is apparent on the face of it that, though three different DCPs recorded it at three different places, dates and time, they are identical. Even if, for a moment, it is presumed that a format of questions were used by them for the convenience, it cannot be ignore that the answers of A.3, A.5, and A.10 are identical verbatim, which is highly improbable, if not copied or a format was provided. However, it is evident from the evidence of PW-93 DCP Phadtare, PW-117 DCP Singh, and PW-118 DCP Dumbre that they did not have questionnaire. PW-93 framed the questions on the basis of the guidelines of senior officers and legal advisors. Whereas, PW-117 and PW-118 prepared their questions on their own.

818. Two people can answer the same way, but not using the exact same words and in the same sequence. They could share the same narrative, but will express it differently. Thus, it strengthens the doubt expressed by the defence about the genuineness of the procedure followed while recording the confessional statements of the accused.

819. Further, it is evident that the portion which precedes the questions of Part-I of confessions of A.3, A.5, and A.10, are exactly the same with only the name of the officers and the accused changed. Each paragraph's beginning and ending is in the same manner.

820. PW-118 DCP Dumbre admits that the contents of paragraph no. 2 in Exh. 1212 (Part-I of A.3's Confession) and the contents of first paragraph in Ext.1246 (Part-I of A.10's Confession) are similar, except the name and the particulars of the accused, the name of the police officer who produced him, the time and date of production. He admits that sequence wise and factually the contents of paragraphs 3, 4 and the paragraph no.1 given below in Ext. 1212 are similar to paragraph nos. 2, 3 and 4 in Ext.1246, except the punctuations, i.e., 'stroke', 'comma' and 'fullstop' and Ext.1246 being handwritten. The question no.1 and its answer in both are same. The question no.2 is same. Though the question about the age was not asked, the answers in both show that the accused stated his age. The question no.3 is same in both. It is true that though the question about fluency in a language was not asked, the accused have given that answer. It is true that though the accused were asked as to in what medium they had studied, they have given an answer about it.

821. It is to be noted that, the case is same with the preceding part of Part-I of confessions of A.4, A.6, A.9, and A.12. The chart given herein below will make it clear.

CHART NO. 38

Part-I of A.4 (recorded by PW-104 DCP Karale) (Exh. 1057)	Part-I of A.6 (recorded by PW-104 DCP Karale) (Exh.1068)	Part-I of A.9 (recorded by PW-93 DCP Phadtare) (Exh.921)	Part-I of A.12 (recorded by PW-117 DCP Singh) (Exh.1226)
1. Perused the report of A.C.P., A.T.S., Mumbai Shri S. I. Patil.	1. Perused the report of A.C.P., A.T.S., Mumbai Shri S. I. Patil.		
2. The accused Ehtesham Kutubuddin Siddiqui,	2. The accused Shaikh Mohamad Ali Alam Shaikh @ Ajij, age 37,	1. The accused Muzzamil Ataur Rehman Shaikh, @	1. The accused Navid Rashid Khan, age 26 yrs., Occ: Service,

aged 25 yrs, Occ: Nil, Res: 202, Safia Manzil, Naya Nagar, Mira Road (East), Dist: Thane has been arrested by Anti Terrorism Squad, Mumbai in Borivali Railway Police Station C.R.No. 156/06 U/secs. U/s. 3 (1) (i), 3 (2), 3. (4) of MCOC Act 1999 r/w secs. 10 & 13 U.A. (P) Act, r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B IPC, r/w Sec. 6, 9 (b) Indian Explosives Act, r/w Sec. 3, 4, 5 Explosives Substances Act, r/w 151, 152, 153, 154 Indian Railways Act. was produced before me by PSI Padmakar Deore attached to Anti Terrorism Squad, Mumbai, today i.e. on 06/10/2006 at 09.00 hrs., at my office to record the confession statement of said accused as per the provisions laid down in sec. 18 (1) of M.C.O.C. Act, 1999.	Occ: Moti(Tilismi) Seller, Add:- 33/T/2, Shivaji Nagar, Govandi, Mumbai, has been arrested by Anti Terrorism Squad, Mumbai in ATS C.R.No. 05/06 U/secs. 3(1)(i), 3(2), 3(4) of MCOC Act 1999 r/w secs. 10 & 13 U.A. (P) Act, r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B IPC, r/w Sec. 6, 9(b) Indian Explosives Act, r/w Sec. 3, 4, 5 Explosives Substances Act, r/w 3 & 4 of Prevention of Damage to Public Property Act, r/w sec. 151, 152, 153, 154 Indian Railways Act. was produced before me by API Nivrutti Kolhatkar attached to Anti Terrorism Squad, Mumbai, today i.e. on 24/10/2006 at 09.00 hrs., at my office to record the confession statement of said accused as per the provisions laid down in sec. 18 (1) of M.C.O.C. Act, 1999.	Abu Shahid aged 22 yrs, Occ. Service, Res./o: 203 A-Wing, Tirupati Building, Naya Nagar, Mira Road (East), Dist: Thane has been arrested by Anti Terrorism Squad, Mumbai in Borivali Rly P.stn C.R.No. 156/06 U/s. 3(1)(i), 3(2), 3(4) of MCOC Act 1999 r/w sec. 10 & 13 U.A. (P) Act, r/w sec. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B IPC, r/w Sec. 6, 9(b) Indian Explosives Act, r/w Sec. 3, 4, 5 Explosives Substances Act, r/w sec. 151, 152, 153, 154 Indian Railways Act. was produced before me by Police Inspector R.R. Joshi attached to Anti Terrorism Squad, Mumbai, today i.e. on 04.10.2006 at 1500 hrs., at my office to record the confession statement of said accused as per the provisions laid down in sec. 18(1) of M.C.O.C. Act, 1999.	Res./o:- Plot No. 43/45, Lake Shore Towers, G-3, New Vidhya Nagar Coloney, Naredment, Sikandarabad, Andhra Pradesh State, PIN-500056 has been arrested by Anti Terrorism Squad, Mumbai in A.T.S., MCOCA C.R.No. 05/06 U/s. 3(1)(i), 3(2), 3(4) of MCOC Act 1999 r/w secs. 10, 13 of U.A. (P) Act, r/w secs. 302, 307, 326, 325, 324, 427, 436, 121-A, 123, 124-A, 120-B of IPC, r/w Sec. 6, 9(b) of Indian Explosives Act, r/w Sec. 3, 4, 5 of Explosives Substances Act, r/w sec. 3, 4 of Prevention of Damage to Public Property Act, r/w sec. 151, 152, 153, 154 Indian Railways Act was produced before me by API Shashank Shelke attached to Anti Terrorism Squad, Mumbai, today i.e. on 23/10/2006 at 14-00 hrs., at my office to record the confessional statement of said accused as per the provisions laid down in sec. 18 (1) of M.C.O.C. Act, 1999.
3. I have ascertained the facts that the above mentioned	3. I have ascertained the facts that the above mentioned	2. I have ascertained the facts that the above mentioned	2. I have ascertained the facts that the above mentioned

offence was committed in the jurisdiction of the Maharashtra State limits on 11/07/2006.	offence was committed in the jurisdiction of the Maharashtra State limits on 11/07/2006.	offence was committed in the jurisdiction of the Maharashtra State limits on 11/07/2006.	offence was committed in the jurisdiction of the Maharashtra State on 11/07/2006.
4. The accused was taken in my personal custody and PSI Padmakar Deore and staff of ATS were asked to go out of my room and there were no police officers or policemen present anywhere, from where the proceedings of recording the confession could be seen or heard.	4. The accused was taken in my personal custody and API Nivrutti Kolhatkar and staff of ATS were asked to go out of my room and there were no police officers or policemen present anywhere, from where the proceedings of recording the confession could be seen or heard. I asked him to remove the veil which he did.	3. The accused was taken in my personal custody & Police Inspector R.R. Joshi & staff of ATS were asked to go out of my room and there were no police officers or policemen present anywhere, from where the proceedings of recording the confession could be seen or heard.	3. The accused was taken in my personal custody and API Shashank Shelke and staff of ATS were asked to go out of my room and there were no police officers or policemen present anywhere, from where the proceedings of recording the confession could be seen or heard. I asked him to remove the veil which he did.
5. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded below in Hindi.	5. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded by me in Hindi.	4. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded below in Hindi.	4. The accused was informed that he is no longer in the custody of Anti Terrorism Squad, Mumbai and was asked the following questions to which he replied in Hindi and the same are recorded below in Hindi.

822. The above referred chart once again highlighted the fact of similarity in the Part-I of the confessional statements. The above referred Part-I of the confessionals statements are of A.4, A.6, A.9 and A.12, recorded by three different DCPs. Despite the same, they are identical verbatim, except the name, age and address of the accused. This is possible only if some format is provided to all, however, the DCPs have denied use of any format or questionnaire.

823. Furthermore, questions asked to the accused persons in the beginning of Part-II, matched word to word in the confessions of A.3, A.7, and A.9 to A.12. These questions are herein under:

CHART NO. 39

Part-II of A.3 (Exh.1218)	Part-II of A.7 (Exh.1037)	Part-II of A.9 (Exh.924)	Part-II of A.10 (Exh.1249)	Part-II of A.11 (Exh.1127)	Part-II of A.12 (Exh.1230)
१. क्या तुम अब भी बयान देना चाहते हो?	१. क्या तुम अब भी बयान देना चाहते हो ?	१. क्या तुम अब भी बयान देना चाहते हो?	१. क्या तुम अभी भी कबुली जबाब देना चाहते हो?	२. क्या तुम अब भी बयान देना चाहते हो?	1- क्या तुम अब भी इकबाले बयान देना चाहते हो?
२. तुम्हे सोचने के लिए समय दिया था, वह समय काफी था या और समय चाहिये?	२. तुम्हे सोचने के लिए जो समय दिया था, वह समय काफी था या और समय चाहिये ?	२. तुम्हे सोचने के लिए जो समय दिया था, वह समय काफी था या और समय चाहिये?	२. तुम्हे सोचने के लिए समय दिया था, वह समय काफी था या और समय चाहिए?	१. तुम्हे सोचने के लिए समय दिया था क्या वह काफी था? या और समय चाहिये?	2- तुम्हे सोचने के लिए समय वक्त दिया गया था, वह काफी था या तुम्हे और यवन साहिये?
३. तुम्हारे उपर बयान देने का कोई दबाव नहीं है, या कोई जबरदस्ती नहीं है, क्या ये बात तुम्हारे समझ में आई?	३. आपके उपर बयान देनेका कोई दबाव नहीं है और ना ही कोई जबरदस्ती है. क्या यह बात आपके समझ में आई?	३. तुम्हारे उपर बयान देनेका कोई दबाव नहीं है। या कोई जबरदस्ती नहीं है! क्या ये बात तुम्हारे समझ में आई?	३. तुम्हारे उपर बयान देने का कोई दबाव नाही है! या कोई जबरदस्ती नहीं है! क्या ये बात तुम्हारे समझ में आई?	३. तुम्हारे उपर कबुली बयान देनेका कोई दबाव नहीं या कोई जबरदस्ती नहीं. ये बात तुम्हारे समझमें आई हैं?	3. तुम्हारे उपर इकबालीया बयान देने के लिए कोई दबाव नहीं है, और नहीं किसी तरह की जबरदस्ती है, क्या इस बात को तुम्ह समझ रहे हो?
४. क्या पुलिस या किसी आदमी ने तुम्हे फिर डराया, धमकाया तो नहीं?	४-क्या पुलिस या किसी आदमी ने आपको डराया या धमकाया तो नहीं ?	४. क्या पुलिस या किसी आदमी ने तुम्हे फिर डराया, धमकाया तो नहीं?	४. क्या पुलिस या किसी आदमी ने तुम्हे फिर डराया, धमकाया तो नहीं?	४.क्या पुलिस या किसी आदमी ने तुम्हे डराया, धमकाया तो नहीं ?	4. क्या पुलिस या किसी और ने तुम्हे डराया, धमकाया या मारा पीटा है?

५. क्या पुलिस या किसी आदमीने तुम्हे बयान देने के लिए, केस से बाहर निकालनेका या सजा कम दिलवाने का वादा किया है?	५. क्या पुलिस या किसी आदमीने तुम्हे बयान देने के लिए, केस से बाहर निकालने का या सजा कम दिलवाने का वादा किया है?	५. क्या पुलिस या किसी आदमीने तुम्हे बयान देने के लिए, केस से बाहर निकालने का या सजा कम दिलवाने का वादा किया है?	५. क्या पुलिस या किसी आदमीने तुम्हे बयान देने के लिए, केस में से बाहर निकालने का या सजा कम दिलवाने का वादा किया है?	५. क्या पुलिस या किसी आदमीने तुम्हे कबुली बयान देने के लिए केस से बाहर निकालनेका या सजा कम दिलानेका वादा किया है?	5- क्या पुलिस या किसी और ने तुम्हे बयान देने पर केस में से बाहर निकालने का या सजा कम दिलवाने का वादा किया है?
६. क्या पुलिस या किसी आदमी ने तुमसे तुम्हारे बयान देने पर सरकारी गवाह बनाने का वादा किया है?	६-क्या पुलिस या अन्य किसीने आपको बयान देने पर सरकारी गवाह बनाने का वादा किया है?	६. क्या पुलिस या किसी आदमी ने तुमसे तुम्हारे बयान देने पर सरकारी गवाह बनाने का वादा किया है?	६. क्या पुलिस या किसी आदमीने कबुली बयान देने के लिए कोई लालच दि है?	६.क्या पुलिस या किसी आदमीने तुम्हारे कबुली बयान देनेपर सरकारी गवाह बनानेका वादा किया है?	6 क्या मुलीस या किसी आदमी ने तुम्हारे इकबालिया बयान देने पर सरकारी गवाह बनाने का वादा किया है?
७. क्या पुलिस या किसी आदमीने बयान देने के लिए कोई लालच दी है?	७-क्या पुलिस या अन्य किसीने बयान देने के लिए आपको कोई लालच दिखाया है?	७. क्या पुलिस या किसी आदमीने बयान देने के लिए कोई लालच दी है?	७. क्या तुम बिना किसी दबाव के या अपनी मजीसे कबुली बयान दे रहे हो?	७. क्या पुलिस या किसी आदमीने कबुली बयान देने के लिए कोई लालच दी है?	7. क्या पुलिस ने या किसी आदमी ने इकबालिया बयान देने के लिए कोई लालच दी है ?
८. क्या तुम बिना किसी दबाव के या अपनी मर्जीसे बयान दे रहे हो?	८-क्या तुम बिना किसी दबाव के और अपनी मर्जी से बयान दे रहे हो?	८. क्या तुम बिना किसी दबाव के या अपनी मर्जीसे बयान दे रहे हो?	८. तुम्हे कोई परेशानी या मुश्किल तो नहीं है?	८. क्या तुम किसी दबाव के बिना अपनी मर्जीसे कबुली बयान दे रहे हो ?	8. क्या तुम बिना दवाव के पूरी तरह अपनी मर्जी से बयान दे रहे हो?
९. तुम्हे कोई परेशानी या मुश्किल तो नहीं है?	९-तुम्हे कोई परेशानी या मुश्कील तो नहीं है?	९. तुम्हे कोई परेशानी या मुश्किल तो नहीं है?		९. तुम्हे कोई परेशानी या मुश्किल तो नहीं?	

१०. मैं तुम्हारा बयान जबरदस्ती लेनेवाला नहीं हूँ। अगर बयान तुम अपनी मर्जीसे, बिना किसी दबाव के दे रहे हो, तो मैं तुम्हारा बयान दर्ज करता हूँ। क्या ये बात तुम्हारे समझ में आयी?	१०-मैं आपका बयान जबरदस्ती लेनेवाला नहीं हूँ। अगर आप अपनी मर्जी से और बिना किसी दबाव या जबरदस्तीसे अपना बयान दे रहे हो तो मैं आपका बयान दर्ज करता हूँ। क्या यह बात आपके समझ में आयी है?	१०.-मैं तुम्हारा बयान जबरदस्ती लेनेवाला नहीं हूँ। अगर बयान तुम अपनी मर्जीसे बिना किसी दबाव के दे रहे हो, तो मैं तुम्हारा बयान दर्ज करता हूँ। क्या ये बात तुम्हारे समझ में आयी?	९. मैं तुम्हारा कबूली बयान जबरदस्ती लेने वाला नहीं हूँ। अगर कबूली बयान तुम अपनी मर्जीसे, बिना किसी के दबाव के दे रहे हो, तो मैं तुम्हारा कबूली बयान दर्ज करता हूँ। क्या ये बात तुम्हारे समझ में आयी ?	१०. अगर तुम अपनी मर्जीसे, बिना किसी दबाव या डरसे अपना कबूली बयान देना चाहते हो तो ही मैं तुम्हारा कबूली जबाब दर्ज करूंगा। क्या यह बात तुम्हारे समझ में आई है?	

824. We have already seen that it is evident from the evidence of PW-93 DCP Phadtare (who recorded the confessional statements of A.5 and A.9), PW-117- DCP Singh (who recorded the confessional statements of A.3 and A.12) and PW-118- DCP Dumbre (who recorded the confessional statements of A.10) that they did not have questionnaire. PW-93 formulated questions based on the guidelines of senior officers and legal advisors, whereas PW-117 and PW-118 independently prepared their respective questions.

825. PW-118 DCP Dumbre admits the question number 4 to 8 and their answers in both (A.3 and A.10) are same. The footnotes in both are substantially the same, except the name of the police officer and the date and time. He admits that the contents of paragraph 1 in both Exh.1218 (Part-II of A.3's Confession) and Exh.1249 (Part-II of A.10's Confession) are same, except the name and the particulars of the accused, the names of the police officers and the date and time of

production. He further admits that the contents of paragraph 4 in Exh.1218 are the same as the contents of paragraph 2 in Exh.1249. He admits that the contents of paragraph 5 in Exh.1218 are the same as the contents of paragraph 3 in Exh.1249. He admits that the question no. 1 to 3 and their answers are same. The question no. 5 in Exh.1218 and question no.4 in Exh.1249 and their answers are the same. In both questions, the word '*phir*' is used before the words '*daraya*' and '*dhamkaya*'. The question no. 6 in Exh.1218 and the question no. 5 in Exh.1249 and their answers are the same, except use of the word '*kabuli bayan*' in Exh.1249 instead of word '*bayan*' in Exh.1218. The question no. 6 in Exh.1249 and question no. 8 in Exh.1218 and their answers are the same. Question no. 7, 8 and 9 in Exh.1249 and their answers the same as question no. 9, 10, and 11 in Exh.1218, except the word '*kabuli jawab*'. He admits that the notes below the questions and answers are word to word same.

826. Let us now examine the depositions of the other DCPs to ascertain whether they possessed any questionnaire or were provided with any guidelines regarding the formulation of questions

827. PW-102 DCP Mohite recorded the confessional statements of A.2 and A.7. He deposed that he did not have the question ready in writing before he started recording the confessional statements of A.2 and A.7. He asked the questions from his mind based on law and experience. A suggestion given to him that everything that is written in Part-I and Part-II was sent ready-made by the ATS officers and he just wrote it down in his handwriting, was denied by him.

828. PW-104 DCP Karale recorded the confessional statements of A.4 and A.6. He has deposed that his senior officers have not given any

written guidelines about recording confessional statements. He generally asks similar types of questions to the accused whenever he records the confessional statements.

829. PW-111 DCP Ranade recorded the confessional statement of A.11. He deposed that his department had not provided the questionnaire or proforma of the certificate before 04/10/2006.

830. PW-113 DCP Choubey recorded the confessional statement of A.1. He deposed that it was the first occasion when he recorded the confessional statement under the MCOCA or under any other Act. He made efforts to collect information as to how the confessional statement is to be recorded by talking with one of his colleagues as he knew that. He further deposed that his colleague did not give him any questionnaire. He formulated the questions himself.

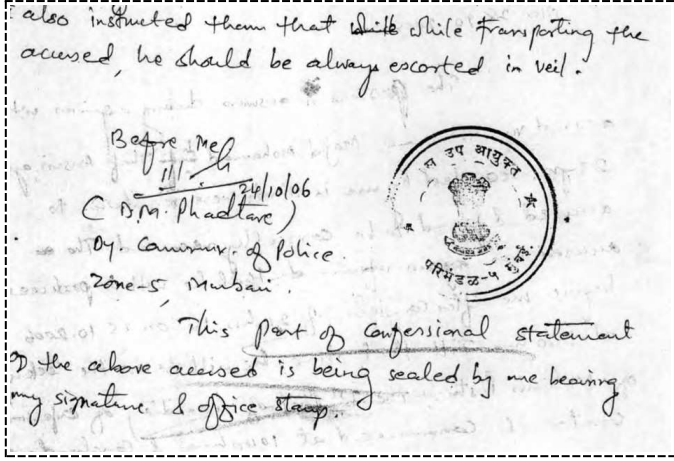
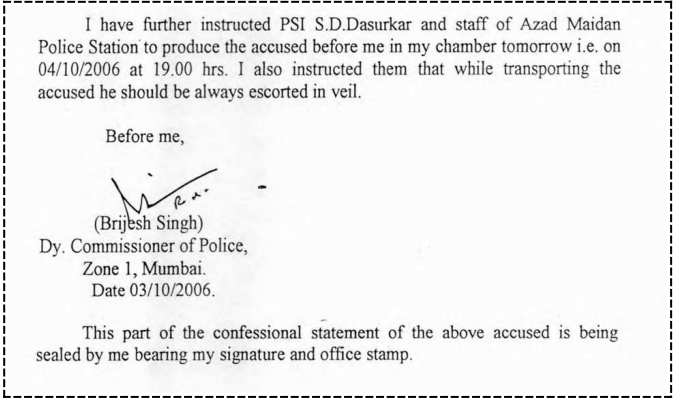
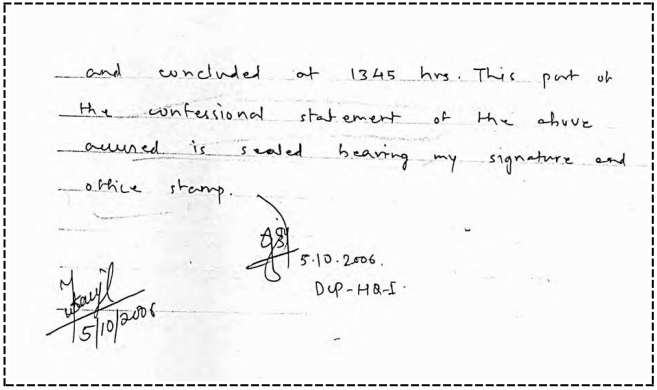
831. The above referred discussion, therefore, leads us to a conclusion that a possibility cannot be ruled out, as expressed by the defence, that though these documents pretended to be prepared by the concerned DCPs, in fact, were not prepared by the DCPs. Hence, it creates doubt about the compliance of procedural safeguards and norms to be followed while recording of the confessional statements.

Missing Of Stamp Of DCP At The Bottom Of Part-I Of The Statements Of A.3 And A.10, Even Though There Is A Mention That It Bears Office Stamp

832. On perusal of the Part-I of the confessional statements of A.3, A.5, and A.10, it can be seen that the Part-I of all the three confessional statements end with “this part of the confessional statement of the

above accused is sealed bearing my signature and office stamp.” Though there is a mention of bearing of office stamp, no office stamp can be seen at the bottom of Part-I of A.3 and A.10. Whereas, it is present in the Part-I of the confessional statement of A.5. The images of the relevant portion of Part-I of A.3, A.5 and A.10 will make it clear.

Image No. 2

Part-I of A.5 (Exh.934)	
Part-I of A.3 (Exh.1212)	
Part-I of A.10 (Exh.1246)	

833. Not putting the stamp despite there being a mention of bearing it, may not be of any consequence in normal circumstance. Such error may happen possibly in two circumstances, 1) the officer inadvertently did not put the stamp, or 2) a ready-made document was provided to the office and he mechanically signed it, without looking into the requirement of putting stamp.

834. In the first circumstance, such error can be ignored. But in second circumstance, it will amount to non-compliance of safeguards and fair procedure, which is fatal and makes the confessional statement inadmissible.

835. It is to be noted that the circumstances explaining probable reasons for the error of not putting the stamp, are not brought on record by the prosecution. However, considering that some of Part-I and Part-II of the confessional statements written by different DCPs are identical verbatim, the possibility of second circumstance cannot be ruled out.

Similarity In Questions And Answers In Part-II Of A.3 And A.5

836. Shockingly, if Part-II of the confessional statement of A.3 and A.5 are perused, it will be revealed that, the preliminary questions and answers in Part-II of the confessional statements are identical, which can be seen from the comparative chart given herein under.

CHART NO. 40

A.3 - Faizal Shaikh (recorded by PW-117 DCP Singh)	A.5 - Mohd. Majid Mohd. Shafi (recorded by PW-93 DCP D.M.Phadtare)
१. क्या तुम अब भी बयान देना चाहते हो? जबाब- जी, हाँ।	१. क्या तुम अब भी बयान देना चाहते हो? जबाब: जी हाँ।

२. तुम्हे सोचने के लिए समय दिया था, वह समय काफी था या और समय चाहिये? जबाब- मुझे दिया हुआ समय काफी है। मुझे और समय नहीं चाहिये।	२. तुम्हे सोचने के लिए समय दिया था, वह समय काफी था, या और समय चाहिये? जबाब: मुझे दिया हुआ समय काफी था। है। मुझे और समय नहीं चाहिये।
३. तुम्हारे उपर बयान देने का कोई दबाव नहीं है, या कोई जबरदस्ती नहीं है, क्या ये बात तुम्हारे समझ में आई? जबाब- जी हाँ ये बात मेरी समझ में आई।	३. तुम्हारे उपर बयान देने का कोई दबाव नहीं है, या कोई जबरदस्ती नहीं है, क्या ये बात तुम्हारे समझ में आई? जबाब: जी हाँ, ये बात मेरे समझ में आई।
४. क्या पुलिस या किसी आदमी ने तुम्हे फिर डराया, धमकाया तो नहीं? जबाब- नहीं, मुझे किसने डराया या धमकाया नहीं है।	४. क्या पुलिस या किसी आदमी ने तुम्हे फिर डराया या धमकाया तो नहीं? जबाब: नहीं, मुझे किसने डराया धमकाया नहीं।
५. क्या पुलिस या किसी आदमी ने तुम्हे बयान देने के लिए केस से बाहर निकालने का या सजा कम दिलवाने का वादा किया है? जबाब- जी नहीं।	५. क्या पुलिस या किसी आदमी ने तुम्हे बयान देने के लिए, केस से बाहर निकालने का या सजा कम दिलवाने का वादा किया है? जबाब: जी नहीं।
६. क्या पुलिस या किसी आदमी ने तुमसे तुम्हारे बयान देने पर सरकारी गवाह बनाने का वादा किया है? जबाब- नहीं।	६. क्या पुलिस या किसी आदमी ने तुमसे तुम्हारे बयान देने पर सरकारी गवाह बनाने का वादा किया है? जबाब: नहीं.
७. क्या पुलिस या किसी आदमी ने बयान देने के लिए कोई लालच दी है? जबाब- जी नहीं।	७. क्या पुलिस या किसी आदमी ने बयान देने के लिए कोई लालच दी है? जबाब: जी नहीं.
८. क्या तुम बिना किसी दबाव के या अपनी मर्जीसे बयान दे रहे हो? जबाब- जी हाँ. मैं बिना किसी दबाव अपने मर्जीसे बयान दे रहा हूँ।	८. क्या तुम बिना किसी दबाव के या अपनी मर्जीसे बयान दे रहे हो? जबाब: जी हाँ. मैं बिना किसी दबाव और अपने मर्जीसे बयान दे रहा हूँ.
९. तुम्हे कोई परेशानी या मुश्किल तो नहीं है? जबाब- जी नहीं।	९. तुम्हे कोई परेशानी या मुश्किल तो नहीं है? जबाब: जी नहीं.
१०. मैं तुम्हारा बयान जबरदस्ती लेनेवाला नहीं हूँ। अगर बयान तुम अपनी मर्जीसे, बिना किसी दबाव के दे रहे हो, तो मैं तुम्हारा बयान दर्ज करता हूँ। क्या ये बात तुम्हारे समझ में आयी? जबाब- जी हाँ. ये बात मेरी समझ में आयी है, और मैं अपना बयान अपनी मर्जीसे दे रहा हूँ।	१०. मैं तुम्हारा बयान जबरदस्ती लेनेवाला नहीं हूँ। अगर बयान तुम अपनी मर्जीसे, बिना किसी दबाव के दे रहे हो, तो मैं तुम्हारा बयान दर्ज करता हूँ। क्या ये बात तुम्हारे समझ में आयी? जबाब: जी हाँ, ये बात मेरी समझ में आयी है। और मैं अपना बयान अपनी मर्जीसे दे रहा हूँ।

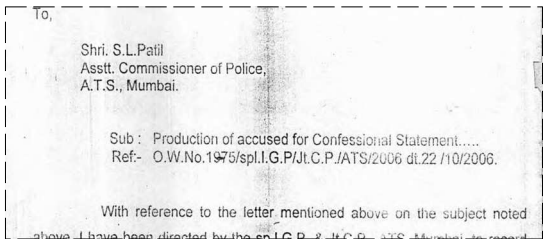
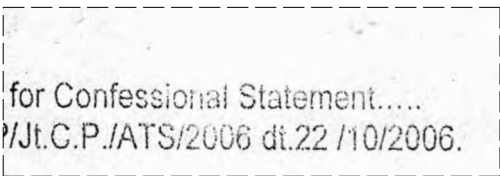
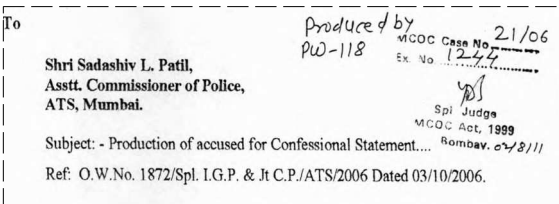
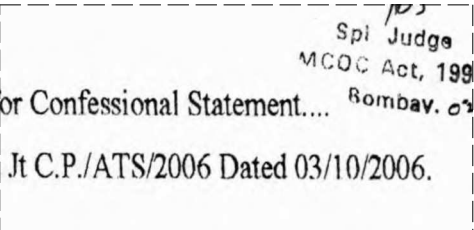
837. Admittedly, two DCPs namely PW-117 Brijesh Singh and PW-93 D.M. Phadtare recorded Part-II of A.3 and A.5 respectively on two different dates, at different places and time. By any stretch of imagination, it is highly impossible to have same questions, and its sequence in both the statements with same answers. Thus, it speaks volume and create doubt about the genuineness of the procedure followed while recording confessional statements of these accused.

Similarity In Putting Dots In The Subject Of The Letter Correspondence Made Between DCPs and Chief I.O. ACP Patil

838. Whenever three dots are used in any sentence like '...', it is called as 'ellipsis', which signifies that the sentence was originally longer, and the omitted portion is not part of the quoted text. In informal writing, it can represent a pause, hesitation, or an incomplete thought.

839. The images of relevant portion of letters written by DCPs who put such dots are reproduced with magnified images as under.

Image No. 3

Original Image of Relevant Portion	Magnified Image of Relevant Portion
Exh.1224 	
Exh.1244 	

Exh.1245 To, Shri Ashutosh Dumbre Dy. Comm. of Police, HQ-1, Mumbai. <i>Produced by PW-118</i> MCOC Case No. 21/01 Ex. No. 1245 Spl. Judge MCOC Act, 1999 Bombay. Sub : Production of accused for Confessional Statement.... Ref : Your O.W.No. 531/DCP/HQ/2006 Dt. 04/10/2006.	for Confessional Statement.... CP/HQ/2006 Dt. 04/10/2006.
Exh.1225 To, Shri. Brijesh Kumar Singh, Dy. Commissioner of Police, Zone I, Mumbai. <i>26-7-11</i> Sub : Production of accused for Confessional Statement.... Ref : Your O.W.No. 2687 /DCP/Zone I/2006 Dt. 23/10/2006.	for Confessional Statement.... CP/Zone I/2006 Dt. 23/10/2006.
Exh.1177 To, Shri Sadashiv L. Patil, Asstt. Commissioner of Police, ATS, Mumbai. Sub : Production of accused for Confessional Statement..... Ref : O.W. No. 1847/Spl. I.G.P. & Jt. C.P./ ATS/2006, dated 02/10/2006.	for Confessional Statement..... S.P. & Jt. C.P./ ATS/2006, dated 02/10/2006.
Exh.1016 To Shri Sadashiv L. Patil, Asstt. Commissioner of Police, ATS, Mumbai. <i>Produced by PW-102</i> MCOC Case No. 21/01 Ex. No. 1016 Spl. Judge MCOC Act, 1999 Bombay. Subject : - Production of accused for Confessional Statement.... Ref: O.W.No. 1874/Spl. I.G.P. & Jt C.P./ATS/2006 Dated 03 /10/2006.	for Confessional Statement.... S.P. & Jt C.P./ATS/2006 Dated 03 /10/2006.

840. PW-118 DCP Dumbre admits that the contents of the letters Exh.1244 (Letter from PW-118 to PW-186 Chief I.O. directing to produce A.10 for confession) and Exh.1224 (Letter from PW-117 DCP Singh to PW-186 Chief I.O. directing to produce A.12 for confession) are similar, except the particulars of the accused, the inward number, and outward number, reference. The format of the letters is similar. He cannot

explain why there are some dots after the word 'statement' in the subject column in Ext.1244. Similar dots are there in Ext.1224, however the number of dots are different. Similar dots are there in Ext.1245 (Letter from PW-186 Chief I.O. to PW-118 to take custody of A.10). He agrees that several dots are not necessary after the word 'statement'. PW-118 admits that similar dots are there after the word 'statement' in Exh.1225 (Letter from PW-186 Chief I.O. to PW-117 DCP Singh to take custody of A.12), which are unnecessary. He denies that the ACP, ATS provided him with the letters that he says he prepared in his office.

841. It is, thus, evident that in Exh.1224 and Exh.1177 (Letter from PW-113 to Chief I.O. directing him to produce A.1 for confession) there are five dots, whereas, in Exh.1244, Exh.1245, Exh.1225, and Exh.1016 (Letter from PW-102 to Chief I.O. directing him to produce A.2 for confession) there are four dots. Moreover, it is clear from the text that it has no relevance in view of the described usage of such dots (ellipsis). Thus, it only depicts the non-application of mind of the DCPs while possibly copying the text and the dots in it without examining whether such dots have any relevance at the place where they are used. This further brings these documents and other documents under the shadow of doubt whether it is prepared by someone else than the concerned DCPs.

842. Having observed as above, it is imperative to consider the findings recorded by the Learned Special Court in this regard. The Learned Special Court has observed thus: -

“1390. Next and the most agitated objection is that all the seven DCPs committed common mistakes, did common changes and additions and by this the only inference can be drawn is that all the

confessional statements were prepared by the ATS officers in the ATS office and were supplied to the DCPs only for signing. It is also submitted that the accused were taken to the DCPs only to get their signatures and make record in the police station that they were brought to the DCP for recording of the confessional statement. Insofar as the later submission is concerned, the voluminous and contemporaneous documentary record in the form of letters by the DCPs to the investigating officer of the ATS, to the local police stations, the oral evidence of the DCPs, the oral evidence of the escorting officers, station diary entries and the medical record fully proves that the accused were taken to the DCPs for the purpose of recording their confessional statement and not for taking their signatures.

1391. The points on which the submissions of common authorship of the confessional statements is based are changes in sequence and addition of sections concerning the first batch of the seven accused, then copying of word to word with mistakes from other confessions, etc. The changes in sequence and addition of sections is pointed out in respect of the letters sent by the Jt. CP, ATS to the DCPs, the letters sent by the DCP to the ACP, ATS, the letters by the DCP to the in-charge of local police station and the letters by the DCP to the CMM and it is submitted that before recording Part-1 of the confessional statement, the DCP has two letters with him, one from the Jt. CP, ATS and one from the investigating officer of the case. It is submitted that the sequence of the sections and addition of the sections by the DCPs is the same when they have written letters to the above authorities, but it is changed in Part-I and Part-II. The sequence is changed and section 34 of the IPC is deleted. It is submitted that if this is done by one DCP, it can be understood, it can be a coincidence if done by two DCPs, but if it is done by all the seven DCPs, then the only inference that can be drawn is that all the confessional statements were supplied by the ATS to the DCPs and the accused did not make any confession before them and therefore the seven confessional statements of the A1 to A4 and A9 to A11 are required to be discarded on this ground. Learned advocate Wahab Khan submitted that the sequence of sections of offence in the correspondence/set of letters prior to the recording of the confessional statements of all the eleven accused is changed by the DCPs in Part-I and Part-II of the confessional statement. However, in the correspondence by the DCPs after the confessional statements were recorded, including the letters to the CMM, the sequence of sections in the correspondence prior to the recording of the confessional statements is maintained. He submits that the DCPS have written the first and second part of the confessional statements by applying their minds uninfluenced by any outside things. Therefore, the sequence of sections of offence in the correspondence

after recording of the confessional statements should be consistent with the sequence in the first and second part of the confessional statement. He submits that it may be said that this is a minor thing, but points out that this practice is followed by all the seven DCPS which is not natural and cannot be digested and it cannot be said that soft copies of the letters were given to all the authorities right from the Jt. CP, ATS upto the ACP.

1392. In my humble opinion, as submitted by the learned advocate himself, this is a minor thing. The letters sent by the DCPS are on their letter pads bearing the logo of 'Brihanmumbai Police and the possibility of soft copy of format of letters being provided cannot be ruled out. However, only on the basis of such commonality, it would be preposterous to draw the conclusion that the confessional statements themselves are fabricated and were dictated or prepared by a single authority.

1404. In view of the above discussion, the submission about the changes in sequence, addition of sections, commonality of words and mistakes in the confessions, uses of particular words, improper use of some words that are wrongly written, sequence of names of wanted accused as well as the accused in this case being common, covered in the topic the common authorship of the confessions, are untenable and do not affect the evidential value of the confessional statements. They also do not lead to any inference that there was a common author for all the confessional statements and that they were provided by the investigating machinery.”

843. It is apparent on the face of above referred observations that Learned Special Court not only ignored and discarded the doubt about the genuineness in following the procedure by the DCPs in recording Part-I and Part-II but held contrary to a well settled law. Hence, we are of the firm view that the above observations are perverse.

II) Variations in mentioning the names of accused A.4 and A.9 in correspondence and Part-I and Part-II of the confessional statements

A.4 – Ehtesham Siddique

844. Learned Counsel Shri. Chaudhary argues that in the letter dated 04/10/2006 (**Exh.1055** – Letter from PW-104 DCP Karale to PW-186

Chief I.O.), the name of A.4 is referred as 'Ehtesham Qutubuddin Siddiqui' and not 'Ehtesham Qutubuddin Ansari' as mentioned in Exh.1054 (Letter from Jt. CP to PW-104 DCP Karale). The oral evidence of PW-104 shows that he had no other material, except letter Exh.1054, while writing letter Exh.1055. If this is so, the error made in Exh.1054 should have been carried forward in the letter Exh.1055. It is, therefore, argued that the possibility that the letter Exh.1055 was not written by PW-104 cannot be ruled out.

845. Let us test the above referred submission. From the record, it is evident that in the letter Exh.1054 (Letter by Joint CP to PW-104 DCP Karale directing him to record confession of A.4), the name of A.4 is mentioned as 'Ehtesham Qutubuddin Ansari'. Whereas, in fact, the name of A.4 is 'Ehtesham Qutubuddin Siddiqui'. However, on perusal of Exh.1055 (Letter by PW-104 DCP Karale to PW-186 Chief I.O. to produce A.4 for confessional statement) it can be seen that the name of A.4 is written 'Ethesham Kutubuddin Siddiqui'.

846. In this regard, in cross-examination, PW-104 DCP Karale admits that the name of A.4 mentioned in Exh.1054 is 'Ehtesham Qutubuddin Ansari'. He cannot say from where he got the information to write the name of A.4 in Exh.1055 as 'Ethesham Kutubuddin Siddiqui'. Thus, it is evident that despite an opportunity to explain such error was given to him, he failed to explain.

847. It is to be noted that PW-104 deposed that he did not know anything about A.4 till he received letter Exh.1054. He has not received any material in connection with this case till he drafted Exh.1055. He has not seen the accused till he was produced before him.

He denied the suggestion that he had received the entire information and documents on 04/10/2006 as to what confession the accused was going to make.

848. If these variations in mentioning the names are considered in isolation, they may be ignored. But, in totality of background earlier discussed, which suggests possibility of copying, this cannot be ignored. Thus, such variations further strengthen the case of the defence that these documents were not prepared by the concerned DCPs.

A.9 – Muzzammil Ataur Rehman Shaikh

849. Similarly, in case of A.9, there are variations and different versions of spellings and the name.

850. Learned Sr. Counsel Shri. Muralidhar argues that it is not a question of spelling mistakes but the question is that how could it happen if the same officer is writing and when a copy paste facility was available. It is argued that all the three letters (**Exh.927** – letter by PW-93 to CMM after recording Part-II, **Exh.928** – Letter by PW-93 to local police station for producing A.9 before Learned CMM, and **Exh.929** - Letter to ACP Patil informing that the custody of A.9 is being handed over to PI R.R.Joshi) were dictated immediately after recording of Part-II of confession. He, therefore, argues that it creates doubt whether it is written by the same person.

851. On perusal of record, it is evident that on 03/10/2006, Jt. CP issued a letter to PW-93 DCP Phadtare directing him to record the

confessional statement of A.9. In the said letter, name of A.9 appears at four places as 'Mujjamil Ataur Rehman Shaikh'.

852. Thereafter the letter written by DCP Phadtare on 04/10/2006 (Exh.918) to PW-186 ACP Patil and letter (Exh.920) dated 04/10/2006 again written to PW-186 ACP Patil, the name of A.9 is written as 'Mujjamil Ataur Rehman Shaikh'. However, while recording the Part-I and Part-II of A.9, PW-93 records the name of A.9 as 'Muzzamil Ataur Rehman Shaikh@Abu Shahid'. Furthermore, in a letter written by PW-93 date 06/10/2006 to PW-186 ACP Patil, the name of A.9 is written as 'Mujjamil Ataur Rehman Shaikh'.

853. Thus, it is evident that in all the correspondence made by PW-93 in relation with recording of confessional statement of A.9, the name written is as 'Mujjamil Ataur Rehman Shaikh'. However, in the confessional statement Part-I and Part-II and in every page of confessional statement, the name of A.9 is written as 'Muzzamil Ataur Rahman Shaikh @ Abu Shahid'. Thus, there is not only change in spelling but there is addition of '@ Abu Shahid' after the name of A.9

854. The important part which is to be noted here is that, on the record, nowhere A.9's name appears along with his alias name, i.e. Abu Shahid.

855. PW-93, in his cross-examination, deposed that he came to know A.9's alias name as Abu Shahid during the interaction with A.9. He admits that this alias name is not written in the answer to the second question. This is the only question concerning his name to which he has given the answer as Muzzammil Ataur Rehman Shaikh and he did

not mention the alias name Abu Shahid. He admits that that Exh. 917 (Letter from Jt. CP to PW-93 DCP Phadtare) and Exh.918 (Letter from PW-93 to PW-186 Chief I.O.) do not mention this alias name. He further admits that the alias name is not written in the second line of the paragraph, after the signature of the accused below the question and answer portion. He could not assign any reason for this.

856. If the oral testimony of PW-93 is accepted that he came to know A.9's alias name as Abu Shahid during the interaction with him, there is no explanation why A.9's name was not written in the same fashion in the letters written by PW-93, Exh. 927, Exh.928 and Exh.929 dated 06/10/2006 which were admittedly written after recording of Part-II of the confessional statement on 05/10/2006. Similarly, while writing A.9's name in answer to second question, he did not mention his alias name. Therefore, it creates doubt about the explanation given by PW-93 that he came to know A.9's alias name as Abu Shahid during the interaction with him.

857. If we consider letter correspondence (Exh.918, 920, and 929) written by PW-93 as one set of documents because of similarity in names written in these letter, and Part-I and Part-II of confessional statements as second set of documents because of mentioning of name of A.9 in a different style than mentioned in the letters, in that case, one more interesting aspect needs to be noted about mentioning of the offences in both the sets of documents. In the first set of documents (Letters Exh.918, 920, and 929), while mentioning the offences, section 34 of IPC, it is mentioned at the end of the offences referred to under IPC. In reverse direction, from section 34, section 124A , 123, 121A and 120B

are mentioned. However, in the confessional statements, section 34 of IPC is missing and section 120B is mentioned in the end of the offences referred to under IPC, i.e., in reverse position. Section 120B comes first and then 124A, 123 and 121A.

858. Thus, it is evident that not only the name of A.9 is mentioned differently in both the sets of documents but even the offences are mentioned in two different sequences.

859. The prosecution failed to explain the above referred discrepancies, which give rise to a doubt as raised by the defence as to the genuineness of the documents and whether they were written by the concerned DCP or some different persons. There is one more reason to say so. PW-93, who recorded the confessions of A.5 and A.9, failed to identify both the accused A.5 and A.9 in dock identification.

860. In the circumstances, for the reasons recorded above, we do not accept the argument made by the prosecution that the contemporaneous record wipes out doubt as to whose confession PW-93 recorded because the accused have not denied their signature on the confessions or the fact that they were produced before CMM, and further argument that because the police officers who produced the accused before PW-93 before Part-I and the police officer who produced the accused after the period of reflection have been examined, the defence cannot give much weightage to the fact that PW-93 could not identify A.5 and A.9 in dock identification.

III) Absence of certificates under Sub-rule 6 of Rule 3 of the MCOC Rules at the bottom of the confessional statements of A.1, A.3 and A.10

861. It is argued by the defence that confessions of A.1, A.3 and A.10 do not have certificates as contemplated under Rule 3(6) of the MCOC Rules. There must be a certificate at the end of the confession. And, in absence of such certificate, it can be said that there is no contemporaneous record of the satisfaction of the DCP that the confession is made voluntarily. It is submitted that the said lacuna cannot simply be remedied through oral testimony. It is further argued that Section 463 of Cr.PC allows any omissions, lacuna, or irregularities in recording a confession under section 164 of Cr.PC to be supplemented or corrected by the Learned Magistrate whilst giving evidence on oath. It is argued that this provision has no applicability to confessions recorded by police officers u/s 18 MCOCA, it being an extraordinary penal statute which allows confessions to be recorded by police officers by way of an exception to the general law.

862. On the other hand, learned SPP argues that series of documents which are proved by examining relevant witnesses sufficiently establish that all the procedural formalities were complied with. However, certain shortcomings in the certificates given after the completion of the confession will not vitiate the statement. To buttress this argument, he placed reliance upon the judgment of *Sanjay Dutt vs. State of Maharashtra* reported in AIR 2013 SC 2687.

863. Learned SPP further argues that absence of such certificate at the end of confessional statements will not vitiate the confessions. To buttress his submission, he has placed reliance on the judgment of

Mohamad Iqbal Farooq Sheikh v. State of Maharashtra, reported in 2006 SCC OnLine Bom 878.

864. In the case of **Sajjan Singh v. The State**, reported in 1952 Cri. L.J. 952, the Pepsu High Court has held thus: -

“The Magistrate who is entrusted with this duty, must appreciate his function in that behalf as one of a Judicial task of ascertaining that the statement that the accused is going to make is of his own accord and not on account of any influence on him. He has also to bear in mind that satisfaction of his conscience as to the voluntary character of the statement is not the only act to be achieved by him but he should leave such materials on the record as would satisfy the Court which is to decide the case, that the confessional statement was in fact voluntarily made.”

865. The proforma of the certificate to be appended at the bottom of statement is given under Rule 3(6) of the MCOC Rules which reads thus: -

“6. The confession recorded under sub-rule (5) shall, if it is in writing, be signed by the person who has made such confession and by Police Officer, who has recorded the said confession. Such Police Officer shall, under his own hand, also make a memorandum at the end of the confession to the following effect:-

"I have explained to (name of the confessor) that he is not bound to make a confession and that, if he does so, any confession that he makes, may be used as evidence against him and I am satisfied that this confession has been made voluntarily. It has been made before me and in my hearing and has been recorded by me in the language in which it is made and as narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession/statement made by him."

866. From Rule 3(6) of the MCOC Rules, it can be said that the rule mandates the DCP to certify the following things in the certificate: -

- (i) It has been explained to the accused that he is not bound to make the confession and the same can be used against him as evidence,

- (ii) The DCP has to get satisfied that the confession has been made voluntarily,
- (iii) The confession was made before the DCP, in his hearing,
- (iv) The confession has been recorded by DCP in the language in which it is made and narrated by the accused,
- (v) The recorded confession was read over to the accused and the accused admitted it to be verbatim and correct, and containing also full and true account of the confession made by the accused.

867. The Hon'ble Supreme Court of India, in the case of *Bharatbhai vs. State of Gujarat* reported in AIR 2002 SC 3620, has observed that in such matter of recording of confessional statements the fate of not only the accused but co-accused as well also hinges on such a confession recorded by a police officer. Therefore, the rule is harsher the consequences, the stricter is the need to comply with the requirement of the Rules.

868. In the case of *Kartar Singh (supra)*, the Hon'ble Supreme Court of India has held that, in view of the legal position, vesting authority on higher police officer to record the confession, hitherto enjoyed by the judicial officer in the normal procedure, there should be no breach of procedure and the accepted norms of recording the confession.

869. In the case of *Nazir Ahmed vs. King Emperor* reported in AIR 1936 PC 253, the Privy Council has observed that when power is given to do a certain thing in a certain way, the thing must be done in that

way or not at all. There is no doubt that this exposition will apply to the present case with full force.

870. The requirement to have a certificate as provided under Rule 3(6) of MCOC Rules is contemplated under section 18(3) of MCOCA. Sub-section 3 of section 18 is in two parts. The first part is in respect of satisfaction of the DCP that the confession is being made voluntarily. The first part of sub-section 3 says that the police officer shall before recording any confession under sub-section 1, explain to the persons making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him, and such police officer shall not record any such confessions unless, upon questioning the person making it, he is satisfied that it is being made voluntarily.

871. The second part of sub-section 3 of section 18 which is relevant for us to answer the submissions made by rival parties as regards absence of a certificate at the bottom of the confessions. The second part of sub-section 3 of section 18 of MCOCA says that the concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

872. Having a satisfaction of the DCP to believe that the confession is being made voluntarily is *sine-qua-non* for the exercise of jurisdiction to record the confession. Sub-section 3 of section 18 of MCOCA does not make it obligatory for the DCP to append at the end of the record of the preliminary questioning, a certificate as to anticipate voluntariness of the confession about to be recorded. But the law does

peremptorily require that, after recording the confession, the DCP must append at the foot of the record, a memorandum certifying his satisfaction that the confession was voluntarily made.

873. The reason for requiring compliance with this mandatory requirement at the end of recording of the confession, as held by the Hon'ble Supreme Court of India in the case of *Chandran vs. State of Tamil Nadu* (1978) 4 SCC 90, appears to be that it is only after hearing the confession and observing the demeanour of the person making it, that the Magistrate is in the best position to append the requisite memorandum certifying the voluntariness of the confession made before him.

874. In the case of *Bharatbhai (supra)*, the Hon'ble Supreme Court of India has held thus: -

“**33.** ...Writing the certificate and making the memorandum are thus made mandatory to prove that the accused was explained that he was not bound to make a confession and that if he made it, it could be used against him as evidence, that the confession was voluntary and that it was taken down by the police officer fully and correctly. These matters are not left to be proved by oral evidence alone. The requirement of the rule is preparation of contemporaneous record regarding the manner of the recording the confession in the presence of the person making it. Though giving of the statutory warning, ascertaining the voluntariness of the confession and preparation of a contemporaneous record in the presence of the person making the confession are mandatory requirements of the rule, we see no good reason why the form and the words of the certificate and memorandum should also be held mandatory. What the mandatory requirements of a provision are cannot be decided by overlooking the object of that provision. They need not go beyond the purpose sought to be achieved. The purpose of the provision is to see that all formalities are performed by the recording officer himself and by others to ensure full compliance with the procedure and seriousness of recording a confession. We fail to appreciate how any departure from the form or the words can adversely affect the object of the provision or the person making the confession so long as the court is

able to conclude that the requirements have been substantially complied with. No public purpose is likely to be achieved by holding that the certificate and memorandum should be in the same form and also in the same terms as are to be found in Rule 15(3)(b). We fail to appreciate how the sanctity of the confession would get adversely affected merely because the certificate and the memorandum are not separately written but are mixed up or because different words conveying the same thing as is required are used by the recording officer.

43. In *Sharafat Hussain Abdul Rahaman Shaikh v. State of Gujarat* [(1996) 11 SCC 62 : 1997 SCC (Cri) 48] the conviction of the appellant was primarily based on confessions of each of them. Allowing the appeal and setting aside the judgment of conviction passed by the Designated Court and citing with approval *Chandran case* [(1978) 4 SCC 90 : 1978 SCC (Cri) 528] this Court held that : (SCC p. 64, paras 4-5)

“4. Admittedly, in none of the four confessions (Exts. 72, 73, 75 and 76), with which we are concerned in this appeal, such a memorandum finds place. The question, therefore, that falls for our consideration is what is the value of such a memorandum and, for that matter, the effect of absence thereof. The answer to this question has been given by this Court in *Chandran v. State of T.N.* [(1978) 4 SCC 90 : 1978 SCC (Cri) 528] while dealing with sub-section (4) of Section 164 CrPC, which lays down the procedure to be followed by a Magistrate in recording a confession and is *pari materia* with the abovequoted Rule 15(3), with the following words : (SCC p. 101, para 31)

‘But the law does peremptorily require that after recording the confession of the accused, the Magistrate must append at the foot of the record a memorandum certifying that he believes that the confession was voluntarily made. The reason for requiring compliance with this mandatory requirement at the close of the recording of the confession, appears to be that it is only after hearing the confession and observing the demeanour of the person making it, that the Magistrate is in the best position to append the requisite memorandum certifying the voluntariness of the confession made before him. If, the Magistrate recording a confession of an accused person produced before him in the course of police investigation, does not, on the face of the record, certify in clear, categorical terms his satisfaction or belief as to the voluntary nature of the confession recorded by him, nor testifies orally, as to such satisfaction or belief, the defect would be fatal to the admissibility and use of the confession against the accused at the trial.’ (emphasis supplied)”

46. In view of the aforesaid discussion, our conclusions are as follows:

- A. Writing the certificate and making the memorandum under Rule 15(3)(b) is mandatory.
- B. The language of the certificate and the memorandum is not mandatory.
- C. In case the certificate and memorandum is not prepared but the contemporaneous record shows substantial compliance with what is required to be contained therein, the discrepancy can be cured if there is oral evidence of the recording officer based on such contemporaneous record.
- D. In the absence of contemporaneous record, discrepancy cannot be cured by oral evidence based on the memory of the recording officer.

875. From the above referred observations of the Hon'ble Supreme Court of India, it is evident that making the memorandum is mandatory to prove that the confession was voluntary and that it was taken down by the police officer fully and correctly. Making memorandum is not an empty formality of the rule. It is required to be made at the end of the confession. The officer certifies the manner in which the statement was given by the accused and was recorded. The satisfaction of the recording officer, as per the rule, has substantial relevance on the aspect of voluntary nature of confession, which is the heart of confession for it being made the basis of conviction. However, the language of the certificate and the memorandum is not mandatory, but at the same time, it is a requirement of the rule to prepare contemporaneous record regarding the manner of recording the confession in the presence of the person making it.

876. In the teeth of above referred legal exposition, let us revert back to the facts of this case. From the record, it is evident that at the foot of the confessional statements of A.1 (Exh.1181), A.3 (Exh.1218), and

A.10 (Exh.1249) there is no memorandum as required in compliance with Sub-rule 6 of Rule 3 of the MCOC Rules.

877. Admittedly, it is not the case as regards A.1, A.3, and A.10 that there are memorandum but the same are not in a form prescribed or in a language used in a form. But the case is of not having memorandums at all at the foot of the confession of A.1, A.3, and A.10.

878. In absence of any such memorandum, if we see whether there is any contemporaneous record available on record to show the satisfaction of the concerned DCPs recording the confessional statements of A.1, A.3, and A.10 about voluntariness, there is no such record produced before the Court.

879. The question, therefore, is whether without contemporaneous record, oral evidence can be laid to establish the fulfilment of mandatory requirement of the Rule. The Hon'ble Supreme Court of India, in the case of *Bharatbhai (supra)*, while discussing the case *S.N Dube vs. N B Bhoir* (2000) 2 SCC 254, it is held that the contemporaneous record has to support the deposition in court. If the recording officer without contemporaneous record is allowed to depose later after a lapse of several years in court, it would be too hazardous to rely on such testimony as, ordinarily, an officer is likely to depose in court what was left out to be recorded in documents as per mandatory provisions of the Act and the Rules, once he knows that he had made a vital omission. If the contemporaneous record shows that in substance though not in form, the requirements of the Rule were fulfilled, the defect of form can be cured by oral deposition made, maybe after many years, on the basis of the contemporaneous record.

880. The answer, therefore, to a question that whether without contemporaneous record, oral evidence can be laid to establish the fulfilment of mandatory requirement of the rule, is in negative.

881. The gist of above observation of the Hon'ble Supreme Court of India, therefore, is that contemporaneous record is must for showing substantial compliance with what is required therein in the memorandum, and the oral evidence can be laid based on such contemporaneous record to cure the discrepancy.

882. In the circumstances, in absence of contemporaneous record, the prosecution cannot be permitted to cure the defects by leading evidence, however, even if it is allowed, by leading oral evidence, let us examine what nature of oral evidence is brought on record by the prosecution as regards fulfilment of mandatory requirement of sub rule 6 of rule 3 of MCOC Rules.

883. PW-118 DCP Dumbre, who recorded the confession of A.10 has deposed that PSI Thakur produced the accused before him at 1500 hours in veil on 06/10/06. He asked PSI Thakur to remove the veil and inquired with him whether the medical examination of the accused (A.10) was done. PSI Thakur informed him that it was done. He confirmed it by perusing the medical papers of the GT Hospital. He then asked PSI Thakur to leave his cabin and asked the accused to sit on a chair. He ensured that the proceedings between him and the accused in his cabin would not be seen and heard by anybody from outside, he then asked the accused whether he wants to make the confessional statement voluntarily, to which he replied in the affirmative. He told him (A.10) that he is in his custody and is not

bound to make a confessional statement. He inquired whether he still wants to make the confessional statement, to which he replied in the affirmative. He then asked him whether the period of 24 hours given to him was enough, to which he replied in the affirmative. He asked him whether he wanted some more time to think about his decision to make the voluntary statement. He informed him that he did not need any more time. He again told him that there is no force or pressure him to give the confessional statement. He said he understood it, but wanted to give it. He again questioned him whether he has been threatened, lured or pressurized to give the confessional statement, to which he replied in the negative. He told him that he would record his confessional statement only if it is voluntarily given and only if it is without force and pressure. He told him that he understood this and still wanted to make the confessional statement voluntarily. Thus, he was satisfied about the voluntariness of the accused for making the confessional statement.

884. From the above referred evidence of PW-118 DCP Dumbre, it can safely be said that because of the questions asked by him to the accused about the voluntariness before recording the confessional statement, he believed that the confession was being voluntarily made, which is a *sine-qua-non* for the exercise of jurisdiction to record confession.

885. As we have already held that the memorandum under Sub-Rule 6 of Rule 3 of the MCOC Rules, peremptorily required after recording the confession of the accused at the foot of the confessional statement certifying that he believes that the confession was voluntarily made. Even the language of memorandum given under Sub-Rule 6 of Rule 3

of the MCOC Rules suggest the compliance in the same way. And therefore, as per the memorandum, the DCP has to mention in the memorandum in a language namely “I am satisfied that this confession has been made voluntarily”. The words ‘has been’ make clear the stage at which the satisfaction of the voluntariness needs to be recorded. Let us, therefore, examine the further evidence of PW-118 DCP Dumbre to find out whether he stated about such satisfaction to establish the compliance of the rule.

886. PW-118 deposed that he then started recording his (A.10's) statement as per his narration in his own handwriting in the language that he used. The recording continued upto 20:00 hours. Then handed over the written part to him for reading. After he read it, he read it over to him again. He told him that it is as per his say and then he signed all the pages. He also countersigned (Exh.1249). He took a photocopy of Part-B, put the original in an envelope (Exh.1250) and sealed it under his signature.

887. The oral testimony of PW-118 DCP Dumbre nowhere even slightly suggests about compliance of his satisfaction about voluntariness of the accused, which is to be arrived at only after hearing the confession and observing the demeanor of the person making it. Thus, it can be said that the prosecution failed to even establish the compliance of Sub-Rule 6 of Rule 3 of the MCOC Rules by leading oral evidence. In the circumstances, in absence of memorandum, contemporaneous record, and even oral evidence of the concerned DCP as regards voluntariness, the confession of A.10 is inadmissible and cannot be relied upon.

888. We will now undertake the similar exercise about PW-113 who has recorded the confessional statement of A.1 and not appended memorandum as required under sub rule 6 of rule 3 of the MCOC Rules at the foot of the confession.

889. PW-113 DCP Choubey, deposed that PI Gaikwad and his staff from police station Bandra produced the accused (A.1) before him in his chamber at 1900 hours on 04/10/06. He inquired with PI Gaikwad whether all the instructions given to him were complied or not. He replied that they had complied with all the instructions. He then instructed PI Gaikwad and his staff to leave his chamber. He ensured that there was nobody else in his chamber and nearby, who could see or hear the proceedings in his chamber. After that he tried to take the accused in his confidence and inquired whether he had any complaint of ill-treatment against the officers and staff of PS Bandra or ATS. He replied that he did not have any complaint. He asked him whether anybody tried to meet him or contact him during the period of 24 hours He replied in the negative. After this, he explained to him that he is the DCP of that area, who can record his confessional statement. He then inquired from him whether there was any pressure or threat because of which he was making the confessional statement, to which he again replied in the negative. He again told him that he is not bound to make the confessional statement and if he makes it, it can be used against him as evidence. After this he was satisfied that he was ready to give the confessional statement voluntarily.

890. As we have already held that the memorandum under Sub-Rule 6 of Rule 3 of the MCOC Rules, peremptorily required after recording the confession of the accused at the foot of the confessional statement.

The authority shall certify that he believes that the confession was voluntarily made. Even the language of memorandum given under Sub-Rule 6 of Rule 3 of the MCOC Rules suggests the compliance in the same way. Let us examine whether PW-113 deposed about his satisfaction regarding voluntariness of statement at the end of the confessional statement of A.1.

891. PW-113 deposed that he told him (A.1) to state whatever he wanted to state and started writing as per his narration in his own handwriting. After this was completed, he wrote a brief account of the proceedings of the day, read over the statement recorded from the beginning to the accused and asked him whether it was as per his narration. He said yes. He then gave the papers to him, for signing. He went through the papers and then signed on every page. He also signed thereafter on every page and put his stamp. Thereafter he got two photocopies of the entire confessional statement, i.e., Part-I and Part-II, he kept the photocopies in his custody and sealed the original confessional statement Part-I and Part-II in one envelope.

892. The oral testimony of PW-113 nowhere even suggests about compliance of his satisfaction about voluntariness of the accused, which is to be arrived at only after hearing the confession and observing the demeanour of the person making it. Thus, it can be said that the prosecution failed to even establish the compliance of Sub-Rule 6 of Rule 3 of the MCOC Rules by leading oral evidence.

893. PW-113, in his cross-examination, deposed that it was mandatory to give a certificate at the end of the confessional statement as per Section 18(3) of the MCOCA, but at that time he was not aware

of the rules and the format. He was aware of the provisions of Section 18(3) of MCOCA when he recorded the confessional statement about expressing his satisfaction of the voluntary character of the confession putting the date and time of the same. He admits that he did not record it though he had intended to do so.

894. In these circumstances, in absence of memorandum, contemporaneous record, and even oral evidence of the concerned DCPs, i.e., PW-113 DCP Choubey and PW-118 DCP Dumbre that they were satisfied that A.1 and A.10, respectively, made confession voluntarily, the confession of A.1 and A.10 are inadmissible and cannot be relied upon.

895. Moving further, PW-117 recorded the confessional statements of two accused namely, A.3 and A.12. Though he claims that after recording the confessional statement of A.3, he appended a printed format of certificate recording his satisfaction about the voluntariness, it is not available on record. In these circumstances, it is to be noted that the prosecution could have led secondary evidence of such certificate. However, it was not done. Therefore, the fact remains that there was no certificate appended with the confessional statement of A.3 in compliance with requirement of Sub-Rule 6 of Rule 3 of the MCOC Rules.

896. In the above referred backdrop, let us now scrutinise the evidence of PW-117 about his satisfaction that A.3 had given statement voluntarily.

897. PW-117 deposed that the accused (A.3) was produced before him on 05/10/06 at 1000 hours in veil. He confirmed the compliance of his instructions and the escort party replied that the instructions have been complied, including medical examination. He then asked the escort party to go out of his chamber and he ensured that there was no one within sight and hearing of the proceedings going on, in his chamber. He and the accused only were present in the chamber. He asked him to remove the veil and he made him comfortable. He ascertained his general state of well being by his demeanor and body language. He asked him whether the time given to him was sufficient or not and he said that it was sufficient. He asked him if he still wants to make the confessional statement. He said yes. He warned him that making of confessional statement is not compulsory and if made, it can be used against accused persons as evidence in the court. He also inquired with him whether he was under any inducement, threat or promise. He replied in the negative. He asked him whether anyone had met him during the period of reflection. He said no. He again checked with him whether he had been promised to become an approver or has been promised a lesser sentence, to which he replied in the negative. He told him that if he still wants to make the confessional statement, it will be recorded in his language and it would be read over to him and if he approves it to have been recorded as per his version, then he will be required to sign it. He contemporaneously wrote down the questions and answers after ascertaining his voluntariness to make the confessional statement. His stenographer was in his chamber during the questions and answers part and he was typing it on the computer. On the questions that he asked and the answers that the accused gave, he came to the conclusion that the accused wanted to make the

confessional statement voluntarily and was not under any threat, inducement or promise. The printout of the questions and answers part was shown to the accused, he read it, admitted it to be correct and then signed it.

898. Then he deposed that accused was comfortable in Hindi language. Therefore, he proceeded to write down his narration in his own handwriting. He asked the stenographer to go out during this writing. They started at 10:00 hours and at 14:30 hours, he had to stop because of visit of Prime Minister Manmohan Singh in his jurisdiction and he had to attend it. He made a note of this fact in English in his own handwriting in the narration part itself. He kept the said portion under his lock and key in his chamber and sent back the accused to Azad Maidan Police Station.

899. PW-117 gave the instructions to the escort party to produce A.3 on the next day, i.e., on 06/10/06 at 10:00 hours and gave them a letter. PSI Dasurkar took the accused in his custody and took him back. The accused was again produced before him at 10:00 hours on 06/10/06. He again confirmed with the escorting party about compliance of his instructions and they said that they have been complied. He then asked them to go out of the chamber, asked the accused to remove his veil. He again asked the accused whether he still wants to make the confessional statement. He said yes. He also ensured that he is not under any kind of inducement, threat or promise during the intervening period, to which he replied in the negative. He continued to record his narration in his own handwriting after being satisfied about the voluntariness of his confessional statement. He gave the

papers to the accused to read when it was completed. On reading it he expressed satisfaction that it was truthfully recorded as per his version. He also signed on each page and he also put his signatures along with his signatures. After this he appended a printed format of certificate recording his satisfaction about the voluntariness of the accused who had made the confessional statement.

900. PW-117 DCP Singh, in his cross-examination, deposed that he remembers having appended typed certificate to A.3's confessional statement. He denied that he had not annexed any such certificate to the confessional statement of the A.3 - Faisal, therefore it is not found with it.

901. Though PW-117 claimed to have appended certificate of voluntariness, in oral testimony he did not say that he got satisfied about voluntariness and therefore a certificate was prepared and it was appended. Whereas, about satisfaction of voluntariness before recording the confession, he has specifically deposed that he continued to record his narration in his own handwriting after being satisfied about the voluntariness of his confessional statement. PW-117 has not deposed about such satisfaction after recording of the confessional statement but he only speaks that he appended a printed format of certificate, recording his satisfaction about the voluntariness of the accused. PW-117, in absence of the mandatory certificate, ought to have stated in his ocular evidence that he reached such satisfaction, during hearing the confessional statement and after recording the confessional statement.

902. Thus, it can be said that the prosecution failed to even establish the compliance of Sub-Rule 6 of Rule 3 of the MCOC Rules by leading oral evidence. In the circumstances, in absence of memorandum, contemporaneous record, and even oral evidence of the concerned DCP as regards the satisfaction of PW-117 that A.3's confession was being made voluntarily, the confession of A.3 is inadmissible and cannot be relied upon.

903. The prosecution has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Sanjay Dutt (supra)*, which says that if the confession made by an accused is voluntary and true, it is admissible against co-accused as a substantive piece of evidence and minor and curable irregularities in recording of the confession, such as omission in obtaining the certificate of the competent officer with respect to the confession do not affect the admissibility of the said evidence. Thus, it is evident that the condition for admissibility of confessional statement in absence of certificate is that the confession must be voluntary and true. However, having held that the prosecution failed to establish that the statement was voluntary, the judgment in the case of *Sanjay Dutt (supra)* is of no assistance to the prosecution.

904. In light of above referred observations, we have no hesitation to hold that the confessional statements of A.1, A.3, and A.10 are inadmissible and conviction cannot be based on the same.

IV) Though certificates are appended at the bottom of the confessional statements of A.2, A.4, A.5, A.6, A.7, A.9, A.11, & A.12, they do not serve the purpose as contemplated under Sub-rule 6 of Rule 3 of MCOC Rules

905. Now, coming to the confessional statements of the accused having certificates appended at the bottom of such confessional statements. It is alleged to have not been in the format as provided under Sub-Rule 6 of Rule 3 of the MCOC Rules or there are certain discrepancies in such certificates. Such challenge is raised by the defence in relation to A.2, A.4, A.5, A.6, A.7, A.9, A.11, and A.12. Thus, let us look at the certificates appended below the confessional statements of the above referred accused. The certificates of all the accused are identical verbatim except change in the name of the accused. One of such certificates is produced herein under, to avoid duplication.

CERTIFICATE

(Sec.(1) of M.C.O.C. Act, 1999)

This is to certify that the accused Ehtesham Kutubuddin Siddiqui, arrested by ATS Mumbai, in connection with Boriwali Railway Police Station C.R.No. 156/2006 U/S 3(1)(i), 3(2) 3(4) M.C.O.C.Act 1999 r/w 10, 13 U.A.P. Act r/w 302, 307, 326, 325, 324, 436, 427,120 (B), 121 A,123, 124-A, 34 IPC r/w 3, 9, (b) Indian Explosive Act. r/w 151, 152, 153, 154 of Indian Railways Act r/w 3, 4, 5 Explosive Substances Act of Section 18 of the M.C.O.C. Act 1999 was produce before me. He was explained that he is not bound to make a confession and that if he does so, it may be used as evidence against him. I am satisfied that whatever confession statement was made before me was made voluntarily by the said accused.

906. The above referred certificate is appended at the bottom of confessional statement of A.4. Identical certificates are appended below the confessional statements of A.2, A.5, A.6, A.7, A.9, A.11, and A.12.

907. It is evident from the said certificate that it certifies three things:-

- (1) The accused was explained that he is not bound to make a confession and that if he does so, it may be used as evidence against him,
- (2) He is satisfied that whatever confessional statement was made before him was made voluntarily by the said accused,
- (3) Since there is a mention in the certificate that the accused was produced before him, and he satisfied that whatever confessional statement was made before him, was made voluntarily by the said accused, it can be said that the requirement that the confession was made before the DCP, in his hearing, is satisfied.

908. For the sake of convenience, we will again state the requirements of the certificate, herein under: -

- (i) It has been explained to the accused that he is not bound to make the confession and the same can be used against him as evidence,
- (ii) The DCP has to be satisfied that the confession has been made voluntarily,
- (iii) The confession was made before the DCP, in his hearing,

- (iv) The confession has been recorded by DCP in the language in which it is made and narrated by the accused,
- (v) The recorded confession was read over to the accused and the accused admitted it to be verbatim and correct, and containing also full and true account of the confession made by the accused.

909. From the above referred requirements of Sub-Rule 6 of Rule 3 of the MCOC Rules, and considering the certificates appended by the DCPs below the confessions of the above referred accused, it is crystal clear that the following requirements have not been complied with: -

- (a) The confession has been recorded by DCP in the language in which it is made and narrated by the accused,
- (b) The recorded confession was read over to the accused and the accused admitted it to be verbatim and correct, and containing also full and true account of the confession made by the accused.

910. The Hon'ble Supreme Court of India, in *Bharatbhai (supra)*, held that giving of the statutory warning, ascertaining the voluntariness of the confession and preparation of a contemporaneous record in the presence of the person making the confession are mandatory requirements of the rule. It is further observed as to why the form and the words of the certificate and memorandum should also be held mandatory. What are the mandatory requirements of a provision, cannot be decided by overlooking the object of that provision. They need not go beyond the purpose sought to be achieved. The purpose of the provision is to see that all formalities are performed by the

recording officer himself and by others to ensure full compliance with the procedure and seriousness of recording a confession. It is held that how any departure from the form or the words can adversely affect the object of the provision or the person making the confession so long as the court is able to conclude that the requirements have been substantially complied with. No public purpose is likely to be achieved by holding that the certificate and memorandum should be in the same form and also in the same terms. It is also observed the sanctity of the confession would get adversely affected merely because the certificate and the memorandum are not separately written but are mixed up or because different words conveying the same thing as is required are used by the recording officer.

911. In light of the above referred exposition of law, we will now examine whether the above referred two requirements are fulfilled by the words used in the memorandum conveying the same thing as required.

912. A.2, in Part-I, stated that he knows Hindi, and he can write and read Hindi language. In Part-II, at the end of the confession, he states that he read the confession and it is recorded as per his narration.

913. A.4, in Part-I, stated that he knows Hindi, and he can write and read Hindi language. In Part-II, at the end of the confession, he states that he read the confession and it is recorded as per his narration.

914. In Part-I of A.5, the DCP has recorded that he asked questions to A.5 which he replied in Hindi, and therefore, the same were recorded by him in Hindi. He also, at the bottom of question answers,

recorded in Part-I that he gave answers in Hindi. A.5, at the end of his confession stated that he gave his statement as per his own will and the same is recorded as per his narration. He further states that he read it and found to be recorded as per his narration.

915. In Part-I of A.6, the DCP has recorded that A.6 replied to the questions in Hindi, and accordingly the same are recorded by him in Hindi. At the bottom of question and answers in Part-I, A.6 has stated that he gave answers in Hindi. Whereas, at the end of the confession, he states that he gave confessional statement as per his will and the same is recorded as per his narration and found to be as narrated. He further stated that he read it & found to be as narrated.

916. In Part-I of A.7, the DCP has recorded that A.7 replied to the questions in Hindi, and accordingly the same are recorded by him in Hindi. At the bottom of question and answers in Part-I, A.7 has stated that he gave answers in Hindi. Whereas, at the end of the confession, he states that he gave confessional statement as per his will and the same is recorded as per his narration and found to be as narrated.

917. In Part-I of A.9, the DCP has recorded that A.9 replied to the questions in Hindi, and accordingly the same are recorded by him in Hindi. At the bottom of question and answers in Part-I, A.9 has stated that he gave answers in Hindi. Whereas, at the end of the confession, he states that he read the statement and found it to be recorded as per his narration.

918. In Part-I of A.11, the DCP has recorded that A.11 replied to the questions in Hindi, and accordingly the same are recorded by him in

Hindi. At the bottom of question and answers in Part-I, A.11 has stated that he gave answers in Hindi. Whereas, at the end of the confession, he states that he read the confessional statement and also it was read over to him and which is found to be recorded as per his narration.

919. In Part-I of A.12, the DCP has recorded that A.12 replied to the questions in Hindi, and accordingly the same are recorded by him in Hindi. At the bottom of question and answers in Part-I, A.12 has stated that he gave answers in Hindi. Whereas, at the end of the confession, he states that he gave confessional statement as per his will and the same is recorded as per his narration and found to be as narrated.

920. From the above referred observations, it is evident that there is a contemporaneous record of compliance of the conditions namely, (a) the confession has been recorded by DCP in the language in which it is made and narrated by the accused, and (b) the recorded confession was read over to the accused and the accused admitted it to be verbatim and correct, and containing also full and true account of the confession made by the accused. Thus, considering the law laid down in the case of *Bharatbhai (supra)* that the form and the language of certificate cannot be held mandatory but important is satisfaction of purpose, according to us, the record shows that there is a compliance of sub rule 6 of rule 3 of MCOC Rules as regards A.2, A.4, A.5, A.6, A.7, A.9, A.11, and A.12.

921. We have supplied emphasis, while recording of compliance of Sub Rule 6 of Rule 3 of the MCOC Rules, in the above paragraph, on the words 'the record shows', for the reason that while examining the compliance of each of the requirement we noticed certain crucial aspect

which again compel us to consider a point whether it is safe to rely upon such compliance, as the Hon'ble Supreme Court has held that these circumstances as not a formality, but seek strict compliance.

922. While seeking strict compliance, we notice as follows: -

- (1) In all the certificates, the language and words are identical verbatim. Even the handwritten certificates are also word to word same though written by five different DCPs at different places on different dates and time.
- (2) Admittedly, the certificates are not as per the format given under sub rule 6 of rule 3 of MCOC Rules. Had the certificate been in the format, it would have been natural and possible that all the certificates are worded verbatim. However, unless it is in the format as provided, it is highly improbable that all the certificates written by five different DCPs would be identical verbatim.

923. The following chart will show that identical wordings were used in the part preceding to the questions asked by all the five DCPs, during the Part-I, to show that the confessions have been recorded in the language in which it is made and narrated by accused.

CHART NO. 41

Part-I of A.2	Part-I of A.4	Part-I of A.5	Part-I of A.6	Part-I of A.7	Part-I of A.9	Part-I of A.11	Part-I of A.12
Accused <u>was asked the following questions to which he replied in Hindi and the same are recorded by me in my own handwriting.</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following questions to</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following questions to which he</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following</u>	The accused was informed that he was no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following</u>	The accused was informed that he is no longer in the custody of Anti terrorism squad, Mumbai <u>and was asked the following questions to</u>

	<u>which he</u> <u>replied in</u> <u>Hindi and the</u> <u>same are</u> <u>recorded</u> below in Hindi.	<u>replied in</u> <u>Hindi and the</u> <u>same are</u> recorded by me in Hindi.	<u>questions to</u> <u>which he</u> <u>replied in</u> <u>Hindi and</u> <u>the same are</u> recorded by me in Hindi.	<u>questions to</u> <u>which he</u> <u>replied in</u> <u>Hindi and</u> <u>the same are</u> recorded by me my own handwriting in Hindi.	<u>questions to</u> <u>which he</u> <u>replied in</u> <u>Hindi and</u> <u>the same are</u> recorded below in Hindi.	<u>questions to</u> <u>which he</u> <u>replied in</u> <u>Hindi and</u> <u>the same are</u> recorded below in Hindi.	<u>which he</u> <u>replied in</u> <u>Hindi and the</u> <u>same are</u> recorded by me in Hindi.

924. In light of the above-referred chart, it is evident that with respect to the condition of compliance namely, the confession has been recorded by DCP in the language in which it is made and narrated by the accused, the identical wordings used in the portion preceding the questions in Part-I of the confession appears highly improbable. Such verbatim similarity across confessions allegedly recorded by five different DCPs, in the absence of any prescribed format or uniform guidelines, raises serious doubts about the authenticity of the recording process.

925. PW-111 DCP Ranade, who recorded confessional statement of A.11, in his cross-examination, admits that the wording in his certificate is somewhat different from the wordings-given in sub-rule (6) of Rule 3 of the MCOC Rules. It is not written in his certificate that it has been made before him and in his hearing and has been recorded by him in the language in which it is made and as narrated by, the confessor, he has read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession statement made by him.

926. PW-93 DCP Phadtare, in his cross-examination, admits that the contents of the certificate do not contain the words "It has been made before me and in my hearing and has been recorded by me in the

language in which it is made and, as narrated by, the confessor. I have read it over to the confessor and he has admitted it to be verbatim and correct, and containing also full and true account of the confession/statement made by him". The department has not issued any proforma or format of the certificate to be issued in such cases.

927. PW-102 DCP Mohite admits that the certificates that he gave are not according to the proforma. It is not written in the certificates that it has been made before him and in his hearing and has been recorded by him in the language in which it is made and as narrated by him and that he has read it over to him and he has admitted it to be verbatim and correct and containing also full and true account of the confessional statement made by him.

928. PW-104 DCP Karale deposed that he did not know that it was to be written in the certificate that it was made in his hearing and has been recorded by him in the language in which it is made and, as narrated by the confessor, he has read it over to the confessor and he has admitted it to be verbatim and correct and containing also full and true account of the confessional statement made by him.

929. In light of the aforementioned circumstances, and after carefully considering the requirements stipulated under Sub-Rule 6 of Rule 3 of the MCOC Rules, the oral testimonies of the DCPs, and the chart referenced above, demonstrating the identical language used in the preceding portions of the questioning by the DCPs during Part-I to establish that the confessions were recorded in the language of the accused, it can be concluded that this evidence falls under a shadow of doubt.

V) Not making the accused aware about the right to have legal/lawyer services.

930. Learned Counsel for the defence argues that the sanctity of a confession is to be considered when it is made after giving proper legal advice. The accused persons were saying that they are innocent and then after the last remand of the accused persons, the ATS went to record the confession. When their confessions were recorded, all the accused were represented by lawyers on record. Yet, none were offered the opportunity to consult their lawyers or obtain legal advice before their confessions were recorded. Each of the DCPs has been asked this question whether they offered to provide legal assistance to the accused. But the answer was that we did not think it was necessary. Learned Counsel submits that the denial of legal assistance prior to confession vitiates the confession of evidentiary value.

931. The Hon'ble Supreme Court of India, in the case of *Khatri and Others (II) ..vs.. State of Bihar and Others*, reported in (1981) 1 SCC 627, held thus: -

“5. ...the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer. It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence..... Mr. K. G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to an indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints. We may

point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence and whatever is necessary for his purpose has to be done by the State."

932. The Hon'ble Supreme Court of India, in the case of *State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600, held thus:

"160. In the same judgment, we find lucid exposition of the width and content of Article 22(1). Krishna Iyer, J. observed: (Nandini Satpathy case [(1978) 2 SCC 424 : 1978 SCC (Cri) 236] SCC p. 455, para 62)

"The spirit and sense of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice."

"We think that Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined."

It was pointed out (SCC p. 455, para 63) that the lawyer's presence, in the context of Article 20(3), "is an assurance of awareness and observance of the right to silence". It was then clarified: (SCC p. 456, para 63)

"We do not lay down that the police must secure the services of a lawyer. ... But all that we mean is that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied",

162...."In order fully to apprise a person interrogated of the extent of his rights under this system then, it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him. Without this additional warning, the admonition of the right to consult with counsel would often be understood as meaning only that he can consult with a lawyer if he has one or has the funds to obtain one. The warning of a right to counsel would be hollow if not couched in terms that would convey to the indigent ---the person most often subjected to interrogation-- the knowledge that he too has a right to have counsel present."

181. The importance of the provision to afford the assistance of the counsel even at the stage of custodial interrogation need not be

gainsaid. The requirement is in keeping with the Miranda [384 US 436 : 16 L Ed 2d 694 (1966)] ruling and the philosophy underlying Articles 21, 20(3) and 22(1). This right cannot be allowed to be circumvented by subtle ingenuities or innovative police strategies. The access to a lawyer at the stage of interrogation serves as a sort of counterweight to the intimidating atmosphere that surrounds the detenu and gives him certain amount of guidance as to his rights and the obligations of the police. The lawyer's presence could pave the way, to some extent, to ease himself of the mental tension and trauma. In the felicitous words of Finlay, C.J. of Ireland in *People v. Healy* [(1990) 2 IR 73]:

“The undoubted right of reasonable access to a solicitor enjoyed by a person who is in detention must be interpreted as being directed towards the vital function of ensuring that such a person is aware of his rights and has the independent advice which would be appropriate in order to permit him to reach a truly free decision as to his attitude to interrogation or to the making of any statement, be it exculpatory or inculpatory. The availability of advice must, in my view, be seen as a contribution, at least, towards some measure of equality in the position of the detained person and his interrogators.”

182...The lawyer's presence and advice, apart from providing psychological support to the arrestee, would help him understand the implications of making a confessional statement before the police officer and also enable him to become aware of other rights such as the right to remain in judicial custody after being produced before the Magistrate.”

933. From the above referred exposition of law, on the point of providing legal aid to an accused, it is evident that the spirit and essence of Article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of mere custodial interrogation . The observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice. The State, therefore, is under a constitutional mandate to provide free legal aid to an accused who is unable to secure legal services on account of indigenious.

934. It is further evident that the access to a lawyer at the stage of interrogation serves as a sort of counterweight to the intimidating atmosphere that surrounds the detenu and gives him certain amount of guidance as to his rights and the obligations of the police. The lawyer's presence could pave the way, to some extent, to ease himself of the mental tension and trauma. The right of reasonable access to a lawyer enjoyed by a person who is in detention must be interpreted as being directed towards the vital function of ensuring that such a person is aware of his rights and has the independent advice which would be appropriate in order to permit him to reach a truly free decision as to his attitude to interrogation or to the making of any statement, be it exculpatory or inculpatory. The lawyer's presence and advice, apart from providing psychological support to the arrestee, would help him understand the implications of making a confessional statement before the police officer and also enable him to become aware of other rights such as the right to remain in judicial custody after being produced before the Magistrate.

935. In the present matter, it is thus imperative to find out whether the accused were informed about their right to have services of lawyer before recording the confessional statements. To ascertain this, the oral testimony of the DCPs will be helpful.

936. PW-104 DCP Karale, who recorded the confessional statement of A.4, has deposed that he did not ask the accused as he did not feel it necessary whether they wanted to take the advice of any advocate or their relatives.

937. PW-102 DCP Mohite, who recorded the confessional statements of A.2 and A.7, has deposed that he does not remember whether he asked the accused whether they had engaged an advocate and whether he permitted the accused to talk with his parents.

938. PW-117 DCP Singh, who recorded the confessional statements of A.3 and A.12, has deposed that he did not ask A.3 and A.12 if they wanted legal aid or to consult a friend or lawyer. He did not ask both the accused whether they wanted any advocate or relative to be present while recording their confessional statements. He does not remember having given opportunity to the accused to consult their lawyers before making the confessional statement.

939. PW-118 DCP Dumbre, who recorded the confessional statement of A.10, has deposed that he asked A.10 whether his advocate was with him, he answered in negative. He did not ask him whether he had retained any advocate. According to his understanding, the accused has a right to consult his advocate. As the accused said no, there was no question of permitting to consult his advocate.

940. PW-111 DCP Ranade, who recorded the confessional statement of A.11, deposed that he did not ask A.11 whether he wanted to take legal advice before making the confessional statement because there is no legal provision for this. He admits that had not asked such question.

941. PW-93 DCP Phadtare, who recorded the confessional statements of A.5, and A.9, in cross-examination, admits that it is not written in the statements (Exh.924 and Exh.937) that he had asked the

accused whether he wanted legal assistance or he wanted anyone to remain present on his behalf.

942. From the evidence of above referred DCPs, it is abundantly clear that, at the crucial stage of recording confession, the accused were not made aware of their right to have services of lawyer. Thus, the valuable right of the accused to have services of lawyer has been denied to the accused in the present matter.

943. The Hon'ble Supreme Court of India, in the case of *Navjot Sandhu (supra)*, in reference to section 52 of POTA made certain observations. Under section 52 of POTA, various safeguards to the accused are provided. Sub-section 2 of it provides that the person arrested shall be informed of his right to consult a legal practitioner as soon as he is brought to the police station. The Hon'ble Supreme Court of India has held that the denial of the safeguards will be one of the relevant factors that would weigh with the court to act upon or to discard the confession.

944. No doubt, safeguards as provided under sub-section 2 of section 52 of POTA is not provided under the MCOCA, however, it will not take away the right of the accused under MCOCA to consult his lawyer when he is interrogated by the police or before proceeding to record confession, in view of his fundamental rights under Article 22(1) and Article 20(3) as well as the provision of the section 303 of the Cr.PC. Therefore, the law laid down in the case of *Navjot Sandhu (supra)* will apply to this case with full force.

VI) No Enquiry Made By The DCPs Of The Reason Why The Accused Wanted To Confess Before Recording Confession

945. Learned Counsel for the defence argues that the DCPs did not ascertain the reasons behind the accused persons wanting to confess. An essential aide in ascertaining voluntariness is understanding the reasons why a person wants to confess to a crime that could very easily get him to the gallows, which would cause immense shame and suffering to him and his entire family. It is most abnormal and unusual for anyone to want to take such a step, and the reasons for taking it would indicate whether or not the claims of voluntariness are genuine or not. The learned Counsel states that none of the DCPs asked this question.

946. The learned SPP argues that there is ample evidence on record to show that all the concerned DCPs warned the accused that it is not binding on them to make a confession. This question itself suggests that if the accused does not want to confess or give statement there is no force for giving a statement. It also implies that the concerned DCPs tried to find out whether the accused is voluntarily giving his statement. It is, therefore, submitted that even in absence of such specific question put by the DCP, there is a compliance of the procedure to be followed before recording confessional statement.

947. The Hon'ble Supreme Court of India, in the case of ***Shivappa .vs.. State of Karnataka*** reported in (1995) 2 SCC 76, held that: -

“6. ...In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and

should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administering the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not bound to make a statement and that if he makes one it may be used against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.”

948. The Hon’ble Supreme Court of India, in the case of *Rabindra Kumar Pal Alias Dara Singh..vs.. Republic Of India*, reported in (2011) 2 SCC 490: -

“64. The following principles emerge with regard to Section 164 Cr.P.C.:

- (i) The provisions of Section 164 Cr.P.C. must be complied with not only in form, but in essence.
- (ii) Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.
- (iii) A Magistrate should ask the accused as to why he wants to make a statement which surely shall go against his interest in the trial.
- (iv) The maker should be granted sufficient time for reflection.
- (v) He should be assured of protection from any sort of apprehended torture or pressure from the police in case he declines to make a confessional statement.
- (vi) A judicial confession not given voluntarily is unreliable, more so, when such a confession is retracted, the conviction cannot be based on such retracted judicial confession.
- (vii) Non-compliance of Section 164 Cr.P.C. goes to the root of the Magistrate's jurisdiction to record the confession and renders the confession unworthy of credence.
- (viii) During the time of reflection, the accused should be completely out of police influence. The judicial officer, who is entrusted with the duty of recording confession, must apply his

judicial mind to ascertain and satisfy his conscience that the statement of the accused is not on account of any extraneous influence on him.

(ix) At the time of recording the statement of the accused, no police or police official shall be present in the open court.

(x) Confession of a co-accused is a weak type of evidence.

(xi) Usually the Court requires some corroboration from the confessional statement before convicting the accused person on such a statement.”

949. The Madhya Pradesh High Court, in the case of **Ghasi Ram v. State**, reported in 1952 Cri. L.J. 1866: -

“17. ...Before sending the accused to such custody he should be assured of every sort of protection against torture or pressure from outside agents or the Police and he should be asked the reason why he is going to make a confession which will surely go against him at his trial.

950. In the teeth of the above referred exposition of law, let us revert back to the facts of this case.

951. PW-118 DCP Dumbre deposed that he does not think that the first and foremost question that is required to be asked is as to in which case he wants to make the confessional statement and for what purpose.

952. PW-93 DCP Phadtare admits that he did not inquire with the concerned accused (A.5 and A.9) as to under what circumstances they became ready to confess and expressed a desire to do so. PW-93 admits that it is not recorded in the confessional statements that he asked the accused A.5 and A.9 as to why they wanted to confess. He admits that it is not written in both the parts that he asked the accused as to why he was making the confession.

953. PW-104 DCP Karale states that it is not necessary to ask the accused as to why they wanted to confess.

954. PW-111 DCP Ranade states that he did not ask A.11 when he wanted to confess and to whom he expressed this desire.

955. PW-117 DCP Singh states that he did not ask A.3 and A.12 as to why they wanted to confess.

956. It is, thus, evident that none of the DCPs asked the accused as to why he wants to make a statement which surely shall go against his interest in the trial. Such enquiry is one of the safeguards to be taken care of before recording the statement. Such safeguards are provided to help to ascertain voluntariness. In absence of such enquiry in this matter, we are of the opinion that the DCPs failed to comply with necessary safeguards.

VII) Sufficient Cooling Off Period Was Not Given To The Accused

957. Learned Counsel for the defence argues that none of the DCPs inquired about how long the accused had been in police custody. This was essential to ascertain the cooling off period necessary in the case, the extent of efforts necessary to exorcise the fear that would have enveloped the accused, the steps that needed to be taken to ascertain voluntariness and whether the accused had been tortured or not. In the absence of ascertaining any of this information for himself, it would be impossible for the DCP to reach any conclusion on voluntariness.

958. Learned SPP submits that as per the provisions of law, the minimum period of 24 hours is provided as a cooling off period, which has been provided by all the DCPs. It is further argued that a specific

question was put to every accused whether he wants further period of reflection which was denied. It is, therefore, submitted that it cannot be said that sufficient cooling off period was not provided to the accused for reflection.

959. The Hon'ble Supreme Court of India, in the case of *Shivappa vs. State of Karnataka* reported in (1995) 2 SCC 76, has held that before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he should give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence.

960. In the present case, the accused were in police custody spanning from 24 days to 76 days before recording of their confessional statements, which shows that they were in prolonged custody immediately preceding the making of the confession.

961. The DCPs had granted a cooling period of 24 hours to the accused for reflection. The said period was granted without inquiring the period of their custody. In this regard, the evidence brought on record by the prosecution is as under.

962. PW-93 DCP Phadtare deposed that he was not aware from 11/07/2006 upto 03/10/2006 about the names of the persons who were arrested. When he received letter Exh.930 (Letter from Jt. CP to PW-93 directing him to record confession of A.5) on 23/10/2006, he had inquired as to when the concerned accused was in custody and when he was arrested.

963. PW-102 DCP Mohite admits that he did not get knowledge as to when A.7 was arrested and when he first expressed his desire to make the confessional statement. He further states that no one had told him that A.2 was in custody since 23/07/06. He deposed that he cannot tell the dates of the duration of the police custody of the accused.

964. PW-104 DCP Karale states that he did not ask him (A.4) when he was arrested. He did not feel that the knowledge of the dates of the arrest of the accused and the stage of the investigation were important for him.

965. PW-111 DCP Ranade admits that the date of arrest of the A.11 is not mentioned in any correspondence with the I.O. and Joint CP. He did not know on 04/10/2006 and 05/10/2006 as to when A.11 was arrested and how long he was in police custody. He did not ask any question in this connection to A.11.

966. PW-117 DCP Singh states that he had no information as to whether A.3 was in custody of ATS from the last week of July 2006.

967. PW-118 DCP Dumbre deposed that he could not know from the entire correspondence as to when A.10 was arrested and for how long he was in the police custody. The record of the confessional statement does not show that he asked A.10 as to when he was arrested, how long he was in detention. He deposed that he does not remember whether any ATS officer told him the date of arrest of the accused. He did not ask them since when A.10 was in police custody. He did not ask A.10 when he was arrested and for how many days he was in police custody.

968. The above referred evidence of the concerned DCPs shows that while granting cooling off period, it was granted mechanically, without considering the period of their police custody. The DCPs have not considered the purpose behind granting cooling off period by making enquiry about the period of police custody. The purpose of making such enquiry is to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused.

VIII) The concerned DCPs did not look into the medical reports of accused before recording confessional statements

969. The another challenge as regards voluntariness is on the ground that even though the injuries were visible on the accused while recording the confessional statements, the concerned DCPs did not look into the medical reports relating to such accused, which ought to have seen by the DCPs as the injuries are the evidence of torture and even the slightest evidence of torture makes the confession inadmissible.

970. Learned SPP has argued that, during the custody period, the accused were medically examined from time to time as per the mandate of law and concerned doctors were also examined and the medical certificates were exhibited. There is no record to show that condition of any of the accused had deteriorated that they needed to be hospitalized or that they were required to be examined extensively in fact all of them were examined for 5 mins each which is the normal way of routinely examining any person in the ordinary course. It is, therefore, submitted that it is too much to doubt this contemporaneous record to say that the DCPs failed to follow the safeguards.

971. In the case of *Emperor vs. Nazir and others*, reported in AIR 1933 All 31, the Allahabad High Court held thus: -

“... It is impossible for the accused, even if he is defended, to adduce any reliable direct evidence of maltreatment or inducement while he was in the police custody. His allegations, when put to the investigating officers, are naturally denied. But the matter should not be allowed to rest there. The Judge, with whom the responsibility lies for acting upon the confession, should satisfy himself by putting searching questions to such witnesses as had anything to do with the confession. The first question that ought to strike every Judge is "why the accused made the confession?" It is very important to ascertain, from those in whose custody the accused was, the circumstances in which the question of confession first arose, how the accused expressed his willingness to be placed before the Magistrate and his readiness to make a confession.”

972. In the case of *Bala Majhi vs. The State of Orissa*, reported in 1951 SCC OnLine Ori 1, the Orissa High Court has held thus: -

“7. In considering the admissibility of a confession, there is a simple test which can always be employed. The Ct will address itself to the question "Is it proved affirmatively by the prosecution that the confession was free & voluntary?", that it was not preceded by any inducement, threat, or promise held out by ft. person in authority; if so, whether the effect, of such inducement, threat, or promise had

clearly been removed before the settlement was made. In that case & that case alone, the evidence of that statement is admissible. The burden of proof always lies upon the prosecution.”

973. The Hon’ble Supreme Court of India, in the case of *Rabindra (supra)*, has carved out principles with regard to section 164 of Cr.PC. It is held by the Hon’ble Supreme Court of India that the provisions of section 164 of Cr.PC must be complied with not in form, but in essence. It is held that before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution.

974. We have already observed that such enquiry as regards the safeguards provided to the accused, is to ascertain voluntariness of the confessional statement. Therefore, it goes to the root of validity of confessional statement as it is a settled law that confession which is voluntary and true, is only admissible in law.

975. The inquiry relating to the period of police custody of accused and the circumstances in which the question of confession first arose, are relevant to be considered by the authority before recording the confessional statement. In short, the authority has to get satisfied that whether any torture or inducement was there which created such circumstances for the accused to make confession. Therefore, the authorities shall not only insist for medical examination of the accused but shall also look into the reports of such medical examination reports

to ascertain whether there was any maltreatment or inducement which would make the confession inadmissible. In the circumstances, we will examine the oral testimony of the concerned DCPs to find out whether such safeguards had been followed by them before recording the confessional statements.

976. PW-93 DCP Phadtare deposed that a question asked to A.5 as to whether he was medically examined, is not written. There is no specific reason as to why he did not write those questions and answers. He admits that, other than the confessional statements and correspondence produced by him, there is no other contemporaneous record about his recording the confessional statements. During the recording of A.5's statement, he told him that he wished to examine his body. A.5 said no, saying that nothing has happened to him. There is no reason why this is not mentioned in Part-I and Part-II.

977. Contrary to the above statement, PW-93 claims that he examined A.5's body and denied that there was a swelling on his feet and tenderness in thighs. However, the medical examination of A.5 on admission into Byculla Jail shows swelling on A.5's foot and tenderness on both thighs.

978. Thus, it is evident that PW-93 did not try to find out was there any maltreatment or torture to A.5 before recording his confessional statement. The record amply suggests that A.5 was tortured. In the circumstances, it can be said that PW-93 failed to follow the safeguards, in essence.

979. PW-102 DCP Mohite deposed that PSI Gangurde told him that he had got A.2 medically examined and he was given food and water on time and the other directions were complied.

980. PW-102 further deposed that he asked A.2 preliminary questions as to whether he was medically examined and whether he was given meals on time.

981. From the above referred oral evidence of PW-102, it appears that except asking PSI Gangurde whether A.2 was medically examined, he did not take further pains to look into the medical reports or to examine the body of A.2.

982. PW-102 deposed that it is necessary to find out whether the accused is tortured or harassed by the police. One of the ways to find out it is to see whether he has any body injury. He did not try to find it out in this manner on 25/10/06. He cannot say whether he will be shocked to know that when the doctor examined A.7 and found 8-10 injuries on A.7. He admits that there is no mention in Exh.1037 (Part-II of A.7's Confession) that he had ascertained from the police officer as to whether A.7 was medically examined.

983. A.7's medical reports suggest causing torture to him in police custody. PW-102 not only failed to look into the medical report of the medical examination carried out just before Part-I and Part-II of the confessional statement of A.7, but he went to the extent of saying that he cannot say whether he will be shocked to know when the doctor examined A.7 and found 8-10 injuries on A.7. This statement of PW-102 shows the approach he had to ascertain voluntariness.

984. PW-104 deposed that he asked A.4 whether he had any difficulty and whether he had any necessity of medical aid. A.4 said no and stated that his medical examination was done. The intention behind asking the accused as to whether he was beaten, threatened, induced or promised was to ascertain whether he was really intending to make the confessional statement voluntarily. He did not feel it necessary to examine the body of A.4 to ascertain whether he had been physically tortured.

985. The oral testimony of PW-104 repeats the story of not ascertaining whether there was any torture or maltreatment to A.4 before recording his confessional statement.

986. PW-113 DCP Choubey deposed that he had instructed the escort officer to take A.1 for medical examination, after Part-I. This shows that, when A.1 was produced for Part II of his confession, the DCP, except enquiring with the escort officer whether his instructions had been complied with or not, did not verify as to whether his said instruction was seriously followed and as to whether the accused was tortured or induced, to make the confessional statement.

987. It is to be noted that the record shows that on the day when A.1's confession was recorded, A.1 was suffering from a scrotal haematoma. During his medical examination after Part-I, A.1 stated to the medical officer (PW-183) that he was suffering from renal trauma. Further, the medical certificate notes that the patient has a history of renal trauma but relevant papers from KEM hospital have not been brought. PW-183 also admits that spermatic haematoma could be easily seen if the accused was asked to remove his clothes.

988. Thus, had the DCP seen the medical papers or conducted the bare minimal enquiry about the presence of injuries, the presence of the spermatic haematoma would have been obvious to him.

989. PW-117 nowhere states in his oral evidence that he examined A.3 and A.12's medical papers. In fact, he only proceeded on the basis that the escorts had informed him that the examination has been done.

990. PW-118 DCP Dumbre deposed that he did not express his desire to examine the body of A.10 and he did not do so. He does not state that he perused A.10's medical papers. He is even unable to say when A.10's medical examination was conducted.

991. From the above referred oral testimonies of the concerned DCPs, we have reached to the conclusion that they failed to follow the mandate of law as regards the safeguards provided while recording confessional statement of the accused. None of the DCPs tried to ascertain the circumstances, including was there any maltreatment or inducement in which the question of confession first arose. Therefore, the confessional statements would come under the shadow of doubt whether they were voluntarily given.

CONFESSONAL STATEMENTS

992. The expression 'confession' has not been defined in the evidence act. It, however, occurs under the category of admissions and as a definition given by Justice Stephen in Article 21 of his digest of the Law of Evidence, which says that a confession is an admission made at any time by a person charged with a charge stating or suggesting the inference that he committed that crime.

993. In the case of *Regina vs. William Baldry*, reported in (1852) 2 DEN 430, certain observations made by eminent Judges are noted with the views of Lord Campbell CJ and Mills J, which read thus: -

“Lord Campbell C. J. - I doubt whether the rule excluding confessions made in consequence of an inducement held out, proceeds upon the presumption that the confession is untrue, but rather that it would be dangerous to receive such evidence, and that for the due administration of justice it is better that it should be withdrawn from the consideration of the jury

Mills J. The law assumes that a man may falsely accuse himself upon the slightest inducement.

The law is suspicious in the highest degree of confessions; it suspects that it does not get at the truth as to the way in which they are obtained

The slightest hope of mercy to induce a prisoner to disclose is enough to render the statement inadmissible; (Rex v Thomas, 6 Car & P 353, Patteson J.)

It is remarked by Blackstone, 4 Bla. Com 357, even in cases of felony, at the common law they are the weakest and most suspicious of all testimony, ever liable to be obtained by artifice, false hopes, promises of favour, or menaces, seldom remembered accurately, or reported with due precision; and incapable in their nature, of being disproved by other negative evidence The law, therefore, distrusts confessions in criminal cases.

In Hardress' Rep 139, referred to in Gilbert, Ev. 123 (see Sedgwick's edition), where it is said to be contrary to natural justice for a man to be obliged to accuse himself, and the law on the subject seems to be none other than the application of the maxim *nemo tenetur prodere seipsum* The law does not suppose a man to be guilty till he is proved to be so.”

994. Similarly, some important observations of eminent jurists are reproduced herein under:

- A) A self-criminating statement cannot be evidence against a prisoner if he have made it under any expectation of advantage or fear of injury. A qualification of this doctrine was introduced by Patteson, J., in *Reg. v. Taylor*, viz., that the inducement or

threat must be made by some person in authority. (Reg. v. Gillis (a), reported in 1866 Criminal Law Cases 69)

B) LORD COLERIDGE, C.J.: - The rule laid down in William Oldnall Russell on Crimes, 5th ed. 1877 vol. iii. pp. 441, 442, is, that a confession, in order to be admissible, must be free and voluntary: that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. (Reg. v. Fennell, reported in 1881 QBD Vol.VII 147)

C) There are three conditions necessary to render a confession inadmissible (1.) The existence of a charge made against, or a suspicion attached to, a prisoner. (2.) The presence of a person in authority. (3.) Some reason to infer that the admission is made under the influence of hope or fear, sanctioned in some way by such person in authority. (Reg. v. Gillis (a), 1866 Cri. Law Cases 69)

D) Lord Cave J.: - I always suspect these confessions, which are supposed to be the offspring of penitence and remorse and which nevertheless are repudiated by the prisoner at the trial. It is remarkable that it is of very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear, and satisfactory, but when it is not clear and satisfactory, the prisoner is not infrequently alleged to have been seized with a desire, born off penitence and remorse, to supplement it with a confession a desire which vanishes as soon

as he appears in a court of justice. (**R .v. Thompson (1893) 2 QB 12)**

E) It is common knowledge, as observed by Lord Cave, that evidence of confession is only imported when the other evidence against the accused is weak. (**Mst. Bhagan v. State of Pepsu AIR 1955 Pepsu 33)**

995. The above referred observations by the eminent Jurists, right from 1852, would help us to appreciate and consider the confessional statements of the accused in this case.

996. In this case, the defence raised challenge to the confessional statements mainly on two grounds namely,

- I)** the statements suffer from trustworthiness and completeness and
- II)** the statements vitiate because of the torture inflicted on accused to extort confession.

997. Accordingly, we advert upon these challenges in the following paras.

I) The Confessional Statements Suffer From Trustworthiness And Completeness

998. Before examining the truthfulness of the confessional statements, the important fact needs to be noted that all the accused who allegedly gave confessional statements retracted the same. It is further important to note that all the accused have retracted their

respective confessional statements at the earliest opportunity after they were transferred to judicial custody from the police custody.

999. The chart given herein under would indicate the relevant dates when the accused were transferred to judicial custody and the date on which they retracted their confessional statements.

CHART NO. 42

Sr. No.	Name of the Accused	Date of Conclusion of Part-II of Confessional Statement	No. of Days in Police Custody	Date of transfer to Judicial Custody	Date of Retraction Before Court
1.	A.1 - Kamal Ahmed Mohd. Vakil Ansari	05.10.2006	76 Days	09.10.2006	09.10.2006
2.	A.2 - Dr. Tanveer Ahmed Mohd. Ibrahim Ansari	05.10.2006	75 Days	09.10.2006	09.10.2006
3	A.3 - Mohd. Faisal Ataur Rehman Shaikh	06.10.2006	70 Days	09.10.2006	09.10.2006
4.	A.4 - Ehtesham Qutubuddin Siddiqui	07.10.2006	56 Days	09.10.2006	09.10.2006
5.	A.5 - Mohd. Majid Mohd. Shafi	25.10.2006	26 Days	26.10.2006	09.11.2006
6.	A.6 - Shaikh Md. Ali Alam Shaikh	25.10.2006	26 Days	26.10.2006	09.11.2006
7.	A.7 - Mohd Sajid Margub Ansari	25.10.2006	26 Days	26.10.2006	26.10.2006
8.	A.9 - Muzzammil Ataur Rehman Shaikh	05.10.2006	70 Days	09.10.2006	09.10.2006
9.	A.10 - Sohail	06.10.2006	73 Days	09.10.2006	09.10.2006

	Mehmood Shaikh				
10.	A.11 - Zameer Ahmed Latifur Rehman Shaikh	05.10.2006	72 Days	09.10.2006	09.10.2006
11.	A.12 - Naveed Hussain Khan	25.10.2006	24 Days	29.10.2006	09.11.2006

1000. There is a mistake committed by the trial Court while recording in the judgment that A.5 – Majid has not retracted. In fact, A.5 has retracted. The said error was committed due to the name ‘Mohammed Majid’ written in place of ‘Mohammed Sajid’.

1001. Before examining the confessional statement, let us reiterate the law on retracted confessional statements. The Hon’ble Supreme Court of India, in the case of *Aloke Nath Dutta v. State of W.B.*, (2007) 12 SCC 230, has held thus: -

“96. ...Considering the guarantee under Article 20(3) and also humanising standards under Article 21 we need to tread cautiously while construing retracted confession. Although such caution is subject to some exceptions such as per se evidence of the motivating factors of retraction or retraction based on extraneous circumstances.

105. ...In a case where confession is made in the presence of a Magistrate conforming the requirements of Section 164, if it is retracted at a later stage, the court in our opinion, should probe deeper into the matter. Despite procedural safeguards contained in the said provision, in our opinion, the learned Magistrate should satisfy himself whether the confession was of voluntary nature. It has to be appreciated that there can be times where despite such procedural safeguards, confessions are made for unknown reasons and in fact made out of fear of police.

111. ...However, we are not unmindful of the fact that in this country, retractions are as plentiful as confessions. In a case of retracted confession, the courts should evidently be a little slow in accepting the confession, although the accused may not be able to fully justify the reasons for his retraction.”

1002. The Hon'ble Supreme Court of India, in the case of *K.I. Pavunny.vs.. Assistant Collector (HQ), Central Excise Collectorate, Cochin* reported in (1997) 3 SCC 721, has held thus: -

“It would thus be seen that there is no prohibition under the Evidence Act to rely upon the retracted confession to prove the prosecution case or to make the same basis for conviction of the accused. The practice and prudence require that the Court could examine the evidence adduced by the prosecution to find out whether there are any other facts and circumstances to corroborate the retracted confession. It is not necessary that there should be corroboration from independent evidence adduced by the prosecution to corroborate each detail contained in the confessional statement. The Court is required to examine whether the confessional statement is voluntary; in other words, whether it was not obtained by threat, duress or promise. If the Court is satisfied from the evidence that it was voluntary, then it is required to examine whether the statement is true. If the Court on examination of the evidence finds that the retracted confession is true, that part of the inculpatory portion could be relied upon to base conviction. However, the prudence and practice require that Court would seek assurance getting corroboration from other evidence adduced by the prosecution.”

1003. The Hon'ble Supreme Court of India, in the case of *Navjot Sandhu (supra)* has held thus: -

“Retracted confession, however, stands on a slightly different footing. As the Privy Council once stated, in India it is the rule to find a confession and to find it retracted later. A court may take into account the retracted confession, but it must look for the reasons for the making of the confession as well as for its retraction, and must weigh the two to determine whether the retraction affects the voluntary nature of the confession or not. If the court is satisfied that it was retracted because of an afterthought or advice, the retraction may not weigh with the court if the general facts proved in the case and the tenor of the confession as made and the circumstances of its making and withdrawal warrant its use. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused. Therefore, it can be stated that a true confession made voluntarily may be acted upon with slight evidence to corroborate it, but a retracted confession requires the general assurance that the retraction was an afterthought and that the earlier statement was true.

Retracted confession must be looked upon with greater concern unless the reasons given for having made it in the first instance are on the face of them false”

Retracted confession is a weak link against the maker and more so against a co-accused. With great respect to the eminent Judge, the comment that the retracted confession is a “weak link against the maker” goes counter to a series of decisions. The observation must be viewed in the context of the fact that the court was concentrating on the confession of the co-accused rather than the evidentiary value of the retracted confession against the maker.

34. ...A retracted confession may form the legal basis of a conviction if the court is satisfied that it was true and was voluntarily made. But it has been held that a court shall not base a conviction on such a confession without corroboration. It is not a rule of law, but is only rule of prudence. It cannot even be laid down as an inflexible rule of practice or prudence that under no circumstances can such a conviction be made without corroboration, for a court may, in a particular case, be convinced of the absolute truth of a confession and prepared to act upon it without corroboration; but it may be laid down as a general rule of practice that it is unsafe to rely upon a confession, much less on a retracted confession, unless the court is satisfied that the retracted confession is true and voluntarily made and has been corroborated in material particulars.”

35. ...That each and every circumstance mentioned in the retracted confession regarding the complicity of the maker need not be separately and independently corroborated... It would be sufficient, in our opinion, that the general trend of the confession is substantiated by some evidence which would tally with what is contained in the confession.

37. ...The expression ‘corroboration of material particulars does not imply that there should be meticulous examination of the entire material particulars. It is enough that there is broad corroboration in conformity with the general trend of the confession”

1004. In the case of *Queen-Empress v. Mahabir*, reported in 1895 SCC OnLine All 84, the Allahabad High Court held thus: -

“The mere fact that a confession has been subsequently retracted will not make it inadmissible against the accused. But before a Court can act upon such confession it must be satisfied as to its truth. Having regard to the fact that it not unoften happens that an accused person is forced or cajoled by the police into making confessions, it is the more necessary that a Court should be satisfied beyond reasonable doubt that the statements contained in the confessions of the accused are true.”

1005. In the case of *Emperor v. Krishna Babaji Chavan*, reported in AIR 1933 BOM 230, this Court held thus: -

“6. ... Now it is obvious that the retraction of a confession is a circumstance of very varying importance. Its significance depends on the nature of the confession, the circumstances in which it was made, the circumstances in which the retraction was made, and the nature of the retraction. If a full and detailed confession is made in circumstances which make it unlikely that it was the result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing : for the making of the confession can hardly be explained except on the hypothesis that it is true, whereas the retraction may easily be explained as an act of policy, the result of legal advice or the pressure of friends or the suggestion of more sophisticated associates in the lock-up. If a confession is retracted at the earliest opportunity more weight may fairly be attached to it than if the accused waits until the Sessions trial; and a retraction which takes the form of a mere denial of the fact of making the confession can hardly ever be given the same importance as one which admits the making of the confession but explains it as due to coercion or illegal inducement. If there is anything in the evidence which lends support to a suggestion of the latter kind, the confession must always be most carefully scrutinised and the Court should be cautious about relying upon it. That I take to be the real effect of the retraction of a confession. It does not cancel out the confession, but it puts the Court on inquiry as to its value, its voluntary character and the probability of its being true. And that is why it has been laid down frequently by the Courts that as a general rule a retracted confession requires corroboration of some kind, although as a matter of law corroboration is not necessary at all as was pointed out by this Court in *Emperor v. Rama Kariyappa* . But the amount of corroboration which the Court will look for depends on the circumstances of the particular case, and sometimes very slight corroboration will suffice.”

1006. The High Court of Pepsu, in the case of *Mst. Bhagan (supra)* has held thus:-

“58. Assuming that these confessions were voluntary, as they were retracted by the prisoner, it is necessary to look for an independent corroborative evidence. The weight to be attached to such confessions depends upon the circumstances under which they were made and later retracted including the reasons given by the prisoner for retracting them. The circumstances under which these

confessions were obtained from the convict have already been narrated in detail. In my opinion, in the circumstances of this case, it is not safe to act upon the retracted confession as it is not possible to come to the unhesitating conclusion.

60. In another authority of the Supreme Court reported in *Muthuswami v. State of Madras*, 1951 SCC 1020: AIR 1954 SC 4 (G), it was held,

“No hard and fast rule can be laid down regarding the necessity of corroboration in the case of a retracted confession in order to base a conviction thereon. But apart from the general rule of prudence where the circumstances of a particular case cast a suspicion on the genuineness of the confession it would be sufficient to require corroboration of the retracted confession.”

1007. It is, thus, evident from the above referred exposition in law that mere fact that the confession has been subsequently retracted, will not make it inadmissible against the accused. It depends on the nature of the confession, the circumstances in which it was made, and the nature of retraction. If a full and detailed confession is made in circumstances which make it unlikely that it was the result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing.

1008. If a confession is retracted at the earliest opportunity more weight may fairly be attached to it than the accused waits until the Sessions Trial. If the court is satisfied that it was retracted because of an afterthought or advise, the retraction may not weigh with the court. All the same, the courts do not act upon the retracted confession without finding assurance from some other sources as to the guilt of the accused, in other words, corroboration. It is not a rule of law but is only a rule of prudence.

1009. Since we have seen in this matter that all the accused have retracted their confessional statements, we proceed to examine each of

the confessional statements by keeping in mind the above referred well settled principles of law, as regards retracted confessional statements. However, before that it is necessary to look into the law as regards to the truthfulness of the confessional statements.

1010. In the case of *Devender Pal Singh ..vs.. State of NCT of Delhi And Anr.*, reported in (2002) 5 SCC 234, the Hon'ble Supreme Court of India has held thus: -

“31. ... So the crux of making a statement voluntarily is, what is intentional, intended, unimpelled by other influences, acting on one's own will, through his own conscience. Such confessional statements are made mostly out of a thirst to speak the truth which at a given time predominates in the heart of the confessor which impels him to speak out the truth. Internal compulsion of the conscience to speak out the truth normally emerges when one is in despondency or in a perilous situation when he wants to shed his cloak of guilt and nothing but disclosing the truth would dawn on him. It sometimes becomes so powerful that he is ready to face all consequences for clearing his heart.”

1011. The Hon'ble Supreme Court of India, in the case of *Bharatbhai (supra)*, has held thus: -

“22. ... Section 24 provides that a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. Article 20(3) of the Constitution of India provides that no person accused of any offence shall be compelled to be a witness against himself.”

1012. In the case of *Navjot Sandhu (supra)*, the Hon'ble Supreme Court of India has held thus: -

"27. ... Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression "appears" connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer."

1013. The Hon'ble Supreme Court of India, in the case of *Aloke Nath Dutta (supra)* has held thus: -

"87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to: (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.

90....The confession is a long and rambling one which could have been invented by an agile mind or pieced together after tutoring. What would have been difficult is to have set out a true set of facts in that manner. But unless the main features of the story are shown to be true, it is, in our opinion, unsafe to regard mere wealth of uncorroborated detail as a safeguard of truth."

1014. The contention of the defence is that the confessions of the accused, though replete with many minor details like the accused traveling to Pakistan via Iran, connections to Lashkar-e-Taiba, and training camps, the confessions are contrastingly and strangely silent on

crucial elements of the present offence. A genuine confession from the actual assailant should reveal significantly more information than the investigating agencies possess. However, though the Prosecution has claimed to have recorded confessional statements of 11 accused persons who allegedly admitted to their role in conceptualising, planning, recruiting, preparing and orchestrating bomb blasts in seven local trains, neither the accused themselves or the investigators seem to know anything about such basic issues.

1015. Learned Counsel Ms. Payoshi Roy states that one of the main tests to ascertain the truthfulness of any confession is examining the depth of information it provides. Thus, ascertaining the truthfulness of a confession depends on whether it includes insights that go significantly beyond the investigating agency's existing knowledge. If the information held by the confessor merely matches that of the investigators, if they are identical, then it raises serious concerns. Ms. Roy further states that, in the present case, we see that what is unknown to the ATS is also unknown to the accused.

1016. On the other hand, learned SPP argued that the detailed narration made by each of the accused itself is sufficient to show its truthfulness. It is argued that no one can create a story with such precision and minute details, as narrated by the accused. It is, therefore, submitted that the challenge to the confessional statements is baseless.

1017. In light of the rival submissions and law discussed, it would be appropriate at this juncture to appreciate and go through each and every confession to analyse its truthfulness and completeness.

A.1 – Kamal Ansari

1018. A.1 – Kamal was arrested on 20/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 76 days before recording of his confessional statement. According to him, his confessional statement is the outcome of the torture inflicted on him.

1019. The record shows that the last application for seeking remand was moved by the prosecution on 25/09/2006, *i.e.*, on the next day of invocation of provisions of MCOCA. In this application, it was the case of the prosecution that “considering the widespread tentacles of the organized crime syndicate, and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done, for which, custodial interrogation of the accused persons is absolutely essential.”

1020. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1021. In the above backdrop, it may be considered that, after 9 days of the above referred remand application, Part-I of the confessional statement of A.1 was recorded on 03/10/2006, and the Part-II, on 4th and 5th October 2006. This shows that, just within few days from the last application of remand, A.1 allegedly gave the confessional statement.

1022. The prosecution could not bring on record the reason for giving that statement by A.1 after a prolonged custody of 76 days. And, particularly when, there was no sufficient evidence available with the prosecution.

1023. According to A.1, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.1 - Kamal Ahmed Mohd. Vakil Ansari

मेरा पुरा नाम कमाल अहमद मोहम्मद वकिल अन्सारी है. पिताजी का नाम स्व. मोहम्मद वकील अंसारी है. मैं ग्रा. / पोस्ट-बासू पट्टी, जिला-मधुबनी, रा. बिहार का रहनेवाला हूँ। अभी मैं मुर्गा बेचने का काम करता हूँ. मेरे साथ गांव मे मेरी बीवी तबस्सुम सुलताना, मेरी माँ सहिदुनिसा, चार बेटे अब्दुल्ला, ओबेदुल्ला, अब्दुर रहमान और सुफियान और एक बेटा मरियम खातुन रहते हैं.

मेरे पिताजी कानपुर में ऑर्डनान्स फैक्टरी में काम करते थे। मेरी माँ और सब भाई बहन गाँव में रहते थे। पिताजी बीच में गाँव आया करते थे। पिताजी 1983 में रिटायर्ड होकर गाँव में आकर हमारे साथ रहने लगे। पेंशन में करीब सौ रुपये मिलते थे जिससे घर का खर्चा नहीं चलता था। इस लिए माँ बीड़ी बनाती थी और पिताजी बरसात में छाता बनाते थे।

मैं पहले क्लास से पाँचवे क्लास तक गाँव बासुपट्टी के प्राथमिक विद्यालय में 1980 से 1985 तक पढ़ाई की। छठी और सातवी क्लास मिडल स्कूल बासुपट्टी मे ही 1986 से 1987 तक पढ़ाई की। आठवी क्लास में गरीबी के कारण स्कूल छोड़कर गाँव के ही नादीर हुसैन टेलर के पास टेलरींग सिखने लगा ।

करीब एक साल में टेलरिंग सिखने के बाद जादा पैसा कमाने के लिए 1989 में दिल्ली चला गया। उस समय मेरा बडा भाई शकिल अहमद दिल्ली के गोविंदपुरी में कुतुबुद्दीन मास्टर के फॅक्टरी में कपडे सिलने का काम करता था। फिर मैं भी वही काम करने लग गया। इसके बाद करीब सन 2000 तक मै दिल्ली में अलग अलग पन्द्रह से ज्यादा गारमेंट फॅक्टरी में काम किया। करीब चार फॅक्टरी मे ज्यादा दिन काम किया और बाकी जगह थोडे थोडे दिन काम किया। जिस फॅक्टरी में ऑर्डर खत्म हो जाता था तो फिर दुसरी फॅक्टरी में जाना पडता था। इस दौरान एक वर्ष छोड़कर बाकी समय गोविंदपुरी इलाके में ही रहते थे। करीब एक वर्ष मंगोलपुरी में रहता था।

इसी बीच मेरा निकाह तबस्सुम सुलताना उर्फ तबस्सुम शीरी के साथ 06/12/1994 को दरभंगा में हुआ। निकाह के सव्वा महिने पहले मैं गाँव आया था और निकाह के करीब 25 दिन बाद फिर से काम करने के लिए दिल्ली चला गया।

मेरे गाँव से डेढ किलो मीटर दुर बलकटवा गाँव है। बलकटवा के डॉ. जोहर अन्वर जवाहरलाल नेहरू युनिवर्सिटी के प्रोफेसर है। दिल्ली में मेरे साथ रहनेवाला अनवर, जो कि मेरे ही गाँव का था, ने मेरी जान पहचान डॉ. जोहर अनवर से करवाई। वैसे वे मेरे पिताजी को जानते थे। डॉ जोहर अनवर हमें बिमार होने पर मुफ्त में होमियोपेथी की दवा

देते थे। उनके सौतेले छोटे भाई हाफिज जुबैर पिता का नाम समसुल हक उमर करीब चालीस वर्ष (अभी) को मैं जानता था। मेरा उससे कोई नजदीकी का रिश्ता नहीं था।

1997 साल के जनवरी में हाफिज जुबैर हमलोगों के पास अब्दुल्ला उमर करीब 35 वर्ष और हुसैन उमर करीब 35 वर्ष ऐसे दो लोगों को लेकर आया। उसने बताया की ये लोग बनारस से दिल्ली काम खोजने के लिए आये। इनको जगह मिलने तक अपने पास रखलो। दो-तीन दिन वे हमारे साथ रुके और उसके बाद उसी बिल्डींग में जमीनवाले मंजिल पर रहने लग गये। करीब एक सप्ताह के बाद मैं अब्दुल्ला और हुसैन के ही कमरे में रहने लग गया। यह बिल्डींग गोविंदपुरी के सात नम्बर गली में था।

वहाँ हम लोग करीब ढाई महिने और रहे। हमारा तीनों का खर्चा हम मिल बँट कर करते थे। घर में पानी कम आने के कारण यह घर छोड़कर हमलोग 13 नम्बर गली, गोविंदपुरी में चले गये। वही पर एप्रिल / मई में अब्दुला और मेरे बीच में राशन के पैसे को लेकर लड़ाई हो गई। उस समय वहाँ गली में पुलिस आई थी। उसने हमें गोविंदपुरी पोलीस स्टेशन में ले जाकर समझा बुझाकर छोड़ दिया। इस घटना के बाद मैं अलग होकर अपने भाई के साथ जाकर रहने लग गया। बाद में मुझे पता चला की अब्दुला मेरे गाँव में जाकर मेरे पिताजी के साथ 2-3 दिन रहकर आया था। यह जानकारी मेरे गाँव का रहनेवाला लियाकत अनसारी, जो की दिल्ली में ही काम करता था, ने मुझे दिया था।

27 फरवरी को मेरे छोटे भाई जमाल अहमद ने गाँव से फोन करके बताया की पिताजी बिमार हैं। मैं तुरंत गाँव पहुँचा। उनपर नबाब मेमोरियल हास्पिटल में इलाज चल रहा था। 19/3/1998 को पिताजी का इंतकाल हो गया। उसके बाद 5/6 महिने मैं गाँव में ही रहा था। दिल्ली से जब गाँव के लोग वापस आये तो उन्होंने बताया की हमारे साथ रहनेवाले अब्दुल्ला और हुसैन दिल्ली के आय.टी.ओ. बाम्ब विस्फोट में पकड़े गये हैं। वे बनारस के नहीं बल्की पाकिस्तानी थे।

सन 2000 में विधान सभा चुनाव में आर.जे.डी. पक्ष का प्रचार करने के लिए गाँव गया था। चुनाव प्रचार रैली में इब्राहिम राईन आकर मुझसे मिलकर, वह हाफिज जुबैर का दोस्त है, बताया। उसने बताया कि हाफीज ने मुझे मिलने के लिए अगले दिन काठमांडु में बुलाया है। 09:00-10:00 बजे के दरम्यान निकलकर जनकपुर करीब 12:00 बजे पहुँचा। वहाँ इब्राहिम राईन मिला और रात की बस से हम दोनों सुबह करीब 06:00 बजे काठमांडु पहुँचे। काठमांडु बस अड्डे से टैक्सी पकड़कर हम सितापायला के एक घर में पहुँचे। वहाँ हाफीज जुबैर और अब्दुल रहमान वहाँ मिले। हाफीज जुबैर ने कहा की तुम्हें मदरसे के लिए चंदा जमा करने के लिए पाकिस्तान जाना है। इस एक महिने में तुम्हें करीब रु.50,000/- मिल जायेंगे, उसे हमलोग आधा आधा बँट लेंगे। पासपोर्ट नहीं होने के बारे में बोलने पर उसने फोटो निकाल कर लिया और बताया की वह पासपोर्ट बनवा देगा। उसने यह भी बताया की तुम्हारे साथ 3-4 लोग रहेंगे। एक महिने गाँव जाकर आने लिए कहा।

एक महिने बाद मैं वापस काठमांडु गया। वहाँ पर हाफीज जुबैर, अब्दुल रहमान व इब्राहिम राईन वहाँ मिले। हाफीज जुबैर ने मुझे पासपोर्ट, एक भरा हुआ फार्म और 400/- फी दिया और वही पाकिस्तानी अम्बेसी में जाकर व्हिसा लगाकर आने को कहा। मैं करीब 11:00 बजे निकलकर करीब 11:30 बजे अम्बेसी पहुँचा। पासपोर्ट, फार्म और रु. 250/- फी दिया और करीब दो घंटे में व्हिसा लगाकर पासपोर्ट मिल गया। यह पासपोर्ट, जो मुझे हाफीज जुबैर ने दिया था, नेपाल देश का था। उसपर मेरा नाम कमाल अहमद और पिताजी का नाम मोहमद मुन्शी लिखा था।

हाफीज जुबैर ने इसके बाद मुझे रु.1500/- दिए और बताया की तीन दिन के बाद दरभंगा रेलवे स्टेशन पर करीब 11:00 बजे इन्कॉईरी के पास चार लोग मिलेंगे। उनका हुलिया भी बताया। उसी हिसाब से रेलवे स्टेशन पर करीब 11:00 बजे बताए हुए जगह पर चार

उनमेसे दो के नाम मुझे याद है। उनका नाम फैज और रशिद था। बाकी दो के नाम हमें याद नहीं है। करीब तीन बजे के ट्रेन से निकलकर अगले दिन शाम को करीब चार बजे दिल्ली पहुँचा। वहाँ से करीब 08:00 बजे की ट्रेन से निकलकर सुबह 06:00 बजे अमृतसर पहुँचे। वहाँ से बस से वाघा बोर्डर पहुँचे। भारत के साईड में चेकिंग कर के और स्टाम्प मारकर पाकिस्तानी साईड गये। उस साईड भी उसी प्रकार किया गया। वहाँ से बस पकड़कर हम पाँचो लाहौर रेल्वे स्टेशन करीब दोपहर बारह से एक के दरम्यान पहुँचे। वहाँ से हाफीज जुबैर ने दिये फोन नम्बर पर लष्कर ए तोयबा के कमांडर असलम को फोन किया। पी.सी.ओ. बुथवाले से असलम ने बात करके, पता निकालकर करीब पन्द्रह मिनीट में हमारे पास आ गया। असलम हम सबको लेकर टेम्पो से एक तीन मंजिला मकान में ले गया। उस मकान के कमरे में और सीढ़ी पर लष्कर ए तोयबा के और हत्यारों के पोस्टर लगे हुए थे। हम पाँचो को उसी रूम में बंद करके असलम बाहर जाकर पन्द्रह मिनीट में आया और हमारा पासपोर्ट लेकर पठाण सुट पहनने के लिए दिया। शाम को करीब साढ़े सात बजे असलम सबको निचे लेकर आ रहा था, उस समय खालीद सैफुल्ला मिला। वह भी लष्कर ए तोयबा का है ऐसा असलम ने बताया। गली में खड़ी एक बस में हम सबको बिठाकर असलम और खालीद सैफुल्ला दोनों चले गये। बस करीब 08:00 बजे रात को चलकर सुबह 08:00 बजे करीब मुजफराबाद पहुँची। बस से उतरने के बाद करीब पन्द्रह मिनीट चलकर, दो रूम जिसपर लष्कर ए तोयबा का बोर्ड लगा हुआ था, उसके सामने लाईन में खड़े हो गये। वहाँ असलम ने लाहौर में दिया हुआ नाम हैदर बताकर और उसने ही दिए हुए पता का कागज देकर टेंट में बैठ गये।

थोड़ी देर बाद करीब डेढ़ घंटा पहाड़ी पर पैदल चलकर उम्मुल कोडा नाम के ट्रेनिंग पर पहुँचे। वहाँ पर करीब डेढ़ सौ लोग ट्रेनिंग के लिए आये थे। सैफुल्ला कसुरी वहाँ का इनचार्ज था। उसे वहाँ अमीर करके बोलते थे।

ट्रेनिंग में सुबह 04:00 बजे नमाज पढ़ते थे। उसके बाद कुरान की पढ़ाई होती थी। सिर्फ दो दिन, जब बारिस नहीं हुई थी तो वर्जिश कराई गई थी। 01:00 बजे खाने का समय होता था। 11:00 बजे और 05:00 बजे नमाज, मजहबी तकरीर और पुरे दुनिया के मुसलमानों पर होनेवाले जुल्म और नाइंसाफी के बारे में बताया जाता था। वही पर बाबरी मस्जिद गिराने पर और काश्मिर में हिदुस्तानद्वारा मुसलमानों पर किया जाने वाला अत्याचार, महिलाओं का इज्जत लुटना, कत्ले आम करने के बारे में बताते थे। यह सब सुनकर हिदुस्तान के खिलाफ नफरत पैदा हो गयी थी। वापस आकर घातक कारवाई करने की इच्छा तैयार हो गई थी। रूटीन के हिसाब से रात को 08:30 बजे छोड़ दिया जाता था। बहुत ज्यादा ठंड होने के कारण उम्मुल खोडा में ट्रेनिंग के दौरान पन्द्रह दिनों में मैं बिमार पड़ गया। फिर खालिद सैफुल्ला मुझे और बाकी साथ के चारों को लेकर नीचे आकर जिस कमरे में लष्कर ए तोयबा का बोर्ड था वहाँ पहुँचे। वहाँ से करीब 05:00 बजे शाम को बस पकड़कर दुसरे शहर जिसका नाम नहीं याद है, सुबह 10:00 बजे पहुँचे। वहाँ से फिर रात में 07.30-08.00 बजे करीब बस पकड़कर सुबह 07:30 बजे बहावलपुर पहुँचे। वहाँ से पिकअप वैन में पिछे में निचे बिठाकर करीब 12:00 बजे दोपहर में रेगीस्तान में ट्रेनिंग सेंटर में पहुँचे। वहाँ ट्रेनिंग लेनेवाले हम पाँच लोग थे। वहाँ का इन्चार्ज महमुद था। उसके अलावा अमीर नाम का उस्ताद और एक बावर्ची था। खालीद सैफुल्ला भी वहाँ आता जाता रहता था।

वहाँ ट्रेनिंग में 04:00 बजे नमाज और कुराण पढ़ना पड़ता था। सुरज निकलने पर छह किलो मीटर दौड़ने के लिये जाना पड़ता था। उसके बाद पी.टी. और एक्सरसाईज होता था। नाश्ते के बाद तकरीर और किताब पढ़ना होता था। 12:30 बजे खाने के लिए छोड़ा जाता था। दोपहर 03:30 बजे से एके-47 रायफल, रिव्हालवर और बाम्ब बनाने की ट्रेनिंग दी जाती थी। रात को 08:30 बजे नमाज के बाद छोड़ दिया जाता था। रात को

बारी बारी से सबको संतरी का पहरा ड्युटी करना पड़ता था। करीब पन्द्रह दिन की वहाँ की ट्रेनिंग होने बाद मेरे साथ आये चार लोगोंने वहाँ चंदा जमा करने के लिए आये थे लेकिन दुसरा ही काम चालू है, हमें वापस भेज दो बोलने पर अमीर ने फैज को दो चाटा लगाया और तुम्हे सबक सिखाता हूँ बोला। अगले दिन उसने चारोंको गायब कर दिया। दो-तीन दिन के बाद वहाँ पाँच पंजाबी ट्रेनिंग के लिए आये। वहाँ मेरी दो महिने ट्रेनिंग चली। उसी दौरान अमीर ने मेरा और पंजाबी लडको का हथियार हात में लेकर फोटो खीचा था। ट्रेनिंग खत्म होने पर सैफुल्ला खालीद पिक अप वैन लेकर आया और वहावलपुर छोड़ा। वहाँ से रातभर बस से चलकर सुबह करीब सात बजे लाहौर पहुँचा। बस अड्डे पर सैफुल्ला खालीद ने मुझे पासपोर्ट कपडा और रु.12,000/- दिया। फिर उसने डायरेक्ट काठमांडू से जिसने भेजा था, उसके पास जाकर मिलने को कहा। वहाँसे बससे मैं वाघा बोर्डर आकर बोर्डर क्रॉस करके अमृतसर से शाम को करीब चार-पाँच बजे रेल से दिल्ली आया। शाम को करीब छह सात बजे दिल्ली से चलकर करीब रात बारह बजे दरभंगा पहुँचा। सुबह बस पकडकर जनकपुरा दोपहर में एक बजे करीब पहुँचा। वहाँसे शाम को बस पकडकर सुबह 05:30 बजे करीब काठमांडू पहुँचा। बस स्टैंड से शितपायल आकर हाफीज जुबैर के घर पर जाकर उससे मिला।

वहाँ मैं हाफीज जुबैर पर गुस्सा होकर बोला वहाँ मदरसा के चंदा के वजाए दहशतवाद की ट्रेनिंग दी गई और सिर्फ रु.12000/-मिले। उसने साथ गये लोगों को भी गायब कर दिया। इसपर हाफीज जुबैर ने बोला कि जो हुआ वह भुल जायो क्यों की उनलोगों ने तुम्हारी फोटो ली है। उसने धमकाया की वह फोटो भारतीय पुलिस को दे देने पर मुझे फाँसी भी हो सकती है। उसने नेपाली पासपोर्ट ले लिया और दस दिन बाद आकर मिलने को कहा। उसके बाद मैं घर जाकर बचे हुए पैसे घरपर देकर एक हप्ते बाद अप्रैल 2001 में फिर से काठमांडू गया। वहाँ मैं हाफीज जुबैर के नाईस ट्रॅवल्स के आफिस में काम करने लग गया। वहाँ पर अब्दूल रहिमान और इब्राहिम राईन भी थे। मुझे 3000/- तक पगार देता था। करीब छह महिने बाद उस आफिस में सैफुल्ला खालीद मिला। मुझे बाद में पता चला की सैफुला खालीद ही नाईस ट्रॅवल्स चलवाता था। सैफुला खालीद ने मुझे थोडा कम्प्युटर चलाना सिखाया और ईमेल आयडी तयार करके दिया। वो तीन आयडी

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3)kamaalahmad2@rediffmail.com थे। एक का पासवर्ड skbj था। यह मेरे भाईयो के पहले नाम पर है। सैफुल्ला ने मुझे उससे ईमेल आय.डी. का इस्तेमाल करके सायबर कॅफे से संपर्क में रहने के लिए बोला। उसने गरीब पढे लिखे और जरूरतमंद लडको को पाकिस्ताना जाकर चंदा जमा करने के नाम पर तैयार करके ट्रेनिंग करने के लिए तैयार करके ईमेल से बताने के लिए कहा। मुझे फिर 3000/-रु. दिया और मैं गाँव चला आया। मैं लालच में आकर, मैंने सैफुल्ला खालीद के कहने पर आपने साडु भाई (साली का पती) अनवर उल हक, ग्राम/पो. बासुपट्टी, जिला- मधुबनी, को पाकिस्तान भेज दिया था। उसे बताया था की पाकिस्तान में मदरसा के चंदा के लिए जाने पर एक महीने में करीब चालीस से पचास हजार रुपये मिल जाते है जिसमें से आधा उसे मिल जायेगा। उसे हाफीज जुबैर का फोन नंबर देके काठमांडू भेज दिया। अगस्त 2001 में वह पाकिस्तान चला गया। करीब सव्वा दो महिने बाद वह वापस आ गया और मुझपर बहुत गुस्सा किया। कसम देकर मुलक के खिलाफ ये सब काम बंद करने को कहा। बाद में मैंने उसका नेपाली पासपोर्ट चुल्हे में डालकर जला दिया।

इस दरम्यान मैं इब्राहिम राईन और सैफुल्ला से कम्प्युटर के द्वारा संपर्क में रहता था। बहुत समय वे लोग पन्द्रह बीस दिन पहले ही डेट और टाईम बता देते थे। उस समय तुरंत तुरंत मेसेज आ और चला जाता था। कभी कभी वे उपलब्ध नहीं रहते थे तो सिर्फ उनका मेसेज रहता था।

करीब एक साल में, सेप्टेंबर 2002 तक इब्राहिम ने टाईम टाईम पर मुझे 75000/- रु. दिये। लेकिन मैंने एक भी लडके को ट्रेनिंग के लिए नहीं भेजा। इस दरम्यान उसने मुझे दिल्ली जाने के लिए कहा और वहाँ एक नम्बर पर हैदर के नाम से फोन करने के लिए कहा। ऐसा करने पर मुझे 20,000/- रु. और एक ए.के.-47 देगा। यह मैसेज मुझे कम्प्यूटर पर मिला था। इस काम के लिए मैं 02/10/2006 को करीब 03:30 बजे दोपहर को दिल्ली पहुँच कर अपने साडू अनवर उल हक के घर पहलादपुर बदरपुर बार्डर के यहाँ रुक गया। सुबह दिए हुए नम्बर पर फोन कर के सुबह 09:30 बजे पारस सिनेमा हाल के पास, नेहरू प्लेस पर मिलना तय हुआ। वहाँ एक आदमी आकर मेरा नाम पुछा। उसके तुरंत बाद सादा कपड़े में आई पुलिस ने मुझे पकड़ लिया और बुरका डालकर लोदी कॉलनी के पुलिस आफिस में ले गये। उसी रात पुलिस ने मेरे साडू भाई को भी पकड़ लिया। मैंने पैसे लेकर ट्रेनिंग के लिए लडके नहीं भेजे इसलिए शायद पुलिस में खबर देकर मुझे पकड़ा दिया होगा। दिल्ली पुलिस ने मेरे उपर कट्टे का केस बनाया और मैं 20-22 दिन जेल में रहा। मेरे भाई शकील अहमद ने रु. 15000/- के जमानत पर मुझे छुटाया। जमानत पर छुटने के बाद 20-25 दिन के बाद मैं गाँव चला आया।

गाँव में आने के बाद आलू प्याज का काम कर रहा था। आम के सिजन में आम बेचता था। बरसात में छाता बनाता था। अब मुर्गी बेचने का काम करता हूँ। मेरे घर का फोन नम्बर 06246-273679 है। मेरा मोबाईल नम्बर 9934610679 है। यह मोबाईल मुझे बलकटवा गाव के नुमेर, जो कि कटर में रहता है, ने मुझे भेजा था। क्यों की मैं उसकी माँ का खयाल रखता था। मैं ढाई-तीन साल से घर के टेलिफोन पर आय.टी.सी. कार्ड का इस्तेमाल करता हूँ। यह कार्ड मैं मधुबनी के सायबर कैफे के मालिक मिश्राजी के पास से लेता था। इसका इस्तेमाल भाईयो, बहनो और दोस्तो से दिल्ली, बस्ती, कतार, नेपाल और कभी कभी सउदी बात करने के लिए करता था।

मई 2006 के शुरूवात में अब्दुल रहमान, जो काठमांडु में हाफीज जुबैर के नाईस ट्रॅवल्स में काम करता था, वह मेरे गाँव में सुबह 11:00 बजे के करीब आया और मुझे जनकपुर साथ में चलने के लिए कहा। वहाँ जाने पर वह मुझसे बात करेगा और मुझे पैसा देगा ऐसा बोला। इसलिए मैं उसके साथ जनकपुर गया। वहाँ उसने मेरी फोनपर सैफुल्ला से बात कराई। सैफुल्ला ने बताया की जब मैं पकड़ा गया उस समय वह व्यस्त था, इसलिए कोई मदद नहीं कर सका। और उसने अब्दुल रहमान से रु.10,000/- लेकर गाँव जाने के लिए कहा। अब्दुल रहमान ने मुझे रु. 10000/- और एक प्लास्टिक की थैली, जिसमें करीब आधा किलो काले रंग का पावडर था, दी। पुछने पर अब्दुल रहमान ने बताया की वो आरडीएक्स पावडर है जिसका वक्त पड़ने पर बम्ब बनाने के लिए इस्तेमाल किया जा सकता है। मैं 10,000/- और आरडीएक्स पावडर की थैली लेकर गाँव वापस आया। वह थैली मैंने मेरे पलंग के नीचे छुपाकर रख दी।

मई 2006 के आखीर में अब्दुल रहमान ने मुझे फिर जनकपुर बुलाया था। इसलिए मैं वहाँ उससे मिलने चला गया। वहाँ पर उसने मुझे दो पाकिस्तानीयों से जिनका नाम असलम और हाफिजुल्ला बताया था, मिलाया। अब्दुल रहमान ने मुझे इन दोनों को बम्बई ले जाकर साजीद चाचा के हवाले करने को कहा। मैं उनको जनकपुर से होते हुए पटना लेकर आया। वहाँ से रात को ट्रेन पकड़कर दुसरे दिन सुबह बम्बई पहुँचा। बम्बई में उन दोनों को लेकर जोगेश्वरी में साजीद चाचा के दुकान पर मिला और उन दोनों को उनके हवाले करके मेरे गाँव बासुपट्टी वापस आ गया।

07 जुलै को मुझे अब्दुल रहमान ने बताया मुझे 11 जुलै को सुबह साजीद चाचा के घर मिरा रोड बम्बई में किसी हालात में पहुँचना है। वहाँ मुझे लष्कर ए तोयबा के कमांडर आजम चिमा का एक बड़ा काम असलम हाफीजुल्ला और साजिद चाचा के साथ मिलकर बम्बई में करना है। इस लिए मैं मेरे गाँव से बम्बई के लिए 09 जुलै 2006 को निकला। मैं

11 जुलै 2006 की सुबह साजिद चाचा के घर करीब 08:30 बजे पहुँचा। वहाँ पर असलम और हाफीजुल्ला मौजूद थे। वहाँ से दोपहर 02:00 बजे मैं, असलम, हाफीजुल्ला और साजिद चाचा फैजल को मिलने बांद्रा के लिए लोकल ट्रेन से निकले। करीब 03:00 बजे फैजल के घर बांद्रा पहुँचे। फैजल के घर में उसके साथ और 08-10 आदमी थे। उस कमरे में 7 काली रेक्जीन की बैग रखी थी। जिसमें बम बनाके रखे थे। वह बम की सात बैग चर्चगेट पर अलग अलग लोकल ट्रेन में रखना है, ऐसा फैजल ने बताया। उसमें से फैजल ने एक बैग मुझे दि और कहा की मैं, असलम, हाफीजुल्ला और वहाँ मौजूद एक पाकिस्तानी जिसका नाम सलीम बताया गया था, ऐसे हम चार लोग एक बैग चर्चगेट रेल्वे स्टेशन के प्लेटफॉर्म नं. 3 के सामने के फस्ट क्लास के डब्बे के सामनेवाले जगह पर पहुँच कर वहाँ से 5:57 बजे की फास्ट ट्रेन में सामने से पहले फस्ट क्लास के डब्बे में लगेज रैक पर रखना है और फिर हम चारों को हर हालत में दादर रेल्वे स्टेशन पर उतरना है।

हम चारों फैजल के घर से बमवाला बैग लेकर टैक्सी से चर्चगेट रेल्वे स्टेशन पर करीब शाम 05:00 बजे पहुँचे। वहाँ पहुँच कर हमने फस्ट क्लास के चार टिकट लिए। शाम 5 बजकर 57 मिनट की गाड़ी प्लेटफॉर्म नम्बर तीन पर लगने के बाद हम चारों गाड़ी के पहले फस्ट क्लास के डब्बे में चढ़े। मैंने बम की बैग पैसंजर रैक पर रखी और हम चारों दरवाजे के पैसेज में खड़े रहे। जब ट्रेन दादर रेल्वे स्टेशन पर आई तो हम सब उतरने लगे। उसी समय लोगों की भीड़ का एक बड़ा रेला अंदर की तरफ चढ़ने लगा, इसलिए हम बड़ी मुश्किल से लोगों को धक्का देते हुए उतरने में कामयाब हुए। लेकिन भारी भिड़ के कारण सलीम पाकिस्तानी हमारे साथ नहीं उतर सका और डब्बे में ही अटक कर रह गया। इतने में ट्रेन स्टार्ट हो गयी। दादर रेल्वे स्टेशन पर उतरने के बाद हम तीनों बस बदलते बदलते मिरा रोड तक साजिद चाचा के घर पर आये। वहाँ पर मैंने असलम और हाफीजुल्ला को छोड़ा और वापीस बस बदलते बदलते दादर रेल्वे स्टेशन पर आकर दादर सेन्ट्रल से कल्याण पहुँचा। रात को करीब 01:00 बजे कल्याण से पटना की ट्रेन पकड़ कर दुसरे दिन सुबह सुबह पटना पहुँचा। वहाँ से बस से उसी दिन 13 जुलै 2006 को मेरे गाँव पहुँच गया।

20 जुलै 2006 को बम्बई पुलिस और बिहार की पुलिस ने मुझे मेरे गाँव बासुपट्टी में पकड़ा और वहाँ से मुझे मेरे घर ले गये और मेरे घर की तलाशी में मुझे अब्दुल रहमान ने दी हुई आरडीएक्स की थैली, जो मैंने मेरे घर में पलंग के नीचे छुपा कर रखी थी, वह जप्त कर ली और मुझे हवाई जहाज से पटना से बम्बई लेकर आ गये। और तबसे मैं पुलिस की हिरासत में हूँ।

1024. After going through the entire confessional statement of A.1 - Kamal, it is evident that the first 6 paras are relating to his education and family background. The middle portion of the statement till the highlighted portion, discloses that how he came in contact with some of the accused including wanted accused. This portion further discloses the story about his training in Pakistan.

1025. However, the relevant portion is the highlighted portion of the statement, which relates to the bomb blasts and the charge framed against A.1.

The True Translation Of The Highlighted Portion

"In the beginning of May 2006 Abdul Rahman, who worked for Hafiz Zubair's Nice Travels in Kathmandu, came to my village around 11:00 a.m. and asked me to accompany him to Janakpur. He said that when we reach there, he will talk to me and give me money. For this purpose I went with him to Janakpur. There he made me talk to Saifullah on the phone. Saifullah told me that when I was caught, he was busy so he could not help me. And he asked Abdul Rehman to take Rs. 10,000 and go to the village. Abdul Rehman gave me Rs. 10000 and a plastic bag which contained about half a kilo of black powder. On asking, Abdul Rehman told me that it is RDX powder which can be used to make bombs when needed. I returned to the village with Rs 10,000 and a bag of RDX powder. I hid that bag under my bed.

At the end of May 2006, Abdul Rehman called me to Janakpur again. So I went there to meet him. There he introduced me to two Pakistanis named Aslam and Hafizullah. Abdul Rehman asked me to take both of them to Bombay and hand them over to Sajid Chacha. I brought them to Patna via Janakpur. From there, I caught a train at night and reached Bombay the next morning. In Bombay, I took them to Sajid Chacha's shop in Jogeshwari and after handing them over to him, I returned to my village Basopatti.

On 7th July, Abdul Rehman told me that I have to reach Sajid Chacha's house in Mira Road, Mumbai at any cost on the morning of 11th July. There I have to do a big job of Lashkar-e-Taiba commander Azam Cheema in Bombay along with Aslam Hafizullah and Sajid Chacha. So, I left for Bombay from my village on 09 July 2006. I reached Sajid uncle's house on the morning of 11th July 2006 at around 08:30 am. Aslam and Hafizullah were present there. From there at 02:00 pm Aslam, Hafizullah, Sajid uncle, and I left by local train for Bandra to meet Faisal. We reached Faisal's house in Bandra at around 03:00 pm. There were 8-10 more people with Faisal in his house. There were 7 black rexine bags kept in that room. In which the prepared bombs were kept. Faisal said that those 7 bags of bombs were to be put in different local trains at Churchgate. Faisal gave me one bag from it and said that I, Aslam, Hafizullah and a Pakistani present there whose name was told to be Salim, the four of us have to take one bag to the place in front of the first class coach on platform no. 3 of Churchgate railway station and from there we have to keep it on the luggage rack in the first first class coach from the front in the 5:57 pm fast train and then all four of us have to get down at Dadar railway station at any cost.

The four of us took the bag containing the bomb from Faizal's house and reached Churchgate railway station by taxi at around 5:00 pm. After reaching

there, we bought four first class tickets. After the train arrived at platform number three at 5:57 pm, the four of us boarded the first-class compartment of the train. I kept the bag containing the bomb on the passenger rack and the four of us stood in the door passage. When the train arrived at Dadar railway station, we started getting down. At the same time, a huge crowd of people started boarding the train, we managed to get down with great difficulty by pushing the people. But due to the heavy crowd, Salim Pakistani could not get down with us and remained stuck in the compartment. Meanwhile, the train started. After getting down at Dadar railway station, the three of us kept changing buses and reached Sajid uncle's house on Mira Road. There I dropped Aslam and Hafizullah. I left and went back to Dadar railway station by changing buses and reached Kalyan from Dadar Central. I caught a train from Kalyan to Patna at around 1:00 in the night and reached Patna early the next morning. From there I reached my village by bus on the same day i.e. 13th July 2006."

Conclusion

1026. The law says that if a full and detailed confession is made in circumstances which make it unlikely, and that, it was a result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Babaji Chavan (supra)*).

1027. In light of the above referred well settled law position, when we appreciated, in detail, the relevant portion of the confessional statement of A.1, we have reached to the conclusion that this retracted confessional statement does not fall in the category of a full and detailed confession, and therefore, creates doubt about its truthfulness, for the following reasons: -

- i. A.1 - Kamal states that Abdul Rehman introduced him to two Pakistanis Aslam and Hifizullah. Abdul Rehman asked him to take both of them to Bombay and handover them to Sajid Chacha. Thereupon, he brought them to Puna via Janakpur, from there he reached Bombay by train and in Bombay he took both of them to Sajid Chacha's shop in Jogeshwari. And after handing

over them, he returned to his village Basopatti. Whereas, in the earlier part, nowhere there is a mention of Sajid Chacha or his acquaintance with him.

It is pertinent to note here that A.1 - Kamal was native of Basopatti in Bihar. After his education in Basopatti, he worked in Delhi and sometimes went to Kathmandu and Janakpur. In his statement, nowhere he mentioned that he ever visited Bombay. There is no mention of any other person accompanied with A.1 - Kamal to Mumbai, who was acquainted with Mumbai. In this backdrop, there is no mention in the statement why A.1 - Kamal was chosen to take two Pakistanis to Mumbai and handover them to Sajid. There is no mention of the fact that after reaching Mumbai, how he traveled upto Jogeshwari and reached to the shop of Sajid. This information ought to have disclosed by him as we have observed that A.1 - Kamal never visited Mumbai or nothing is brought on record that he had knowledge of topography of Mumbai. Even there is no mention about any cell number or that any detail information was provided to him to enable him to reach to Sajid without any difficulty. There is only a mention as shop in Jogeshwari. No other details of shop and address, are given.

ii. Similarly, it is evident that A.1 - Kamal first time met A.3 - Faizal on 11th July 2006. This was the second visit of A.1 - Kamal to Mumbai. In whole statement, nowhere A.1 - Kamal claimed that he had knowledge of the topography of Bombay. In this backdrop, it is important to note that on the date of blasts, A.3 - Faisal simply asked A.1 - Kamal to take some Pakistanis with him

with a bag containing bomb, go to Churchgate railway station and keep the bag in the first class bogie of the 5:57pm Virar fast local train on the rack and get down at Dadar.

No one will quarrel on the point that a person who doesn't know Mumbai and its topography how difficult it is for such person to travel in Mumbai, particularly when he doesn't know how the local trains operate, where is the particular station, how to reach such station, where from the taxi should be hired, and after reaching the station from where to enter the station, where the ticket counter is, how to reach to the platform, how to find out the train, etc., which is almost impossible unless some guidance is provided. In the statement of A.1 - Kamal, there is no mention of such guidance given to him. Even there is no mention of any difficulty he faced in absence of such guidance.

iii. A.1 - Kamal has stated that he and three Pakistanis, after taking a bag from A.3 – Faisal's house, reached Churchgate by taxi at about 5 pm. The record shows that the house of A.3 - Faisal is at Perry Cross Road, Bandra. There is no mention from which place A.1 could get taxi to reach Churchgate. There is no mention where they kept the bag containing bomb in taxi, i.e., on the seat or in the boot. This information is important in view of the fact that, as per A.1 - Kamal, including him total four persons traveled in the taxi.

Even he did not mention the size of the bag and how he reached upto taxi from A.3's house, whether on foot or by any

conveyance. He has also not mentioned who among them carried the bag till they reached taxi and after getting down the taxi.

iv. A.1 - Kamal has stated that Aslam, Hafizullah, Sajid Chacha and he reached Faisal's house at Bandra at 3pm. There were 8-10 more people with Faisal in his house. There were 7 black rexine bags kept in that room, in which the prepared bombs were kept. He has not explained who told him that the 7 black rexine bags are of the bombs.

v. As per A.3 – Faisal's confessional statement, he made 7 pairs for planting bombs in the train. One pair was consisted of one local and one Pakistani. However, as per A.1's, along with him, three Pakistanis were there.

1028. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.2 - Tanveer Ansari

1029. A.2 – Tanveer Ansari was first arrested on 23/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in prolonged police custody for 75 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1030. The record shows that the last application moved by the prosecution was on 25/09/2006 in Cr. No. 156/2006, i.e. on the next day of invocation of provisions of MCOCA. In the last application dated 25/09/2006 for remand, the prosecution stated that “considering

the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential.”

1031. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1032. The confessional statement of A.2 was recorded on 04/10/2006 (Part-I) and 05/10/2006 (Part-II). This shows that just within few days from the last application of remand, A.2 allegedly gave confessional statement. The prosecution could not bring on record the reason for giving confessional statement by A.2 after prolonged custody of 75 days. And, particularly when, there was no sufficient evidence available with the prosecution.

1033. According to A.2, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.2 - Dr. Tanveer Ansari

मेरा नाम डॉ. तन्वीर अहमद मोहम्मद इब्राहीम अन्सारी है. मेरी उम्र ३३ साल की है. मैं युनानी डॉ हूँ. मैं मेरे परीवार वालो के साथ ४/३१. बी.आय.टी. ब्लॉक, एम.एम.ए. मार्ग, मोमिन पुरा, बम्बई-११ इस पते पर रहता हूँ. मेरे भाई इश्तियाक अहमद का मोबाईल फोन जिसका नंबर ९०६९३२०४५७ है. यह मोबाईल फोन मैं इस्तेमाल करता था. मेरा ई मेल आय डी Gudu_Sir@Yahoo.com है और इस ई मेल आय डी का पासवर्ड Bum3124 है.

मैंने मौलाना आझाद हायस्कूल, आग्रीपाडा में दसवी कक्षा तक पढ़ाई की. बाद में ज्यूनियर कॉलेज ऑफ आर्ट्स, साइंस अन्ड कॉमर्स, नागपाडा में मैंने जूनीयर कॉलेज की पढ़ाई की. ताज तिबीया युनानी मेडीकल कॉलेज, नाल साहब चौक, नागपुर से मैंने डॉक्टरी का बी.यू.एम.एस. कोर्स सन

1998 में पुरा किया। छह महीने इंटरनशिप करने के बाद फौजीया नर्सिंग होम, बापटी रोड, नागपाड़ा मुंबई में मैंने २ साल आर.एम.ओं की नोकरी की। उसके बाद मुस्लीम अम्बुलन्स हॉस्पिटल में मैंने दो साल नौकरी की।

पढ़ाई के दौरान मैं नागपूर में जामा मस्जिद के मोमीनपुरा में एक खोली (कमरा) में रहता था। साल 1997 में शरीफ बद्दू और मुस्तफा शरीफ के कहने पर मैं जामा मस्जिद में हर इतवार को होने वाले दरसे ए कुरान प्रोग्राम के लिए जाने लगा। यह प्रोग्राम सिमी याने स्टुडेंट्स इस्लामीक मुव्हेमेंट ऑफ इंडीया यह संगठन की तरफ से आयोजित किए जाते थे। बाद में मैं सिमी संगठन का सदस्य बना। शुरू में मैं इक्वान बना। साल 1999 में पढ़ाई पूरी होने के बाद मैं मुंबई लौटा लेकिन मैं सिमी संगठन से जुड़ा रहा। सिमी के कुर्ला ऑफिस में मेरा आना जाना था। साल 2000 में मैंने सिमी के दिल्ली मुख्यालय में दस दिन का ट्रेनिंग किया। दिल्ली में सिमी का मुख्यालय झाकीर नगर में है। मेरे ट्रेनिंग के दौरान शाहीद बद्र फलाही, सफदर नागोरी, डॉ अनिस अहमद, डॉ अक्रम फलाही इन लोगों ने भाषण कीये। यह ट्रेनिंग के लिए मैंने खुद खर्चा किया था।

सरकार (हुकूमत) ने जब सप्टेंबर 2001 में पाबंदी लगाई थी तब मैं सिमी में अन्सार था। हुकूमत की पाबंदी के बावजूद मैं सिमी का सक्रीय सदस्य रहा और काम करता रहा।

सन 2002 के रमजान महिने में, ईशाद खान, जो सिमी के महाराष्ट्र के अध्यक्ष थे, उन्होंने मुझे और सोलापूर के सिमी कार्यकर्ता तन्वीर को सिमी के लिए पैसा लाने के लिए हैद्राबाद भेजा था। वहां पर सिमी के मौलाना अब्दुल अलिम इसताही यह पैसा जमा करते थे। हम इसताही साब के घर गये थे लेकिन उसके पास पैसे न होने की वजह से हमें खाली हाथ वापस आना पड़ा।

सन 2000 से मैं फैजल को जानता हूँ। सिमी के कुर्ला ऑफिस में वह आता था। उस समय हमारी उससे पहचान हुई थी। सप्टेंबर 2001 में मैं सिमी के कुर्ला ऑफिस में हाजिर था। उस वक्त पुलिस ने मुझे और सिमी के बाकी सदस्यों को गिरफ्तार में लिया था। मेरे साथ इशाद खान (महाराष्ट्र सिमी अध्यक्ष), मोहसिन मिर्झा, पुसद, यवतमाळ, एहतेशाम कुतुबुद्दीन सिद्दीकी, मीरा रोड, शरीफ बेकरीवाला और कई सदस्यों को पुलिस ने गिरफ्तार किया था। कुर्ला कोर्ट में हमने नारेबाजी की थी, इसलिए पुलिस ने हमारे खिलाफ और एक केस भी दर्ज की थी। यह दोनों केसेस कुर्ला कोर्ट में चालू हैं।

सन 2003 में मुझे बम्बई सिमी का सेक्रेटरी बनाया गया। डिसेंबर 2003 में मुझे सेक्रेटरी पद से हटाया गया। अब तक जिहाद के प्रती कुछ करने का मेरा मन बन गया था। कश्मीर, पॅलेस्टाइन, चेचन्या, इराक इन देशों में मुसलमानों के उपर जो अत्याचार हो रहे हैं, उनके लिए वहां जिहाद करने का मैंने तय किया था। एहतेशाम सिद्दीकी जो सिमी का सक्रीय सदस्य था और मैं उसे जानता था। एहतेशाम मुझे बम बनाने की ट्रेनिंग लेने के लिए कहता था।

अप्रैल 2004 में एहतेशाम सिद्दीकी ने मुझे बताया की फैजल शेख पाकिस्तान में है और मेरे पाकिस्तान में मिलीटन्सी के ट्रेनिंग के लिए इंतजाम करने के लिए वह तैयार है। व्हीजा बनाने के लिए मेरा पासपोर्ट मैंने एहतेशाम को दिया। एहतेशाम ने मुझे मुझम्मील जो फैजल शेख का भाई है उससे पासपोर्ट, टिकट और व्हीजा लेने के लिए कहा। मैंने मुझम्मील से संपर्क किया। मुझम्मील ने मुझे मेरा पासपोर्ट, इरान का व्हीजा और 20,000 रुपये और हवाई जहाज का टिकट दिया। उसने मुझे लष्कर ए तोएबा का कमांडर आझम चिमा जो बहावलपूर पाकिस्तान का है। उसके दो टेलिफोन नंबर दिए। मैं प्रिन्स अलि खान हॉस्पिटल में नोकरी करता था। मैंने नोकरी का इस्तिफा दिया।

21 मई 2004 को दोपहर साढ़े बारा बजे मैं इरान एअरवेज की फ्लाइट से बंबई से तेहरान गया। वहां से मैं डोमेस्टिक फ्लाइट पकड़कर रात ग्यारह बजे ज्ञायदान पहुंचा। दूसरे दिन मैंने बहावलपूर में फोन करके मेरे आने की खबर दी। दो दिन के बाद लष्कर ए तोएबा का एक आदमी जिसका नाम उसने अब्दुल रहमान बताया वह आया और मुझे तिफतान ले गया। वहां पर उसने मेरा नाम नईम बताया।

उसके साथ मैं बॉर्डर पार करके पाकिस्तान में गया। वहाँ से बस से हम क्वेट्टा में गये। अब्दुल रहमान मुझे क्वेट्टा में एक अंडरग्राउंड जगह पर ले गया। दूसरे दिन हम रेल्वे से बहावलपूर गये। वहाँ पहुँचते ही अब्दुल रहमान मुझे आझम चीमा के बंगले पर ले गया। उसने मेरी आझम चीमा से पहचान करवायी। वहाँ मैं फैजल से भी मिला, आझम चीमा को बाबाजी कहके भी पुकारा जाता है। आझम चीमा ने मुझे तुम अहिले हादीस हो क्या ऐसा पूछा था और मैंने हाँ कहा था। फैजल ने मेरी पहचान सोहेल शेख (मुन्ना) से करायी और मुझे बताया की सोहेल शेख ने पाकिस्तान में एक साल का ट्रेनिंग किया है। सोहेल शेख महाराष्ट्र के पूना से आया है ऐसा फैजल ने मुझे बताया था।

मैंने आजम चीमा को बताया था की मुझे हाथियार चलाने का और बम बनाने का ट्रेनिंग लेना है। ट्रेनिंग के बाद भारत जा कर काफिरों के खिलाफ जिहाद करना है। उसके बाद आजम चीमा ने अहमद नामके लड़के के साथ मुझे मुझपफराबाद के पास लष्कर ए तोएबा के ट्रेनिंग कैंप में भेजा।

ट्रेनिंग कैंप पहुँचने पर मेरी झाकी उर रहमान नाम के कमांडर के साथ पहचान करायी गयी। मैंने 13 दिन ट्रेनिंग लिया। ट्रेनिंग के दौरान मुझे AK 47 रायफल, पिस्तूल चलाना, बम बनाना सिखाया गया और डिटोनेटर के बारेमें स्पेशल ट्रेनिंग दिया गया।

ट्रेनिंग पूरा होने के बाद मैं बहावलपूर में आझम चीमा उर्फ बाबाजी के बंगले पर आया। वहाँ कुछ लोग आझम चीमा के साथ बैठकर बातें कर रहे थे। मैंने उन लोगों के बारे में जब फैजल से पूछा तो उसने मुझे बताया की वह लोग पाकिस्तानी खुफिया एजेंसी याने आय.एस.आय. (ISI) के लोग हैं और उन्हीं के इशारों पर सारे ट्रेनिंग कैंप चलाये जाते हैं। तुम अभी जीस ट्रेनिंग कैंप से आये हो वहाँ का पूरा खर्चा आय.एस.आय. देती है। वह लोग जाने के बाद मैं आझम चीमा से मिला और मेरी ट्रेनिंग के बारेमें उन्हे जानकारी दी।

आझम चीमा के बंगले में ही फैजल ने मेरी ई मेल आयडी बनायी और उसिके उपर मुझसे संपर्क किया जाएगा ऐसा बताया। मैंने इस बयान के सुरुवात में बताई हुआ ई मेल आय. डी. वहीं है। वहाँ से निकलते वक्त आझम चीमा ने मुझे जाली नोट चेक करने के लिए एक अल्ट्रावायोलेट लैंप भेजने के लिए कहा था। बाद में अब्दुल रहमान ने मुझे पाकिस्तान इरान बॉर्डर क्रॉस करवाया। मैंने इरान में वहीजा एक्स्टेंड किया। कुछ दिन इरान में रहने के बाद जुलाई 2004 में मैं बम्बई वापस आ गया।

बम्बई आने के बाद एहतेशाम मुझे मिला। मैंने उसे मेरी पाकिस्तान में हुई ट्रेनिंग के बारे में जानकारी दी। उसने मुझे बम बनाने के तरीके के बारे में पूछा और बम बनाने में लगने वाली चीजों की लिस्ट मुझसे ली। कुछ दिनों बाद फैजल का भाई मुझम्मील ट्रेनिंग के लिए इरान होकर पाकिस्तान गया। मैंने जाली नोट चेक करने के लिए एक अल्ट्रावायोलेट लैंप उसके हाथ आझम चीमा के लिए भेजा था।

सन 2005 ने एहतेशाम मुझे बार बार बिनती करके मुझसे बम बनाने की चीजे लाने के लिए कहता था। उसके कहने पर मैंने असिटोन 500 मिली, सल्फ्युरिक एसिड 500 मिली, हायड्रोजन पॅराऑक्साईड 500 मिली मंगवाके मेरे लॉकर में रख दिये थे।

जनवरी या फरवरी 2006 में एहतेशाम ने मीरा रोड के एक फ्लैट में सीमी कार्यकर्ताओं को इकट्ठा किया था और सबको जैश ए मोहम्मद के प्रमुख मसूद अजहर के भाषण की सीडी सुनाई थी। उस वक्त मैं, सफदर नागौरी, असिफ खान उर्फ जुनैद, उत्तर प्रदेश के शहनाज खान और सीमी के बाकी सदस्य हाज़िर थे।

जनवरी या फरवरी महीने में फैजल ने मुझे भाड़े पर एक खोली देने के लिए कहा था। फैजल ने मुझे कहा था की, उसके पास पाकिस्तान से कुछ महेमान आले वाले हैं और उन्हे रहने के लिए एक रुम चाहिए। मैंने फैजल को एक रुम नागपाडा एरीया में दिखाई थी लेकिन डिपॉज़ीट ज्यादा होने से फैजल ने रुम लेने से इन्कार किया था।

फरवरी 2006 में फैझल ने मुझे फैझल के घर पर बुलाया था। मैं फैझल के बांद्रा वाले घर पर गया। वहापर जुनैद, फैझल, एहतेशाम, मुजम्मिल, सोहेल, जमीर हाजीर थे। फैझल ने हमें बताया की, आय.एस.आय. के कहने पर आझम चिमा ने मुंबई की लोकल ट्रेनों में बम धमाके करने का प्लान किया है। प्लान को अंजाम देने के लिये कुछ पाकिस्तानी मेहमान आनेवाले हैं। फैझल ने इस वारदात में मदद करने के लिये हमें कहा था। उस वक्त फैझल ने मुझे बॉम्ब के इलेक्ट्रीक सर्किट के बारे में भी पूछा था। लेकिन मैंने उसे बताया की, मैंने केमिकल बम बनाने की ट्रेनिंग ली है और इलेक्ट्रीक सर्किट के बारे में मुझे जानकारी नहीं है।

उसके बाद हमने चर्चगेट से विरार जानेवाली ट्रेनों में सफर किया। वर्किंग डे पर शाम के समय ट्रेनों में भीड़ ज्यादा होती है। इसी दौरान बम धमाके करने का जुनैद और फैझल ने तय किया। फैझल के बांद्रावाल घर में उसके बाद कई मिटिंगें हुईं। मैं भी हाजीर रहता था। मिटिंग में फैझल ने बताया था की, बम बनाने का काम शिवाजीनगर के मौहम्मद अली के घर में किया जाएगा और बम बनाने का सामान आसीफ खान उर्फ जुनैद ने महम्मद अली के घर पे रख दिया है।

मैंने फैझल के बांद्रा वाले घर में पांच पाकिस्तानी मेहमानों को देखा था। उन लोगों से फैझल ने मुझे मिलवाया था और उनकी पहचान लष्कर-ए-तोयबा के लोग करके करवायी थी। 8, 9 और 10 जुलाई को मैं एहतेशाम के साथ महम्मद अली के शिवाजीनगर के घर पे गया था। वहा पे मिरा रोड का साजीद अन्सारी और दो पाकिस्तानी बंदे थे जिसमें एक का नाम सुहेल शेख था। वहा पे साजीद अन्सारी और दो पाकिस्तानी बंदे बम बनाने का काम कर रहे थे। एहतेशाम ने मुझे महम्मद अली के घर पे पहरा देने को कहा था। 10 जुलाई 2006 के शाम को बम के ७ बॅग महम्मद अली के घर से फैझल के बांद्रा वाले घर में लाके रखे थे। उसी रात जब मैं फैझल के बांद्रा वाले घर गया था तब मैंने यह बॅग देखे थे। वहा पर फैझल ने मुझे बताया की, सात जोड़ीया ट्रेन में बमवाले बॅग रखवाने के लिये बनायी गयी है। फैझल ने मुझे 11 जुलाई 2006 के दिन तयार रहने के लिये कहा और जरूरत पडनेपर वह मुझे बुलाएगा ऐसा कहकर मुझे वहासे जाने के लिए कहा। 11 जुलाई 2006 के दिन मैं घरपर ही था। टिच्ची पे मैंने बम धमाकों की खबर देखी थी। उस वक्त मैं साबु सिध्दीकी हॉस्पिटल में ही था।

1034. After going through the complete confessional statement of A.2 - Tanveer, it will be revealed that the first few paragraphs are related to education and family background and then he narrates the story of how he came in contact with SIMI and the activities he had undertaken of SIMI. In the middle part of the statement, he discloses his training in Pakistan during which he learnt how to use AK-47 Rifle and Pistol, and also how to prepare bombs and detonators. He further speaks about how he came in contact with the wanted accused Azam Cheema and some of the accused persons namely Junaid, Faizal, Ehtesham, Muzzammil, Suhail, and Zameer.

1035. If the charge against A.2 - Tanveer is considered, the last highlighted portion is relevant for the purpose of the present matter as relates to bomb blasts.

The True Translation Of The Highlighted Portion

"After coming to Bombay, I met Ehtesham. I told him about my training in Pakistan. He asked me about the method of making bombs and took a list of things needed to make bombs. After a few days, Faisal's brother Muzzammil went to Pakistan via Iran for training. I sent an ultraviolet lamp through him for Azam Cheema to check fake notes.

In 2005, Ehtesham repeatedly requested me to bring him the materials needed to make bombs. As per his instructions, I ordered 500 ml of acetone, 500 ml of sulfuric acid and 500 ml of hydrogen peroxide and kept them in my locker.

In January or February 2006, Ehtesham had gathered SIMI workers in a flat in Mira Road and played a CD of a speech by Jaish-e-Mohammad chief Masood Azhar to everyone. At that time, I, Safdar Nagori, Asif Khan alias Junaid, Shahnaz Khan from Uttar Pradesh and other SIMI members were present.

In January or February, Faizal asked me to give him a room on rent. Faizal told me that he had some guests from Pakistan and they needed a room to stay. I showed Faizal a room in Nagpada area but Faizal refused to take the room because the deposit was too high.

In February 2006, Faizal called me to his house. I went to Faizal's house in Bandra. Junaid, Faizal, Ehtesham, Muzammil, Sohail, Zameer were present there. Faizal told us that on the instructions of ISI, Azam Cheema has planned to bomb the local trains of Mumbai. Some Pakistani guests are coming to execute the plan. Faizal asked us to help in this plan. At that time, Faizal also asked me about the electric circuit of the bomb. But I told him that I have taken training to make chemical bombs and I do not know about electric circuits.

After that we travelled in trains going from Churchgate to Virar. Trains are more crowded in the evening on working days. During this time Junaid and Faizal decided to carry out the bomb blasts. After that many meetings were held at Faizal's house in Bandra. I also used to be present. In the meetings Faizal had told that the work of making bombs will be done at Mohammad Ali's house in Shivajinagar and Asif Khan @ Junaid has kept the material for making bombs at Mohammad Ali's house.

I had seen five Pakistani guests at Faizal's Bandra house. Faizal had introduced me to those people and identified them as members of Lashkar-e-Taiba. On 8, 9 and 10 July, I, along with Ehtesham, went to Mohammad Ali's house in Shivaji Nagar. There was Sajid Ansari from Mira Road and two Pakistani men, one of whom was named Sohail Sheikh. Sajid Ansari and two

Pakistani men were doing the work of making bombs there. Ehtesham had asked me to guard Mohammad Ali's house. On the evening of 10 July 2006, seven bomb bags were brought from Mohammad Ali's house to Faizal's house in Bandra. I saw these bags that night when I went to Faizal's house in Bandra. There Faizal told me that seven pairs have been made to keep bomb bags on the train. Faizal asked me to be ready on 11th July 2006 and that he would call me if needed and asked me to go there. I was at home on 11th July 2006. I had seen the news of bomb blasts on TV. At that time I was in Saboo Siddique Hospital."

Conclusion

1036. When we considered the relevant portion of the confessional statement of A.2 relating to the bomb blasts, we found that this retracted confessional statement does not fall in the category of a 'full and detailed confession', which creates doubt about its truthfulness, for the reasons discussed hereunder.

1037. A.2 states that, A.4 – Ehtesham repeatedly requested him in 2005 to bring material needed to make bombs. As per instructions, he ordered 500ml of Acetone, 500ml of Sulphuric Acid, and 500ml of Hydrogen Peroxide and kept them in his locker.

1038. At this juncture, let us examine the use of this material.

Sulphuric Acid has a wide range of applications across various industries, which primarily includes fertilizer production, chemical manufacturing, and metal processing. It is widely available in the market.

Hydrogen Peroxide is widely used to clean wounds, prevent infection, disinfect surface, to bleach hair, textile, etc. It is also readily available in the market.

Acetone has wide range of uses, including as a nail polish remover, industrial cleaning, and chemical manufacturing. It is also readily available in the market.

1039. It is, thus, surprising that the material which A.2 procured and stored, as stated herein above, though is readily available in market and commonly used in homes and hospitals, why it was purchased and put in the locker by him for one year. Furthermore, it is also not explained why there was an insistence of A.4 – Ehtesham to procure it and store it when it is readily available all the time in the open market. It is further not justified and explained why it was kept in the locker.

1040. A.2 - Tanveer further states that on 8th, 9th and 10th July, he along with A.4 – Ehtesham, went to A.6's house where A.7 - Sajid and two Pakistanis were there and who were doing the work of making bombs there. He states that A.4 Ehtesham asked him to guard the house of A.6. Thus, A.2 was at A.6's place for all the three days when the bombs were prepared. However, no details are given about how the bombs were prepared, what material was used, how the bombs were packed, what was the container used to pack the bombs, the description of the bags used for putting such bombs, and who procured it.

1041. A.2 - Tanveer states that he was guarding the house of A.6 – Mohd. Ali standing outside his house on the door all the three days. Admittedly, A.6's house is in crowded and congested area. Many must have noticed A.2 standing outside A.6's house continuously for three days. For the people in that locality, this might have been the most unusual thing. However, there is not a single witness who saw A.2 guarding the house of A.6 on all the three days.

1042. He has stated that two Pakistanis were doing the work of making bombs, which is a vague statement. No significant details are provided by him even though he was all the time for three days present at A.6's house with those two Pakistanis.

1043. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.3 – Faisal Shaikh

1044. A.3 –Faisal Shaikh was first arrested on 27/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 70 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1045. The record shows that the last application moved by the prosecution seeking remand was on 28/09/2006, in Cr. No. 156/2006, i.e. after three days of invocation of provisions of MCOCA. In this application, it was the case of the prosecution that “Considering the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential..”

1046. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is

required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1047. The confessional statement of A.3 was recorded on 03/10/2006 (Part-I) and on 5th and 6th October 2006 (Part-II). This shows that just within few days from the last application of remand, A.2 allegedly gave confessional statement.

1048. The prosecution could not bring on record the reason for giving confessional statement by A.3 after 70 days of his police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1049. According to A.3, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

1050. From the case of the prosecution, it can be said that Azam Cheema was the mastermind behind all these blasts. And the plan of Azam Cheema (wanted accused) to carry out in local trains was carried out by A.3 – Faisal. Therefore, it can be said that A.3 had each and every minute information about the plan and its execution. Let us, therefore, examine whether he has given all such details, of which the prosecution has no knowledge of or which would be necessary to complete the chain and connect the dots. The confessional statement of A.3 – Faisal is as follows: -

Confessional Statement of A.3 - Mohd. Faisal Ataur Rehman Shaikh

मेरा नाम मोहम्मद फैजल अताउर रहमान शेख है। कुछ लोग मुझे मुस्तफा, अमीन और समीर के नाम से भी जानते हैं और पहचानते हैं। मेरी उम्र ३२ साल है। मैं बांद्रा में किराये के मकान में रहता हूँ। पता है २४ लकी व्हीला, कौतवाडी, पेरी कौंस रोड, बांद्रा वेस्ट. मैं फिलहाल कोई काम धंदा नहीं करता हूँ और पाकिस्तान के लष्कर-ए-तोयबा के लिए काम करता हूँ। मेरे वालिद अताउर रहमान शेख ये मीरा रोड एरिया के A/२०३ तिरुपती अमार्टमेंट, नया नगर, इस पते पर रहते हैं। मेरी वालिदा परवीन बानू और मेरा छोटा भाई मुजम्मिल भी उनके साथ रहता है. मेरा एक और छोटा भाई राहिल जो सॉफ्टवेयर इंजिनियर है. वो फिलहाल Birmingham U.K. में काम करता है. राहिल की बीवी रिफा और उनके दो बच्चे और वालिद के साथ मीरा रोड में ही रहते हैं. मेरे पकड़े जाने से पहले मैं Airtel के मोबाइल फोन इस्तेमाल करता था. उसके नंबर ९८९२०३६६९४ और ९८९२३३९२२४ थे. मेरा भाई मुजम्मिल पेशे से Software Engineer है और बेंगलूर में ORACLE कंपनी के लिये काम करता था, फिलहाल वो भी ATS पुलिस की हिरासत में है.

मैंने पांचवी तक बॉम्बे में पढ़ाई की है. ५ वीं से १० वीं तक मालेगांव में जामेतुल हुदा high school के हॉस्टल में था. ११ वी के लिए बॉम्बे के महाराष्ट्र कॉलेज में Science से किया, रिजल्ट आने से पहले दो मेरे वालिद ने मुझे मेरे अंकल के पास पूना भेज दिया. वहाँ पर जून १९९४ मैंने Diploma in Electronics के लिये एकलव्य college (Polytechnics), कोथरुड पूने में admission लिया. 1st year में फेल होने के बाद मैंने पढ़ाई छोड़ दी. पूना में मेरे चाचा अब्दुल रहीम ताइवानी रोड, रेल्वे क्वार्टर्स पर रहते हैं और मैं उनके साथ ही रहता था.

उसके बाद मैं मेरे वालिद ने खरीदे हुझे B 1/24, कुबेरा garden, NIBM कोंढवा इस फ्लैट में अकेले ही रहता था. मेरे वालिद जो गल्फ में नौकरी करते थे वो १९९६ में नौकरी छोड़ के इंडिया आ गये. उसके बाद सब १९९७ से हमारा पुरा परिवार बॉम्बे से पुना आकर रहने लगा. उस दौरान मेरे दोनो भाई भी पूना में रहते थे और पढ़ाई करते थे.

मैंने पढ़ाई छोड़ने के बाद गारमेंट का बिजनेस शुरू किया, बॉम्बे से माल खरीद कर पूना में बेचता था। मेरा बिजनेस मैंने १-१.५ साल किया और १९९९ में चीमा गुडस ट्रांसपोर्ट कंपनी, फुरशुंगी पूना में नौकरी करने लगा. वहाँ पर मैंने ८-९ महीने काम किया, ये काम फिर छोड़ दिया और जनवरी २००० में Muslim Bank Institute पूना कैंप, पूना में DTP Computer का ६ महीने का कोर्स किया. २००१ में मेरे भाई राहिल का निकाह हुआ, कोंढवा का flat हमारे परिवार के लिये छोटा पड़ने लगा इसलिए हमारा परिवार पूना में ही मोमिनपूरा रबाळे में रहने लगा. उस दौरान में मोमिनपुरा के मक्का मस्जिद में नमाज के लिये जाया करता था। उस दौरान मेरी मुलाकात SIMI के सदस्य फिरोज पठान, साजिद सुंडके, सोहेल शेख, अनीस शेख, निसार मुल्ला, रिजवान डावरे इन लोगों के साथ हुई। बातचीत के दौरान इन लोगो ने मुझे सिमी के बारे में बताया। मुझे उन लोगो से पता लगा की सिमी के लोग मुस्लिम बच्चों को पढ़ाई के बाद आगे क्या करना है इसके बारे में Guidance करते थे, इसलिए कार्यक्रम भी आयोजित किये जाते थे. मस्जिद में सिमी के तरफ से दरसे कुरान इस कार्यक्रम का आयोजन किया जाता है। ऐसे प्रोग्राम हफ्ते में १ या २ बार होते थे. प्रोग्राम में मेरे भाई राहिल और मुजम्मिल शरीक होते थे। इन प्रोग्रामो की वजह से मैं पूना और बॉम्बे के बहुत से सिमी कार्यकर्ताओ को जानने पहचानने लगा था. पूना में अब्दुल रउफ सिमी का मेन कार्यकर्ता था, वो मेरा खास दोस्त बन गया था, सिमी की तरफ से साल में एक बार बड़ा प्रोग्राम होता था। ऐसा ही एक बड़ा साजेद तरबीयती प्रोग्राम मई २००१ में युनानी मेडीकल

कॉलेज पुना में हुआ था। इस प्रोग्राम के लिये महाराष्ट्र के सभी जिलों से सिमी के प्रमुख कार्यकर्ता आये थे। उस वक्त मेरे भाई राहिल और मुजम्मिल भी इस प्रोग्राम में शामिल हुये थे। वहाँ पर मेरी मुलाकात बॉम्बे से आये कार्यकर्ता एहतेश्याम से हुई और जलगांव के आसिफ खान से भी हुई, उसे जुनेद के नाम से भी जाना जाता था। इसके बाद महाराष्ट्र में जब भी ऐसे बड़े प्रोग्राम होते थे तो मेरी इन लोगों से मुलाकात होती थी।

सिमी के प्रोग्राम में तफ़सीर हुआ करते थे। इन तफ़सीर में मुसलमानों पर दुनिया के सभी देशों में होने वाले अत्याचार और ज्यादतियों के बारे में बताया जाता था। ऐसे प्रोग्रामों में बार बार शरिफ होने के वजह से मुझे मुसलमान भाईयों के बारे में एक जज्बा जागा। और दुनिया भर के मुसलमानों पर होने वाले अत्याचार के खिलाफ कुछ कर गुजरने की तमन्ना पैदा हुई। खास तौर पे बॉम्बे और गुजरात के दोनों दंगों से मैं हिल गया था। इस वजह से मैंने हिजरत करने की सोँची और किसी मुस्लिम देश में सेटल होने का मन बना लिया और वहाँ रहकर हिंदुस्तान में मुसलमानों पर होने वाले अत्याचार का बदला लेने की ठानी। तब मेरे मन में पाकिस्तान जाकर सेटल होने का खयाल आया। इसके लिये मैंने पूना से पासपोर्ट ऑफिस से पासपोर्ट बनवाया। नवंबर 2001 में मैं और अब्दुल रउफ दिल्ली गये और उसने अपने सगे वालेका पत्ता देकर हमारे लिये और अपने बीबी के लिये पाकिस्तान जाने का वीजा बनवाया। लेकिन ऐन वक़्त पर रउफ की बीबी ने पाकिस्तान जाने से मना कर दिया। इस लिए मैंने अकेलेही पाकिस्तान जाने का तय किया। पूना में रहनेवाला मेरा दोस्त असिफ अब्दुल राशिद शेख जो तभी मस्कत में नौकरी करता है, उसने मुझे लाहौर में रहनेवाले उसके पहचान के अबू हरार नाम के एक शख्स का फोन नंबर दिया था।

जनवरी 2002 में मैं पूना से दिल्ली और वहाँ से समझौता एक्सप्रेस से लाहौर गया। लाहौर स्टेशन पहुंचकर मैंने अबू हरार को फोन किया। उसने मुझे मरकतदावा इलाहाद चूरुभुर्जी चौक लाहौर इस ऑफिस का पता दिया और मुझे ऑफिस में आके मिलने के लिए बताया। उसके बताये पते पर मैं पहुंचा। वह ऑफिस एक जंगल में था। मेजपर बैठे आदमी से पूछ कर मैं अंदर गया। कुछ देर बाद वहाँ पर एक हट्टा कट्टा लंबे कद का आदमी आया उसने अपना नाम अबू हरार बताया। मैंने अपना introduction देकर पाकिस्तान आने का मकसद बताया। मैं सिमी के लिए काम करता हूँ ये जान कर अबू खुश हुआ और बोला तूम सही जगह पर पहुंच गये हो। उसने मुझे दो दिन वही पर रखा। अबू हरार मरकज ऑफिस में काम करता था। वहीं पर मेरी मुलाकात एक अब्दुल रज़ाक नाम के हिंदुस्तानी से हुई जो हैद्राबाद का रहने वाला था। वो लष्कर-ए-तोयबा के लिए काम करता था और यही पर 8/5 महीने से रह रहा था। बातचीत के दौरान अब्दुल रज़ाक ने मेरे जज्बात जानकर मुझे लश्कर ए तैय्यबा के ट्रेनिंग कैंप में ट्रेनिंग लेने के लिए उकसाया। मैं जिस मकसद से पाकिस्तान आया था उसे पुरा होता देख मैं ट्रेनिंग के लिये तैयार हो गया। तीसरे दिन शाम को 5.00 बजे अब्दुल रज़ाक ने मुझे कराची के लिये ट्रेन में बिठाया पुरी रात सफर करके दुसरे दिन तकरीबन 3.00 बजे मैं कराची पहुंचा तो स्टेशन पर मुझे लेने अबू जुबेर उम्र 25 साल आया था। वहाँ से मोटर साईकिल से हम आरिफ कासमानी के बंगले पर गये। आरिफ कासमानी की उम्र करीबन 60 साल, गोरा साधारण कदका सफेद बाल और दाढ़ी बाला आदमी था। कासमानी लष्कर-ए-तोयबा का कमांडर था। वहाँ पर मुझे एक कमरे में रखा गया जिसमें और भी 2/3 पाकिस्तानी बंदे रहते थे। शाम को मुझे आरिफ कासमानी मिले। बातचीत के दौरान उन्हे जब पता चला कि मैं हिंदुस्तान में सिमी का मेंबर हूँ तो वो बहुत खुश हुने, उनके कहने पर मैं वही रुक गया। दुसरे दिन दोपहर 2.00 बजे अब्दुल रज़ाक आरिफ कासमानी को साथ लेकर आया। मैंने उसे बताया की मैं पाकिस्तान मेही रहना चाहता हूँ। इसपर अब्दुल रज़ाक ने मुझे लष्कर के लिये काम करना पड़ेगा ये बताया, मैंने झट से हा कर दी। फिर मुझे वही नजदीक लष्कर-ए-तोयबा

के ऑफिस में ले गया। मैं उस ऑफिस में 3-4 दिन रुका वहाँ पर अब्दुल रज़ाक ने आ के मुझे मुजफ्फराबाद में लष्कर-ए-तोयबा के ट्रेनिंग में जाने को कहा। 5 दिन बाद में और अब्दुल रज़ाक ट्रेनसे, लाहौर के लिये निकले। दूसरे दिन 1.00 बजे लाहौर में पहुंचे वहाँ से बस स्टैंड पर आकर मुजफ्फराबाद के लिए बस से निकले। दूसरे दिन सुबह 7.00 बजे मुजफ्फराबाद पहुंचने के बाद लष्कर-ए-तोयबा के बैतुल मुजाहिदीन वाले ऑफिस में गये। उस ऑफिस में मुझे एक दिन रखा गया। दूसरे दिन दोपहर में हम लोग तकरीबन देढ़ घंटा पहाड़ी इलाके में पैदल उपर चल के गये और वहाँ पे चल रहे ट्रेनिंग कैंप में पहुंचे। वहाँ पर बड़ा मैदान था और घने पेड़ थे और मैदान में मस्जिद और रहने के लिए कमरे भी थे। उन कमरे में करीब 20-25 लोग रहते थे। उस समय अब्दुल रज़ाक ने मेरी पहचान अबू रिजवान और अबू महान के साथ करवाई। अबू रिजवान ट्रेनिंग का इंचार्ज था। वहा पर दो दिन मुझे Ak-47, Pistol -T.T, Revolver, बम तैयार करना, धमाके करना ये चीजे बतौर प्रैक्टिस करके सिखायी गयी। रोज सुबह 5 बजे उठकर नमाज पढ़ना, कुरान पढ़ना, नास्ता, क्लास, नमाज, फायरिंग प्रैक्टिस, फिर नमाज और प्रैक्टिस उसके बाद नमाज और खाना और उसके बाद रात में आराम करना ऐसा प्रोग्राम चलता था। लष्कर-ए-तोयबा में ट्रेनिंग 3 तरह की होते है। जिसमें दौर ए आर्म ट्रेनिंग 40 दिन की, दौर ए खास में ट्रेनिंग 3 महिनेकी और अल अस्का ट्रेनिंग कैंप दो दिन था। मुझे अल अस्का में जो ट्रेनिंग कैंप है, वहाँ भेजा गया, ट्रेनिंग के दौरान वहाँ पर कुछ लोग मिलिट्री की गाड़ियो में आते थे, कुछ लोग वर्दी में और कुछ लोग साधे कपडे में होते थे। उनको वहा के लोग बडी इज़त देते थे और अदब से कमांडर साब और कर्नल साब करके बुलाते थे। ये अफसरों फायरिंग प्रैक्टिस के वक्त आकर guidance करते थे। रिजवान ने मुझे बताया की ये लोग पाक मिलिट्री और ISI से तालूक रखते है और ये पूरा ट्रेनिंग कैंप ISI के अंडर ही चलाया जाता है।

तीसरे दिन करीबन 12.00 बजे से मैं और रज़ाक ट्रेनिंग कैंप से निकलकर पहाड उतरकर 1.30 बजे ऑफिस में आये। शाम ६.०० बजे टेम्पोसे बस स्टैंड आकर रात ७.०० बजे बस से लाहौर जाने के लिए निकले। दूसरे दिन सुबह ६.०० बजे हम लाहौर पहुंचे। वहाँसे मिनी बस से चुबुर्जी बंगले पे गये। वहाँ पर लष्कर-ए-तोयबा का प्रोग्राम था। इस प्रोग्राम के लिए आरिफ कासमानी (पता टीपू सुलतान रोड, कराची), आझम चिमा उम्र ६० साल कद ६.६ फुट, हट्टा कट्टा, लंबी दाढ़ी, सफेद बाल, कुर्ता शलवार पहनने वाला LET का ट्रेनिंग कमांडर पता जावेद चौधरी बंगला, बहावालपूर, अबू मुजम्मिल उम्र ३२ साल कद ६.५ फुट लंबी दाढ़ी, कुर्ता पायजमा पहनने वाला, पता- इस्लामाबाद ये लोग आये थे वहाँ पर हमने आझम चिमा से मुलाकात की।

लाहौर में अब्दुल रज़ाक ने मुझे कहा कि लश्कर के ट्रेनिंग चीफ कमांडर झकीउर रेहमान के हुक्म पर मुझे आझम चिमा के साथ काम करना है। उसके बाद हम फिर आझम चिमा से मिले। उसका स्वभाव मुझे बहुत पसंद आया। वह पहली नजर में किसीको अपने नसदीर करनेवाली शख्सियत था। उसने मुझे पूछताछ करके हिंदुस्तान से बंदो को तयार करके पाकिस्तान तक ट्रेनिंग के लिए भेजने को कहा। मुझे २०/२५ हजार रुपये खर्च करने को दिए। हिंदूस्तान के लिये वापस निकलते वक्त कासमानी ने मुझे बर्तन सामान कपडे पॅक करके दिये और साथ में दिल्ली की एक दुकान का कार्ड दिया। इसकी वजह समझाते हुए कासमानी, ने मुझे बताया कि अगर हिंदुस्तानी पैसे तुम्हारे पास रहे तो बॉर्डर पर चेक पोस्ट पर बहुतसे सवालोक सामना करना पड सकता है। अगर सामान साथ रहा तो Inquiry नहीं की जाती और फिर दिल्ली में जाकर तुम्हें इस सामान से १८,००० से २०,००० रुपये मिल जायेंगे, लेकिन कार्ड पर लिखी हुई दुकानपर ही जाना।

एक दिन रूक के दूसरे दिन रात को अब्दुल रज़ाक और उसका साथी मुझे लाहौर रेल्वे स्टेशन लाकर छोड़ा. वहाँ से मैं अटारी बॉर्डर पहुँचा. और वहाँपर २-३ घंटे चेकिंग होने के बाद मैं हिंदूस्तान के वाघा बॉर्डर पहुँचा. वाघा बॉर्डर पे ४-५ घंटे की चेकिंग के बाद सुबह ५.०० बजे की ट्रेन से शाम ७.०० बजे दिल्ली पहुँच गया. दिल्ली पहुँचते मैं जामा मस्जिद के पासवाले अल हजीज लॉज में रुका. दूसरे दिन सुबह १०.०० बजे कासमानी ने दिए हुझे कार्ड पर जो पता था, वहाँ जाके उस आदमी को सामान और कार्ड दिया. उसने मुझे १८ हजार रुपये दिये, उसके बाद मैं निजामुद्दीन गोवा एक्सप्रेस से पूना जाने के लिये शाम को निकला. मैं दूसरे दिन शाम को पूना पहुँचा. मैंने अपने भाई राहिल और मुजम्मिल को मेरी पाकिस्तान में हुई ट्रेनिंग के बारे में बताया और आजम चीमा से मिलने की बात भी बताई. उसके बाद मैंने सिर्फ लष्कर-ए-तोयबा का काम किया. उस दौरान मैं लष्कर की ट्रेनिंग के लिये जवान और लायक लडके ढूँढ रहा था। इसके लिये आजम चीमा से फोन करके पैसे मांगे थे.

पूना पहुँचते ही तकरीबन ४ महीने बाद मैंने आजम चीमा को फोन किया. तब उसने मुझे १,८०,००० रु हवाला से भेजता हूँ कह के बांम्बे का एक आदमी तुमको पैसे देगा ऐसा बताया. उस आदमी का फोन नंबर मुझे दिया. मैं और राहिल बांम्बे आये और उस शख्स को फोन किया. उसने हम मंगलदास मार्केट बूलाकर हमसे पूछताछ करके तसल्ली होने के बाद १,८०,००० रुपये हमे लाकर दिये. मैं जब भी बांम्बे आता था तब टेमकर स्ट्रीट, नागपाडा में रहने वाली मेरी बहन खालिदा के यहाँ रहता था और हवालासे आये हुए पैसे भी उसके पास रखता था। मैंने पूना के मेरे दोस्त सोहेल मेहमूद शेख के पाकिस्तान में ट्रेनिंग के बारे में बता के उसे तैयार किया. उसे मैंने खर्च के लिए १ लाख रु दिये. नवंबर २००२ में उसने इरान का वीजा लेके १८ नवंबर २००२ को तेहरान गया. वहाँ से उसने दुबई में रहनेवाले रिजवान डावरे और मेरे भाई राहिल को फोन करके आजम चीमा का नंबर लिया, फिर चीमा के जरिये मुजफ्फरबाद में १ महीने की ट्रेनिंग लेके वो वापस हिंदुस्तान आ गया. पूना से लष्कर का काम करने से बेहतर बांम्बे से काम करने में ज्यादा सहूलियत थी, क्योंकि वहाँ बंदे भी ज्यादा मिलने की उम्मीद थी. इसलिए मैं पूरी फॅमिली के साथ मीरारोड, नयानगर, में शिफ्ट हो गया.

Today's statement recording stopped here as it is a lengthy statement requiring more time. Also today Hon. prime minister of India Shri. Manmohan Singh is visiting Mumbai and I have been deputed for the said bandobast. Hence the accused is to be produced again before me on 06/10/06 at 10.00 hrs. The statement today was taken from 10.00 hrs. to 14.30 hrs.

6.10.06 at 10:00hrs

The accused is produced before me in veil. He is asked to remove the veil. PSI Dasurkar and Staff asked to go out. There is nobody except me and the accused in my room. I have again ascertained the voluntariness of his confessional statement and also asked him if there has been any threat/ inducement or promise during the interim period, to which he replied negative. The statement hence continues as-

२००३ में रिजवान डावरे दुबई से पूना आया। वह जब भी पूना आता था तो मुझे बांबे आके मिलता था। अप्रैल २००३ में उसे सौदी में नौकरी मिलनेके बाद वह चीमा जेद्दा (Saudi Arabia) चला गया। उस वक्त मैं सौदी जाने के बारे में सोच रहा था। जब रिजवान डावरे सौदी चला गया तब मुझे पता चला की पाकिस्तान में जिस अब्दुल रज़ाक से मुलाकात हुई वो दुबई में था। मेरा भाई राहिल भी उस वक्त दुबई में था। अब्दुल रज़ाक, राहिल को दुबई में मिला उस वक्त अब्दुल रज़ाक ने राहिल और रिजवान को आदम चीमा से बात करवाकर हिंदुस्तान में लश्कर-ए-तय्यबा के लिए और काम को अंजाम देने के लिए मुझे उन दोनों के साथ संपर्क बनाये रखने के लिए कहा। क्योंकि अगर मैं सीधे हिंदुस्तान से पाक फोन करूंगा तो पकड़े जाने का उन्हें डर था। इस लिए ऐ सावधानी बरती गयी, उसी तरह आजम चीमा मेरा भाई राहिल और रिजवान डावरे के जरिए मुझसे संपर्क बनाये रखने लगा। मुझे क्या काम करना है और मैं क्या काम कर रहा हूँ इसकी पूरी जानकारी उन दोनों के जरिये लेने लगा। आजम चीमा मुझे उन दोनों के जरिए पैसे भेजता था। मैंने और बंदो को ट्रेनिंग के लिये भेजने की कोशिश की लेकिन सोहेल मेहमुद के अलावा मैं किसी और को नहीं भेज सका।

2003 मे अब्दुल रज़ाक ने मुझे फोन करके कहा की कुछ Problem की वजह से आजम चीमा का Office बंद हो चुका है। इस वजह से मेरा और उसका संपर्क कम हुआ। मैंने रिजवान डावरे को फोन करके मेरे लिये saudi में कोई नौकरी ढुंडने को कहा। इस पर रिजवान ने मुझे खुद Saudi आकर नौकरी ढुंडने की सलाह दी। मैं २००३ के आखिर मैं Saudi जाने के लिये उमराह विजा लेकर Saudi निकल गया। वहाँ मैंने अपना नाम 'मुस्तफा' रखा था। मैं जेद्दाह saudi Arabia मे रिजवान डावरे के पास एक-डेढ़ महिना रहा, उसी दरम्यान मेरी अब्दुल रज़ाक से फोनपर बात हुई। तब मुझे आजम चीमा का काम फिरसे शुरू होने की बात मालुम हुई। मैंने आजम चीमाको फोन करके मुझे पाकिस्तान आना है, ऐसा कहा पर उसने मुझे saudi रहकर लष्कर के लिये काम करने को कहा। मेरी कोशिशो के बावजूद मुझे saudi में नौकरी नहीं मिली। मैंने फिर आजम चीमाको संपर्क करे के पाकिस्तान आनेकी तमन्ना जाहिर की, इसपर उसने मुझे दुबई का विजा देके दुबई आने को कहा। उसके कहने के मुताबिक शरीफ नाम के आदमी ने मुझे दुबई का वीजा बना के दिया।

मैं मार्च २००४ में दुबई गया। वहाँ पर १५ दिन मैं मेरे बहनोई जाकिर के पास अबू धाबीमे रहा। वहाँ से मैंने फिर चीमासे फोनपे बात की तो उसने मुझे किशम (ईरानी ISLAND) इस जगहपे आनेको कहा। मैं अबु धाबीसे हवाई जहाजसे किशम गया। वहाँ मैं हॉटेल टोल इन में रुका। दो दिन बाद एक अबू फैजल, उम्र तकरीबन 30 साल, मुझे ले जाने के लिये चीमाने भेजा। अबु फैजल और मैं हम दोनों जहाजसे बंदर अब्बास बंदरगाह (ईरान) पहुंचे। वहाँ से दोपहार 12 बजे मैं बस में बैठकर शामको 7 बजे ईरान पाक बॉर्डर पहुंचे। वहाँ से जीप में बैठकर हमने बॉर्डर क्रॉस किया मेरा पासपोर्ट टोल इन हॉटेल मे काउंटर पर जमा था। बॉर्डर क्रॉस करने के दो घंटे बाद हम पाकिस्तानी तुर्बत शहर में पहुंचे वहाँ से, रात 9 बजे बस में बैठकर बहावलपुर के लिये रवाना हुये रात भर का सफर तय कर के दोपहर चार बजे बहावलपुर पहुंचकर आजम चीमा के घर गये।

आजम चीमा ने वहाँ मुझे अमीन यह नया नाम दे कर मेरा असली नाम छुपाकर रखने की ताकीद दी। आजम चीमा ने मुझे जितने पैसे भेजे उस हिसाबसे बहुत कम लोग हिंदुस्थान से ट्रेनिंग के लिए आये इस बात के लिये नाराजी दिखाई, ऐसा बोलकर आजम चीमा ने मुझे कुछ कर दिखाने के लिये उकसाया और, बंबई में बड़ी वारदात करनी है तो और बंदो को ट्रेनिंग के लिये भेजने पर जोर दिया। मैं वहाँसे रिजवान डावरे को बीच बीच में फोन करके ट्रेनिंग के लिये हिंदुस्थानसे और बदे भेजनेको कहता था। उसके मुताबिक रिजवान ने मुझे फोन करके डॉ तन्वीर ऐहतेश्याम के जरिये ट्रेनिंग के लिये पाक आने को तय्यार है ऐसी बात कही तो मैंने मुझम्मील से, पास रखे हुझे पैसों से डॉ तन्वीर के लिये वीजा और टिकिट का इंतजाम करने

के लिये कहा उस मुताबिक मुझम्मील ने मुश्ताक agent के जरिये डॉ. तन्वीर को वीजा और तिकीट का इंतजाम करके ईरान के रास्ते ट्रेनिंग को भेज दिया. आजम चीमा के ट्रेनिंग कैंप में मेरी मुलाकात डॉ. तन्वीर से हुई. उसने मुझफराबाद से 15 दिन की ट्रेनिंग पूरी की और वो फिर ईरान के रास्ते हिंदुस्तान वापस चला गया. अगस्त 2004 में मुझम्मील ट्रेनिंगके लिए पाकिस्तान आया तब मैंने उससे भी मुलाकात की। उसने मुझफराबाद में १५ दिनकी ट्रेनिंग पूरी की और वो भी ईरान के रास्ते हिंदुस्तान चला गया। पूना में रहनेवाले सोहेल शेख से मेरी अच्छी जान पहचान थी. वही सोहेल शेख मुझफराबादमें ट्रेनिंग कर रहा है ये बात मुझे रिजवान डावरे से मालूम हुई. इसलिये मैंने मुझफराबादमें सोहेल से संपर्क किया और उसके कहनेपर मैं उससे मुझफराबाद जाकर मिला तब मुझे पता चला की वो पिछले सात आठ महीने से मुझफराबाद ट्रेनिंग सेंटर में रह रहा है. और उसने ६ महीने की ट्रेनिंग हासिल की है. मैं और सोहेल बहावपूर जाके आजम चीमा से मिले. वहाँ हमने चार महीने तक ट्रेनिंग ली. बाद में सोहेल ईरान के रास्ते से दुबई चला गया फिलहाल वो कहाँ है मुझे मालूम नहीं.

आजम चीमा से मुझे लश्कर-ए-तय्यबा संगठन के बारे में काफी मालुमात हासिल हुई. L-e-T संगठन यह "मरकज उद दावा वल इरशाद" इस संगठन की आतंकवादी कारवाइओं को अंजाम देने वाली ब्रांच है. हाफिज मोहम्मद सईद यह मरकज और लश्कर के प्रमुख संगणना है. और उनके नीचे १) आजम चीमा (बहावलपूर) २) अबू मूजम्मिल (इस्लामाबाद) ३) आरिफ कासमानी (कराची) ऐसे और इनके जैसे और भी कमांडर्स हैं. सब कमांडर्स LET संगठन के लिये बंदों की भरती करके उन्हें आतंकवादी प्रशिक्षण देते हैं. और आतंकवादी कारवाइ को अंजाम देने के लिये जो चाहिये वो मदद करते हैं.

आजम चीमा बंबई में कोई बड़ी वारदात करना चाहता था और उसके लिये मुझे हिंदुस्तान भेजना चाहता था. पर मेरा पासपोर्ट किशम के टोल इन हॉटेल में रह जाने के वजह से मुझे हिंदुस्तान आने में दिक्कत आ रही थी. इसलिए आजम चीमा ने मोहम्मद आक्रम नाम से मेरा पाकिस्तानी पासपोर्ट बनवाया और उसपे Saudi Arabia का उमरा वीजा लगवाया. October 2004 में उस पासपोर्ट के सहारे मैं Saudi Arabia जाके रिजवान के पास रहने लगा. इसी दरम्यान मैं मक्का शरीफ २-३ बार हो के आया. एक बार मक्का शरीफ जाते वक्त चेक नाके पर मेरी तलाशी लेते वक्त पुलिस को मैंने पाकिस्तानी होने की बात कही लेकिन मेरी तलाशी में उन्हें मेरे पास हिंदुस्तानी Driving licence मिलनेपर उन्होंने मुझे 3 दिन जेल में रखा, वहाँ से मुझे जेदाह ले जाके फिर 4 दिन जेल में रखा गया. वहाँ पर हिंदुस्तानी Embassy के लोगोंने मुझसे पूछताछ कर के मुझे Emergency certificate, पर दिल्ली भेज दिया. 2004 के आखिर में दिल्ली से मैं बंबई आया. मैंने मेरे 14000 रियाल रिजवान के पास रखे थे. 3-4 महीने बाद मैंने सारी बातें मुजम्मिल को बता दी उस वक्त राहिल बंगलोर में काम कर रहा था. मैं उसे मिलने बंगलोर गया और उसे सारी बातें बताके आजम से संपर्क में रहने को कहा.

उसी दौरान ग्रैंट रोड में रहने वाले मेरे दोस्त राहिल शेख की मुझसे मुलाकात हुई. उसने मुझे फिरोज घासवाला नाम का लडका ट्रेनिंग जाने के लिये तय्यार है कहके उसका पासपोर्ट मुझे ला के दिया. उस पासपोर्ट पर मैंने मुश्ताक शेख नाम के Agent के जरिये ईरान का "झियारत विजा लगवाके फिरोज को वाया ईरान ट्रेनिंग को भेजा. उसी दरम्यान मैंने रिजवान के पास रखे हुआ 14000 रियाल उसने मुझे भेज दिये थे. उसके बाद मैंने अहमदाबाद में रहनेवाले उबेद चीपा को वीजा और टिकट बनवाकर ट्रेनिंग के लिए भेज दिया. मीरा रोड के नया नगर से मुझें तकलीफ होने लगी उसके दो कारण थे. एक तो मेरे वालिद और वालिदा मेरे साथ रहते थे और दुसरा ये कि नया नगर में मुसलमानों की तादाद ज्यादा होने की वजह से पुलिस की आचानक चेकिंग भी होती थी. इसलिए पाकिस्तान से हिंदुस्तान आने के बाद जनवरी 2006 में मैं डोंगरी में उर्दु पाठशाला के पास एक भाड़े का कमरा लेकर रहने लगा. बाद में मैं

धारावी में शिफ्ट हुआ और रफिक युपी रेस्टॉरेंट के मालिक फैजल खुर्शीद के घर पर रहा. 5-6 महीने वहाँ रहने के बाद आजम चीमा से भेजे पैसे रिजवान के जरिये मिले. उसमें से मैंने बांद्रा के पास पेरी क्रॉस रोड पर २४ लक्की व्हीला में एक फटल किराये पर लिया, वहाँ पर मैं अकेले ही रहता था. मार्च 2006 में रिजवान डावरे हिंदुस्तान में ही था. वो Saudi Arabia में जाना चाहता था वो परिवार के साथ Dockyard Road पे रहने वाले उसके चाचा से मिलने आया था. उसी दरम्यान में वो मुझे बांद्रा में आकर मिला. हम दोनो में पाकिस्तान में हुई ट्रेनिंग लश्कर और आजम चीमा उसके इरादों के बारे में और हिंदुस्तान से ज्यादा बंदे ट्रेनिंग के लिये भेजने के बारे में बातचीत हुई. मैंने रिजवान को आजम चीमा के जरिये और पैसे भेजने के बारे में भी कहा. April 2006 में ग्रांट रोड वाले राहिल शेख ने औरंगाबाद के झुल्फीकार फैय्याज अहमद का पासपोर्ट लाकर दिया. मैंने उसपर वीजा लगवाके झुल्फीकार को ट्रेनिंग के लिये आजम चीमा के पास पाकिस्तान भेजा.

आजम चीमा ने मुझे रिजवान के जरिये हवाला से कूल मिलाकर 10 लाख रुपये भेजे थे. उसमें से २ लाख रु मैंने अपने वालिद के ICICI बैंक के खाते में जमा किया. जिन लडकों को मैंने ट्रेनिंग के लिये भेजा था उनका खर्चा आजम चीमा ने भेजे हुझे पैसों में से ही किया गया था. अब तक मैंने हिंदुस्तान से 7 लडकों को ट्रेनिंग के लिये पाकिस्तान भेजा. उनके नाम १) मुझमिल अताऊर रहेमान शेख २) चिपा मोहम्मद अली चॉद मोहम्मद ३) जमिर अहमद लतीफूर रहेमान, ४) झुल्फीकार फैय्याज अहमद ५) घासवाला फिरोज अब्दुल लतिफ ६) सोहेल मेहमुद शेख ७) डॉ. तन्वीर अहमद मोहम्मद अन्सारी ऐसे हैं.

मैं मेरे दोस्त आलम जावेद और मुश्ताक के साथ बांद्रा के डांस बार में हमेशा जाता था. मैं हैद्राबाद में रहने वाले जावेद को जानता हूँ. वो भी पाकिस्तान से ट्रेनिंग लेके आया है. वो जब भी बॉम्बे आता था मुझसे मुलाकात करता था. उसे पैसे की बहुत जरूरत थी इसीलिये मैंने २-३ बार उसे पैसे भी दिये थे. देडसाल पहले बांम्बे के घाटकोपर इलाके में साई प्लाज़ा डान्स बार में डान्सर का काम करनेवाली लडकी मनीषा चौहान से मेरी जान पहचान हो गयी. हम दोनो में गहरी दोस्ती है और एकदूसरे के घर आना जाना है.

बॉम्बे आने के बाद मैं लगातार आजम के संपर्क में रहा. उसने मुझे बंबई में कोई बड़ी वारदात करने के लिये अच्छा टारगेट ढूँडने को कहा, मैंने जमीर और सोहेल के साथ बांम्बे का दौरा किया. हम लोग World trade Center, स्टॉक एक्सचेंज, महालक्ष्मी मंदिर, सिद्धीविनायक मंदिर, कुछ बड़े शॉपींग मॉल, लोकल रेल्वे स्टेशन में घुमे. तब मैंने पाया के स्टॉक एक्सचेंज, World trade Center, और मंदिर में सुरक्षा के इंतजाम सख्त थे लेकिन लोकल ट्रेन का टारगेट मुझे सही लगा. क्यों कि वहाँ सुरक्षा के इंतजाम इतने पक्के नहीं थे. और सभी रेल्वे स्टेशन भीड़ से भरे होते हैं. आजम चीमा से जब मेरी फरवरी 2006 में बात हुई तब उसे टारगेट के बारे में जानकारी दी. आजम चीमा को भी ये टारगेट अच्छा लगा और उसने मुझे इसके बारे में और ज्यादा गौर करने के लिये कहा. उसके लिये आजम चीमा ने पाकिस्तान के कुछ लोगों को भेजने का जिक्र किया और वह मेहमान जल्द ही बंबई आयेंगे ऐसा बताया. आजमने ये भी कहा की, मेरी तरह और जिन हिंदुस्तानी बंदों ने पाकिस्तान में तहबियत हासिल की है उन लोगो से मुझे contact मैं रहने की हिदायत दी. उस मुताबिक मैं गोवंडी का मोहम्मद अली, हैद्राबाद का जावेद, जलगांव का जुनेद, मीरा रोड का साजिद, मेरे दोस्त ऐहतेशाम, जमीर, सोहेल शेख और डॉ तन्वीर से लगातार contact मैं रहा. मेरे contact मैं और भी कुछ लोग थे. आजम के कहने पे बिहार का कमाल और कलकत्ता का माजिद भी मेरे संपर्क में रहता था. आजम ने तकरीबन ११ मेहमान पाकिस्तान से हिंदुस्तान भेजने की बात की थी. मैंने ऐहतेशाम, तनवीर, जमीर, मुजम्मिल और सोहेल के साथ बांम्बे से विरार जाने वाली लोकल ट्रेनों का सफर कर के वहाँ का जायजा लिया. मैंने पाया की भीड़ के वक्त चलती हुई लोकल ट्रेनों में धमाका करना ज्यादा आसान रहेगा. मैंने धमाको के लिये working Day के शाम का

वक्त चूना क्योंकि उस वक्त ट्रेनो में भीड़ ज्यादा होती है. और भीड़ में आसानी से घुल मिल जा सकता था.

उसी दरम्यान ग्रांट रोड वाले राहिल शेख ने मुझे फोन करके माहिम बुलाया. तभी उसने मुझे बताया की उसके घर दिल्ली की पुलिस पकड़ने आयी थी. तब वो पिछवाड़े से कुदकर भागा. उसी में उसका पैर Fracture हो गया, उसने मुझे इलाज के लिए १५००० रु मांगे. मैंने उसे १५००० रु लाकर दिये. उस वक्त उसके साथ दो आदमी थे. उनमें से एक आदमी का नाम मुन्नाभाई था. राहिल ने मुझे बताया की पाकिस्तानी ट्रेनिंग के लिये भेजे हुए उबेद या फिरोज नाम के लड़के को दिल्ली पुलिस ने पकड़ा था उसी ने पुलिस को राहिल का नाम बताने से दिल्ली पुलिस उसे पकड़ने आयी थी. उसने मुझसे फिर कहा कि अगर वह पकड़ा गया तो पुलिस मुझे पकड़ेगी. मैं अलग काम को अंजाम देने की फिराक में होने की वजह से राहिल को मुझसे ज्यादा Contact नहीं रहने की हिदायत दी.

उसके बाद मैं अपने काम को अंजाम देने में जुट गया. आजम चीमा के इशारों पर लोकल ट्रेन में धमाके करने के लिये आसिफ खान उर्फ जुनेद ने कुछ बंदों के जरिये मई २००६ से सामान एकटठा करना शुरू किया. तय किये मुताबिक ये सब सामान जुनेद के गोवंडी वाले महमद अली के घर रखवा दिया।

मई २००६ में ही आजम चीमा ने कुछ पाकिस्तानी बंदों को हिंदुस्तान भिजवाया. उनमे से बिहार के कमाल ने नेपाल बार्डर के रास्ते से दो लोगों को लाया. उनका नाम असलम और हाफिज उल्ला बताये गये, माजिद ने बांग्लादेश के ढाका बार्डर से ६ पाकिस्तानी बंदों को लाया उनके नाम साबीर, अबु बकर, कासम आली, अम्मुजान, अबु हसन और एहसानउल्ला ऐसे बताये गये. आते वक्त एहसानउल्ला ने अपने साथ १५ किलो RDX लाया था. हिंदूस्तान के हैदराबाद का रहने वाला अब्दुल रझाक जो फिलहाल पाकिस्तान में है वो गुजरात के कच्छ बार्डर से ३ पाकिस्तानी बंदों को लाया उनके नाम अबु उमेद, सलीम और सोहेल शेख ऐसे बताए गये. इन चारों को मैंने अपने बांद्रा वाले घर में रखा था. माजीद ने जिन पाकिस्तानी बंदों को लाया था उनके रहने का इंतजाम जुनेद ने किया था.

आजम चीमा ने रिजवान डावरे के जरिये मुझे देने के लिये दिये हुए पैसे रिजवान ने अपने पुना में रहने वाले भाई अब्दुल रहमान के पास ११२०० रियाल भेजे थे. आजम के ये पैसे धमाको को अंजाम देने के लिये ही भेजे थे. ये पैसे मुझे मिलने से पहले ही मुझे पुलिस ने पकड़ लिया और ये रियाल पुलिस ने Inquiry में जब्त कर लिये ये बात मुझे पुलिस से बाद में पता चली.

बम धमाको के दरम्यान मुझे आजम चीमा ने १५००० रियाल भिजवाये थे वो पैसे धमाको के बाद होनेवाले खर्चा के लिये भेजे थे. वो मुझे मिलने के बाद मैंने अपने घर पे ही रखे थे. ये पैसे धमाको को अंजाम देनेवाले बंदों को देने थे. लेकिन धमाको के बाद पुलिस का बंदोबस्त सख्त हो गया और चौराहे पे नाकाबंदी और चेकिंग होने लगी इसके लिये मैंने पैसों को अपने पास रखना ही ठीक समझा और मामला ठंडा हो जाने के बाद इसका इंतजाम करने वाला था लेकिन मुझे २७ जुलाई २००६ को ही पुलिस ने पकड़ लिया और Inquiry के दौरान वो पैसे मेरे पास से पुलिस ने जप्त कर लिये.

काम को अंजाम देने के लिये ११ जुलाई ये दिन मुकर्रर किया गया. उसके पहले बम बनाने की planning की गयी. बम महमंद अली के घर बनाने का Decide हुआ. एहतेशाम, डॉ. तन्वीर, जुनेद, महमंद अली, साजीद और दुसरे कुछ बंदे मेरे लगातार contact मे रहते थे, कभी कभी वो लोग मेरे बांद्रा वाले घर में Meeting के लिये आते थे, ऐसी ही कुछ Meeting साजिद के मीरा रोड वाले घर पर भी होती थी. बम बनाने का काम ८-९ और १० जूलाई २००६ इन दिनों गोवंडी में मोहम्मद अली के घर पर किया गया. बम बनाने का काम पाकिस्तान से आये हुआ सोहेल शेख और मीरा रोड का साजिद अंसारी और एक

पाकिस्तानी बंदो ने किया। साजिद अंसारी की जोगेश्वरी में Mobile Repairing की दुकान थी इसी वजह से उसे electronic circuit के बारे में जानकारी थी। एहतेशाम बम बनाने की पूरी कारवाई पे देखरेख कर रहा था। उसने मुझे बताया की बम बनाने का काम पाक से आये हुऐ सोहेल शेख और साजिद ने किया। ऐसे बम के ७ बॅग १० जुलाई २००६ को शाम के मेरे बांद्रा वाले घर में लाकर रखे गये। आजम चीमा के कहने के मुताबिक बम plant करने के लिये पाकिस्तानी और १ लोकल आदमी ऐसी ७ जोड़िया बनाई गईं। लोकल लोगों में मैं था और मेरे साथ पाकिस्तानी बंदा अबू बकर था। बाकी लोगो में एहतेशाम, हैदराबाद का नावेद, बिहार का कमाल, और मीरा रोड का साजिद थे ऐसा मुझे याद है। ११ जुलाई २००६ को हम सभी लोग जोड़ी में अलग अलग Taxi में बांद्रा से चर्चगेट स्टेशन के लिये ३-४ बजे के बीच निकले। मैं और अबू बकर आखिर में निकले। उस दिन हम में से किसी ने अपना मोबाईल साथ में नहीं रखा था क्योंकि हमे ऐसी हिदायत दी गई थी। सभी जोड़ियां १-१ करके चर्चगेट स्टेशन के East side में आई और plan के मुताबिक बम से भरी bag लेकर सबवे से निकलकर platform पर आयि हरेक जोड़ी ने plan के मुताबिक अलग अलग लोकल ट्रेनों में बॅग रखे। जैसा Decide हुआ था वैसे बॅग रखने के बाद उसी डब्बे में सफर करके बंबई सेंट्रल के बाद उतरना तय हुआ था। मैंने तय हुई ट्रेन के First class compartment में अबू बकर के साथ चढ़ा। Plan के मुताबिक मुझे सीट के उपर वाले रैक में बॅग रखना था, लेकिन रैक पर पहले से ही सामान रखा हुआ था। इसलिए मैंने बम वाला बॅग सीट के नीचे रखा उसके बाद मैं और अबू बकर उसी compartment से दादर तक सफर किया और दादर स्टेशन पर उतर गये। ट्रेन में बहुत भीड़ थी और हमे उतरने में बहुत दिक्कत हुई। उतरने के बाद मैं अबू बकर को अपने बांद्रा वाले घर लेकर आया और बाद में plan के मुताबिक वो अपने आप बस से बांम्बे के बाहर निकल गया।

धमाको के बाद सभी पाकिस्तानी बंदे अपने अपने ठिकाने पर रुके और एक एक करके बस से बंबई से बाहर निकलकर दुसरे शहरोंसे अलग अलग ट्रेन पकडकर पाकिस्तान चले गये। मुझे बाद में पता बला की हम में से एक बम रखने वाली जुनेद और सलीम की जोड़ी मेंसे सलीम वक्त पर नहीं उतर पाने की वजह से बम धमाके में शहीद हो गया, वो लाहौर का रहने वाला था और वो मेरे ही घर पे रुका था।”

1051. After going through the complete confessional statement of A.3, it will be revealed that the first few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. Then he narrates about his visit to Pakistan in the year 2002 and the training he obtained in the Lashkar-e-Taiba training camp. He further narrates about the training given to him in such camps of the use of AK-47, Pistol - TT, and Revolver. He further states about the training given to him about preparing bombs. In the further part of the statement, he speaks about his activities relating to sending other persons for training to Pakistan. Then remains the highlighted

portion which according to us is relevant for the purpose of the present matter considering the charge for which he was tried. The translation of the highlighted portion is as under: -

The True Translation Of The Highlighted Portion

"After coming to Bombay I was in constant touch with Azam. He asked me to find a good target for a big crime in Bombay. I travelled in Bombay with Zameer and Sohail. We visited the World Trade Center, Stock Exchange, Mahalaxmi Temple, Siddhivinayak Temple, some big shopping malls, and local railway stations. I observed that security arrangements were strict in the Stock Exchange, World Trade Center and temples but I thought the local train would be an appropriate target. Because security arrangements were not so strong there. And all railway stations are crowded. When I talked to Azam Cheema in February 2006, I gave him information about the target. Azam Cheema also liked this target and asked me to look into it more. For that Azam Cheema talked about sending some people from Pakistan and said that those guests will come to Bombay soon. Azam also instructed me to stay in contact with other Indian people like me who have obtained training in Pakistan. Accordingly, I was in constant contact with Mohammad Ali of Govandi, Javed of Hyderabad, Junaid of Jalgaon, Sajid of Mira Road, my friends Ehtesham, Zameer, Sohail Sheikh and Dr. Tanveer. There were some other people in my contact. As per Azam's instructions, Kamal of Bihar and Majid of Calcutta also remained in contact with me. Azam had talked about sending around 11 guests from Pakistan to India. I traveled in local trains from Bombay to Virar with Ehtesham, Tanveer, Zameer, Muzammil and Sohail and surveyed the place. I found that it would be easier to carry out the blast in running local trains during rush hours. I chose the evening time of the working day for the blasts because the trains are more crowded at that time. And I could easily mingle with the crowd.

Meanwhile, Rahil Sheikh of Grant Road called me and asked me to come to Mahim. He told me that Delhi Police had come to his house to arrest him. He ran away by jumping from the backyard. In that, his leg got fractured. He asked me for Rs. 15000 for his treatment. I brought Rs. 15000 and gave it to him. At that time, he had two men with him. One of them was named Munnabhai. Rahil told me that a boy named Ubed or Firoz who was sent to Pakistan for training was caught by Delhi Police. He had told Rahil's name to the police and hence Delhi Police had come to arrest him. He then told me that if he is caught, the police will arrest me. As I was planning to execute some other work, I instructed Rahil not to have much contact with me.

After that I got busy in executing my work. On the instructions of Azam Cheema, Asif Khan @ Junaid started collecting material from May 2006 with the help of some people to carry out blasts in local trains. As per the plan, Junaid kept all these materials at the house of Mohammad Ali of Govandi.

In May 2006, Azam Cheema sent some Pakistani men to India. Kamal from Bihar brought two of them from the Nepal border. Their names were told to be Aslam and Hafiz Ullah. Majid brought 6 Pakistani men from the Dhaka border of Bangladesh. Their names were said to be Sabir, Abu Bakar, Kasam Ali, Ammujan, Abu Hasan and Ehsanullah. While coming, Ehsanullah brought 15 kg of RDX with him. Abdul Razak, a resident of Hyderabad, India, who is currently in Pakistan, brought 3 Pakistani men from the Kutch border of Gujarat. Their names were told to be Abu Umed, Salim and Sohail Sheikh. I kept these four in my house in Bandra. Junaid made arrangements for the stay of the Pakistani men brought by Majid.

The 11200 riyals that Azam Cheema had given to Rizwan Daware to give to me, Rizwan sent it to his brother Abdul Rehman who lives in Pune. Azam had sent this money only to carry out the blasts. Before I could receive this money, I was caught by the police and these riyals were confiscated by the police during the inquiry. I came to know about this later from the police.

During the bomb blasts, Azam Cheema had sent me 15000 Riyals. That money was for the expenses to be incurred after the blasts. After receiving it, I kept it at my home. This money was to be given to the people who carried out the blasts. But after the blasts, the police security became strict and blockades and checking started happening at the road intersections. Due to this, I thought it best to keep the money with me and was going to make arrangements for it after the matter cooled down, but I was caught by the police on 27 July 2006 and during the inquiry, the police confiscated that money from me.

11th July was fixed as the date to execute the blasts. Before that, the planning of making the bomb was done. It was decided to make the bomb at Mohammad Ali's house. Ehtesham, Dr. Tanvir, Junaid, Mohammad Ali, Sajid and some other people were in constant contact with me. Sometimes they used to come to my house in Bandra for meetings. Similar meetings also used to be held at Sajid's house in Mira Road. The work of bomb-making was done at Mohammad Ali's house in Govandi on 8th, 9th and 10th July 2006. The bomb-making was done by Sohail Sheikh from Pakistan, Sajid Ansari from Mira Road and another Pakistani man. Sajid Ansari had a mobile repair shop in Jogeshwari, that is why he had knowledge about electronic circuits. Ehtesham was supervising the entire operation of making the bomb. He told me that the bomb making was done by Sohail Sheikh and Sajid from Pakistan. 7 bags of such bombs were brought to my house in Bandra in the evening on 10th July 2006. As per Azam Cheema's instructions, 7 pairs were formed consisting of a Pakistani and 1 local man to plant the bombs. I was among the locals and with me was a Pakistani guy, Abu Bakar. The rest of the people were Ehtesham, Naved from Hyderabad, Kamal from Bihar and Sajid from Mira Road, I remember. On 11th July 2006, all of us left in pairs for Churchgate station from Bandra in different taxis around 3-4 pm. Abu Bakar and I left last. That day, none of us had kept our mobile phones with us because we were instructed to do so. All the pairs came one by one to the East side of Churchgate station and as per the plan, carrying the bags having bombs, came out of the subway and reached the platform. Each pair put the

bags in different local trains as per the plan. It was pre-decided that after keeping the bags as decided, we would travel in the same compartment and get off after Bombay Central. I boarded the First Class compartment of the train with Abu Bakar. As per the plan, I had to keep the bag on the rack above the seat but there was already luggage on the rack. So I kept the bag with the bomb under the seat. After that, Abu Bakar and I travelled in the same compartment till Dadar and got off at Dadar station. The train was very crowded and we had a lot of trouble getting off. After getting off, I brought Abu Bakar to my house in Bandra and later, as per the plan, he left Bombay by bus on his own.

After the blasts, all the Pakistanis stayed at their respective places and one by one left Mumbai by bus and took different trains from different cities to go to Pakistan. I came to know later that one of us, from the pair of bomb planters Junaid and Salim, Salim was martyred in the bomb blast because he was not able to get down on time. He was a resident of Lahore and he had stayed at my house only.”

Conclusion

1052. The law says that if a full and detailed confession is made in circumstances which make it unlikely that it was a result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Bababji Chavan (supra)*).

1053. In light of the above referred well settled law position, when we considered the relevant portion of the confessional statement of A.3 relating to the bomb blasts, we are of the opinion that this retracted confessional statement does not fall in the category of a full and detailed confession, which creates doubt of its truthfulness, for the reasons discussed hereunder.

1054. A.3 – Faisal states that he traveled in local train from Bombay to Virar with Ehtesham, Tanveer, Zameer, Muzzammil and Suhail, and chose the evening time of working day for the blasts. However, no details of the 7 trains fixed for carrying out blasts and their timings are given.

1055. He then states that, on instructions of Azam Cheema, Asif Khan @ Junaid (A.13) started collecting material from May 2006 with the help of some people, to carry out blasts in the local trains. No details about the material they collected, who gave the information of the material required for preparation of bomb, and why A.13 was chosen to collect such material are given by him. This information is important because preparation of bombs needs expertise knowledge. It is also important to state what type of bombs were prepared and the material required for preparing such bombs. A.3 is silent about this most relevant information.

1056. He states that Azam Cheema sent him 15,000 Riyals, which was for the expenses to be incurred after the bomb blasts. He states that was to be given to the persons who carried out the blasts. But after the blast, the police security became strict and therefore he thought it best to keep the money with him and was going to make the arrangements after the matter cooled down.

1057. Even if this explanation for not making the payment to the accused who had participated in the blasts, is accepted, there is no explanation why he did not convert the Riyals into Indian Rupees, for payment. Admittedly, A.1 - Kamal was from Basopatti, a small town. A.3 is not saying that the accused had knowledge to convert the currency.

1058. A.3 – Faisal further states that 11th July was fixed as the day to execute the blasts. Before that, the planning of making the bombs was done. Though he states that the planning of making bombs was done, no details of such planning are provided nor discernible therefrom.

1059. A.3 – Faisal states that it was decided to make the bombs at A.6 - Mohd. Ali's house. Admittedly, A.6's house, as per the record, is at Shivaji Nagar, Govandi, which is a congested and crowded area. No reason is provided by A.3 as to why A.6's house was chosen to assemble the bombs. Particularly when some of the Pakistanis were staying at the house of A.3 – Faisal and further after making of the bombs, the bombs were to take to the house of A.3 and to be distributed from his house. In this backdrop even the reason, why the bombs were not assembled at A.3's house, is also necessary.

1060. Though A.3 refers, in his statement, about the knowledge of A.7 about electronic circuits, no details are given about what type of electronic circuit was provided to him. It is important as there are various types of circuit boards as per the type of bomb. No information was provided as regards what type of bombs were prepared, what was the time set, if they were time bombs, the triggering device etc.

1061. Though at the instance of A.3, certain articles namely pressure cooker whistles, rubber rings, wires, printed circuit board etc. were recovered u/s 27 of Indian Evidence Act, which A.3 claimed that he had thrown from the running train, there is no mention about such material or the fact of throwing such material from the running train in statement. Even there is no mention of use of pressure cooker for packing of the bombs. There is no description of the bags or from where the same were procured.

1062. Though he states that 7 pairs were prepared for planting bombs in 7 trains, consisting of one local and one Pakistani, no details of such 7 pairs are given, except two such pairs. This disclosure was must

particularly when the prosecution has no knowledge about who planted bombs in Cr. No. 78/2006 and Cr. No. 86/2006.

1063. Moreover, according to A.3, deceased accused Salim, who was Pakistani, accompanied A.13. Whereas, as per the version of A.1-Kamal, Salim accompanied A.1.

1064. Though he states that A.7 – Sajid was in one of the pairs of the accused formed for planting the bombs, however, as per the prosecution, A.7 did not participate in planting the bomb.

1065. He even did not disclose the plans of sending Pakistanis back to Pakistan. But in most vague manner he only states that the Pakistanis went back to Pakistan after carrying out the bomb blasts.

1066. A.3 did not explain why the other accused were not allowed to flee away with the Pakistanis. This is important to state because many accused were called as suspects at the initial stage of investigation and they were not arrested and allowed to go home. Even then, no one ran away. It is to be noted that A.7, in his complaint about torture, has stated that on 25/07/2006, he had gone to his native when he got the knowledge that ATS officer called him, then he came back on 15/08/2006 and contacted ATS Officer Shri. Gaikwad on 18/08/2006. Thus, he did not run away, but on his own went to ATS. Therefore, he has to further explain if it was decided not to flee away and go to Pakistan with the other wanted accused, what was the idea and intention behind such planning.

1067. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.4 - Ehtesham Siddique

1068. A.4 – Ehtesham Siddique was first arrested on 12/08/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in prolonged police custody for 56 days before recording of his confessional statement. According to him, his confessional statement is the outcome of torture inflicted on him.

1069. The record shows that the last application seeking remand was moved by the prosecution on 28/09/2006, i.e. on the next day of invocation of provisions of MCOCA, in Cr. No. 156/2006. In this application, it was the case of the prosecution that “considering the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential.”

1070. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1071. The confessional statement of A.4 was recorded on 06/10/2006 (Part-I) and 07/10/2006 (Part-II). This shows that just within few days from the last application of remand, A.4 allegedly gave confessional statement.

1072. The prosecution could not bring on record the reason for giving confessional statement by A.2 after prolonged custody of 56 days of his

police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1073. According to A.4, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.4 - Ehtesham Qutubuddin Siddique

मेरा नाम ऐतेशाम कुतुबुद्दीन सिद्दिकी है। मेरी उम्र २५ साल है। कारोबार कुछ नहीं। मैं २०२, सफिया मंझिल, नया नगर, मिरा रोड (पूर्व), जिल्हा- ठाणे यहाँ पर रहता हूँ। मेरा जनम 01.01.1982 के दिन मेरे मामाके गांव तेहुवा, तहसिल फुलपूर, जिल्हा-आझमगड, उत्तर प्रदेश यहा पर हुआ था। मेरे पिताजी और कुटुम्ब, जब मेरी उमर चार साल की थी। उस टाईम १९८६ सालमे बम्बई में आए। सन १९८८ मेरे पिताजी सौदी अरेबिया मे काम करने के लिए गए। इसलिए मार्च १९८९ मे हम हमारे गांव युनूसपूर, ता. शहागंज, जिला- जोनपूर, उत्तर प्रदेश यहा पर लौटे। मेरे पिताजी श्री. कुतुबुद्दीन मोबीन अहमद सिद्दिकी, उमर ५० साल, नॅशनल सेंटर, दमाम सिटी, सौदी अरेबिया यहा पर कंपनीमे काम करते है। मेरी माँ श्रीमती अफसाना कुतुबुद्दीन सिद्दिकी उमर ४५ साल, कारोबार - गृहिणी, मेरे गांव में रहती है। एप्रिल २००५ मे मेरी शादी हुभी थी। मेरी पत्नी शबीना उमर २२ साल शादी के बाद ६ महिने मेरे साथ रही। उसके बाद वह अपने पिताजी हामीद मेहफुज शेख, झकेरिया मशिद, सहागंज, इलाहाबाद के साथ रह रही है। मैं सिमीका काम करता था इसलिए वह मुझे छोड के चली गयी। मेरा छोटा भाई ऐहसान, उमर २४ साल, मेरे पिताजी के साथ नॅशनल सेंटर, दमाम सिटी, सौदी अरेबिया यहा पर काम करता है। मेरी बहन आयशा, उमर ७ साल, मेरे माँ के साथ गाव में रहती है।

मेरी पहली और दुसरी तक की पढाई एन. के.एस. स्कूल, खेरवाडी, बांद्रा पूर्व, मुंबई यहा पर हुआ। उसके बाद पाचवी कक्षा तक पढाई अफझल प्रायमरी स्कूल, युनूसपूर. ता. शहागंज, जि. जौनपूर, उत्तर प्रदेश यह बोर्डिंग स्कूल में हुआ। उसके बाद आठवी कक्षा तक पढाई फलकानिया ज्युनिअर हायस्कूल, शाही तालाब, ता. सहागंज, जिल्हा. - जैनपूर, उत्तर प्रदेश यहा पर हुआ। उसके बाद दसवी कक्षा तक पढाई महमद हसन इंटर कॉलेज, जैनपूर, उत्तर प्रदेश यह स्कूल से हुआ। उसके बाद १२ वी सायन्स पढाई महाराष्ट्र कॉलेज, नागपाडा यहाँ से हुआ उसके बाद नारायण नागु पाटील इंजिनिअरिंग कॉलेज, पेण जिल्हा- रामगड यहापर मैंने बी.ई. (केमिकल इंजिनिअरिंग) के दो साल तक पढाई की। सिमी के बॅन के केसमे अटक होने के कारण तिसरे साल से मैंने पढाई छोड दि।

सन 1993 मे मेरे पिताजी ने २०२, सफिया मंझिल, नया नगर, मिरा रोड (पूर्व), जिल्हा ठाणे यहा पर दो रूम किचन का फ्लॅट खरीदा था। सन 1996 साल से मेरे घर के लोग यहा पर रहने लगे। मेरे पढाई के दिनो मे मैंने सिमी संघटना के बारे में सुना था। मैं एप्रिल २००१ से सिमी के पाईप रोड, कुर्ला यहा के कार्यालय में जाने लगा। यह ऑफिस के लायब्ररी मे मैं और इम्रान शेख, धार्मिक किताबे पढने लगे। यह इम्रान शेख, नारायण नागो पाटील इंजिनियरिंग कॉलेजमे मेरे साथ पढता था। और वह मेरा रूम पार्टनर था। यहाँ पर मेरी सिमी के और सदस्योसे पहचान हुआ। यहा पर मैं हर इंतवार को रात को होनेवाली दर्से कुराण कार्यक्रम को हाजिर रहता था।

यहा पर मेरी दोस्ती असरार अहमद उमर २९ साल, इसके साथ हुआ, ओ ट्रान्स इंन्स्टीट्यूट ऑफ कॉम्प्युटर टेक्नॉलॉजी यह संस्था, नया नगर, मिरा रोड यहाँ पर चलाता था। वह मीरा रोड सीमी का अध्यक्ष भी रह चुका है। असरार अहमदने मेरी सिमी के और कार्यकर्ताओसे पहचान करवाई।

ऑगस्ट २००१ मे इसरार अहमद, उमर २० साल पत्ता स्कॉन एकरस-२, पहिला मजला, नया नगर, मीरा रोड, ठाणे इसने मुझे दिल्ली मे, सिमी के मुख्यालय में ट्रेनिंग के लिए भेजा। मेरे साथ अब्दुला असमानी को भी ट्रेनिंग के लिए भेजा। हम दिल्ली में सिमीके मुख्य कार्यालय १५१/८-९, झाकीर नगर, नवी दिल्ली २५ यहा पर गये, यहा पर ट्रेनिंग के दौरान हमने १) यासीन पटेल फलाही, उमर ३२ साल पत्ता- अहमदाबाद, गुजरात २) शाहिद बद फलाही, उमर २९ साल, यूनानी डॉक्टर, पत्ता- मनचौथा जिल्हा-अजमगढ ३) जमिल सिध्दिकी, उमर ४० साल पत्ता- लखनौ, उत्तर प्रदेश, ४) सफदर नागोरी, उमर २९ साल, कारोबार मैकॅनिकल इंजिनिअर, पत्ता उज्जैन, मध्य प्रदेश, इनके भाषण सुने।

सन २००१ मे दिल्ली में मेरी पहचान फैजल अत्ताउर रहेमान शेख, उमर २५ साल पत्ता- पुणे इसके साथ हुआ। फैजल सिमी के ट्रेनिंग के लिए आया था। २ सप्टेंबर २००१ इस दिन सिमीकी एक मिटींग अजुमन-ए-इस्लाम स्कूल, व्ही.टी. स्टेशन, बम्बई यहा पर हुआ थी। यहा पर २५० सिमी के कार्यकर्ता इस कार्यक्रम को हाजीर थे।

दि. २७.०९.२००१ के दिन शाम को १८.०० बजे के दरम्यान सिमी के कुर्ला के कार्यालय में गया था। रात के ०८.०० बजे के दरम्यान पोलीस कार्यालय में आए और मैं और बाकी के ७ लोगो को पकडा, और कार्यालय को सिल लगाया। हमारे खिलाफ कुर्ला पोलीस स्टेशन मे गु.र.क्र. २७५/२००१ दर्ज किया और हम लोगो को पुलीस ने अटक किया। इस केस में मेरे साथ डॉ. तन्वीर मोहम्मद इब्राहिम अन्सारी भी पकड़ा गया था।

आसिफ खान बशिर खान उर्फ जुनेद उर्फ मेहफूज, उमर ३५ साल, पत्ता जलगांव जिल्हा – जलगांव, सन २००१ मे महाराष्ट्र के लिये सिमीका सेक्रेटरी था। यह जलगांव केस में फरार है। सिमीपर बॅन के बाद यह कुर्ला मे भाडेपर रूम लेकर वहाँ से सिमी का काम करता था। यह पुरे भारत मे घुमता था। फेब्रुवारी २००६ मे केरल में हुए मिटींग मे इसको सिमी का ऑल इंडिया अध्यक्ष चुना गया था। लेकिन इसने अध्यक्ष बनने से इंन्कार किया। इसलिए उसे सिमी से बाहर किया गया। उसकी जगह मिसबुल इस्लाम, उमर ३२ साल, पता- कोलकाता पश्चिम बंगाल, इसको सिमी का अध्यक्ष बनाया। आसिफ खान ने मई २००६ मे उसकी बीबी और बच्चों को जलगांव से बम्बई लाया था। और भाडे की रूम लेकर वह मीरा रोड में रहने लगा था।

कुर्ला पोलीस स्टेशन के बॅन केस में हम लोग २४ दिन जेल में थे। उस टाईम पे मेरे उपर दो केस थे। एक केस में रु. ३०००/- का जामीन और, दुसरे केस में रु. ८०००/- का जामीन मंजूर किया गया।

मार्च २००२ मे इसरार अहमद ने मेरी, मीरा रोड, सिमी के अध्यक्ष पर नियुक्ती कि, उस टाईम ईशाद सलीम खान, उमर ३५ साल, पता मीरा रोड यह महाराष्ट्र सिमी संघटन का अध्यक्ष था। उसी वक्त मैं कुराण का अभ्यास चालु किया। कुराण मे जिहाद के बारे में मैंने जादा पढना चालु किया। इंटरनेटपर लष्कर ए तोयबा कि वेबसाईट jamatuddawa.org इसके जरिए मैं जिहाद और उसके बारे मे लिटरेचर और जिहाद के तराने, डाउन लोड करता था। और उसका अभ्यास करता था। गुगल सर्चसे मे मसुद अजहर प्रमुख जैश-ए-मोहंमद इनकी स्पीचेस् दुढकर डाउनलोड करके सुनता था।

एप्रिल २००३ में ईशाद खान, उमर ३१ साल, धंदा सिविल इंजिनियर, सिमी संघटना महाराष्ट्र अध्यक्ष इसने मेरे पास रु. ५०,०००/- रकम दी थी। और उसके कहने पर मैंने वह रकम सिमी का ऑल इंडिया फायनान्स सेक्रेटरी इम्नान अन्सारी, उमर २८ साल, पता- इंदौर, मध्य प्रदेश उसको दी थी। यह पैसे सुप्रिय कोर्ट में चल रही सिमी की केस लड़ने के लिए दिई थे।

मई २००३ में तारीक इस्माईल ने मेरी पहचान भटकल, कर्नाटक में रहनेवाला रियाज भटकलसे करवाई। वह रियाज भटकल जैश-ए-मोहम्मद संघटने की आसिफ रझा ग्रुप का सदस्य था। और २००१ के पहले सिमी का सदस्य था। सिमी के बँन होने के बाद वह आसिफ रझा ग्रुप में चला गया। मैंने उससे जिहाद के बारे में चर्चा की, और हिन्दूस्तान में मुस्लिम लोगो को जिहाद के बारे में ट्रेनिंग देने के लिए ट्रेनिंग कैंप चालू करनेकी और उसीके लिए जगह धुँडने की बातें की थी। उसके बाद रियाज भटकलने मुझे नेपाल में ट्रेनिंग के लिए जगह देखने को कहा। और नेपाल में इस्लामीक संघ के कार्यालय में जाकर हरुण रशिद नामक व्यक्तिको मिलने के लिए कहा था। मैं, जुलै २००३ में मेरा गांव तेवआ, ता. फुलपूर, जि. आजमगढ़, उत्तर प्रदेश यहा पर गया। यहा पर ४/५ दिन ठहरने के बाद मेरा गांव का दोस्त मोहमद खालीद इसके साथ मैं बस से काठमांडू नेपाल गया। वहासे टैक्सी पकड़कर घंटाघर के ताज हॉटेल पे गये और वहा पर रुके। दुसरे दिन सबेरे १०.०० बजे हम इस्लामिक संघ के लायब्ररीमें गए और वहाँपर हरुण रशिद उमर २७ साल इसको मिले। वहाँसे वह उसके रूम पर लेके गया। वहाँ पर हमने नेपाल में ट्रेनिंग कैंप चलाने के बारे में चर्चा की थी। उसने बताया कि, आसिफ रझा ग्रुपका आसिफ उर्फ अमीर यह विरगंज का रहनेवाला हमको ट्रेनिंग के लिए जगह देनेवाला है। दुसरे दिन हरुण रशिद हमको बससे विरगंज लेके गया। वहाँपर उसने एक मशिद में हमको जुनेदसे मिलवाया। जुनेद कि उमर अंदाजन ३० साल, उंची ६ फुट, लुंगी और कुर्ता पहना हुआ था। बारिश का सिझन है इसलिए जगह दिखाना मुश्किल है। ऐसा उसने हमको बताया और बारिश का सिझन खतम होनेके बाद आने के लिए हमको कहा। उसके बाद रकसूल बॉर्डर से हम भारत में वापिस आए। ऑगस्ट २००३ में मैं तारिक इस्माईल के घरपर रियाज भटकलसे मिला और उसको यह हकिकत बयान कि।

नोव्हेंबर २००३ में निहाल कॉर्नर हॉटेल, मीरा रोड के पास मेरी फैसल से मुलाकात हुआ। फैसल मुझे पहले दिली में सिमी के ऑफिस में मिला था। उस टाईमसे उससे पहचान थी। मिरा रोडमें हमारी पहचान और बढ़ी। हमारा घर में आना जाना चालू था। उस दौरान एक बार फैसलने मुझे बताया कि, वह हाफिज सईद, लष्कर ए तोयबा का प्रमुख, इसके साथ बैठता उठता है। उस टाईम फैजलने मुझे रु. २५,०००/- दिए और कहाँ कि जिहाद के बारे में किताब छापना। उसके बाद मैंने muwahideen.tk व jamatuddawa.org इस वेबसाईटसे मटेरियल डाउनलोड किया और 'ईस्लाम की चोटी' यह शिर्षक का किताब प्रकाशित किया। मैंने फैजल का यह किताब दिखाया। फैजल ने मुझे यह किताब की २५० प्रती निकालने के लिए कहा। फेब्रुवारी २००४ तक मैं फैजल को मिलता रहा।

फैजल ने मुझे जिहाद और अहले-ए-हदिस के बारे में जानकारी दी और बताया की वह खुद और उसका भाई मुजम्मिल यह पाकिस्तान जाके लष्कर-ए-तोयबा के ट्रेनिंग कैंप में जाकर प्रशिक्षण लेके आए हैं। उसने मुझे ट्रेनिंग जाने के लिए कहा था, लेकिन मैंने नकार दिया। पाकीस्तान से ट्रेनिंग करके वापस आने के बाद क्या करना पड़ता है। ऐसा मैंने फैजल को पुछा था। तब उसने बताया था की पाकिस्तान से भारत में आतंकवादी कारवाई करने के लिए जो लोग आते हैं उनके रहने का, खाने का और सुविधा देखने का काम करना पड़ता है। फैजलने मुझे डॉ. तन्वीर ट्रेनिंग के लिए जा सकता है क्या। यह पुछा था। मैंने डॉ. तन्वीर को

यह बात बतायी तो डॉ. तन्वीर ट्रेनिंग को जाने के लिए तैयार था। उसके बाद मैंने डॉ. तन्वीर की फैजल से मुस्लीम अँब्युलन्स, भेंडी बाजार यहा पर मुलाकात करवायी।

मार्च २००४ में आखिरी हप्ते में मैंने मेरी इ मेल आयडी nusebat@yahoo.com से फैजल के आयडी tabesun@yahoo.com पर फैजलसे संपर्क किया। उस टाईम फैजल पाकिस्तान में ट्रेनिंग के लिए गया था। उस टाईम फैजलने मुझे बताया की दि. ०९.०४. २००४ को आझम चीमाने भेजा हुआ लष्कर-ए-तोयबा का एक आदमी आजमेर, राजस्थान में आ रहा है। वह गार्ड है और राजस्थान बॉर्डर से पाकिस्तान जाने का रास्ता वह दिखानेवाला था। फैजलने यह बताया की, वह आदमी के सरके उपर लाल रंग का रुमाल होगा। बहा जाने के लिए फैजलने मुझे उसका भाई मुझेम्मील से रु. १०,०००/- लिए और अजमेर का टिकट बुक किया। फैजल ने उसका भाई मुझेम्मील से मेरी पहचान मीरा रोड में करवाई थी। तब से मैं मुझेम्मील को जानता था। लेकिन दि. ०४.०४.२००४ को मेरा भाई ट्रेनसे गिरकर जखमी हो गया इसलिए मैं अजमेर जा नहीं सका। इसके बारे में मैंने फैजल को ई-मेल से बताया था। फैजलने दुसरे आदमी को भेजने के लिए कहा था। लेकिन मैंने दुसरे आदमी को भेजा नहीं। उसके ३/४ दिन के बाद फैजलने फिरसे इंटरनेटसे संपर्क किया और मेरे उपर बहुत गुस्सा किया। दि. २०.०४.२००४ को मैंने डॉ. तन्वीर का पासपोर्ट मुझेम्मील को दिया। उसके बाद डॉ. तन्वीर मे २००४ में ट्रेनिंग के लिए चला गया। तन्वीर का विसा और टिकट का इंतजाम मुझेम्मील ने कीया था। तन्वीर को ट्रेनिंग को जाने के लिए मैंने मोटीवेट कीया था। और ट्रेनिंग के दौरान बम बनाने की मालुमात हासिल करने के लिए उसको कहा था।

जुन २००४ के दुसरे हप्ते में डॉ. तन्वीर ट्रेनिंगसे वापस आया। मैं उसका, उसके घरके बाजूमें अहले ए हादिस मशिद में पास, मोमीनपुरा, आग्रीपाडा यहा पर मिला। उसने मुझे उसके ट्रेनिंग के बारे में पुरा बताया और बॉम्ब बनाने के बारे में जानकारी दी। मैंने कोर्टमें केस लखने के लिए इम्रान अन्सारी का रु. २५,०००/- दिये। यह पैसे मुझे महाराष्ट्र सिमीके अध्यक्ष इशार्द खान ने दिए थे।

ऑगस्ट २००५ में फैजल मुझे बांद्रा स्टेशनमें मिला था। तब फैजलने मुझे बताया की, पाकीस्तान में ट्रेनिंग के दरम्यान बहाका पुरा माहोल का अंदाजा लेने के बाद उसके समझमें आया की, पाकिस्तान में चलरहे सभी ट्रेनिंग कॅम्प यह आय.एस.आय. के कंट्रोल में और उनके निर्देशपर ही चलते हैं। फैजलने मुझे यह भी बताया की, अयोध्या मंदीरपर हमला आय.एस.आय. के कहनेपरही लश्कर-ए-तोयबा और जैश-ए-मोहम्मद ने मिलकर किया था। जिन लोगोंने इस हमलेको अंजाम दिया, वह पहले बम्बई आये थे। उनका बम्बईके ट्रेनोमें बम धमाके करने का इरादा था। लेकिन, रहनेका और बाकी चीजोंका इंतजाम नहीं हुआ। इसलिये आय.एस.आय. ने उनको अयोध्या मंदीरपर हमला करने के लिये कहा। इस बात का पता मुझे फैजल से चला। उस वक्त फैजल ने मुझे बम्बई में वारदात करने का आझम चीमाने तय किया है ऐसा बताया।

मेरा जिहाद के बारे में स्टडी चालू था। और मैं सिमी के मेरी जहनियत की लोग, के संपर्क में था। जिहाद पे अंमल कैसा किये जाए और जिहादी ट्रेनिंग के लिए जगह के बारे में बातचीत करने के लिए सफरदर हुसैन नागोरी उर्फ हुसैन, उमर ३६ साल, पता: उज्जैन, मध्यप्रदेश और मैंने उज्जैन में दि. ०४.०७.२००६ से ०७.०७.२००६ तक मिटींग आयोजित की थी। यह मिटींग के लिए दि. ०३.०७.२००६ के दिन मैं और मेरे चार सहकारी रात को २०.०० वा. बोरीवली स्टेशनसे अंवतीका एक्सप्रेस में बैठे और दुसरे दिन सुबह ९.०० वा. बजे के दरम्यान उज्जैन में पहुंचे। वहा पर हमको लेने के लिए कमरुद्दीन नागोरी उर्फ राजूभाई आया था। यह सफरदर नागोरी का भाई और मध्य प्रदेश सिमीका अध्यक्ष हैं। वहाँसे हम रिक्षासे हम कमरुद्दीन नागोरी के खेतमें एक झोपड़े में पहुंचे। यह खेत और झोपड़ी कमरुद्दीन नागोरी

की थी। वहा पर मिटींग के लिए इकरार शेख पता- उजैन, अकबर बेग, पता: इंदौर और शहनवास, पता- लखनौ यह सिमी के कार्यकर्ता हाजिर थे। दि. ०४.०७.२००६, दि. ०५.०७.२००६ और दि. ०६.०७. २००६ पैसे तिन मिटींग चली मिटींग में तय हुआ चीजे इस प्रकार है।

1) जिहाद क लिए नया संगठन स्थापन किया गया। उसको सुरक्षा करने की वजह नाम नहीं दिया गया।

2) यह संघटन सिमी के अंदर रहकर जिहाद का काम करेगा।

3) संघटन के लक्ष और कार्यप्रणाली ऐसी है।

अ) खिलाफत को कायम करने के लिए कोशिश करना।

ब) दुनियाभर मे जारी जिहाद में शिरकत के लिए रास्ते निकालना ।

क) वाजयावी बाबरी मशिद और काफिरो का ऐतहसाब (कत्तल) करना ।

4) यह संगठन के लिए दुनियाभरसे ढाई साल के अंदर अमिर तलाशना तालीबान का मुल्ला उमर अमिर चुना जा सकता है।

5) यह संगठन का एक वाली, उसके निचे एक माविन अली रहेगा। हर राज्य मे संगठन प्रमुख एक नकिब रहेगा। उसके दो सहाय्यक नकिब रहेंगे। और उनके निचे २४ लोग, ४ के ग्रुप से काम करेगे. ग्रुप मे चारोमेसे १ बेस्ट शुटर, १ बेस्ट ड्रायव्हर, १ खुफिया जानकारी हासिल करनेके लिए और १ सहाय्यक काम के लिए.

6) एक साल मे सब लोगोको प्रशिक्षित किया जाएगा।

7) मध्य प्रदेश मे कमरुद्दीन नागोरी और बिहार में मैं ट्रेनिंग के लिए जगह ढूंढेगा।

8) एक साल के बाद कारवाई शुरू कि जाएगी।

9) व्ही.एच.पी., बजरंग दल, मुस्लीम विरोधी लोग और मुस्लीम विरोधी पोलीस अधिकारी की कत्तल किया जाएगा।

10) अब्दुल सुभान कुरेशी उर्फ कासिम और शेहनवास यह देश की बाहर के जिहादी संघटन से संपर्क करेंगे।

11) रु. १५ लाख जमा करनेका तय हुआ। इसमे से रु. ५ लाख जमिन के लिए, और रु. ५ लाख प्रशिक्षण के लिए। और रु. ५ लाख प्रवास खर्च के लिए उपयोग किया जाएगा।

12) सफदर नागोरी को वाली चुना गया। महाराष्ट्र का नकिब मुझे चुना गया और हाफिन उर्फ सईद को कर्नाटक का नकिब चुना गया।

इस मिटींग के दौरान मैं फैजलसे लगातार संपर्क में था। और हमारे प्लैन की प्रोग्रेस के बारे मे उससे जानकारी लेता था ।

यह मिटींग होने के बाद दि. ०६.०७.२००६ को मैं बम्बई लौटा।

फैजल जब पाकिस्तान से ट्रेनिंग लेकर आया था। उसके बाद वो लष्कर-ए-तोयबा के कमांडर आझम चीमा के हमेशा संपर्क में रहता था। इसके बारे मे जब वो मुझे मिलता था तब वह मुझे बताता था। मई २००६ मे आझम चीमा ने कुछ पाकिस्तानी बंदो को हिन्दुस्तान भिजवाया था। उनमे से बिहार के कमाल अहमद मोहमद वकील अन्सारी ने नेपाल बॉर्डर के रास्ते दो लोगो को लाया था। उनके नाम अस्लम और हाफीज उल्ला ऐसे बताये गये। मुझे फैजल ने

बताया था की कमाल पाकिस्तानसे लष्कर ए तोयबा के ट्रेनिंग कैंपसे ट्रेनिंग करके आया है। फैजल से मुझे यह पता चला की माजीद ने बांगला देश के ढाका बॉर्डर से ६ पाकिस्तानी बंदो को लाया था। उनके नाम साबीर, अबु बकर, कासम अली, अंम्मुजान, अबु हसन और एहसान उल्ला ऐसे बताये गये। आते वक्त एहसान उल्लाने अपने साथ १५ किलो आरडीएक्स लाया था। बाकी कुछ पाकिस्तानी बंदे कच्छ बॉर्डर से आये थे।

आझम चीमा से टारगेट ढूँढनेका मेसेज आया था। इसके बारे में फैजल ने जलगांव के आसिफ खान उर्फ जुनेद से चर्चा की थी। और वो जुनेदसे आगे के कारवाई के बारे में हुकूम लेता था। आझम चीमा के कहने पे फैजल ने बम्बई में टारगेट ढूँढने के लिए शुरुवात की थी। फैजल ने बताया था की वर्ल्ड ट्रेड सेंटर, स्टॉक एक्सेज, महालक्ष्मी मंदीर, सिध्दी विनायक मंदीर, कुछ बड़े मॉल्स, लोकल रेल्वे स्टेशन इत्यादी टारगेट का जायजा लेने के लिए कहा था। फैजल, जमीर और सोहेल ये लोगो ने बम्बई का दौरा करने के बाद यह पाया की, रेल्वे ट्रेन्स टारगेट करना आसान है। क्यो की बाकी जगह सुरक्षा के इंतजाम अच्छे थे। मैं, हैद्राबाद का नावेद, गोवंडी का मोहम्मद अल्ली, जलगांव का जुनेद, मीरा रोड का साजीद, जमीर, सोहेल शेख, और डॉ. तन्वीर लगातार फैजल के कॉन्टैक्ट मे रहते थे।

फैजल ने मुझे बताया था की आझम चीमाने तय किया है कि बम्बई के वेस्टर्न लाईनपर शाम के भीडके समय ७ ट्रेनो मे बम धमाके करनेका तय हुआ है। उसके बाद मैंने, फैजल, तन्वीर, जमीर, मुझम्मील और सोहेल के साथ मे चर्चगेट से विरार जानेवाली लोकल ट्रेनो में सफर करके जायजा लिया था। कभी कभी उसके घर में भी जाते थे। फैजलने बताया की ११ जुलै, २००६ को बम धमाके करने का तय हुआ है।

जब बम बनाने की प्लैनींग हुई उस टाईम गोवंडी के मोहम्मद अली के घर पे बम बनाने का फैसला लिया था। बम बनाने का काम ८, ९ और १० जुलै को मोहम्मद अली के घर जो गोवंडी में रहता है वहापर किया गया। बम बनानेका काम पाकिस्तानसे आये हुये सोहेल शेख और मीरा रोड का साजीद अन्सारी और एक पाकिस्तानी बंदे ने किया। बम बनाते वक्त आरडीएक्स, अमोनियम नायट्रेट, डिझेल, ९ व्होल्ट की बॅटरी और क्वार्टस, घडी यह चिजोंका इस्तेमाल किया था। वहा पर जलगांव का आसीफ खान उर्फ जुनेद, पाकिस्तानसे आया हुआ अंम्मुजान, परवेज ये लोग भी हाजीर थे। मैं बम बनानेकी पुरी कारवाई पर देखरेख करता था। डॉ. तन्वीर भी बम बना ते समय हाजीर था। और वह बाहर सुरक्षा के बारे मे निगरानी कर रहा था। मैंने बम बनाने के कार्यवाहीपर सुपरविजन किया। बम बनाने के बाद ७ बॅग मे रखे गये। और वह ७ बॅग १० जुलै, २००६ के शाम को फैजल के बांद्रावाले घर मे लाके रखे।

फैजलने मुझे दुसरे दिन दोपहर को आने को कहा। उसने मोबाईल फोन साथ में नही लाने के लिए कहा था। उसके कहने के मुताबीक मैं ११ जुलै २००६ को दोपहर के साडे तीन बजे के दरम्यान फैजल के घर पहुंचा। वहा पर और १०-१२ बंदे हाजीर थे। फैजलने मुझे एक बम की बॅग दी। उस टाईम उसने मेरे साथ एक आदमी दिया। उसको मैं अंम्मुजान यह नाम से जानता हु और ओ पाकिस्तानी बंदा है ऐसे बताया गया। उसके बाद फैजलने हमको टॅक्सी पकड के चर्चगेट रेल्वे स्टेशन जाने को कहा। और वो बम वाली बॅग तकरीबन १७.१५ बजे चर्चगेट से छुटनेवाली विरार ट्रेनके फर्स्ट क्लासके डीब्बेमे सामान रखनेके रॅकपर रखने को कहा। उसकी सूचना के अनुसार मैं और अम्मुजान जो पाकिस्तानी आदमी था टॅक्सी पकडके चर्चगेट रेल्वे स्टेशन गये। वहा हम दोनों ने विरार जानेके लिये फर्स्ट क्लासकी दो टिकटे लि। तभी चर्चगेट रेल्वे स्टेशन के अंदर प्लॅट फॉर्म नं. ३ पर विरार जानेवाली फास्ट लोकल ट्रेन लगी थी और १७.१९ को छुटने वाली थी। मैं और अम्मुजान ने बम रखी हुई काली बॅग लेकर उस ट्रेनके आगे के फर्स्ट क्लास के डिब्बेमे चढ़ गये। उस डिब्बे की सामान

रखने की रैंक पर मैंने वो बम वाली काली बैग रखी। उसके बाद हम दोनों उसी डिब्बेमें रुके। उसके बाद प्लैन के मुताबीक हम दादर रेल्वे स्टेशन तक गये। और वहा से ट्रेन से उतर कर टैक्सी से अब्दुल वाहीद के घर मुंब्रा गये। अब्दुल वाहीद के घर मुंब्रा में पहुंचने के बाद साजीश को अंजाम देनेवाले और चार पाकिस्तानी बंदे आये और वो सब २-३ घंटे रुकने के बाद बस से बम्बई के बाहर चले गये।

1074. After going through the complete confessional statement of A.4, it will be revealed that the first few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. Then he narrates how he came in contact with A.3 - Faisal, and about his activities as a SIMI Activist. Then he speaks about how he came in contact with Riyaz Bhatkal, a member of Jaish-e-Mohammad group. In the last and highlighted portion, he disclosed the planning about the bomb blast to be carried out in the local trains, and the survey made by him along with the accused Faisal, Tanveer, Zameer, Muzzammil and Suhail to finalise the targets. He further speaks about the preparation of the bombs and the supervision he made during the said process of preparation of bombs. He then states about the keeping of bomb bags in the train from Churchgate to Virar at 17:15 hrs. Thus, the highlighted portion of the statement is relevant.

The True Translation Of The Highlighted Portion

"After Faisal returned from Pakistan after training, he was always in touch with Lashkar-e-Taiba commander Azam Cheema. He used to tell me about this whenever he met me. In May 2006, Azam Cheema sent some Pakistani people to India. Among them, Kamal Ahmed Mohammad Vakil Ansari of Bihar brought two people via Nepal border. Their names were given as Aslam and Hafiz Ullah. Faisal told me that Kamal had returned from Pakistan after training from Lashkar-e-Taiba's training camp. I came to know from Faisal that Majeed had sent two Pakistani men to India from Bangladesh. 6 Pakistani prisoners were brought from Dhaka border. Their names were given as Sabir, Abu Bakar, Kasam Ali, Ammujaan, Abu Hasan and Ehsan Ullah. While coming from Pakistan, Ehsan Ullah had brought 15 kg of RDX with him. Some other Pakistani prisoners came from Kutch border.

A message to find a target was received from Azam Cheema. Faizal discussed this with Asif Khan alias Junaid of Jalgaon. And he used to take orders from Junaid about further action. On the instructions of Azam Cheema, Faizal started to find targets in Bombay. Faizal had told that he was asked to take stock of the targets like World Trade Center, Stock Exchange, Mahalaxmi Temple, Siddhi Vinayak Temple, some big malls, local railway stations etc. After visiting Bombay, Faizal, Zameer and Sohail found that it is easy to target railway trains. Because the security arrangements were good at other places. I along with Naved from Hyderabad, Mohammad Ali from Govandi, Junaid from Jalgaon, Sajid from Mira Road, Zameer, Sohail Sheikh and Dr. Tanveer were constantly in contact with Faizal.

Faisal had told me that Azam Cheema had decided to bomb 7 trains on the Western Line of Bombay during the evening rush hour. After that, I, along with Faisal, Tanveer, Zameer, Muzzamil and Sohail, travelled in local trains from Churchgate to Virar and analyzed the situation. Sometimes we would also go to his house. Faisal told me that it was decided to plant the bombs on 11th July, 2006.

When the planning of making the bomb was done, it was decided to make the bomb at Mohammad Ali's house in Govandi. The bomb making work was done at Mohammad Ali's house in Govandi on 8th, 9th and 10th July. The bomb making work was done by Sohail Sheikh from Pakistan, Sajid Ansari from Mira Road and a Pakistani man. While making the bomb, things like RDX, ammonium nitrate, diesel, 9 watt battery and quartz watch etc. were used. Asif Khan alias Junaid from Jalgaon, Ammujan from Pakistan, Parvez etc. were also present there. I used to supervise the entire operation of making the bomb. Dr. Tanveer was also present while making the bomb. And he was monitoring the security outside. I supervised the bomb making process. After making the bombs, they were kept in 7 bags. And those 7 bags were brought to Faisal's house in Bandra on the evening of July 10, 2006.

Faizal asked me to come the next day in the afternoon. He had asked me not to bring my mobile phone with me. As per his instructions, I reached Faizal's house on 11th July 2006 at around 3:30 in the afternoon. There were 10-12 other people present there. Faizal gave me one bag which was having a bomb. At that time I was accompanied by another man. I know him by the name of Ammujan and he is a Pakistani man. He was told to be a Pakistani. After that Faizal asked us to take a taxi and go to Churchgate Railway Station. And that bomb bag was with us. He had given the instruction to keep the bag on the luggage rack of the first class bogie of the Virar fast which was about to leave from the churchgate station at about 17:15 hours. Upon his Instructions me and Ammujaan who came from Pakistan took a Taxi and went to churchgate railway station and bought two tickets for first class compartment of the fast train going to Virar. At the same time a fast local train going to virar was halted on platform no. 3, churchgate and was about to leave at 17:19 hours. I and Ammujaan boarded

the first class compartment by taking the black bag in which the bomb was kept. I kept the black bag on the luggage rack of the first class compartment. After that we stood in the same compartment and got down at Dadar Railway Station as per the plan. After getting down from the train we took a taxi and went to Abdul Wahid's house in Mumbra. After reaching Abdul Wahid's house in Mumbra four more Pakistani men came who were involved to execute the conspiracy and stayed for 2-3 hours and boarded the buses to get out of Mumbai."

Conclusion

1075. The law says that if a full and detailed confession is made in circumstances which make it unlikely that it was a result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Babaji Chavan (supra)*).

1076. In light of the above referred well settled law position, when we appreciated the relevant portion of the confessional statement of A.4, we are of the opinion that this retracted confessional statement does not fall in the category of a 'full and detailed confession', and therefore, creates doubt about its truthfulness, for the reasons discussed hereunder.

1077. As per A.4, he was a part of the planning for carrying out the bomb blasts. According to him, when the planning of making the bombs was done, it was decided to make the bombs at A.6's house. He, like A.3, has not given the explanation why A.6's house was chosen for making the bombs, particularly when A.6's house was in crowded area and the bombs were to be taken to and distributed from A.3's house.

1078. Though A.4 refers to preparing of plannings, no details of such plannings are given.

1079. He refers to material of bomb namely, RDX, Ammonium Nitrate, Diesel, 9 volts battery, and Quartz watch, but he is silent about pressure cooker used for packing the bombs.

1080. He refers to procurement of material, however, he did not give the details from where such material was procured and who procured the same and when.

1081. He states that the bombs were prepared on 8th, 9th, and 10th July, but no details are given about the type of bombs, or the type of triggering devices used, or the time set, if it was a time bomb.

1082. He states that A.3 – Faisal asked him to take a taxi and go to Churchgate and plant the bomb in 5:15pm Virar fast train. However, he has not disclosed from where he hired the taxi and how he traveled from the house of A.3 to the point of taxi.

1083. Furthermore, though he was involved in the planning, he did not refer to the details of the seven trains in which they decided to carry out the bomb blasts.

1084. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.5 – Mohd. Majid

1085. A.5 – Mohd. Majid was arrested on 29/09/2006 in Cr. No. 156/2006 in Borivali Railway Police Station. He was in police custody for 26 days before recording of his confessional statement. According to

him, his confessional statement is the outcome of and the result of torture inflicted on him.

1086. The record shows that the last application moved by the prosecution for seeking remand was on 13/10/2006 in MCOC Cr. No. 05/2006. In this application, it was the case of the prosecution that “It becomes incumbent for investigation agency to go to the root of the matter and to nab all the persons responsible for this crime, including persons from Pakistan as also the local associates, members and abettors, who are involved in the commission of this organised crime and the acts preparatory to the commission of this offence. Investigation is in progress, still many other aspects are to be verified, therefore, the custody of the accused persons is required.”

1087. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1088. The confessional statement of A.5 was recorded on 24/10/2006 (Part-I) and 25/10/2006 (Part-II). The prosecution could not bring on record the reason for giving confessional statement by A.5 after prolong custody of 26 days of his police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1089. According to A.5, it was because of torture and therefore, he immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.5 - Mohd. Majid

मेरा नाम मोहम्मद माजीद मोहम्मद शफी अन्सारी है। मेरी उम्र २८ साल है। मैं ७/३, डॉ. एम.एन. चटर्जी सरानी, राजा बाझार, कोलकत्ता-९ यहा पर राजा फुटवेअर और न्यू स्टार फुटवेअर नाम के जुते की दुकान चलाता हूँ। जुते के दुकान के अलावा पिछले दो साल से मैं चश्मे का बिज़नेस पार्टनरशिप में करता हूँ। इस बिज़नेस मे मेरा पार्टनर मेरे बचपनका दोस्त महमद शकिल महमद मेहबुब है। मैं १७/२, एच/६, कॅनलवेस्ट रोड, नार्कल डांगा पोलीस स्टेशन के नजदीक कोलकत्ता-९ यहा मेरी बीबी फरझाना और मेरी एक महिने की छोटी बेटी, माँ मुस्तरी बेगम महमद शफी और मेरे छह भाईयो के साथ रहता हूँ। मुझे चार बहने है और उनकी शादीया हो चुकी है। वे उनके पती के साथ रहती है।

मेरे पिता मोहंमद शफी सन १९८९ में गुजर गये। मेरे पिता का चप्पल और जुतों की दुकान अभी हमसब भाई मिलकर चलाते है और उसमे से मिली कमाई पर हमारा गुजारा होता है। जुन २००५ मे मैने प्रेम विवाह किया। मेरी पत्नि फरझाना माजिद अभी भी पढ़ रही है। मेरे ससुर पेशे से वकील है।

मेरा जन्म ०९/०३/१९७९ को कोलकाता में हुआ है। मैंने कक्षा पहली से पाँचवी कक्षा तक, मोहम्मद जान हायर सेकेंडरी हायस्कूल, कोलुटोला, कलकत्ता-७३ इस स्कूल में पढ़ाई पुरी की। उसके बाद मैं इनसानी बोर्डिंग स्कूल, बिहार में एक साल तक छटी कक्षा में पढ़ा। फिर मैंने सातवी कक्षा से नवी कक्षा तक मोहम्मद जान हायर सेकेंडरी हायस्कूल, कोलुटोला, कलकत्ता-७३ में पढ़ाई पुरी की। मेरा पढ़ाई में दिल नहीं लगता था। मैं पिता और भाई के जेब से पैसे भी चुराया करता था। और सिनेमा देखा करता था। मैंने सन १९९८ से पढ़ाई छोड़ दी और मैं और मेरे पिता के राजा फुटवेअर व न्युस्टार फुटवेअर इस दुकान पर मेरे भाईयो के साथ काम देखता हूँ।

मेरी सौतेली बुआ सोनी (पुरा नाम मालुम नहीं) ढाका, बांग्लादेश में रहती है। उन्हें एक लडका मोहम्मद आशिफ और उसकी उम्र २४ साल है। उनके पती का सायकल पार्ट बनाने का कारखाना बांग्लादेश में है। उसका लडका मोहमद आशिफ मेरे सौतेले चाचा मोहम्मद अस्लम को मिलने को कोलकत्ता के लिए आता जाता रहता है। वो कोलकत्ता आने पर हम साथ मे घुमा-फिरा करते थे। सभी खर्चा मोहमद आसिफ खुद करता था।

२००१ मैं और मेरे कोलकत्ता के दोस्त महम्मद शकील, मोहम्मद नूर आलम, महम्मद खुर्शिद, महम्मद मैफुज आदम, मोहम्मद फैसल, मोहम्मद फिरोज इनके साथ बम्बई घुमने आया था। और दिसंबर २००१ मे मेरा बांग्लादेश में रहनेवाला सौतेला भाई आसिफ और उसके दोस्त मोहसीन, पप्पू, ताज और एक लडका (जिसका नाम अभी मुझे याद नहीं) इनके साथ आया था। तब उनके साथ छ दिन के लिये दार्जिलींग भी घुमने गया था। और उसका पुरा खर्चा उन्ही लोंग ने किया था।

दिसंबर २००३ में मेरा बांग्लादेश में रहने वाला सौतेला भाई आसिफ उसके माता पिता के साथ उसके मामु अज़गर के शादी के लिये कोलकाता आया था। उस वक्त वे सब दस दिन कोलकत्ता ठहरे थे। उस वक्त आसीफ के साथ उसके बांग्लादेश में रहनेवाले दोस्त सामी, ताज, मोहसीन, पप्पू, तुषार ये लोग भी कोलकत्ता आये हुए थे। वे अजगर के ३ बी, गॅस स्ट्रीट इस पते पर ठहरे थे। अजगर की शादी के दुसरे दिन रिसेप्शन था। उसी दिन हम सब पहले बम्बई और वहाँ से गोवा घुमने गये। बम्बई मे हम भेंडी बाजार के एक हॉटेल में रुके थे। उस वक्त आसीफ के पास मोबाईल नंबर ९८३०७६२१७२ था।

२००३ में मेरे पास रिलायन्स कंपनी का मोबाईल फोन नंबर ९३३१९८६३५६ था। लेकिन उसका बील न भरने की वजह से वो बंद हो गया। उसके बाद आसीफ ने उसके खुद के लिए

लिया मोबाईल फोन क्र. ९८३०७६२१७२, मैंने इस्तेमाल किया था। इस नंबर पर मुझे आसीफ फोन किया करता था। बाद में यह फोन मैंने फेक दिया।

फरवरी २००६ के दरम्यान मुझे मेरे मोबाईल नं. ९८३०७६२१७२ पर आसीफने फोन करके बताया की उसका एक दोस्त सामी कुछ अर्जेंट काम से बांग्लादेश जाना चाहता है। लेकिन उसका बांग्लादेश का पासपोर्ट खत्म हुआ है। इसलिए उसे बांग्लादेश बॉर्डर पार कराने में उसकी मदद करो। इस बात के लिये मैंने उसे हा कहा था। बाद में सामी ने मुझे फोनकर सियालदा स्टेशन पर बुलाया। मैं उसे वहाँ जाकर मिला। बातचीत और लहजे से सामी हिन्दुस्तानी लगता था। बाद में हम दोनों ने बोनगांव स्टेशन जाने के लिये ट्रेन पकड़ी। इस समय सब खर्चा सामी ने किया। दो घंटे बाद हम बोनगांव स्टेशन पहुँचे। वहाँ पहुँचने पर कल्लु नामक आदमी ने मेरे मोबाईल पर मुझे फोन किया। बाद में मुझे पता चला की कल्लु को मेरा मोबाईल नंबर आसीफ ने दिया था। कल्लु ने हमें बोनगांव बाजार में बुलाया। हम रिश्ता पकड़कर बोनगांव बाजार पहुँचे, वहाँ हमें कल्लु मिला। मैंने कल्लु से सामी को मिलवाया। और सामी को बॉर्डर पार करने के लिये कल्लु के हवाले कर दिया और मैं कोलकत्ता वापीस चला आया। इस काम के लिये सामी ने मुझे ३०००/- रुपये दिये और कल्लु को भी कुछ रुपये दिये।

इसके १५-२० दिनों के बाद मुझे आसीफने मेरे मोबाईल पर फोन करके बताया की सामी बिना कोई दिक्कत के बांग्लादेश में अपने जगहपर पहुँच गया है। उसी वक्त आसीफ ने मुझसे ये भी गुजारीश की की उसके और दो दोस्त बांग्लादेश जाना चाहते हैं और उन्हें भी इंडीया की बॉर्डर क्रॉस करने में मदद करो। उसी दौरान सामी का भी मुझे फोन आया और उसने भी आसीफ के उन दो दोस्तों को बॉर्डर पार करने में मदद करो ऐसी रिक्वेस्ट करके तुम्हें पैसा मिलेगा ऐसा कहा, मैं इस काम के लिये तैयार हो गया।

फरवरी २००६ को आखरी हप्ते में शाम को मुझे मेरे मोबाईल पर सियालदा रेल्वे स्टेशन से फोन आया। फोन करनेवाली व्यक्तीने आसीफ का रेफरन्स दिया और मुझे सियालदा रेल्वे स्टेशन पर बुलाया। वहाँ पहुँचने बाद मैंने देखा की, दो लोग मेरे इंतजार में खड़े थे। उनमें से एक ने अपना नाम बाबर बताया और दुसरे का नाम मुझे अभी याद नहीं। हम तिनो मिलकर सियालदा से बोनगांव के लिए रेल्वे पकड़ी। मैंने पहले से ही रिटर्न टिकट ले रखी थी। किसी को शक न हो इसलिये सफर में हम अलग अलग बैठे। बोनगांव स्टेशन पर उतरकर हमने खाना खाया। कुछ समय बाद आसिफ का मेरे मोबाईल पर फोन आया और उसने मुझे बोनगांव स्टेशन पर रुकने के लिये कहा। मुझे और भी किसीका फोन आयेगा, ऐसा भी उसने कहा। उसके कुछ ही देर के बाद मुझे एक आदमी का फोन आया, उसका नाम अभी मुझे याद नहीं। उसने हमें बोनगांव चौक में बुलाया। हम बोनगांव चौक जाकर उसे मिले। वहाँपर मैंने बाबर और उसके दोस्त को उस आदमी के हवाले कर दिया। उस आदमी ने मुझे ५०००/- रुपये दिए। और मैं कोलकत्ता घर वापस आया।

उसके कुछ दिन बाद मेरा सौतेला भाई आसिफ कोलकत्ता आया और मुझे मिला। उसवक्त आसीफ ने मुझे बताया की हिंदुस्तान मुसलमानों के उपर जुल्म बेहद बढ़ गये हैं। बाबरी मस्जिद के बारें में भी वहाँ की सियासत ने कुछ कारवाई नहीं की। गुजरात में फसादों के दौरान मुस्लीम लोगों पर अत्याचार हुये। लेकिन हुकमत ने इस अत्याचार के जिम्मेदार लोगों पर कोई कारवाई नहीं की। इसलिए हिन्दुस्तान में जिहाद करना बहुत जरूरी है। आसिफ की यह बात मुझे जच गई, और मैं इस नेक काम के लिए मदद करने के लिए मैं तैयार हूँ ऐसा कहा। इस बात पर आसिफ ने कहा की यह लष्कर-ए-तोयबा के कमांडर आझम चिमा और उसका नुमाईदा अब्दुल रज्जाक के कॉन्टैक्ट में हैं। आसिफ ने आगे ये भी बताया की कुछ ही दिनों बाद आझम चिमा बांगला देश बॉर्डर से हिंदुस्तान में कोई बड़ी वारदात करने के लिए कुछ पाकीस्तानी बंदे भेजने वाला है। आसिफ से मुझे ये भी पता चला की आझम चिमा के इशारों

पर बम्बई के कुछ लोग उसपर काम कर रहे हैं। उनमें से आसिफ खान उर्फ जुनेद और फैजल शेख ये दोनों मेन को ऑर्डिनेटर है ऐसा मुझे पता चला। आझम चिमा के कहने पर मैं बम्बई में फैजल शेख और आसिफ खान के कॉन्टैक्ट में रहता था।

मई २००६ में मुझे वो दोनों से पता चला की बम्बई के लोकल ट्रेनों में बम धमाके करने का टारगेट तय हुआ है। मुझपर आझम चिमा ने पाकिस्तान से भेजे हुए छ बंदों को बांग्लादेश बॉर्डर से हिंदुस्तान में लाकर बम्बई में आसीफ खान उर्फ जुनेद और फैजल शेख के हवाले करने की जिम्मेदारी सौंपी गयी थी। मुझे उस वक्त मोबाईल फोन साथ में नहीं लाने की हिदायत दी गयी थी। इस काम के लिए मुझे कल्लू की जरूरत पड़ेगी। इसलिये मैंने उससे भी कॉन्टैक्ट करके रखा था। और मैंने मेरे चश्मे के दुकान का पार्टनर महमद शकील महमद मेहबुब इसको ही जरूरत पड़ने पर मदद करने के लिए कहा था। तय किये मुताबिक मई २००६ के दूसरे या तिसरे हप्ते में कल्लू ने मुझे बताया की वह बोनगाव बॉर्डर तक बांग्लादेश बॉर्डर क्रॉस करके छह पाकिस्तानी बंदों को बोनगाव मार्केट में लानेवाला है। उसने मुझे बताया की यह लोग आझम चिमा के कहने पर भेजे जा रहे हैं। और उसको बम्बई ले जाकर छोड़ना है। इस पाकिस्तानी बंदों को लाने के लिए मुझे बोनगाव जाना था। इसलिए मैंने महमद शकील को मेरे साथ आने को कहा और मेरे साथ आने के लिए वह तैयार हुआ। दूसरे दिन मैं और महमद शकील रेल्वे से बोनगाव गये। वहाँ से टैक्सी करके हम बोनगाव मार्केट में गये। वहा पर कुछ देर के बाद कल्लू छ पाकिस्तानी बंदों को लेकर आया। उसने नाम मुझे साबीर, अबुबकर, कासम अली, अम्मुजान, अबु हसन और एहसान उल्ला ऐसे बताये गये। उन लोगों के पास उनकी अपनी बँग थी और एहसान उल्ला के पास अलग सी बड़ी सी सुटकेस नुमा बँग थी। एहसान उल्ला ने उस बड़ी बँग से अंदर आरडीएक्स होने की बात कही और उसे सावधानी से बम्बई ले जाना है ऐसे कहा। उसके बाद हम रेल्वे से कोलकत्ता पहुँचे। कोलकत्ता पहुँचने के बाद महमद शकील उसके घर चला गया। उस रात आये हुए पाकिस्तानी बंदों मेरे घरपर रुके। दूसरे दिन मैं और छह पाकिस्तानी बंदों रेल्वे से बम्बई पहुँचे। तय हुये मुताबिक आसिफ खान उर्फ जुनेद को मिरा रोड जाकर मिले। वहा पर उसने हमें एक जगह पे लेके गया। पुछने पर पता चला की उस जगह पर पहले सिमी का ऑफिस था। मैं वहा एक रात रुका और दूसरे दिन वापस कोलकत्ता चला गया। बम्बई से निकलते वक्त आसिफ खान उर्फ जुनेद ने मुझे कोलकत्ता से संपर्क में रहने के लिए कहा था।

जुलाई २००६ के पहले हप्ते बम्बई से मेसेज आया की १० जुलाई २००६ को मुझे किसी भी हालत में बम्बई पहुँचना है। उस मुताबिक मैं १० जुलाई २००६ को बम्बई पहुँच गया। मुझे आसिफ खान उर्फ जुनेद ने रिसिक्व किया और मुझे बम्बई के बाहर मुंब्रा एरिया में वाहीद अली नाम के दूसरे एक सिमी के बंदों के घर लेकर गया और मुझे वही रुके रहने की हिदायत दी और कहा कल बम धमाकों के बाद मैंने जिन पाकिस्तानी बंदों को बांग्लादेश बॉर्डर क्रॉस करके हिंदुस्तान में लाया था उन्ही बंदों को उसी रास्ते से वापस बांग्लादेश पहुँचाना है। कहे मुताबिक ११ जुलाई २००६ को देर रात के वक्त मुझे पाकिस्तानी बंदों मुंब्रा में वाहीद अली के घर आये। उन बंदों में से एक पाकिस्तानी बंदों को एहतेथ्याम नाम का सिमी का नुमाईदा लेकर आया उन पाकिस्तानी बंदों को मैंने बस से पहले गुजरात लेकर गया और वहा से ट्रेन से कोलकत्ता पहुँचा। पहुँचने के बाद कल्लू के जरिये मैंने उन छह पाकिस्तानी बंदों को इंडीया की बॉर्डर क्रॉस करके बांगला देश पहुँचा दिया।

२८ सप्टेंबर २००६ को बम्बई पुलिसने मुझे कोलकत्तासे हिरासतमें ले लिया और बम्बईमें लाकर मुझे गिरफ्तार किया।

1090. First few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. In the middle portion of the statement, he speaks about his connection with Asif and the help he extended to his friends to cross the Bangladesh border with the help of one person named Kallu. Then he narrates about the six Pakistani persons to whom he helped to cross the Bangladesh border and bring them to India for execution of a plan drawn by Azam Cheema relating to the bomb blasts in local trains. Accordingly, he helped wanted accused Sabir, Abu Bakr, Kasam Ali, Ammu Jaan, Abu Hasan & Ehsanullah to cross the Bangladesh border and enter into India. And, in the last highlighted portion, he narrates the story about how he helped those six persons to reach Mumbai to carry out the plan of bomb blasts. The highlighted portion of the statement is the portion which is relevant.

The True Translation of the Highlighted Portion

“A few days after that, my stepbrother Asif came to Kolkata and met me. At that time, Asif told me that atrocities on Muslims in India have increased a lot. The government there did not take any action regarding Babri Masjid. During the riots in Gujarat, Muslims were tortured. But the government did not take any action against the people responsible for this atrocity. Therefore, it is very important to do Jihad in India. I liked Asif's words and said that I am ready to help in this noble cause. On this, Asif said that he is in contact with Lashkar-e-Taiba's commander Azam Cheema and his representative Abdul Razzaq. Asif further told that after a few days, Azam Cheema is going to send some Pakistani people from the Bangladesh border to commit a big crime in India. I also came to know from Asif that some people from Bombay are working on Azam Chima's instructions. I came to know that Asif Khan alias Junaid and Faizal Sheikh are his coordinator. On Azam Chima's instructions, I used to stay in contact with Faizal Sheikh and Asif Khan in Bombay.

In May 2006, I came to know from both of them that a target had been set to carry out bomb blasts in the local trains of Bombay. I was given the responsibility of bringing the six men sent by Azam Cheema from Pakistan from Bangladesh border to India and handing them over to Asif Khan alias Junaid and Faizal Sheikh in Bombay. I was instructed not to bring

a mobile phone with me at that time. I would need Kallu for this work. That is why I had kept him in touch as well. And I had asked my spectacles shop partner Mohammad Shakeel Mohammad Mehboob to help me whenever needed. As decided, in the second or third week of May 2006, Kallu told me that he was going to cross the Bangladesh border till Bongaon border and bring six Pakistani men to Bongaon market. He told me that these people were being sent on the instructions of Azam Chima. And they have to be taken to Bombay and dropped there. I had to go to Bongaon to bring these Pakistani men. So I asked Mohammad Shakeel to come with me and he agreed to come with me. The next day Mohammad Shakeel and I went to Bongaon by train. From there we took a taxi and went to Bongaon market. After some time Kallu brought six Pakistani men there. He told me their names were Sabir, Abubakar, Kasam Ali, Ammujan, Abu Hasan and Ehsan Ullah. Those people had their own bags and Ehsan Ullah had a separate big suitcase like bag. Ehsanullah said that there was RDX inside that big bag and said that it has to be taken to Bombay carefully. After that we reached Kolkata by train. After reaching Kolkata Mohammad Shakeel went to his house. The Pakistanis who came that night stayed at my house. The next day I and six other Pakistanis reached Bombay by train. As decided, we met Asif Khan alias Junaid at Mira Road. From there he took us to a place. On asking, we came to know that SIMI had an office at that place earlier. I stayed there for a night and went back to Kolkata the next day. While leaving Bombay, Asif Khan alias Junaid had asked me to stay in touch with him from Kolkata.

In the first week of July 2006, I received a message from Bombay that I had to reach Bombay at any cost on 10 July 2006. Accordingly, I reached Bombay on 10 July 2006. Asif Khan alias Junaid received me and took me to the house of another SIMI man named Waheed Ali in Mumbra area outside Bombay and instructed me to stay there and said that the Pakistani persons whom I had brought to India after, those same men have to be taken back to Bangladesh by the same route after the bomb blasts by crossing the Bangladesh border. As instructed, on 11 July 2006, late at night, Pakistani men came to Waheed Ali's house in Mumbra. One of those Pakistani men was brought by a SIMI representative named Ehtesham. I took these Pakistani men to Gujarat first by bus and from there reached Kolkata by train. After reaching there, with the help of Kallu, I helped those six Pakistani guys cross the Indian border and send them to Bangladesh.”

Conclusion

1091. The law says that if a full and detailed confession is made in circumstances which make it unlikely that it was a result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Babaji Chavan (supra)*).

1092. In light of the above referred well settled law position, when we considered the relevant portion of the confessional statement of A.5 relating to the bomb blasts, we found that this retracted confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1093. We find that many questions are not answered by A.5 to say that the confessional statement of A.5 is complete and could be held truthful.

1094. A.5 states that he helped six Pakistani persons to cross the Bangladesh Border. He states the names of all the persons, however, does not mention the date on which the Pakistanis arrived in India and other details of their journey till Mira Road.

1095. He is silent about the description of all the six Pakistanis and their information like from which they belong to in Pakistan, or other information like whether they were trained in the terrorist camps, etc.

1096. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.6 Mohd. Ali

1097. A.6 – Mohd. Ali was arrested on 29/09/2006 in Cr. No. 156/2006 in Borivali Railway Police Station. He was in police custody for 26 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1098. The record shows that the last application seeking remand of A.6 was moved by the prosecution on 13/10/2006 in MCOC Cr. No. 05/2006. In this application, it was the case of the prosecution that “It becomes incumbent for investigation agency to go to the root of the matter and to nab all the persons responsible for this crime, including persons from Pakistan as also the local associates, members and abettors, who are involved in the commission of this organised crime and the acts preparatory to the commission of this offence. Investigation is in progress, still many other aspects are to be verified, therefore, the custody of the accused persons is required.”

1099. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1100. The confessional statement of A.6 was recorded on 24/10/2006 (Part-I) and 25/10/2006 (Part-II).

1101. The prosecution could not bring on record the reason for giving confessional statement by A.6 after a prolonged custody of 26 days of his police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1102. According to A.6, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.6 - Shaikh Mohd. Ali Alam Shaikh

मेरा नाम शेख महमंद अली आलम शेख है। उम्र ३७ साल है। मुझे अजीज नाम से भी लोग जानते हैं। मैं युनानी दवा बेचता हूँ। मेरा पता ३३ टी-२, शिवाजी नगर, गोवंडी, मुंबई है। यहाँ मैं २५ सालसे बिबी सैदुनिसा और ४ बच्चोंके साथ रहता हूँ। मेरे २ भाई भी मेरे साथ रहते हैं। पिता शेख आलम शेख (७० साल) गांव सुलतानपूर (युपी) में रहते हैं।

हमारे परिवार की हालत खराब होने की वजह से मैंने पढाई छोड़ दी। १९८६ में मेरी शादी हुई। पहले मैं आबुदा अर्बन क्रेडीट को. ऑप. सोसायटी में कलेक्शन एजेंट का काम करता था।

सितंबर १९९१ में चिता कॅम्प, मानखुर्द, के अब्दुल काझी, जमीउल हसन नुरुल्लाह मुझे सिमी कार्यक्रम के लिए बांद्रा ले गए। बाद में मैं उनके साथ सिमी के कुर्ला दफ्तर में जाता था। १९९३ में मैं सिमी का मॅबर बना। तबसे मैं सिमी के दफ्तर में बार-बार जाने लगा। वहाँ मैं मस्जिदके बाहर सिमीके बाकी मॅबर्स के साथ कुराण और सिमी के बारे में भाषण और तक्रारे सुनता था।

१९९४ में मैं यवतमाल जिले में सिमी संघटन कार्यक्रम के लिए अब्दुल हमीद कोंकणी और इसरत के साथ ३ दिन के लिए गया था। इस कार्यक्रम को १०,००० से १२,००० कार्यकर्ता थे। उस वक्त सिमी के ऑल इंडीया सेक्रेटरी अश्रफ जाफरी हाजीर थे।

नवंबर १९९९ में औरंगाबाद में सिमी के कार्यक्रम के लिए मैं, अब्दुल हमीद चौगुले, फारुख, सईद और ५-६ लोग गये थे। यह भी ३ दिन का था।

जुलै २००० में जलगाँव में भी सिमी कार्यक्रम था। वहाँ भी हम सब गए थे। वहाँ मेरी पहचान जलगाँव के आसिफ खान बशीर खान से हुई। वहाँ ३ दिन के कार्यक्रम में जिहाद के बारे में बताया गया।

सिमी में ३० साल उम्र के बाद मॅबर को रिटायर किया जाता है। मैं डिसेंबर २००० में सिमी से रिटायर हुआ।

उसके ५/६ महिने बाद मैं सिमी के अंजुमन इस्लाम हायस्कूल, मुंबई के कार्यक्रम को गया था। वहाँ प्रमुख अतिथी शाहिद बदर फलाही हाजीर थे।

सितंबर २००१ में सिमी पर बंदी के बाद बाकी सिमी कार्यकर्ताओं को गिरफ्तार किया। पर मैं रियाटर्ड हुआ था। इसलिए मैं बच गया।

सिमी का एक नुमाईदा रियाज भटकल मुझे कुर्ला पाईप रोड वाली मशिद के पास हमेशा मिलता था। २००१ साल में आबुदा अर्बन क्रेडीट को-ऑप सोसायटी बंद हुई, और मैं बेकार हो गया। उस वक्त मैं रियाज भटकल को "अगर कोई २५ से ३० लाख रुपये की मदद मुझे करता है, तो मेरी बैंक फीर शुरू हो सकती है" बोला था। उसने मुझे अँड. शाहिद आझमी को मिलने को कहा। अँड. शाहिद आझमी को मिलने के बाद उसने मेरी मुलाकात झहीर से करवाई। झहीर का असली नाम आसीफ रझा था। जब मैंने बैंक शुरू करने के लिए फायनान्स मांगा, तो उसने खारीज किया और बोला की, अगर मैं ईस्लाम के लिए कुछ करूँगा तो वो मुझे मदद करेगा। मैंने हाँ बोलने से उसने मुझे रियाज भटकल के संपर्क में रहने को कहाँ। एक महिना बाद रियाज और झहीर मुझे कुर्ला के कल्पना हॉटेलमें मिले। उन्होंने फिर पुछने के बाद मैंने ईस्लाम के लिए कुछ भी कर सकता हूँ। ऐसा मैंने बताया। उस दौरान मैंने दुध बेचनेका काम शुरू किया।

मार्च २००२ में रियाज़ भटकल ने मुझे रु. ५०००/- दिये और हर महिना रु. ५०००/- दूंगा, ऐसा कहा. जुन-जुलाई २००२ में मैंने फिर रियाज़ को संपर्क किया. उस दौरान मैंने शिवाजीनगर, गोंवंडी में रहनेवाले मुशीर उददीन सिध्दीकी को जिहाद के बारे में सिखाकर उसको तैयार किया. उस दौरान मेरी मालेगांव के मुनवर से पहचान हुई.

मैं ऑक्टोबर - २००२ में उसके साथ मालेगांव गया था। वहाँ मेरी शब्बीर, जाहिर, राजू इनसे पहचान हो गयी। मैंने उन्हें तेहरीक के बारे में बताकर, शब्बीर को जिहाद के लिये मुंबई के बाहर जाना पड़ेगा, ऐसा कहा. और उसका पासपोर्ट बनाने के लिये बंबई आया. एक महिना बाद मैंने मुशीर को रु. १०,०००/- देकर मालेगांव भेजा. मुशीर ने वहाँ से शब्बीर की पहचान से मुझे एक कट्टा लाकर दिया. रियाज़ भटकल को कट्टा दिखाने के बाद उसने वो खराब है बताया। उस दरम्यान मैंने जलिल अन्सारी को जिहाद के बारे में बताकर, उसको पाकिस्तान को ट्रेनिंग के लिये तैयार किया. मुशीर अहले हदीस और संगणक की अच्छी जानकारी रखता है और ८-१० बार हिंदुस्तान के बाहर जाकर आया है, ऐसा बताया.

जानेवारी २००३ में रियाज़ ने मुझे और मुशीर को ट्रेनिंग के लिये जाना है ऐसा कहा. उस मुताबिक १.२.२००३ को मैं और मुशीर बंबई से दुबई गये। रियाज़ ने हमको रु. १०,००० दिये थे. दुबई में सुफी नाम के एक आदमी ने १६.०२.२००३ तक एक हॉटेल में रखा और बाद में विमान से कराची, पाकीस्तान भेजा. कराची में हमें एक दाढ़ीवाले आदमी ने रिसीव्ह किया और हमारी पासपोर्ट कब्जे में ले लिये. उसके बाद आँखों पर पट्टी बाँधकर एक गाड़ी से अंजान जगह पर ले गये. वहाँ हम १७.०२.२००३ को पहुँचे. गाड़ी से उतरकर देखा, तो वह पहाड़ी इलाका था, और एक तरफ समुंदर भी था। वहाँ हमने फायर आर्म्स, पिस्तौल, एके-४७, LMG आदि की ट्रेनिंग मिला. उस दौरान, बाबा गजाली, इस्तीयाक और ट्रेनिंग कैंप का चीफ मशर आरीफ हमें जिहाद के बारे में पढ़ाते थे. उस दरम्यान ट्रेनिंग में फौजी अफसर जैसे कपड़े वाले भी आते थे. उनकी चाल से वो फौजी अफसर लगते थे. कैंप के लोग उनकी बहुत इज्जत करते थे और उनको 'सर' या 'जनाब' करके बोलते थे. वो अफसर हमें फायरिंग के टिप्स भी देते थे. उनकी बातोंसे मुझे पता चला की वो पाकीस्तान की खुफिया एजन्सी आयएसआय ISI (Inter Service Intelligence) के अफसर है. हमारी ट्रेनिंग ११ दिन चली. कोर्स में हमने AK-47, पिस्तौल, हँड ग्रेनेड चलाना और बम बनाने की भी ट्रेनिंग ली. १२.०३.२००३ को हम कराची वापस आये. वहाँ से पासपोर्ट लेकर दुबई और वहाँ से काठमांडू आये. काठमांडू से नासिर नाम के आदमी की मदद से हम नेपाल बॉर्डर क्रॉस करके सुलतानपूर अमेठी आये. वहाँ से नासिर वापस नेपाल चला गया. और हम २१.०३.२००३ को बंबई आये। २ दिन बाद मुशीर भी बंबई आया.

जुलै २००३ में नफीज और शब्बीर काठमांडू से हिंदुस्तान आते वक्त नेपाल बॉर्डरपर पुलीसने उन्हें पकड़ा और उनका पासपोर्ट और रु. ४०,०००/- का खरीदा हुआ सामान निकालकर उन्हें हिंदुस्थान भेजा। १७.०७.२००३ को नफीज बम्बई आया और शब्बीर मालेगांव गया. मैंने रियाज़ भटकल को फोन करके नफीज और शब्बीर वापस आने की बात बता दी. और नफीज को बेंगलोर भेजनेके लिए जादा पैसे (रु. १,८५,०००/-) की मांग की. उसके बाद मैंने प्राईम एजन्सी, पायधूनी से रु. १,८५,०००/- हवाला से हासिल किया। शब्बीर को रु. ३०,००० दिये और नफीज को रु. १,५०,०००/- दिये। नफीज के साथ सईद नाम का आदमी था. सईदने बेंगलोर में रु. १,२५,०००/- डिपॉजिट भरकर नफीज के लिए एक कमरा किराए से लिया.

उस दौरान मुशीर चॉटींग के जरिए दुबई में सुफी से संपर्क में था. उस मुताबिक जुलै में मुशीर बांग्लादेश जाकर सुफी से मिला। मैं रियाज़ भटकल से और मुशीर सुफी के संपर्क में था. ऑगस्ट में मुशीर बांग्लादेश से वापस बम्बई आया। आने के बाद उसने बताया की बांग्लादेश

में सुफीसे बात हुई है। और बाकी कुछ लड़कों को जिहाद के ट्रेनिंग के लिए पाकीस्तान भेजना है। उसके बाद नफीज़ और सईद बैंगलोर गये। सईद कुछ दिनों के बाद बंबई वापस आया।

मैं पाकीस्तान से जिहादी तरबीयत हासील करने के बाद मार्च २००३ में बम्बई वापस आया। आने के बाद मैंने शब्बीर और नफीज़ को पाकीस्तान में ट्रेनिंग के लिए भेजा था। ये दोनों भी ट्रेनिंग करके जुलै २००३ में वापस आये। उसके बाद मैं और कुछ लोगों की खोज में था, जिनको ट्रेनिंग के लिए भेजा जा सकता है। इसलिए मैं पैसे के लिए रियाज भटकल के संपर्क में रहता था। लेकिन उस दरम्यान मेरी उसके साथ बातचीत / मुलाकात नहीं हो सकी। मैंने की हुई ट्रेनिंग का तेहरीक के लिए कुछ फायदा नहीं हो पा रहा था। और पैसों का भी इंतजाम नहीं हो पा रहा था। इस वजह से मैं परेशान था।

जनवरी २००४ में मैंने गोवंडी के घरसे दूध बेचने का धंदा शुरू किया। लेकिन ५-६ महिने के बाद भी कमाई नहीं हो रही थी। इसलिए मैंने दुध का धंदा बंद किया और युनानी दवा बेचने का काम शुरू किया। इसमें भी कुछ जादा कमाई नहीं हुई। उसी दौरान मैंने जिहाद के आगे के रास्ते ढूँढने के लिए रियाज भटकल का दोस्त आसीफ रज़ा को कॉन्टैक्ट करने की कोशिश की। लेकिन वो पोलीस की मुठभेड़ में मारा गया ऐसा पता चला। उसी दरम्यान मेरी तबीयत खराब हो गई और मेरा ध्यान धंदे से हट गया।

जुलै २००६ में मैं साबु सिध्दीकी हॉस्पिटल, डोंगरी में तिलीस्मी मोती बेचने का धंदा शुरू किया। यह मोती छोटे बच्चे के हाथ पर बाँधा जाता है, जिससे बच्चोंके दात निकलते समय तकलीफ नहीं होती। इस धंधेसे मेरा घर चलता था।

जनवरी २००६ में मैं साबु सिध्दीकी हॉस्पिटल, डोंगरी में मोती बेचने के लिये गया था। वहाँ मेरी मुलाकात डॉ. तन्वीर से हुई। वैसे मैं पहले से उनको सिमी कार्यकर्ता के रूपमें जानता था। उस वक्त डॉ. तन्वीर ने मेरी मुलाकात फैजल शेख से करवाई थी।

उसके १५-२० दिन बाद मैं फिर डॉ. तन्वीर के हॉस्पिटल में गया, तो वहाँ मुझे फैजल मिला। हम दोनो ने वहाँ खाना खाया। बातचित से मुझे पता चला की, फैजल भी सिमी का कार्यकर्ता है। हम दोनों की सोच एक जैसी थी। हमने जिहाद, इस्लाम के बारे में बातें की। उसके बाद हम नजदीक आ गए। फैजल जिहादी फिल्ड का आदमी था और मेरे अंदर भी जिहाद के लिए कुछ करने का जज्बा था। फैजल के जरिए तेहरीक और जिहाद के लिए कुछ करने का मोका मिलेगा, ऐसा मुझे विश्वास हुआ। फैजलने मुझे उसने पाकीस्तान में २ बार I.S.I. के जरीए लष्कर-ए-तोयबा से जिहादी तरबीयत हासील करने के बारे में भी बताया।

मैंने भी फैजल को सिमी के लिए मैंने अबतक जो भी काम किया, उसके बारेमें बताया। फैजल को मैंने रियाज भटकल के बारेमें पुछा। पर रियाज के बारेमें उसको कुछ पता नहीं, ऐसा कहा। फैजल ने मुझे बादमें उसको फुरसत से आकर मिरा-रोड मिलने को कहाँ। उसने मुझे मिरा रोड में एहतेशाम के दुकान पर आने को कहाँ था। एहतेशाम को मैं सिमी कार्यकर्ता होने के बारेमें जानता था। फैजल ने एहतेशाम के जरिए उससे कॉन्टैक्ट करने को कहाँ, लेकिन उसका खुद का मोबाईल नंबर नहीं दिया।

उसके बाद मार्च २००६ के दुसरे/तिसरे हफ्ते में मिरा रोड गया। शाम को मैं एहतेशाम के शहादा पब्लीशींग हाऊस, शम्स मस्जिदके बाजू में गया। वहाँ पर एहतेशाम, जलगाँव का आसीफ खान उर्फ जुनैद, डॉ. तन्वीर, फैजल शेख, और नावीद नाम का लडका मिले। नावीद को मैं वहा पहली बार मिला। फैजल ने मेरी उससे पहचान करवा दी। वह फैजल का दोस्त था और सिमी कार्यकर्ता भी था। वह हैद्राबाद में नौकरी करता था। हम लोग शम्स मस्जिद के कट्टे पे बैठकर बातचीत किया। बातचीत में मुझे पता चला की, फैजल का लष्कर-ए-तोयबा के कमांडर आझम चिमा से संपर्क है और फैजल शेख वेस्टर्न इंडिया का लष्कर-ए-तोयबा का

प्रमुख है। मैं भी तहरीकी और जिहादी सोच का होने की वजह से उन लोगों के साथ जल्दी ही घूलमील हो गया। मैंने भी उनको पाकिस्तान से रियाज भटकल के जरीए तरबीयत हासील की है ऐसा उनको बताया।

मार्च २००३ में मैं पाकिस्तान से वापस आया, लेकिन रियाज भटकल से मुलाकात ना होने की वजह से जिहाद के लिए कुछ नहीं कर सका ऐसा उनको बताया। तब फैजलने बताया, की फिकर करने की कोई बात नहीं, सिर्फ हमारे कांटेक्ट में रहो, तुम्हारी जरूरत पड़ेगी, ऐसा बताया। फैजल ने तब ये भी बताया, की हिंदूस्तान में, खास करके बम्बई मे बम धमाके की प्लानिंग चल रही है। उसने मुझे ऐतेशाम के संपर्क में रहने को बताया।

एप्रिल २००६ के पहले हप्ते में एक दिन ऐहतेशाम ने मुझे शाम के सात बजे बांद्रा वेस्ट के होटल लकी के पास बुलाया और वहाँ फैजल मिलेगा, और काम के बारे मे बोलेगा, ऐसा बताया। जब मैं लकी होटल के पास गया, तब थोड़ी देर में वहा फैजल, नावीद के साथ आया। हमने बाजू के होटल में चाय पी, और बांद्रा के तालाब के पास बातचीत करते बैठे। वहाँ से हम फैजल के बांद्रावाले घर पे गये। वहाँ पर ज़मीर, और पुना का सोहेल महमूद शेख ये लोग पहलेसे वहाँ थे। तब फैजलने हमे बताया की, गुजरात के दंगा फसाद में मुसलमानोंका भारी नुकसान हुआ है। इसीलिए बंबई के गुजराती लोगों को टारगेट करना है। काफी चर्चा के बाद मुझे फैजल ने जो लोकल ट्रेन का टारगेट बताया, वह सही लगा। वेस्टर्न लोकल के फर्स्ट क्लास डिब्बों में जादातर गुजराती लोग सफर करते हैं। शाम के वक्त बम धमाका करना ठिक होगा, क्योंकि उस वक्त लोकल ट्रेन खचाखच भरी होती है। ये सारी बातें फैजल ने पाकिस्तान के आझम चीमा को बता कर फायनल कर ली थी।

फैजल ने मुझे बताया की, आजम चीमा बम धमाको की, वारदात को फायनल अंजाम देने के लिए कुछ एक्सपर्ट पाकिस्तानी बंदो को इंडीया भेजने वाला है। उन पाकिस्तानी बन्दों के रहने का बंदोबस्त करने को कहा। मेरा घर छोटा होने की वजहसे मैंने इस काम के लिए ना कहा। फिर फैजलने मेरे घर में बम बनाने का काम करने को कहा और इसके लिये मैं तयार हो गया।

एप्रिल २००६ के आखरी हप्ते में शनिवार के दिन इशा नमाज के बाद रात के साडे आठ बजे, ऐहतेशाम, डॉ. तन्वीर, फैजल और नावीद मेरे घर आये। हम सबने मिल कर मेरे घर के चारों ओर घुम के मेरे घर का जायजा लिया।

मई २००६ के तिसरे हप्ते में मैं जोगेश्वरी वेस्ट रेल्वे स्टेशन के पास एक काम के लिए गया था। वहा मुझे साजीद अन्सारी दिखा। हमारी सलाम दुआ हुई। साजीद भी सिमी का मेंबर है, इसलिए मैं उसे जानता था। हम फिर बाजू के मस्जिद में नमाज पढने गये। वहा मुझे फैजल शेख मिला। उसने बताया की, धमाके की पुरी तयारी हुई है। मेरे अलावा इस काम को अंजाम देने के लिए साथ में फैजल, जलगाव का आसिफ खान उर्फ जुनेद (जो पहले महाराष्ट्र सिमी का अध्यक्ष भी था), हैद्राबाद का नाविद, मिरा रोड का साजीद अन्सारी, ऐतेशाम सिध्दीकी, जमिर महम्मद, डॉ. तन्वीर, और पुना का सोहेल मेहमूद शेख और फैजल का भाई मुझमिल शेख भी मदद कर रहे थे।

मुझे फैजल से पता चला की, आझम चीमा ने उसको जिहाद के लिए स्टॉक एक्सचेंज बिल्डींग, वर्ल्ड टेड सेंटर, बड़े शॉपींग मॉल्स, गुजरात दंगो के जिम्मेदार सियासती लोग और पुलिस अफसरों को और लोकल ट्रेनों को टारगेट किया जाए। ऐसा बताया था। फैजलने आगे कहा, की जब उसने कुछ साथियों के साथ सब जागहों का सर्वे किया और इन सबमें भीड से भरी लोकल ट्रेन ही सबसे सही टारगेट है ऐसा बताया। फैजल ने ये भी बताया की ११ जुलै २००६ तारीख के शाम को बम धमाका करने का फिक्स हुआ है। उसी मुताबीक पुरा प्लान

तयार किया जा रहा है। बम धमाके की पुरी प्लॉनिंग आसिफ खान उर्फ जुनेद और फैजलने पाकिस्तान के लष्कर-ए-तोयबा के कमांडर आझम चिमा के इशारों पर की है।

जुन २००६ मे एक दिन मैं मिरा-रोड गया था, तब मेरी मुलाकात फैजल से हुई। उसने मुझे बांद्रा वेस्ट के लकी हॉटेल के यहाँ आने के लिए बताया। उसके मुताबीक मैं वहाँ पहुँचा, तो फैजलने मुझे बताया की, जैसे तय हुआ था, वैसे पाकीस्तानी बंदे इंडिया में आए है, और जुलै के ८, ९, और १० तारीख को मेरे घर में बम बनाने का काम चलेगा। उस वक्त मेरा घर पुरी तरह खाली रखने के लिए कहा। इस लिए मैंने ७ जुलै को कुछ बहाना बनाकर मेरी और मेरी भाई की फॅमिली को मेरे रफिक नगर के रिश्तेदार के घर ५-६ दिन के लिये भेज दिया।

प्लॅन के मुताबीक ८ जुलै को शाम में फैजल, नावीद, साजीद अन्सारी और दो पाकिस्तानी बंदे मेरे घर में आये। उन पाकिस्तानी बंदो मे से एक का नाम सोहेल शेख था। यह साहेल शेख असल में पुना का रहने वाला हैं, और २ साल पाकिस्तान में लष्कर-ए-तोयबा के ट्रेनिंग कैम्प मे रह चुका है। अब वह पाकिस्तान में ही रहता है, और बम बनाने में एक्सपर्ट है। उस दिन रात देर तक, वो लोग मेरे घर में बम बनाने का काम करते रहे। ऐहतेशाम भी उस वक्त हाजीर था, और सबके खाने पिये का इंतजाम कर रहा था। तन्वीर भी मेरे घर के बाहर वाँच के लिए खड़ा था।

बम बनानेके लिए पाकीस्तानी दुसरा बंदा एहसान उल्ला ने उसके साथ १५ किलो RDX लाया था। वही RDX फैजल मेरे घर लेके आया था। बाकी का सामान जिसमें काले रंग के ८ रेक्झीन बैग, अमोनियम नाइट्रेट्स, डिटोनेटर्स, क्वार्टझ घडीयाँ आदी चीजे पहले से ही आसीफ खान उर्फ जुनेद ने लाकर मेरे घरमें रखी थी। साजीद अन्सारी को इलेक्ट्रीक सर्कीटका काम करना था। इसलिए उसने उसके साथ बॅटरी, वायर, सोल्डरिंग गन, सोल्डरिंग वायर, सर्कीट बोर्ड आदी चीजे को लेके आया था।

बम बनाने का काम ३ दिन तक चला। बम बनाने के लिए कुछ घरेलु बर्तन इस्तेमाल किये गये। पाकीस्तान में बसा सोहेल शेख और दुसरा पाकीस्तानी बंदा इन दोनों ने असले को मिक्स करके मसाला किया, और उसके बीच डिटोनेटर्स फिक्स कर दिया। उसके बाद साजीद ने सर्कीट और वायर जोडने का काम किया, जिसका उपयोग बम फटने के लिए होता है। इस तरह से १० जुलै के शाम तक मेरे घर में बम बनाने का काम पुरा हुआ। उसके बाद ७ बम अलग अलग काले रंग के बॅग में पैक किए गये। बम बनाने के लिये आसीफ उर्फ जुनेद ने जो सामान लाया था, उसमेंसे बचा हुआ सामान एक बॅग में भरकर वह अपने साथ ले गया। उसके थोडी देर बाद नावीद और फैजल मारुती कार से मेरे घर आये। फैजल को मैंने ७ बॅग मे बम पैक करके तैयार है ऐसा बताया। उन ७ बॅगोंमें से ३ बॅग मैंने एक टॅक्सी करके उसमे रखवायी, और बाकी ४ बॅगोंको नावीद और फैजलने मारुती कार में रख दी। उस वक्त फैजल ने मुझे पाकीस्तानी बंदा सोहेल शेख और दुसरा एक ये दोनो को टॅक्सी से बांद्रा जाने को कहा। उस मुताबीक मैं दोनो पाकीस्तानी बंदो को टॅक्सी में बिठाया और हम बमवाली बॅगों के साथ टॅक्सी से बांद्रा गये। नावीद और फैजल भी मारुती कार से बांद्रा गये। बांद्रा पहुँचने के बाद फैजल के बिल्डींग के निचे हमने टॅक्सी रुकाई और बमवाली तीनो बॅग निकाली। हमने किराया देकर टॅक्सी छोड दी। फैजल के कारसे भी बमवाली ४ बॅग निकाली गई। तब तक और पाकीस्तानी बंदे फैजल के घरसे निचे उत्तरे, और हम सबने मिलकर वो ७ बमवाली बॅग फैजल के घरमें रखवा दी। उसके बाद मे गोवंडी के अपने घर चला आया।

११.०७.२००६ को शाम को मुझे पता चला की, हम अपने मक्सद में कामयाब हो गये और अलग अलग ७ लोकल ट्रेनोंमें अलग अलग रेल्वे स्टेशनपर बम फटने की खबर भी मैंने देर रात TV पर देखी। उसके बाद मैं जादातर वक्त अपने घर से दूर रहता था, और पुलिस की

नजरोंसे छुपने की कोशिश करता था, लेकिन पुलिसने मुझे ३०.०९.२००६ को गिरफ्तार कर लिया।

1103. First few paras are relating to his educational qualification and family background, and then how he came in contact with the people of SIMI. In the further portion, he states how he came in contact with Riyaz Bhatkal, and then about his training in Pakistan. He further states that he sent Shabbir and Nafeez to Pakistan for training in the year 2003. Then he narrates how he came in contact with A.2 - Dr. Tanveer Ansari and A.3 - Faisal. The highlighted portion of the statement is the portion which is relevant as it relates to the bomb blasts.

The True Translation Of The Highlighted Portion

“One day in the first week of April 2006, Ehtesham called me to Hotel Lucky in Bandra West at 7 pm and told me that Faisal would meet me there and talk about some work. When I went to Lucky Hotel, Faisal arrived there after a while with Naveed. We had tea in the hotel nearby and sat talking near the Bandra pond. From there we went to Faisal's house in Bandra. Zameer and Suhail Mehmood Sheikh from Pune were already there. Then Faisal told us that Muslims have suffered a lot in the Gujarat riots. That is why Gujarati people of Bombay have to be targeted. After a lot of discussion, the local train suggested by Faisal seemed right to me as a target. Most Gujarati people travel in the first class compartments of Western Local. It would be better to explode the bomb in the evening because the local train is jam packed at that time. Faizal had finalized all these things by informing them to Azam Cheema of Pakistan.

Faizal told me that Azam Cheema is going to send some expert Pakistani men to India to carry out the final execution of the bomb blasts. He asked me to arrange for the stay of those Pakistani men. I said no to this work because my house was small. Then Faizal asked me to do the bomb-making work in my house and I agreed to do it.

On a Saturday in the last week of April 2006, after Isha Namaz, at 8:30 pm, Ehtesham, Dr. Tanveer, Faizal and Naveed came to my house. All of us walked around my house and surveyed it.

In the third week of May 2006, I went to Jogeshwari West Railway Station for some work. I met Sajeed Ansari there. We exchanged greetings. Sajeed is also a member of SIMI, so I knew him. We then went to the nearby mosque to offer namaz. There I met Faisal Sheikh. He told me that all preparations for the blast have been made. Apart from me, Faisal, Asif Khan @ Junaid of Jalgaon (who was also the president of Maharashtra SIMI earlier), Naveed of Hyderabad, Sajid Ansari of Mira Road, Ehtesham Siddique, Zameer Mohammad, Dr. Tanveer, and Suhail Mehmood Sheikh of Pune and Faisal's brother Muzzammil Sheikh were also helping in carrying out this work.

I came to know from Faizal that Azam Cheema had told him to target Stock Exchange Building, World Trade Center, big shopping malls, politicians responsible for Gujarat riots and police officers and local trains for Jihad. Faizal further said that when he along with some friends surveyed all the places, he found that the crowded local train was the best target. Faizal also told that it has been decided to carry out a bomb blast on the evening of 11th July 2006. The entire plan is being prepared accordingly. The entire planning of the bomb blast was done by Asif Khan @ Junaid and Faizal on the instructions of Azam Cheema, Commander of Pakistan's Lashkar-e-Taiba.

One day in June 2006, I went to Mira Road and met Faisal. He told me to come to Lucky Hotel in Bandra West. Accordingly, when I reached there, Faisal told me that as decided, Pakistani people have come to India and bomb making work will be carried out in my house on 8th, 9th and 10th of July. He asked me to keep my house completely empty at that time. So on 7th July, I made some excuse and sent my family and my brother's family to my relative's house in Rafiq Nagar for 5-6 days.

As per the plan, Faisal, Naveed, Sajid Ansari and two Pakistani men came to my house on the evening of 8th July. One of those Pakistani men was named Suhail Sheikh. This Suhail Sheikh is actually a resident of Pune and has stayed in the training camp of Lashkar-e-Taiba in Pakistan for 2 years. Now he lives in Pakistan and is an expert in making bombs. That day till late at night, they kept making bombs in my house. Ehtesham was also present at that time and was making arrangements for everyone's food and drinks. Tanveer was also standing outside my house to watch.

To make the bombs, another Pakistani man Ehsan Ullah had brought 15 kg of RDX with him. Faisal had brought the same RDX to my house. The rest of the material which included 8 black coloured rexine bags, ammonium nitrates, detonators, quartz watches etc. had already been brought by Asif Khan @ Junaid and kept in my house. Sajid Ansari had to do the electric circuit work. So he had brought batteries, wires, a soldering gun, soldering wire, circuit board etc. with him.

The work of making bombs went on for 3 days. Some household utensils were used to make bombs. Sohail Sheikh, who lives in Pakistan, and another Pakistani man, both of them mixed the materials and made masala and fixed the detonators between them. After that Sajid did the work of connecting the circuit and wire, which is used to explode the bomb. In this way, the work of making bombs in my house was completed by the evening of 10th July. After that, 7 bombs were packed in separate black coloured bags. Asif @ Junaid filled the remaining material from the material he had brought for making bombs in a bag and took it with him. After some time Naveed and Faizal came to my house in a Maruti car. I told Faizal that the bombs are ready after being packed in 7 bags. I hired a taxi and put 3 of those 7 bags in it, and the remaining 4 bags were put in a Maruti car by Naveed and Faizal. At that time, Faizal asked me to take a Pakistani guy Sohail Sheikh and another guy to Bandra by taxi. Accordingly, I made both the Pakistani guys sit in the taxi and we went to Bandra by taxi with the bags containing the bombs. Naveed and Faizal also went to Bandra by Maruti car. After reaching Bandra, we stopped the taxi under Faizal's building and took out the three bags containing the bombs. We paid the fare and left the taxi. 4 bags containing the bombs were also taken out from Faizal's car. By then more Pakistani men came down from Faisal's house, and together we placed the 7 bags containing bombs in Faisal's house. After that I came back to my house in Govandi.

On 11.07.2006 in the evening I came to know that we had succeeded in our aim and I also saw the news of bomb blasts in 7 different local trains at different railway stations on TV late at night. After that I stayed away from home most of the time and tried to hide from the police, but the police arrested me on 30.09.2006.”

Conclusion

1104. When we considered the relevant portion of the confessional statement of A.6 relating to the bomb blasts, we found that this retracted confessional statement does not fall in the category of a full and detailed confession, for the reasons discussed hereunder.

1105. A.6 states that A.3 – Faisal told him that the bomb making work will be carried out at his place. A.6, like A.3 and A.4, also did not disclose the reason for choosing his house for bomb making particularly

in view of the fact that some Pakistanis were staying in the house of A.3, bombs were to be stored and distributed from the house of A.3.

1106. According to A.6, for three days i.e. 8th, 9th, and 10th July, the work of making bombs was carried out in his house. Despite the same, he did not disclose the type of bomb, or the material used for preparing such bomb.

1107. According to A.6, household utensils were used for making bombs. Whereas, it is the case of prosecution that cookers were used for packing the bombs. A.6 nowhere states about use of cookers in the bombs. The expression 'household utensils' is a vague expression.

1108. According to A.6, 15kgs RDX was brought by Ehsanullah (Pakistani Wanted Accused). It was brought to A.6's home by A.3 – Faisal. However, he did not give any details when the RDX was brought by A.3 – Faisal and how it was brought.

1109. Further, considering the fact that he mentions about disposing of other left over material used for making bomb, he did not mention whether the container, in which the RDX was brought, was disposed of or not. There is no recovery of any such container which was used by Ehsanullah to bring 15kgs RDX from Pakistan to India and then by A.3 – Faisal to the house of A.6 – Mohd. Ali.

1110. There is even no mention whether the full quantity of 15kgs RDX was used in making the bombs or some quantity was left over. If some quantity was left over, what was done with the same.

1111. On these crucial aspects, A.6 is silent and even there is no investigation regarding these aspects.

1112. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.7 -Mohd. Sajid

1113. A.7 – Mohd. Sajid was arrested on 29/09/2006 in Cr. No. 156/2006 in Borivali Railway Police Station. He was in police custody for 26 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1114. The record shows that the last application seeking custody of A.7 was moved by the prosecution on 13/10/2006 in MCOC Cr. No. 05/2006. In this application, it was the case of the prosecution that “It becomes incumbent for investigation agency to go to the root of the matter and to nab all the persons responsible for this crime, including persons from Pakistan as also the local associates, members and abettors, who are involved in the commission of this organised crime and the acts preparatory to the commission of this offence. Investigation is in progress, still many other aspects are to be verified, therefore, the custody of the accused persons is required.”

1115. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1116. The confessional statement of A.7 was recorded on 24/10/2006 (Part-I) and 25/10/2006 (Part-II).

1117. The prosecution could not bring on record the reason for giving confessional statement by A.7 after a prolonged police custody of 26 days. And, particularly when, there was no sufficient evidence available with the prosecution.

1118. According to A.7, he immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.7 - Mohd. Sajid Margub Ansari

मेरा नाम मोहम्मद साजीद मदगहूब अन्सारी है। मेरी उम्र २९ साल है। मैं जोगेश्वरी स्टेशन के पास मोबाईल रिपेरिंग की दुकान चलाता हूँ, मैं १०१, सबा परवीन अपार्टमेंट, नया नगर, मीरा रोड (पुर्व) जिला थाने यहाँ पर माँ हसिना खातून और दो भाईयों के साथ रहता हूँ। मेरी बिबी का नाम खुदसिया साजीद अन्सारी है। मेरा बड़ा भाई डॉक्टर है। वह शिफा क्लिनिक नाम से हरी नगर, जोगेश्वरी (पुर्व) में किराये से दवाखाना चहाता है। दुसरा भाई मेकॅनिक इंजिनियर है और वह यश इंजिनीअरींग, कांदिवली (पू.) में काम करता है। मुझे पाँच बहने हैं और उन सबकी शादी हुई है। मेरे पिताजी मरगहूब अहमद अन्सारी १९९० में गुजर गये।

मैंने दसवी क्लास तक फारुख हायस्कूल में पढाई की, बाद में साबू सिद्दीक पॉलीटेक्नीक से मैंने तीन साल का इंडस्ट्रीअल इलेक्ट्रॉनीक्स का डिप्लोमा किया है। मैंने सी-टेक, महाकाली केव्हजू रोड, अंधेरी (पू) यहाँ कॉईन बॉक्स फोन रिपेरिंग का काम किया है। कॅलीबर कॉम्प्यूट्रॉनिक्स अंधेरी (पू.) में रोलेक्स मशीन और एस.टी.डी. मशिन दुरुस्त करने का भी मैं करता था। १९९९ तक मैंने अलग अलग जगह पे नौकरी की।

सन २००० में बंबई के हज हाऊस में मुस्लीम आवास को होनेवाली तकलिफे और उनसे कैसे नियाज पायी जाए इस बारे में प्रोग्रॅम रखा गया था। इस प्रोग्रॅम में मैं शरीक हुआ था। इसी प्रोग्रॅम में सीमी के ऑल इंडिया सदर शाहीद बदर फलाही ने और बाकी सीमी के कार्यकर्ताओंने तकरीर की थी। मुस्लीम आवाम के लिए जिहाद करना जरूरी है ऐसा बताया गया। मुस्लीम युवकोने जेल जाने का डर दिलसे निकालना चाहिए ऐसा भी बताया गया। इन बातोंसे मैं प्रभावीत हुआ। कुछ दिनो बाद मैं सीमी के कुर्ला (पश्चिम) दफ्तर में गया। सीमी के महाराष्ट्र के सदर इर्शाद खान से मेरी पहचान हो गयी। सीमी संघटन के लिए काम करने का प्रस्ताव इर्शाद खान ने मुझे दिया और यह प्रस्ताव मैंने कबुल किया।

दो चार महिने बाद उर्दू टाईम्स अखबार में दिल्ली में कुरान जलाने की खबर मैंने पढी। मैं सीमी के कुर्ला ऑफिस में गया। मैंने इर्शाद खान से इस घटना के बारे में निकाली गयी पर्चिया ली और मोगरा पाडा, मसजीद के सामने खडे होकर लोगो में बाटी। पुलिस मुझे पूछताछ के लिए अंधेरी ले गयी। दूसरे दिन मुझे और मेरा भाई खालीद को पुलिस ने गिरफ्तार किया। दूसरे दिन हम लोग जमानत पर छूटे।

सप्टेंबर २००१ में भारत सरकार ने सीमी संघटन पर पाबंदी लगायी. इसके बावजूद मुसलमान लोगोपर हो रहे अत्याचार के खिलाफ मैं सीमी संघटन की ओर से काम करता रहा. मुझे सीमी का अन्सार बनाया गया. सीमी पर पाबंदी लगने के करीब आठ महिने बाद अंधेरी पुलिस ने मुझे और मेरे भाई खालीद और मेरे मामूका लडका सलीम अन्सारी और इशादि खान को गिरफ्तार किया. दस दिन बाद मेरी जमानत हुयी.

सन २००२ में मीरा रोड, नया नगर के ट्रान्स इन्स्टीट्यूट में मैं नौकरी करने लगा. मैंने अपना अंधेरी का मकान बेचने दिया और मीरा रोड में मकान लिया और वहीपर रहने लगा. उस दौरान मेरी पहचान आसिफ खान उर्फ जुनेद, एहतेशाम सिद्दीकी, डॉ. तन्वीर अन्सारी, फैजल शेख उसका भाई मुझम्मील, गोवंडी का महम्मद अली, जमीर अहमद और पूना का सोहेब महमूद शेख इन लोगोंसे हुआ. यह सभी लोग सीमी के कार्यकर्ता थे और जिहाद की जहनियत रखते थे. उनसे मुलाकत के दौरान अक्सर हमारे बीच गुजरात के कौमी दंगे, बाबरी मस्जिद, काश्मिर आदी मसलोंपर चर्चा होती थी और दुनिया भर के मुसलमानोंपर हो रहे जुल्मोंका कैसे बदला लिया जाए इस पर सोच विचार होता था. मुस्लीम युवांको पाकिस्तान में भेजकर वहाँ आतंकवादी कारवाई को अंजाम देने के लिए हथियार चलाना और गोला बारूद के बारेमें ट्रेनिंग के लिए भेजने के बारे में भी चर्चा होती थी. फैजल ने उसके लष्कर-ए-तोएबा इस आतंकवादी संघटन से कॉन्टैक्ट होने की बात कही थी. पाकिस्तान जाकर आझम चीमा के ट्रेनिंग कैंप में हथियारोंकी तरबीयत हासिल करके आने की बात भी फैजल ने की थी.

कुछ महिनो बाद हमारी एक मिटींग मीरा रोड में हुई. उस मिटींग में फैजल ने बताया की वह लगातार आझम चीमा के संपर्क में है. आझम चीमा ने बताया है की, जिहाद के लिए और ट्रेनिंग के लिए मुस्लीम बंदो को तैयार करो और पाकिस्तान भेजो. इस पर होनेवाले खर्च का पूरा इंतजाम वह खुद आय.एस.आय. की तरफ से करेगा. फैजल जिहादी ट्रेनिंग के लिए लडके ढूँढ रहा था. कुछ महिनो बाद फैजल ने यह भी बताया की, आझम चीमा ने उसे पाकिस्तान बुलाया है और वह जल्द पाकिस्तान जाने वाला है.

ऐसी ही एक मिटींग में मेरी फैजल शेख, आसिफ खान, एहतेशाम, डॉ. तन्वीर और बाकी लोगों से मुलाकत हुआ. फैजल ने बताया की वह दुबारा पाकिस्तान जा के ट्रेनिंग करके आया है. वह पाकिस्तान में तकरीबन छह से सात महिना रुका था. वहाँ की पूरी बातें बताते हुए उसने कहाँ की, लष्कर-ए-तोएबा संघटन आय.एस.आय. के इशारे पर ट्रेनिंग कैंप चलाती है और इसके लिए सारा पैसा भी आय.एस.आय. की तरफसे ही आता है. इस दम पर फैजल ने उसका भाई मुझम्मील, डॉ. तन्वीर अन्सारी, जमीर शेख, पूना का सोहेल महमूद शेख और भी कुछ लोगों को ट्रेनिंग के लिए पाकिस्तान भेजा था.

मैं लगातार आसिफ खान उर्फ जुनेद और फैजल के कॉन्टैक्ट में रहता था. मुझे कहे मुताबीक मैंने जनवरी / फरवरी २००५ में सीमी संगठन के दफ्तर के लिए मकान किराये पर देखना शुरू किया. तब ए टू झेड प्रॉपर्टीज के मालिक आरीफ खान के जरीए केअर टेकर झरीर के पास से ३०४, आम्रवाली बिल्डींग, सेक्टर ११, शांतीनगर, मीरा रोड (पूर्व) यह रूम २५००० रु. डिपॉझीट और २९०० रु. महिने के किराये पर लिया. किराये का पैसा हर महिने एहतेशाम ही देता था.

उस कमरे में सीमी संघटन की मिटींग्स होती रहती थी. मार्च २००६ में महाराष्ट्र के सीमी संघटन के चुनाव हुए. महाराष्ट्र सीमी के जनरल सेक्रेटरी का चुनाव करने की हैसीयत से यह चुनाव एहतेशाम सिद्दीकी ने लिए. इसी चुनावों में मैं सीमी के मीरा रोड युनिट का प्रेसिडेंट चुना गया. सीमी के ऑफिस की चाबीया मेरे अलावा असिफ खान उर्फ जुनेद और एहतेशाम के पास रहती थी. जुनैद सीमी के इस कमरे में तीन से चार महिने तक रहा.

मैंने फरवरी २००६ में फैझल से कॉन्टैक्ट किया तो उसने बताया की आझम चीमा से बात हुई है और आझम चीमा ने बम्बई की लोकल ट्रेनों को बम धमाकों के लिए टारगेट चुना है। उससे मुझे यह भी पता चला की, आझम चीमा पाकिस्तान से कुछ आतंकवादी बंदे भेजनेवाला है। फैझल के कहनेपर मैं उसके और आसीफ खान उर्फ जुनेद से कॉन्टैक्ट बकरार रखता था। आझम चीमा के कहने पर बिहार का कमाल और कलकत्ता का माजीद भी हमारे कॉन्टैक्ट में था। फैझलने मुझे बताया था की, उसने एहतेशाम और कुछ साथियों को बंबई की लोकल ट्रेनों में सफर करके बम धमाके किस तरह से किये जा सकते हैं इसपर स्टडी किया है। इस बारे में मेरी मीरा रोड के घर पर भी कुछ मिटींग्स हुई थी और कुछ मिटींग्स फैझल के बांद्रा वाले घर पर हुई थी। इन मिटींग्स के दौरान असिफ और फैझल ने बम धमाकों की कारवाई को अंजाम देने के लिए हर एक को जिम्मेदारी सौंपी थी।

प्लान के मुताबीक बम में टाईमर डिवाइस लगाने की जिम्मेदारी मुझे सौंपी गयी थी। इसके लिए लगने वाली बैटरी, वायर, प्रिंटेड सर्किट बोर्ड्स, सोल्डरिंग गन, मल्टीमिटर, सोल्डरिंग वायर, रेजीस्टर्स, कपेसिटर्स, इन्सुलेशन टेप, टूल किट आदी चीजे मैंने जमा की, महम्मद अली के गोवंडी के घर पर बम बनाना तय किया गया। आसीफ खान उर्फ जुनेद को बम बनाने में लगनेवाला सामान इकट्ठा करके महम्मद अली के घर रखवाने का जिम्मा सौंपा गया। मई २००६ में आझम चीमा ने अलग अलग जगहों से पाकिस्तानी आतंकवादी बंबई भिजवाये थे। कुछ पाकिस्तानी बंदे फैझल के घर में ठहरे हुए थे। आसिफ खान उर्फ जुनेद ने कुछ पाकिस्तानी बंदों को ठहरने का इंतजाम मीरा रोड के सीमी के ऑफिस में किया था। मुझे बताया गया की, पाकिस्तानी बंदों ने अपने साथ पंद्रह किलो आर.डी.एक्स. लाया है। हमने ११ जुलाई को शाम के वक्त वेस्टर्न लाईन की चर्चगेट से विरार की ओर जानेवाली ट्रेनों में बम धमाके करने का तय किया।

८ जुलाई २००६ को फैझल के कहने के मुताबीक मैं टाईमर डिवाइस बनाने का सारा सामान साथ लेकर फैझल के घर दोपहर एक बजे के करीब पहुँचा। वहाँ पर पहले से ही चार पाकिस्तानी बंदे फैझल के घर पर मैंने देखे। कुछ देर बाद नावीद भी वहाँ पहुँचा। फैझल के कहने पर मैं, फैझल, दो पाकिस्तानी बंदे और नावीद, फैझल की कार से महम्मद अली के गोवंडीवाले घर पर जाने के लिए निकले। नावीद कार चला रहा था। बातों में मुझे पता चला की, पाकिस्तानी बंदा सोहेल शेख असल में पूना का रहनेवाला है और वह पिछले दो सालों से पाकिस्तान में ही रहा है और उसने वहाँ पर जिहादी तरबियत, हत्यार और बम बनाने की एक्सपर्टाईज हासिल की है।

प्लान के मुताबीक ८, ९ और १० जुलाई २००६ को महम्मद अली गोवंडी वाले घर में बम बनाये गये। बम बनाने के लिए घरेलू बरतनों का इस्तेमाल किया गया। सोहेल शेख और एक पाकिस्तानी बंदे ने मिलकर आर.डी.एक्स., अमोनियम नाइट्रेट और डिज़ेल की सहायता से सात बॉमोका मसाला तयार किया और उसके बीचोबीच डिटोनेटर फिट किये। मैंने टाईमर डिवाइस बनाये। टाईमर डिवाइस बनाने के लिये मैंने सोल्डरिंग गन से सर्किट बोर्ड पर वायर के टुकड़ों से कनेक्शन किये और ऐसे बनाये हुए सात टायमर डिवाइस सात अलग अलग बमों में फिट किये। उस वक्त एहतेशाम वहाँ मौजूद था। डॉक्टर तन्वीर, महम्मद अली के घर के बाहर निगरानी करता था। उसी दौरान भिवंडी में हुये हादसे के बारे में अखबार में छपी खबर के बारे में मेरी और एहतेशाम की बात हुयी। उस खबर में महाराष्ट्र के होम मिनिस्टर ने ईट का जबाब गोली से देंगे ऐसी बात कही थी। इस खबर से हम लोगो में गुस्सा और जोष पैदा हुआ। एहतेशाम ने इसका मजाक उड़ाते हुये कहा की, हम भी तो दो दिनों में गोलीका जबाब बम से देने वाले हैं।

१० जुलाई २००६ की देर श्याम की वक्त बम बनाकर सात अलग अलग बॅग में पॅक किय गये. उसके बाद बनाये हुये बम वाली सात बॅग महम्मद अली, नावीद और फैझल मिलकर फैझल के बांद्रावाले घर पर लेकर गये. आसिफ खान उर्फ जुनेद ने बम बनाने के लिये जो सामान लाया था उससे बचा हुआ बाकी सामान वह अपने साथ लेकर चला गया. मैं भी अपना बचा हुआ सब सामान अपने साथ ले गया. प्लान के मुताबीक मुझे बताया गया की जो बंदे लोकल ट्रेनोंमें बम रखने के लिए जा रहे हैं, उन्होंने अपने मोबाईल फोन साथ रखना रिस्की होगा. इसिलिए कोई भी बंदा अपने साथ मोबाईल नहीं रखेगा ऐसा तय हुआ है. उसी वजह से फैझल ने मुझे ११ जुलाई को दोपहर साडे तीन बजे बांद्रा के लक्की हॉटल के सिग्रल के पास पहुंचने के लिये और वहाँपर नावीद उसका मोबाईल फोन मुझे देगा. वह मोबाईल फोन मेरे पास लेकर रखने के लिये कहा.

११ जुलाई २००६ को मैंने दोपहर ढाई बजे बांद्रा जाने के लिए मीरा रोड से लोकन ट्रेन पकड़ी और मैं बांद्रा आया और लकी हॉटल के सिग्रल पर रुका. सव्वाचार बजे के करीब नावीद रिक्शासे वहाँ पहुँचा और मुझे उसका मोबाईल फोन देकर वह फैझल के घर जाने के लिये निकल गया. उसके बाद मैं भी वापस ट्रेनसे मीरा रोड चला गया. मीरा रोड पहुंचने के बाद मुझे देर शाम के वक्त लोकल ट्रेनोंमें बम धमाके होने की बात पता चली. तय हुये मुताबीक नावीद मीरा रोड आकर मुझसे उसका मोबाईल फोन लेकर चला गया.

२९ सप्टेंबर २००६ को पुलिस ने मुझे बम ब्लास्ट केस मे गिरफ्तार किया. २३ अक्तूबर २००६ को मैंने खुद अपनी मर्जी से पुलिस को बताया की बम बनाने के लिए लगनेवाले इलेक्ट्रिक सर्कीट्री बनाने के औजार और बचा हुआ सामान महम्मद अली के घर से ले जाकर, बाद मे जहाँ पर रखा है वह जगह दिखाने की इच्छा पंचोंके सामने जताई. बाद मे मैं पुलिस और पंचोंको तनजीम ए वाल्दाएन हायटेक इन्स्टीट्यूट ऑफ कॉम्प्युटर एज्युकेशन, मदर तेरेसा स्कूल के सामने गेट नं. ६ मालवणी मालाड (पश्चिम) यहा पर ले कर गया और वहाँ पर रखे हुये बैटरी, वायर के टुकडे, प्रिंटेड सर्कीट बोर्डस, एक सोल्डरिंग गन, एक मल्टीमिटर, सोल्डरिंग वायर, रेझीस्टर्स और कैपेसिटर्स, इन्सूलेशन टेप, टूल कीट ऐसा सामान निकालकर दिया, इस सामान के अलावा मैं जो एअरटेल मोबाईल कंपनीका सिमकार्ड इस्तेमाल करता था, उसका एन्वहलप भी मैंने पुलिस को बताया. यह सब सामान और सीम कार्ड का एन्वहलप पुलिस ने बरामद किया.

1119. First few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. He then states about how he came in contact with A.13 - Asif Khan @ Junaid, A.4 - Ehtesham Siddique, A.2 - Dr. Tanveer Ansari, A.3 - Faisal Shaikh, A.9 - Muzzammil Shaikh, A.6 - Mohd. Ali, A.11 - Zameer Ahmed and A.10 - Suhail Mehmood Shaikh. The highlighted portion is the only portion which is relevant as it relates to the bomb blasts.

The True Translation Of The Highlighted Portion

“When I contacted Faizal in February 2006, he told me that he had spoken to Azam Cheema and that Azam Cheema had targeted Mumbai local trains for bomb blasts. I also came to know from him that Azam Cheema was going to send some terrorists from Pakistan. On Faizal's advice, I maintained contact with him and Asif Khan alias Junaid. On Azam Cheema's advice, Kamal from Bihar and Majeed from Calcutta were also in contact with us. Faizal told me that he and Ehtesham had studied how bomb blasts could be carried out by sending some of his associates to Mumbai local trains. Some meetings were held in this regard at my house in Mira Road and some at Faizal's house in Bandra. During these meetings, Asif and Faizal had assigned responsibilities to each one of them to carry out the bomb blasts.

According to the plan, I was given the responsibility of installing a timer device in the bomb. I collected the necessary things like battery, wires, printed circuit boards, soldering gun, multimeter, soldering wire, resistors, capacitors, insulation tape, tool kit etc. It was decided to make the bomb at Mohammad Ali's house in Govandi. Asif Khan alias Junaid was given the responsibility of collecting the material required to make the bomb and keeping it at Mohammad Ali's house. In May 2006, Azam Cheema had sent Pakistani terrorists from different places to Bombay. Some Pakistani men were staying at Faizal's house. Asif Khan alias Junaid had arranged for the stay of some Pakistani men at SIMI's office in Mira Road. I was told that the Pakistani men had brought fifteen kilograms of RDX with them. We decided to bomb trains travelling from Churchgate to Virar on the Western Line on the evening of 11 July.

On 8th July 2006, as per Faizal's instructions, I reached Faizal's house at around 1 pm with all the material required to make a timer device. I saw four Pakistani men already present at Faizal's house. After some time, Naveed also reached there. As per Faizal's instructions, I, Faizal, two Pakistani men and Naveed left in Faizal's car to go to Mohammad Ali's house in Govandi. Naveed was driving the car. During the conversation, I came to know that the Pakistani man Sohail Sheikh is actually a resident of Pune and he has gone to Pakistan and living there for past two years and has acquired expertise in Jihadi training, weapons and bomb making there.

According to the plan, bombs were made in Mohammad Ali's Govandi house on 8th, 9th and 10th July 2006. Domestic utensils were used to make the bombs. Sohail Sheikh and a Pakistani man together prepared the material for seven bombs with the help of RDX, ammonium nitrate and diesel and fitted detonators in the middle of them. I made the timer devices. To make the timer devices, I connected the pieces of wire on the circuit board with a soldering gun and fitted the seven timer devices I had made in seven different bombs. Ehtesham was present there at that time. Doctor Tanveer used to keep watch outside Mohammad Ali's house. During that time, Ehtesham and I talked about the news printed in the newspaper about the

incident in Bhiwandi. In that news, the Home Minister of Maharashtra had said that we will answer bricks with bullets. This news created anger and enthusiasm in us. Ehtesham made fun of it and said, we too are going to reply to the bullets with bombs in two days.

In the late evening of 10th July 2006, bombs were made and packed in seven different bags. After that, Mohammad Ali, Naveed and Faizal together took the seven bags containing the bombs to Faizal's house in Bandra. Asif Khan alias Junaid took the rest of the material he had brought to make the bomb with him. I also took all my remaining material with me. According to the plan, I was told that it would be risky for the people who are going to plant bombs in local trains to keep their mobile phones with them. That is why it was decided that no one will keep a mobile with them. That is why Faizal asked me to reach near the signal of Lucky Hotel in Bandra at 3:30 pm on 11th July and there Naveed will give me his mobile phone. He asked me to keep that mobile phone with me.

On 11th July 2006 I took a local train from Mira Road to go to Bandra at 2:30 PM. I reached Bandra and stopped at the signal of the Lucky Hotel. Around 4:15 PM Naveed reached there by rickshaw and after giving me his mobile phone he left to go to Faizal's house. After that I also went back to Mira Road by train. After reaching Mira Road I came to know about the bomb blasts in local trains in the late evening. As per the arrangement Naveed came to Mira Road and took his mobile phone from me and went away.

On 29th September 2006, the police arrested me in a bomb blast case. On 23rd October 2006, I willingly told the police that I had taken the tools and other material required for making bombs from Mohammad Ali's house and expressed my wish to show the place where they were kept later in front of the Panchas. Later, I took the police and Panchas to Tanzeem-e-Valdain Hi-Tech Institute of Computer Education, opposite Mother Teresa School, Gate No. 6, Malad (West), Malad and took out batteries, pieces of wire, printed circuit boards, a soldering gun, a multi-meter, soldering wires, resistors and capacitors, insulation tape, tool kits and other such material kept there. Apart from these things, I also showed the police the envelope of the SIM card of the Airtel mobile company that I used. All this stuff and the SIM card envelope were recovered by the police.”

Conclusion

1120. When we considered the relevant portion of the confessional statement of A.7 relating to the bomb blasts, we noted that this

retracted confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1121. According to A.7, A.3 – Faisal and A.13 – Asif assigned responsibility to each one of the accused to carry out bomb blasts. The responsibility of installing a timer device in the bomb was given to A.7 – Sajid. According to him, he collected the necessary material like battery, wires, printed circuit boards, soldering gun, multi-meter, soldering wire, resistors, capacitors, insulation tape, tool kit, etc. It is to be noted that, except printed circuit board of bomb, other material is available in the open market. There are various type of circuit boards and it depends on the type of bomb and triggering device. A.7 nowhere states that he had knowledge about making of timer device of a bomb or how many types of circuit boards are there which can be used for making triggering device and out of the same which one was used and from where he procured it. The circuit boards of timer devices of bombs are not available in the open market, and therefore, if such circuit boards were procured, A.7 is silent about the source.

1122. A.7, further, did not disclose the details how he fixed such timer and what was the time set for the explosions.

1123. He did not mention that the bombs were packed in the cookers. According to him, for the bombs, household utensils were used, which does not match with the prosecution story that the bombs were packed in cookers.

1124. He is silent, like A.6, in not disclosing as to whether the whole 15 kgs RDX substance was used, or some quantity was left over. And if it was left over, who had taken the remaining RDX and where was it kept.

1125. The above referred aspects are crucial aspects about which nothing has been brought on record even by the prosecution.

1126. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.9 – Muzzammil Shaikh

1127. A.9 – Muzzamil was arrested on 27/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in prolonged police custody for 70 days before recording of his confessional statement. According to him, his confessional statement is the outcome of torture inflicted on him.

1128. The record shows that the last application moved by the prosecution was on 30/09/2006 in Cr. No. 156/2006, i.e. after six days of invocation of provisions of MCOCA and before 4 days of confessional statement. In the last application, it was the case of the prosecution that “considering the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential.”

1129. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1130. The confessional statement of A.9 was recorded on 04/10/2006 (Part-I) and 05/10/2006 (Part-II). This shows that, just within few days from the last application for remand, A.9 allegedly gave the said confessional statement.

1131. The prosecution could not bring on record the reason for giving that statement by A.9 after spending 70 days in the police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1132. According to A.9, it was because of the torture. After he was referred to judicial custody, at the earliest opportunity, he retracted the statement.

Confessional Statement of A.9 - Muzzammil Ataur Rehman Sheikh

५) मेरा नाम मुझम्मिल अताउर रेहमान शेख उर्फ अबू शाहिद है। मेरा उम्र २२ साल है। मैं २०३ ए विंग, तिरुपती बिल्डींग, नया नगर, मिरा रोड पूर्व, जि. ठाणे इस पतेपर मेरे वालिप के साथ सल २००३ से रहाता हूँ। मेरा भाई फैजल यह लकी व्हिला, २४ पेरी क्रॉस रोड, बांद्रा (प), बम्बई यहा पे रहता है। मेरा छोटा भाई राहील सॉफ्टवेअर इंजिनिअर है। पहले वह बंगलोर के ओरॉकल कंपनी में काम करता था। गये तीन महिने से वह यु.के. में बिर्मिंगहम में काम करता है। राहील की बिबी दिया और उनके दो बच्चे हमारे साथ नया नगर में रहते हैं। मैं खुद भी साफ्टवेअर इंजिनिअर हूँ और बंगलोर के ओरॉकल कंपनी में काम करता था। मेरे पकड़े जाने से पहले मैं मोबाईल फॉन ९९८०४७२४०० इस्तेमाल करता था। मेरा भाई फैजल पाकिस्तान की लष्कर-ए-तोयबा का काम करता था। फैजल के मोबाईल नं ९८९२०३६६९४ और ९८९२३९२२४४ है। फैजल भी फिलहाल एटीएस की पुलीस के हिरासत में है।

६) मेरा जनम नागपाडा म्युन्सिपल हॉस्पिटल, कामाटीपुरा, बम्बई यहाँपर तारीख २२/०५/१९८४ को हुआ था। मेरी पढ़ाई १० वी तक बम्बई और पुना यहाँ हुई है। १२ वी सायन्स पुना कॉलेज से किया है। उसके बाद रेड हंट सर्टिफाईड इंजिनिअर का कोर्स वाशी, नवी मुम्बई से किया है और ओरॉकल सॉफ्टवेअर स्पायडर सिस्टम का कोर्स पुना से किया है। मेरी पढ़ाई हिंदी और अंग्रेजी, उर्दू भाषा में हुई है और हिंदी और अंग्रेजी भाषा में अच्छी तरह से बोलना, पढ़ना और लिखना जानता हूँ।

७) मुझे जुन २००६ में डेटाकोर टेक्नॉलॉजी बंगलोर इनके तरफ से ओरॉकल कार्पोरेशन, ओटीपी टॉवर, बनरगट्टा रोड, बंगलोर इस कंपनी से नौकरी का कॉल

आया था। लेकिन उस कंपनी में नौकरी के लिए कॉम्प्यूटर के अलावा डिग्री कॉलीफिकेशन की जरूरत थी। उसके लिए मैंने मेरे पुना के सगेवाले सईद सलाउद्दीन शेख की मददसे हैद्राबाद रहने वाले खुईन इस आदमी से बोगस डिग्री सर्टिफिकेट हासिल करके ओरेंकल कार्पोरेशन, बंगलोर इस कंपनी देने के बाद मुझे सॉफ्टवेयर इंजिनियर की नौकरी मिली। तारीख २८/०६/२००६ से मैंने कंपनी जॉइन की। मुझे उस कंपनी में रु. २५०००/- तनख्वा हर महीने मिलती थी।

८) मेरे पिताजी सौदी में नौकरी करते थे। तभी १९९० साल में बी २४, कुबेरा गार्डन, एन.आय.बी.एम.रोड कोंडवा, पुना-४८ यहाँ रुम बुक किया। लेकिन मैं तथा मेरी माँ परवीन बानू, भाई राहील ऐसे ६३, टेमकर स्ट्रीट यहाँ रहते थे। उस वक्त मेरा भाई फैजल यह मालेगाव में मदरसा जानेतूल हुदा याहा पढाई करता था। १९९५ साल में फैजल इंटेरिअर डेकोरेटर की पढाई करके पुना में रहने गया और हमारे कोंडवा के फ्लूट में रहता था। मेरे पिताजी १९९६ सालमें सौदी अरेबिया से नौकरी छोडकर आने के बाद हम पुना में रहने गये। साल २००१ में राहिल की शादी के बाद हमारे परिवार को जगह कम पडने लगी इसलिये हम मोमिनपुरा, शकिल मुजाहिद बिल्डींग, २ रा माळा, रुम नं. २०१, घोरपडी रोड पुना यहाँ भाडे का घर लेकर रहने लगे।

९) उस वक्त मेरा भाई फैजल और राहिल सब मक्का मस्जिद, मोमिनपुरा, पुना शहर यहा नमाज़ पडने को जाते थे। इस जगह हम तिनों भाई सिमी के उपर बतायें कार्यकर्ता के साथ दरसे कुरान और जिहाद के बारे में जानकारी लेते थे। हमें मक्का मस्जिद गिराने की जानकारी देकर मुसलमानों पर हो रहे अत्याचार के बारे में जानकारी देते थे। इसी तरह बाबरी मस्जिद गिराकर वहा पर बंधे हुए मंदिर के खिलाफ आवाज उठाने के बारे में कहा जाता था। गुजरात में हुए कोमी फसाद में मुसलमानों को जानसे मारे थे। उसके बारे में भी कहा जाता था। उसी तरह जिहाद करने के बारे में सिखाया जाता था। तभी से फैजल के साथ मैं और राहील भी सिमी का काम करने लगे।

१०) सिमी संघटना का साल में एक बार बडा कार्यक्रम होता था। २००१ सालके आखीरमें झोनल तबीयती स्कूल यह कार्यक्रम आझम कॅम्पस कॅम्प, पुणे यहा युनानी मेडीकल कॉलेज के हॉलमें पाच दिन हुआ। करीब १०० लोग हाजीर थे। उस कार्यक्रम में पुरा कुराण पठण, प्रवचन, हादिस पठण, इस्लाम धर्म का इतिहास और जिहाद के बारे में लेक्चर हुआ। उस कार्यक्रम में मैं तथा फैजल राहील और रिजवान डावरे और अन्य लोग हाजीर थे। उसी कार्यक्रम में मिरा रोड, बम्बई आये हुये कार्यकर्ता एहतेशाम सिध्दीकी से फैजलने मेरी पहचान करवा दी। इस कार्यक्रम में मेरी पहचान जलगावसे आये हुये सिमी के कार्यकर्ता आसिफ खान से हुई। आसिफ खान को जुनेद नाम से भी सब पहचानते हैं।

११) मेरा भाई फैजल २००२ में रमजान के महीने में पाकिस्तान गया था। हमारे पहचान का कोबेरा गार्डन, पुना में रहनेवाला आसिफ अब्दूल शेख इसने पाकिस्तान लाहोर के अबू हरारा नाम के आदमी का फोन नंबर दिया था। पाकिस्तान में अबू हरारा की मदद से अब्दूल रजाक अबू झुबेर, आरिफ कासमानी, आझम चीमा, अबू मुज्जम्मिल में लष्कर ए तोयबा के लिडर को मिलकर मुझफराबाद की ट्रेनिंग सेंटर में

अलग अलग वेपन चलाने का और बम बनाने का, जिहाद करने का, ट्रेनिंग करके करीब दो महिने के बाद फैजल वापीस आया और मुझे ट्रेनिंग के बारे में बताया।

१२) एप्रिल २००२ मे हमारी फैमिली वापस बम्बई में रहने आयी। सिमी संघटन पर लगाई गयी पाबंदी की वजह से हमे गिरफ्तार होने का डर था। उसलिए हम बम्बई रहने आये और हायलैंड बिल्डींग, ७ वा माळा, नरेंद्र पार्क, मिरा रोड, जि-ठाणा यहाँ मेरे मामा शमीम सय्यद इनके रूम मे भाडे से रहने लगे। उसके बाद मेरा भाई फैजल भी बम्बई में रहने के लिए आया। लेकिन फैजल अकेला ५२, टेमकर स्ट्रीट, नागपाडा, बम्बई यहा रहता था। वहा पर रहकर वो सिमी के दरसे कुरान कार्यक्रमों से मुस्लिम युवकों को आतंकवादी कारवाई करने की ट्रेनिंग लेने के लिए पाकिस्तान में भेजने के लिए तैयार करता था।

१३) नोव्हेंबर २००२, मेरा भाई फैजल ने पुना का रहने वाला सोहेल मेहमुद शेख को पाकिस्तान में आतंकवादी प्रशिक्षण को भेजा था। फैजल और उसका दोस्त असिफ खान इन दोनो की मदद से लष्कर ए तोयबा के प्रशिक्षण के लिए अब्दूल रौफ, समीर हुतूळे, रिझवान डावरे ये लोग भी गये थे ऐसा मुझे लगता है।

१४) मेरी चचेरी बहन खलीदा इकबाल अहमद खान, ५५ टेमकर स्ट्रीट, नागपाडा, बम्बई यहाँ रहती है। इसको हम खलीदा आया कहते है। २००३ साल के एप्रिल/ मई के दरम्यान फैजल ने मुझे बताया की खलीदा आया के पास हवाला के पैसे आये है और उस पैसे से उसे गल्फ जाना है। सन २००३ में रिझवान डावरे दुबई से पूना आया था। इसके बारे मे मुझे जानकारी हुई थी।

१५) सन २००३ की नव्हेंबर महिने में फैजल उसका व्हीसा लेकर सौदी अरेबीया गया। उस वक्त मेरे पास ९८६९१९०३०२ यह नंबर का मोबाईल फोन था। फैजल ने गल्फसे मुझे फोन करके रिझवान उसके साथ है ऐसा बताया। उसके कई दिन बाद रिझवान डावरेने मुझे फोन करके बताया की, मेरा भाई फैजल पाकिस्तान गया है। और उसने मुझे फैजल का gudmud@yahoo.com यह ईमेल आयडी दिया। इस ईमेल आयडी पर फैजल और रिझवान डावरे के साथ मैं चैटिंग करता था।

१६) इसके एक हप्ते के बाद रिझवान डावरेने मुझे वापस फोन करके एक नई ईमेल आयडी दिया था वो मुझे आज याद नही और मुझे उसपर चैटिंग करने को कहा। मैंने उसे चैटिंग किया तो रिझवान डावरे और फैजल ने खलीदा आया के पास हवाला के जरीए भेजे हुए ५०,०००/- लेकर बॉम्बे सेंट्रल के लॉज में हिन्दु के सिंग नामसे ठहरे हुए एक आदमी को देने के लिए कहा। रिझवान ने मुझे लॉज का फोन नंबर देकर उस आदमीसे संपर्क करने को कहा। उस वक्त फैजलने मुझे एक १०/- रु. नोट का नंबर दिया और वह नंबर देकर उस आदमी को रु.५००००/- देने को कहा। उसके मुताबीक मैंने दुसरे दिन खलीदा आया के पाससे रु. ५००००/- लेकर बॉम्बे सेंट्रल के होटले में जाकर सिंग नाम के आदमी को मिलकर उसे पास का नोट का नंबर चेक करके उसे मैंने रु.५००००/- दिये। उसकी बातोसे वह मुझे पाकिस्तानी लगा।

१७) २००४ फेब्रुवारी मे रिझवान डावरे ने चैटिंग पर आने को कहा और फैजल का संदेश देना है ऐसा कहा। उस वक्त चैटिंग पर फैजल ने उसे बताया की दुसरे दिन एक आदमी बॉम्बे सेंट्रल टिकट काउंटर के पास आनेवाला है उसे खलीदा आया के

पाससे हवाला के जरीए भेजे हुए रु. १०००००/- लेकर देना। उसका मोबाईल नंबर रिजवान ने मुझे दिया था। दुसरे दिने मैं खलीदा आया से एक लाख रुपये लेकर दोपहर के समय बॉम्बे सेंट्रल रेल्वे टिकट काउंटर के पास जाकर उस आदमी को दिए थे। उस आदमी के बातों से वह पाकिस्तानी लगता था।

१८) उसके बाद २००४ के एप्रिल/मई में रिजवान डावरे ने मुझे फोन करके चैटिंग पे आने को कहा। मैं चैटिंग पर गया तभी ऐहेतेश्याम पाकिस्तान में ट्रेनिंग के लिए कभी आएगा इसके बारे में मुझे पुछने को कहा। ऐहेतेश्याम को मैं पहचानता हूँ क्यों की वह सिमी का कार्यकर्ता है और फैजल का दोस्त है। ऐहेतेश्याम मिरा रोड में मशिद गल्ली में रहता है।

१९) मैंने ऐहेतेश्याम के घर जाकर पुछा तो उसने बताया की उसे ट्रेनिंग के लिए नहीं जाना है। पर उसके दोस्त डॉ. तन्वीर अन्सारी इसे पाकिस्तान में ट्रेनिंग के लिए जाना है। इस बारे में पुछने को कहा। उसके बाद मैंने रिजवान डावरे की ऐहेतेश्याम का संदेश बताया तो उसने मुझे तन्वीर का पासपोर्ट लेकर ६३ टेमकर स्ट्रिट, नागपाडा, मुंबई यहा पे मुस्ताक भाई के पास इरान का व्हिसा लगाने के लिए देने को कहा। मैंने तन्वीर को उसके मोबाईल पर कॉन्टैक्ट किया तो उसने मिरा रोड स्टेशनपर आकर उसका पासपोर्ट मुझे दिया। टिकट के लिए रु. २००००/- खलीदा आपा से लेने को कहा था। उस समय तन्वीर ने मुझे बताया की वह ऐहेतेश्याम का दोस्त है और सिमी का कार्यकर्ता है। मैंने वह पासपोर्ट लिया और रु. २००००/- खलीदा आपा से लेकर पासपोर्ट और पैसे मुस्ताक भाई को इरान का व्हिसा लगाने और इरान का टिकट निकालने को दिये।

२०) उसके कुछ दिनों के बाद रिजवान डावरे ने मुझे फोन करके चैटिंग पर आने के लिए कहा। चैटिंग पर उसने मुझे खलीदा आपा से रु. २०,०००/- लेकर तन्वीर को देने के लिए कहा और आझम चिमा के दो फोन नंबर उसने पहले मुझे दिये थे वह भी तन्वीर को देने के लिए कहा। १५-२० दिनों में तन्वीर के पासपोर्ट में इरान का व्हिसा लगाकर और इरान जाने के लिए एअर टिकट निकालकर मुस्ताक भाई ने मुझे दिया। मैंने वह पासपोर्ट एअर टिकट और खलीदा आपा के पास से लिए हुझे रु. २०,०००/- लेकर डॉ. तन्वीर को मिरा रोड स्टेशन पर दिये। उसको आझम चिमा के दो फोन नंबर भी दिये और इरान पहुंचकर उस फोन नंबर पे कॉन्टैक्ट करने को कहा। मई २००४ में डॉ. तन्वीर इरान के रास्ते से पाकिस्तान गया।

२१) एप्रिल २००४ में रिजवान डावरे ने मुझे चैटिंग पर आने के लिए कहा। मैंने चैटिंग करने पर फैजल मुझे खलीदा आपा से १००००/- रु. लेकर ऐहेतेश्याम को अजमेर जाने के लिए देने को कहा। तब मैं खलीदा आपा से पैसे लेकर ऐहेतेश्याम को १०,०००/- रु. दिये थे।

२२) उसके कुछ दिनों के बाद रिजवान डावरे ने मुझे चैटिंग पर आने को कहा। मैं चैटिंग पर गया तो उसने मुझे ट्रेनिंग के लिए पाकिस्तान जाने के बारे में पुछा। मैंने उसे हा कहा। रिजवान डावरे ने खलीदा आपा से रु. २००००/- लेकर टिकट और व्हिसा के लिए मुस्ताक भाई को देने के लिए कहा। साल २००२ में ही मैंने पुना में मेरा पासपोर्ट बनाकर लिया था। मेरे पासपोर्ट में इरान का व्हिसा लगाने के लिए और

टिकट के लिए मैंने मुस्ताक भाई को मेरा पासपोर्ट और रु. २००००/- दिए। अगस्त २००४ में मैंने ट्रेनिंग के लिए जाने के बारे में रिझवान से कॉन्टैक्ट किया तब उसने मुझे सौदी का एक कॉन्टैक्ट नंबर दिया था। वह नंबर अभी मुझे याद नहीं।

२३) उस दौरान तन्वीर पाकिस्तान से ट्रेनिंग करके लौटकर आया था। उसने मुझे फोन करके वह पाकिस्तान से ट्रेनिंग करके लौटकर आने की बात बताई। मैंने उसे मिरा रोड स्टेशन पर बुलाकर उसको वहां जाकर मिला तो उसने मुझे बताया की, पाकिस्तान में ट्रेनिंग के दौरान उसने एके-४७ रायफल चलाना, उसे खोलना जोड़ना, बम बनाना यह चीजों की ट्रेनिंग हासील की है। तभी तन्वीर ने मुजफ्फराबाद के अल अक्सा इस ट्रेनिंग कैंप में कैसा जाना पड़ता है यह उसने मुझे समझाया। उसने मुझे यह भी कहा की, उसे बहावलपुर में आझम चिमा बाबाजी के घर पर फैजल मिला था। उस समय तन्वीर ने मुझे जाली नोट पहचानने का एक अल्ट्रा व्हायोलेट लैम्प मशिन दिया और पाकिस्तान में आझम चिमा को देने के लिए कहा।

२४) तारीख ९ अगस्त २००४ को जुम्मा के दिन दोपहर १२:३० बजे मैं इरान एअरवेज के हवाई जहाज से इरान के लिए रवाना हुआ और शाम को करीब ०४.३० बजे तेहरान हवाई अड्डे पर पहुंचा। मैं वहां से तेहरान गुल मेहमान पजीर इस होटल में शाम को ०५:०० बजे पहुंचा। मैं इरान जाते समय मेरे पास पासपोर्ट, व्हिसा, रिटर्न टिकट और ५०००/- तुमान इरानी करन्सी और ७० अमेरिकन डॉलर लिए थे। उस होटल में ३०० तुमान किराया मैंने दिया।

२५) मैंने इरान में रिझवान डावरे ने दिए हुए फोन नंबर पर कॉन्टैक्ट करने पर दूसरे दिन दोपहर १२:०० बजे करीब अब्दुल रहमान नाम का एक आदमी लेने के लिए आया। अब्दुल रहमान ने मेरा पासपोर्ट, व्हिसा, टिकट, पैसे और बैग खुद के पास लिए। और मुझे पठाणी कपड़े पहनेने के लिए दिये। इसके बाद उसने मुझे पैदल बोर्डर क्रॉस करवाके पाकीस्तान की हदमें अबुशाहीद नाम के एक आदमी के हवाले किया।

२६) अबुशाहिद ने मुझे असली नाम और पहचान किसी को बताना नहीं ऐसे समझाया। और उसने मेरा नाम अबूशाहिद रखा और वही नाम बताने को कहा। उसके बाद हम दिन रात सफर करके मुलतान रेल्वे स्टेशन पहुंचे। वहाँ से लक्झरी बस से बुधवार तारीख १३/०८/०८ शामको ०६.०० बजे के करीब हम बहावलपुर पहुंचे और वहां से पैदल जाकर आझम चिमा उर्फ बाबाजी के घर गये।

२७) वहाँ आझम चिमा के घर में मुझे मेरा भाई फैजल मिला। फैजल ने डॉ. तन्वीर वहां आकर ट्रेनिंग करके गया ऐसे बताया। करीब दो घंटे बाद आझम चिमा उर्फ बाबाजी बाहर से आया। उसने मुझसे सफरके बारे में पूछताछ कि और ट्रेनिंग को जाना है क्या पूछा। मैंने हा कहा। उस समय मैंने आझम चिमा को तन्वीर ने दिया हुआ जाली नोट पहचानने का अल्ट्रा व्हायलेट लैम्प मशिन दिया।

२८) दूसरे दिन दोपहर में खाना खाने के बाद मैं आझम चिमा उर्फ बाबाजी का ड्रायव्हर अबू बकर के साथ लक्झरी बस से रातभर सफर करके दूसरे दिन सुबह ११.०० बजे हम मुझफराबाद पहुंचे। करीबन आधा कि.मी. पैदल चलके चेकपोस्ट पर पहुंचे। वहां आझम चिमा ने दिया खत चेक पोस्ट पर दिया। वहापर मेरी चेकिंग हुई और हम पहाड़ी चढ़कर तकरीबन दो घंटे के बाद बनी झाडीयो में पहुंचे।

२९) वहा पे घनी झाडीयों मे मिटटी से बने हुये मकान दिखाई दिये। उसपर पत्रे लगाये थे। वहाँ सिर्फ पैदल जाने को रास्ता ही था। उसके पाससेही एक नदी गुजरती है उसमे पाईप डालके कॅम्प के लिए पानी लाया जाता है। अबुबकर ने मुझे यह अल अक्सा ट्रेनिंग सेंटर है ऐसा बताया। वहा पे अबुबकर ने मेरी आबु काफा से पहचान करवा दि और वह उस ट्रेनिंग सेंटर का ईन्चार्ज है ऐसे बताया। आबु काफा ने पहचान करवा दि की ट्रेनिंग सेंटर पाक ऑक्युपाईड कश्मीर का हिस्सा है। वहाँ पे दुसरे दिन मेरी ट्रेनिंग शुरू हुई। मेरी ट्रेनिंग १५ दिन तक चली।

३०) उसके बाद अबुबकर मुझे वापस भवलपुर मे आझम चिमा के घर लेकर गया वहा पर फैजल था। मैं उसके साथ दो दिन रुका। वहा आझम चिमा मुझे फिर मिला। उस समय फैजल भी मेरे साथ हाजीर था। आझम चिमा ने ट्रेनिंग के बारे में कैसा लगा ऐसे पुछा। फिर उसने बताया कि " जिहाद हर मुसलमान का फर्ज है और हर मुसलमान को जिहाद करना चाहिये। मैं ये सब इस्लाम के लिए कर रहा हूँ। हिंदुस्तान में कश्मीर में मुसलमानों पर जुलुम होता है। इसलिए हिंदुस्तान मे जिहाद करना है। मैंने उसे पुछा की, इसके लिए मुझे क्या काम करना पड़ेगा उस समय आझम चिमा ने बताया कि क्या करना है वह फैजल बतायेगा। तब फैजल को मैंने पुछा तो उसने सही टाईम आयेगा तभी बताऊंगा ऐसे मुझे कहा।

३१) दुसरे दिन अबुशाहिद मुझे तसान पहुंचाया। वहाँ मुझे लेने के लिए अब्दुल रहमान आया था। और उसके साथ मैंने बॉर्डर क्रॉस करके ईरान में जायदान पहुंचे। वहाँ से मैं तेहरान पहुंचा। वहाँ पर मैंने तीन दिन रुककर मेरे व्हिसा की तारीख बढ़ा कर लि और इरान ऐअरवेज के विमान से मैं सितंबर २००८ के दुसरे हप्ते में ट्रेनिंग करके बम्बई वापीस आया। मैं बम्बई वापस लौटने के बाद २/३ दिन के बाद डॉ. तन्वीर को मिला और उसे ट्रेनिंग के बारे में बताया।

३२) पाकिस्तान में ट्रेनिंग करके आने के बाद मैंने मेरा मोबाईल नंबर बदलकर एयरटेल का पोस्ट पेड नंबर ९९६७२७२४०२ लिया। उसके बाद वापस जनवरी २००५ में मैंने एअर टेल प्रिपेड मोबाईल नंबर ९८६७३२९०६७ लिया।

३३) साल २००५ के सुरुवात मे रिझवान डावरे ने मुझे फोन करके उसका बदला हुआ नया ई-मेल आयडी मुझे दिया और फैजल २/३ महिनो में पाकिस्तान से वापस आने वाला है ऐसे बताया। उसके कही दिन बाद फैजल ने मेरे मोबाईल पे फोन करके वह सौदी अरेबिया में आया है ऐसे बताया। उसके बाद फैजल फरवरी २००५ में बम्बई लौट आया। फैजल आने के बाद तकरीबन ३ हप्ते हमारे साथ मिरा रोड में रहा। उसके बाद उसने मस्जिद बंदर में किराये पर रुम लेकर वहां रहकर वह लष्कर ए तोयबा के लिए काम करने लगा।

३४) हवाले के जरीए खलिदा आपाके पास आये हुये पैसे मैं फैजल के कहने पर हमारे पिताजी के मीरा रोड की आय.सी.आय. बैंक मे ब्रांच के खाते में भरता था और ब्लैंक चेक बुक पर पिताजी के पहले ही दस्तखत लिए थे। उसके बाद मैं फैजल के कहने पर बैंक से पैसे निकालता था। मैंने एक बार २५ हजार और दुसरे बार ३० हजार ऐसे दो बार बैंक खाते से पैसे निकाल कर मस्जिद बंदर रेल्वे स्टेशन पर फैजल को दिये थे।

३५) फैजल मस्जिद बंदर के रूम पर सिर्फ तीन महिने रहा। उसके बाद धारावी में यु.पी. रेस्टॉरेंट के पास उसका दोस्त शाह फैझल के पास रहा और थोड़े दिन के बाद लक्की व्हिला बिल्डींग, टेरेस फ्लैट नं. २४, पेरी क्रॉस रोड, कांतवाडी बांद्रा (प) बम्बई यहाँ जॉर्जस पार्क के पास कॉर्टर रोड, बांद्रा (प) यहा पर किराये पर एक फ्लैट लेकर वहाँ रहने लगा।

३६) मेरा दुसरा भाई राहिल यह ऑगस्ट २००५ मे ओरॅकल कंपनी बंगलोर में नौकरी को लगा। मैं भाई से मिलने सितंबर २००५ में बंगलोर गया था। मैं वहाँ पर एक महिना रहकर बम्बई वापस आया। और मैंने वाशी मे राजीव बॅनर्जी के घर पर सॉफ्टवेअर ऑपरेटिंग सीखा। वहाँ पर मैंने ६ महिने का कोर्स पुरा किया। उसके बाद एप्रिल २००५ में स्पायडर सिस्टम ओरॅकल, विमान नगर, पूना यहाँ पर मैंने सॉफ्टवेअर इंजिनिअर का एक महिने का कोर्स किया। उस वक्त मैं पुना में मेरी फुफा के गारनेर रेसिडेन्सी, फातीमा नगर, पूणे के घर में रहता था।

३७) मेरा भाई राहिल फेब्रुवारी २००६ मे बंगलोर से बम्बई वापिस आया और मार्च २००६ में कंपनी ने दिये हुये विसापर युके गया। वहा पे वह बर्मिंगहॅम में अपनी मूळ कंपनी जेनझार कि तरफ से फुजीत्सु मे कंपनी में काम करता है। राहिल वहाँ पे कंपनी के करीब भाडे के घर में रहता है। राहिल की बिबी और उनके दो बच्चे हमारे पास मिरा रोड में रहते है।

३८) मैंने पाकिस्तान में लष्कर ए तोयबा के कैम्प में ट्रेनिंग लिया था। वहा पे मेरा भाई फैझल के सामने लष्कर ए तोयबा का कमांडर आझम चिमा ने हिंदुस्तान में खास करके काश्मिर में मुसलमानो पर जुलूम होता है इसलिए हिंदुस्तान में जिहाद करना है ऐसे मुझे बताया था। पाकिस्तान से फैजल फरवरी २००५ मे बम्बई वापस आया। बम्बई आने के बाद फैजल ने मुझे बताया की, हिंदुस्तान मे जिहाद करना है और इसलिए बम्बई मे बड़ी वारदात करना है। बम्बई आने के बाद फैजल आझम चिमा के साथ लगातार संपर्क में था।

३९) इस साल फरवरी २००५ में जलगाव के आसिफ खान उर्फ जुनेद के बुलाने पर फैजल के बांद्रा के घर मिटींग हुई। उस मिटींग में गया था। मिटींग में जुनेद, फैजल, एहतेशाम डॉ. तन्वीर, सुहेल वगैरे थे। इस मिटींग में जुनेद ने बम्बई में बम धमाके करने के लिए टारगेट ढूंढने के लिए फैजल और हमको आदेश दिया।

४०) फैजल, सुहेल वगैरे साउथ बम्बई घुमकर आये लेकिन कोई भी जगह सही नहीं लगी ऐसे फैजल ने बताया। उसके बाद मुझे ऐहेतेशाम, तन्वीर, सुहेल और जमिर को लेकर चर्चगेट से विरार तक लोकल ट्रेन में सफर करके देखा। भिड मे बम धमाके करने के लिए लोकल ट्रेन का टारगेट ठिक लगा। उसमे पकडे जाने का धोका भी नहीं लगा।

४१) फैजल ने उसके कई दिन बाद मुझे बताया की, ११ जुलाई को लोकल ट्रेन मे बम धमाके करने का पक्का हुआ है और उसके लिए आझम चिमा पाकिस्तान से कई आदमी लोगो को भी भेज रहा है। इसमे मुझे कुछ भी काम करने के लिए तयार रहना है ऐसे फैजल ने मुझे बताया और और जरूरत पड़े तो मरी मदद लि जाएगी ऐसे फैजल ने मुझे बताया।

४२) मई २००६ के दूसरे हप्ते में सौदी अरेबिया से रिझवान डावरे ने मुझे मेरे मोबाईल पर फोन किया। उसने मुझे बताया की फैजल ने १५००० रियाल इतनी रकम मांगी है। वह रकम वो सौदी अरेबिया से उसके हिदायत उल्ला सुंडके नाम के एक पहचान वाले के साथ पुना भेज रहा है। रिझवान डावरे ने मुझे फोन पर हिदायत उल्ला सुंडके का मोबाईल नंबर दिया और उसको कॉन्टैक्ट करने को कहा।

४३) २७ जुन २००६ के रोज ओरॅकल कंपनी बेंगलोर से मुझे तुरंत काम पे हाजीर होने के लिए कहा गया। उसी दिन श्याम को मैं किंग फिशर एअर कंपनी के फ्लाईट से बेंगलोर गया। तारीख २८ जून २००६ को मैं ओरॅकल ओटीपी बेंगलोर में डेटाकोअर कॉन्टैक्ट के जरीए काम पर हाजीर हुआ। व्हा मुझे सुबह ०६:३० बजे से दोपहर ०३:०० बजे तक ड्युटी रहती थी।

४४) १५००० रियाल रिझवान डावरे से आने की बात मैंने मई महिने मे ही फैजल को बताई थी। तभी फैजल ने उस बात की जानकारी उसे है ऐसे मुझे बताया था। हिदायत उल्ला सुंडके २ जुलाई २००६ को सौदी से पुना पहुंचा तभी मैंने बेंगलोरसे हिदायत उल्ला सुंडके को कॉन्टैक्ट करके वो रियाल पुना में गारनेर रेसिडन्सी, १ ला माळा, फातीमा नगर में रहने वाले मेरे फुफा के लडके बिलाल सलाउददीन शेख को देने को कहा। मैंने बिलाल सलाउददीन शेख को फोन करके सौदी अरेबिया से आये हुये हिदायत उल्ला सुंडके को रिझवान ने दिया हुआ मोबाईल नंबर देकर उससे १५ हजार रियाल लेकर डेक्कन टॉवर, पुलगेट, ३ रा माळा, पुना यहा रहने वाला मेरा दुसरा रिस्तेदार मोहसीन खान के पास देने के लिए उसे कहा। उसके मुताबिक ०५-०७-२००६ को वो रियाल बिलाल शेख ने हिदायत उल्ला से लिए। फैजल ने बिलाल को कॉन्टैक्ट करके वो रियाल डेक्कन टॉवर, पुलगेट, ३ रा माळा पुना यहां रहने वाला मेरा दुसरा रिस्तेदार मोहसीन खान के पास देने के लिए उसे कहा। बिलाल शेख ने वो १५ हजार रियाल मोहसिन खान के पास दिये। उस समय मोहसिन के पिताजी जे.जे. अस्पताल मे दाखील थे उसके लिए मोहसिन पुना से बम्बई आया। आते समय वह सौदी रियाल साथ लेकर आया और दुसरे दिन जे.जे. अस्पताल में मेरे भाई फैजल को दिए।

४५) तारीख ११-०७-२००६ को मैं हमेशा की तरह सुबह ०६:३० बजे ओरॅकल कंपनी मे काम पर गया। और दोपहर ०३:०० बजे काम खतम होने के बाद कंपनी के पुलक्कब में श्याम ०६:०० बजे तक खेल रहा था। उसके बाद मैं बेंगलोर के सीवीएम, २ स्टेज, २९ मेन, ३९ क्रॉस के रूम पर आया। रात को ०८:३० बजे नमाज को गया। और रात १०:०० बजे बिलाल काश्मिरी बाहर से आया तब उसने बम्बई में लोकल ट्रेनो में बहुत से जगह पर बम धमाके हुये ऐसा बताया। इसलिए मैंने तुरंत बम्बई मेरे घर पर फोन कर कर घरवालों की पुछताछ कि थी तब मुझे बताया की बम्बई में लोकल रेलों में बहोत से जगह पर धमाके हुये और घरवाले सब ठिक है।

४६) पाकिस्तान में मैं अभी आतंकवादी कारवाई करने का ट्रेनिंग ले रहा था तभी उस ट्रेनिंग कॅम्प में बहोत बार मिलीटरी की गाडी लेकर बड़े अफसरान आते थे और हमारा ट्रेनिंग किस प्रकार चल रहा है वो देखते थे। हमारे ट्रेनर लोग उनसे बहोत ही रिस्पेक्ट से पेश आते थे। मैंने उनके बारे मे पुछने पर मुझे पता चला की वो अफसरान

पाकिस्तानी खुफिया एजन्सी आय एस आय के एजन्ट अफसर थे। वो लोगों का लष्कर ए तोयबा के लोगों पर पुरा नियंत्रण था।

४७) उसके बाद बम्बई पुलिस मुझे बेंगलोर से पुछताछ को बम्बई ले आये। मेरे भाई फैजल को भी पुछताछ के लिए पुलिस ने ताबे में लिया। उस पुछताछ के दौरान हम दोनो भाई को तारीख २७-७-२००६ को शाम बम्बई में लोकल रेल में हुये बम धमाके के केस में गिरफ्तार किया। हमारी गिरफ्तारी की वजह और हमारे पिताजी को इस बारे में खबर दी।

1133. First few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. Then in the middle of the portion, he gives information about the activities of A.3 - Faisal Shaikh to send people for training in Pakistan. Then he speaks about the training of Tanveer and his continuous contact with Rizwan Dawrey. Then about his meeting with Azam Cheema and then proceeding for training in Kashmir. The highlighted portion of the statement is the portion which is relevant.

The True Translation Of The Highlighted Portion

“39) In February 2005, a meeting was held at Faizal's house in Bandra on the call of Asif Khan alias Junaid of Jalgaon. I had gone to that meeting. Junaid, Faizal, Ehtesham, Dr. Tanvir, Suhail and Bashir were present in the meeting. In this meeting, Junaid ordered Faizal and me to find targets for carrying out bomb blasts in Bombay.

40) Faisal, Suhail etc. travelled around South Bombay but none of the places seemed right, Faisal told me. After that I travelled in a local train from Churchgate to Virar along with Ehtesham, Tanvir, Suhail and Zameer. The local train seemed like a good target to detonate the bomb in a crowd. There was no risk of getting caught either.

41) Faisal told me several days later that it has been decided to carry out a blast in the bomb on 11th July and Azam Cheema is sending many people from Pakistan for that. Faisal told me that I should be ready to do any work in that and if money is needed, my help will be taken, Faisal told me.

42) In the second week of May 2006, Rizwan Dawrey called me on my mobile phone from Saudi Arabia. He told me that Faizal has asked for a sum of 15000 Riyals. He is sending that money from Saudi Arabia to Pune with an acquaintance named Hidayat Ullah Sundke. Rizwan Dawrey gave me Hidayat Ullah Sundke's mobile number on the phone and asked me to contact him.

43) On 27 June 2006, I was asked by Oracle Company Bangalore to report for work immediately. That very evening I went to Bangalore by Kingfisher Air Company flight. On 28 June 2006, I reported for work at Oracle OTP Bangalore through Datacore Contact. I had duty hours from 06:30 AM to 02:00 PM.

44) I had told Faizal about the 15000 Riyals coming from Rizwan Daware in the month of May itself. Faizal had told me that he knew about it. Hidayat Ullah Sundke reached Pune from Saudi on 2nd July 2006. Then I contacted Hidayat Ullah Sundke from Bangalore and asked him to give those Riyals to my uncle's son Bilal Salauddin Sheikh who lives in Garner Residency, 1st Floor, Fatima Nagar in Pune. I called Bilal Salauddin Sheikh and gave the mobile number given by Rizwan to Hidayat Ullah Sundke who had come from Saudi Arabia and asked him to take 15000 Riyals from him and give it to my other relative Mohsin Khan who lives in Deccan Tower, Pulgate, 3rd Floor, Pune. According to him, on 05-07-2006, Bilal Sheikh took those riyals from Hidayat Ullah. Faizal contacted Bilal and asked him to give those riyals to my other relative Mohsin Khan who lives at Deccan Tower, Pulgate, 3rd Floor, Pune. Bilal Sheikh gave those 15 thousand riyals to Mohsin Khan. At that time Mohsin's father was admitted in JJ Hospital, for which Mohsin came to Bombay from Pune. While coming, he brought Saudi riyals with him and gave them to my brother Faizal in JJ Hospital the next day.

45) On 11-07-2006, I went to work at Oracle company at 6:30 am as usual. After finishing work at 3:00 pm, I was playing in the company's pool club till 6:00 pm. After that, I came to my room at CVM, 2nd Stage, 29 Main, 39th Cross, Bangalore. At 8:30 pm, I went to offer namaaz. At 10:00 pm, Bilal Kashmiri came from outside. He told me that there were bomb blasts in many places in local trains in Bombay. So, I immediately called my home in Bombay and enquired about my family. They told me that there were bomb blasts in many places in local trains in Bombay and everyone in the family is fine."

Conclusion

1134. The law says that if a full and detailed confession is made in circumstances which make it unlikely that it was a result of coercion or inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Bababji Chavan (supra)*).

1135. In light of the above referred well settled law position, when we considered the relevant portion of the confessional statement of A.9 relating to the bomb blasts, it will be revealed that this retracted

confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1136. According to A.9, he carried out survey by traveling in local train along with A.4 - Ehtesham, A.2 - Tanveer, A.10 - Suhail and A.11 - Zameer from Churchgate to Virar and fixed the local trains as target. Except this, he does not disclose any important information namely the details of the trains in which it was decided to carry out the bomb blasts, the timings of the trains, etc.

1137. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.10- Suhail Shaikh

1138. A.10 – Suhail Shaikh was arrested on 25/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in prolonged police custody for 73 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1139. The record shows that the last application moved by the prosecution was on 30/09/2006 in Cr. No. 156/2006, i.e. after six days of invocation of provisions of MCOCA. In the last application dated 30/09/2006 for remand, it was the case of the prosecution that “considering the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail,

a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential.”

1140. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1141. The confessional statement of A.10 was recorded on 05/10/2006 (Part-I) and 06/10/2006 (Part-II). This shows that just within few days from the last application of remand, A.10 allegedly gave confessional statement.

1142. The prosecution could not bring on record the reason for giving confessional statement by A.10 after a prolonged period of 73 days. And, particularly when, there was no sufficient evidence available with the prosecution.

1143. According to A.10, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.10 - Suhail Mehmood Shaikh

मेरा नाम सुहेल महेमूद शेख, उमर ३८ साल, धंदा- कपडे को रफू करने का, पता १५३८, गल्ली नं. १६, सेंट्रल स्ट्रीट, भीमपुरा कॅम्प, पुणे-१ है.

मैं उपर दिये पतेपर मेरे पिताजी, मेरी माँ, दो भाई, मेरी बिबी, मेरे दो लडके और एक लडकी इनके साथ रहता हूँ. मेरा जनम 13.02.1969 को कॅंटोन्मेंट बोर्ड हॉस्पिटल, पूना में हुआ. मेरी पढाई मोलेदिना इंग्लीश प्रायमरी स्कुल कॅम्प, पूना और मोलेदिना टेक्निकल हायस्कुल, स्वारागेट पूना, में हुआ. मैं दसवी कक्षा में फेल हुआ हूँ.

1986 में फेल होने के बाद मैं कपडे को रफू करने लगा. मेरे नाना यही काम करते थे. 1988-1989 में मैं एक्सप्रेसो एडवर्टाइजिंग एजेंसी में काम करता था, लेकिन वहाँ तनखा कम होने के कारण मैंने नोकरी छोड दी और फिरसे रफू करने का काम करने लगा. उस वक्त मेरी

पहचान हमारे घर के नजदीक रहनेवाले सिमी कार्यकर्ता इम्रान शेख से हुई. मैं उसके साथ कमरुद्दीन मस्जिद में शनिचर की रात होनेवाले 'दरसे कुरान' इस सिमी के कार्यक्रम को जाने लगा. वहाँ पर मेरी आसिफ खान, सिमी के युनिट अध्यक्ष के साथ पहचान हो गयी. मैं उनसे हमेशा मिलता था. उसी दरम्यान डिसेंबर १९९२ में बाबरी मस्जिद गिराने के बाद मेरे दिलको काफी ठेस पहुंची थी.

उसके बाद सन १९९५ में 'ईद ए मिलाद' के जूलूस में मैं इम्रान, आसिफ, फिरोज पठाण, इलियास, मोमिन लईक, अब्दुल वहाब और रशिद आग्रावाला इन सभीने मिलके अमेरिकी झंडा जलाया था. उस वक्त हम लोगोंपर लष्कर पूलीस थाना, पुना में केस दर्ज हुआ था, उस केस की सुनवाई अब तक कोर्ट में चालू है। 'जमाते इस्लामी' संघटन के वर्कर अताऊर रहेमान शेख ये सिनेगॉग स्ट्रीट, इमामवाड़ा, मीना अपार्टमेंट पूना के जमाते इस्लामी लायब्ररी में बैठते थे. उनके साथ मेरी १९९५ के शुरू में पहचान हुई. उनके दो बेटे - फैझल और राहिल इनके साथ भी मेरी पहचान हो गई. मेरे जरिये उनकी पहचान आसिफ खान के साथ हो गयी. उसके बाद फैझल और राहिल भी सिमी के प्रोग्राम में आने लगे. उस वक्त मैं भी 'सिमी' संघटन में जाने लगा. वही मेरी पहचान रिझवान डावरे के साथ भी हो गयी. हम सब सिमी संघटन के पूना कार्यालय में मिलने लगे.

सन १९९९ तक मैं सिमी का काम करते रहा. उस वक्त मैं अलीगढ़ उत्तर प्रदेश और औरंगाबाद में सिमी के संमेलन में शरीक होने के लिए जाता था. २००२ में मैंने अपना पासपोर्ट बनवा लिया और जपान में मामु के पास नौकरी के लिए जाने का प्रयास किया. लेकिन पैसे की कमी की वजह से जापान नहीं जा पाया. सन २००० में फैझल का भाई राहिल की शादी हो गयी उस वक्त हम सब लोग हाजीर थे. बाद में मैं एक बार फैझल के घर गया था. फैझल घर में नहीं था, लेकिन उसके पिताजी और भाई थे, उनके साथ ठीकसे बातचीत नहीं हुई. तीन-चार महीने बाद रमझान में फैझल मुझे पुनामें मिला. उस वक्त 'सिमी' संघटन पर बंदी लगनेसे सिमी का काम बंद हुआ था. फिर भी हम मस्जिद में गुप्तता से मिटींग लेकर सिमी संघटन पर होनेवाले अन्याय के बारे में चर्चा करते थे. उस वक्त एक मिटींग में फैझल ने मुझे 'वहाँ मेरी माली हालत सुधारने के लिए एक ऑफर है और उसमें अच्छा पैसा भी मिलेगा, हालत भी सुधर जाएगी' ऐसा कहा. उसके बाद दो तीन बार मैं उसके घर गया और पुछा "क्या ऑफर है?" तो बोला "तुझे अकेले में बोलता हूँ."

उसके कुछ दिन बाद फैझल मुझे मंगल विहार हॉटेल ले गया। वहाँ पर फैझल ने मुझे "पाकिस्तान जाके आतंकवादी ट्रेनिंग करेगा तो वहाँ बहोत पैसा मिलेगा" ऐसा कहा. इसके बारे में सोचने के लिये मैंने वक्त मांगा. बाद में मेरी पहचान जुम्मा, उम्र ४० साल, और कमाल, उम्र ४० साल, दोनों सुदान के नागरिक के साथ हुई। उन्होंने मुझे एक ऑफर दी. उनकी हालत बहोत खराब थी। तब उन्होंने मुझे कहा की अढ़ाई लाख रुपये साउथ आफ्रिका के बैंक में उनके अकाउंट में भरने के बाद मुझे बड़ी रकम मिलेगी. उन्होंने विसा की अवधी खतम होने के बावजूद भी हिंदुस्तानी लडकियोंसे निकाह करके रहते थे. मेरी भी हालत खस्ता थी. उसके बावजूद मैंने सब रिश्तेदारोंसे पैसे इकट्ठा करके उनको दे दिये. उसी दौरान रिझवान डावरे मिला और उसने मुझे "फैझल के प्रपोजल के बारे में क्या सोचा ऐसे पुछा और बताया की, फैझल ने उसे भी वही प्रपोजल दिया हुआ है। मैंने रिझवान को बताया की, "फिलहाल मैंने दुसरा काम शुरू किया है. फैझल के प्रपोजल के बारे में बाद में सोचुंगा". दूसरे दिन मैं और रिझवान डावरे फैझल के घर में गये. फैझल ने प्रपोजल के बारे में पुछा तो मैंने उसे मेरे और जुम्मा और उसके साथी के साथ चल रहे डील के बारे में बताया. कुछ दिनों बाद जुम्मा और कमाल दुबई भाग गये. तब मुझे पता चला की उन्होंने मुझे फसाया. उसके बाद मैंने फैझल का प्रपोजल स्वीकार करने के सिवा और कोई चारा नहीं था. फैझलने मुझे कहा की "तू ट्रेनिंग

करके आना, मैं तुझे एक लाख रूपया दूँगा. वहाँ पहुँचने के बाद तुझे इतना पैसा मिलेगा की तेरी हालत ही बदल जाएगी.”

सप्टेंबर २००२ में फैझल ने मेरा विसा और टिकट का इंतजाम करके एक नव्हेंबर २००२ को मैं मुंबई से तेहरान गया. रिझवान ने जाते समय मुझे रु १०,०००/- और सौदी रियाल १२,०००/- दिये थे. तेहरान से मैं पासरगड गया, वहाँ से फैझल के भाई राहिल को दुबई में फोन किया. मैं सात दिन पासरगड के हॉटेल में ही रुका. बाद में राहिल के कहने से मैं अकेला जायदान गया. उधर अबुझर हॉटेल में चार दिन रुका. वहाँ मुझे लेने अब्दुल रहेमान नाम के आदमी को राहिल ने भेजा. उस अब्दुल रहेमान ने मुझे मेरा नाम अमिन ऐसा बोलने को कहा. वह आदमी मुझे जीप, बस और ट्रेन के जरिए बहावलपूर लेके गया. वहाँ आजम चिमा हमारी राह देख रहा था. उसे मिलने के बाद हमने आराम किया और दुसरे दिन हम तैयार होके चिमा को मिले. उसने जिहाद और गुजरात के बारे में बताया. वहाँ एक आदमी आया, जो आय.एस.आय का आदमी है, ऐसा बाद में मेरे समझ में आया. आजम चिमा ने बताया की " यहाँ पे जो चलता है, वो आय.एस.आय के ही अंडर चलता है और उनको पुरी जानकारी दी जाती है. पाकिस्तान सरकार की आय.एस.आय खुफिया एजेंसी बहुतही शातिर है." चिमा ने मुझे उस आदमी से कुछ बात करने का नहीं ऐसा इशारा किया. बादमें दोनों में देर तक बात हुई. मेरा पासपोर्ट और टिकट चिमा ने रख लिया. रात को आय.एस.आय के आदमी के ही साथ आजम चिमा के कहने पर रात ९.०० बजे गाडी में बैठकर हम लाहोर के लिए निकले. लाहोर पहुँचनेपर मुझे आय.एस.आय के दफ्तर में एक अलग कमरा दिया. कमरे में आय.एस.आय के दो अफसरों ने मेरी पुछताछ की. पुछताछ में मैं उन्हें पक्का जिहादी आदमी लगा. उसी रात को मैं ९.०० बजे उनमेंसे एक आय.एस.आय अफसर के साथ बस से रावलपिंडी निकला. दुसरे दिन सुबह हम रावलपिंडी पहुँचे. वहाँ आय.एस.आय के एक बंगले में रुक गये. वहाँ एक अफसर ने आय.एस.आय के बारे में समझाकर उनके लिए भारत में काम करने के लिए उकसाया. उन्होंने लष्कर-ए-तोयबा के बारे में बताया, की यह तंझीम आय.एस.आय के सपोर्ट पर आय.एस.आय ही चला रही है. यहाँ पर उनके रजामंदी के सिवाय कुछ नहीं चल सकता. उन्होंने मुझे आय.एस.आय के लिए काम करने के लिए बोला. वो मुझे बार बार हिंदुस्तान में आय.एस.आय का एजेंट बनाने के लिए राजी करने की कोशिश कर रहे थे.

उसी रात ९.०० बजे निकलकर दुसरे दिन बससे हम लाहोर पहुँचे और एक बंगले में गये. वहाँ भी आय.एस.आय का एक ऑफिसर मिला. वहाँ पर गुजरात दंगे और अफगानिस्तान पर हुए हमले की चर्चा हुई. मुस्लीम जमात पर हुए अत्याचारों के बारे में मुझे बताया. उन्होंने मुझे हिंदुस्तान से खबर निकालकर भेजने के लिए बोला. उसमें मुंबई, गोवा और महाराष्ट्र के बॉर्डर के बारे में, गुजरात के पुलिस ऑफिसर्स, भाभा अॅटॉमिक रिसर्च सेंटर, आर्मी की खास जगहें इत्यादि के बारे में खबर निकालने के लिए बोला। उन्होंने मुझे तीन ई मेल आयडी नंबर दिये। वहाँ में दो दिन रुका.

दुसरे दिन शाम को बस से रात में सफर करके दुसरे दिन बहावलपूर पहुँचे और आजम चिमा के बंगलेपर गये. वहाँ चिमा को ई मेल आय डी और सब जानकारी दी। तब चिमाने मुझको बताया की आय.एस.आय और लष्कर-ए-तोयबा एकही है. उसने पुछा की तू दोनों में से किसके लिए काम करेगा. मैंने उसे " 'लष्कर ए तोयबा' के लिए करेगा", ऐसा बोलने के बाद चिमाने मुझे "तू फैझल के साथ काम कर, वहाँ पहुँचनेपर तेरे पैसे का इंतजाम हो जाएगा" ऐसा बोला. मैं वहाँ पर दो दिन ठहरा. वहाँ चिमा ने मुझे हत्यार की मालूमात देकर हत्यार चलाने की प्रॅक्टीस करवायी.

तीसरे दिन अब्दुल रहेमान के साथ मैं बहावलपूर से निकलकर एक शहर में जाकर वहाँ से जीपसे रातभर सफर करके दुसरे दिन सुबह तिफतान बॉर्डर के नजदिक पहुँचे. शाम को बॉर्डर क्रॉस करके जायदान पहुँचे. वहाँ से अब्दुल रहेमान वापस चला गया. मैं एक हॉटेल में रुका. दुसरे दिन सुबह मैं मेरा टिकट वही कन्फर्म किया. दोपहर को बस से राततक सफर करके सुबह ११.०० बजे तेहरान पहुँचा और एक हॉटेल में रुककर रात को १२.०० बजे हॉटेल छोड़कर एअरपोर्ट पहुँचा. सुबह ६.०० बजे हवाई जहाज से निकलकर उसी दिन सुबह १०.०० बजे मुंबई एअरपोर्ट पहुँचा. वहाँ से टैक्सी करके दादर आया और बस से पुना आया.

पुना में मुझे फैजल मिला. तब मैंने उसे पाकिस्तान में हुए सब वाकियात बयान किए. मैंने फैजल को बताया कि मुझे आझम चिमाने हत्यार के बारे में मालूमात देकर हत्यार चलाना सिखाया. इसके अलावा कोई ट्रेनिंग नहीं दी, ऐसा भी बताया. फैजल मुझे खर्च के लिए पैसे देता था, लेकिन जैसे कबूल किया गया था वैसे एक लाख रुपये उसने मुझे नहीं दिये. इसलिए पैसा मांगने के लिए मैं बार बार मुंबई जाता था.

फरवरी २००६ में मैं जब पैसा लेने मुंबई आया तब फैजल ने मुझे कहा कि “अगर पैसा चाहिये तो वो जैसा कहे, वैसा करना”. तब मैं पैसे की जरूरत की वजह से उसकी बात पे राजी हो गया. उसके बाद फैजल के घर में जलगाव के जुनेद ने मिटींग बुलवायी. उस मिटींग में मैं हाजिर था. उस मिटींग में जुनेद, फैजल, एहतेशाम, तन्वीर, मुज्जमील और जमीर भी हाजिर थे. उस मिटींग में मुंबई में बम धमाकों के लिए कौनसे टारगेट चुनना है, उस बारे में चर्चा हुई. तभी जुनेद ने सभी लोगों को टारगेट के बारे में सर्व्वे करने का हुक्म दिया. उसके बाद फैजल मुझे और जमीर को अपने साथ मुंबई का मुआयजा करने लेके गया. मुंबई में हमने वर्ल्ड ट्रेड सेंटर, स्टॉक एक्सचेंज, महालक्ष्मी मंदिर, सिध्दीविनायक मंदिर, कुछ बड़े शॉपिंग मॉल, और लोकल रेल्वे स्टेशन घूमे, लेकिन हमने पाया की स्टॉक एक्सचेंज, वर्ल्ड ट्रेड सेंटर और मंदिरों में सुरक्षा के इंतजाम सख्त थे. लेकिन लोकल रेल्वे स्टेशनपर सुरक्षा इंतजाम इतने खास नहीं थे. रेल्वे स्टेशन हमेशा भीड़ से भरे रहते हैं और वहाँ धमाके के बाद जानोमाल का ज्यादा नुकसान होगा. इसलिए लोकल ट्रेन ही सही टारगेट होगा ऐसे डिसाईड हुआ.

मैं उसके बाद फैजल के संपर्क मे हमेशा रहने लगा. उसी महिने में मैं खुद, फैजल, एहतेशाम, तन्वीर, जमीर और मुजम्मिल एक साथ मिलकर मुंबई से विरार जानेवाली लोकल ट्रेन में सफर करके वहाँ का जायजा लेने लगे. हमने यह पाया की शाम को ऑफिस छुटने के बाद ट्रेन मे ज्यादा भीड़ होती है. तब उस लोकल ट्रेनों में धमाका करना जादा आसान रहेगा और भीड़ में आसानी से घुल मिला जा सकता है, ऐसा हमने सोचा.

जुलाई २००६ के पहले हफ्ते में फैजल के बुलाने पर उसके लकी व्हिला, पेरी क्रॉस रोड, बांद्रा वेस्ट इस मकान पर चला गया था। उस वक्त फैजल के घर और चार पाँच आदमी आये हुए थे. मैं उन्हें पहचानता नहीं था। वो लोग फैजल के साथ कुछ बातें कर रहे थे. मुझे देखकर उन्होंने अपनी बाते बंद कर दी। उसके बाद वो लोग ५-१० मिनीट बाद वहाँसे निकल गये. वो जाने के बाद मैंने फैजल के पास उनके बारे में पुछताछ की, तब उसने मुझे कहा की वह लोग पाकिस्तान से आये अपने मेहमान हैं। उनके साथ हम बंबई में बम का बड़ा धमाका करने वाले हैं, इसलिए उसकी तैयारी के लिए वे आये हैं. वहाँ पर उस वक्त जलगांव का आसिफ खान उर्फ जुनेद खान भी हाजिर था. उसके बाद फैजल ने मुझे रु ५,०००/- दिए. वो लेकर मैं उसी दिन पुना वापस आ गया.

१० जूलै को मैं फैजल से और पैसा लेने के लिए बंबई पहुँचा क्यो कि फैजल ने मुझे बोला था, कि वो तारीख को वो मुझे और पैसा देगा. फैजल ने मिलने के बाद बताया की "बम तैयार है.

कल ११ जुलाई को बंबई में लोकल रेल में बम धमाके करेंगे. तुम्हारे लायक कुछ काम रहेगा, तो तुम्हे बता दिया जाएगा. तुम तैयार रहना.”

1144. First few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. Then, in the middle portion, he states that how he came in contact with Rizwan Dawrey and A.3 – Faisal. Further, he narrates the story about him obtaining training at Pakistan. The highlighted part of the statement is relevant to the bomb blasts, the translation of which is as under: -

The True Translation Of The Highlighted Portion

“When I came to Mumbai in February 2006 to get the money, Faisal told me that "if you want the money, do as he says". I agreed to his proposal because of the need for money. After that Junaid of Jalgaon called a meeting at Faisal's house. I was present in that meeting. Junaid, Faisal, Ehtesham, Tanveer, Muzzammil and Zameer were also present in that meeting. In that meeting, there was a discussion about which targets to choose for the bomb blasts in Mumbai. Then Junaid ordered everyone to survey the potential targets. After that Faisal took me and Zameer with him to survey Mumbai. In Mumbai, we visited the World Trade Center, Stock Exchange, Mahalaxmi Temple, Siddhivinayak Temple, some big shopping malls, and local railway stations, but we found that the security arrangements were strict in the Stock Exchange, World Trade Center and temples. But the security arrangements at the local railway station were not that special. Railway stations are always crowded and there would be more loss of life and property after the blast there. Therefore, it was decided that the local train would be the right target. After that I kept in touch with Faizal. In the same month, Faizal, Ehtesham, Tanveer, Zameer, Muzzammil, & I travelled together in the local train from Mumbai to Virar & started surveying the places. We found that the train is more crowded in the evening after office hours. So we thought that it would be easier to carry out a blast in the local train during that time and we could easily mingle with the crowd.

In the first week of July 2006, on Faisal's invitation, I went to his house at Lucky Villa, Perry Cross Road, Bandra West. At that time, four or five people had come to Faisal's house. I did not know them. They were talking to Faisal. On seeing me, they stopped talking. After that, they left after 5-10 minutes. After they left, I asked Faisal about them, then he told me that they were our guests from Pakistan. We are going to do a big bomb blast in Bombay with them, so they have come to do the preparations for that. Asif Khan @ Junaid

Khan of Jalgaon was also present there at that time. After that, Faizal gave me Rs. 5,000. I took that money and returned to Pune the same day.

On 10th July, I reached Bombay to take more money from Faizal because Faizal had told me that he will give me more money on that date. After meeting Faizal, he told me that "The bomb is ready. Tomorrow on 11th July we will carry out bomb blasts in local trains in Bombay. If there is any work suitable for you, you will be informed. Be ready."

Conclusion

1145. When we considered the relevant portion of the confessional statement of A.10 relating to the bomb blasts, we noticed that this retracted confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1146. A.10 states that he had surveyed many places along with A.3 & A.11 only to find out where the bombs can be placed. However, A.2, A.3, A.4, and A.9 state in their confessional statements that all of them along with A.10 and A.11 surveyed the potential places for bomb blasts together.

1147. He does not mention anything about the actual bomb blasts or the planning of bomb blasts, and the information about trains fixed for carrying out the blasts.

1148. Thus, in the circumstances, we find that many questions are not answered by A.10 to say that the confessional statement of A.10 is complete and could be made the basis to convict him.

1149. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.11 - Zameer Shaikh

1150. A.11 – Zameer Shaikh was arrested on 25/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in prolonged police custody for 72 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1151. The record shows that the last application moved by the prosecution was on 30/09/2006 in Cr. No. 156/2006, i.e. after six days of invocation of provisions of MCOCA. In the last application, it was the case of the prosecution that “considering the widespread tentacles of the organized crime syndicate and the way in which the entire continuing unlawful activities are being carried out with immaculate precision without leaving behind any trail, a thorough investigation is required to be done for which custodial interrogation of the accused persons is absolutely essential.”

1152. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1153. The confessional statement of A.11 was recorded on 04/10/2006 (Part-I) and 05/10/2006 (Part-II). This shows that just within few days from the last application of remand, A.11 allegedly gave confessional statement.

1154. The prosecution failed to bring on record the reason for giving confessional statement by A.11 after a prolonged custody of 72 days.

And, particularly when, there was no sufficient evidence available with the prosecution.

1155. According to A.11, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.11 - Zameer Ahmed Latifur Rehman

Shaikh

मेरा नाम जमीर अहमद उर्फ अहमद लतीफ उर रहेमान शेख, उम्र ३२ साल, धंदा चष्मा और ताला चाबी बनानेवाला स्टॉल चलाना, रहनेका पता रूम नं. १००, एल ब्लॉक, वल्लभभाई पटेल नगर, लोटस कॉलनी, वरळी, मुंबई.

मैं उपर लिखे पते पे मेरे पिताजी, मेरे परिवार के साथ रहता हूं. मेरा जनम मुंबई कामाठीपुरा अस्पताल में हुआ. मेरी पढ़ाई मुंबई में बी कॉम तक हुई. ज्युनिअर कॉलेज अकबर पिरमाँय कॉलेज ऑफ कॉमर्स, मौलाना शौकतअली रोड और महाराष्ट्र कॉलेज नागपाडा मुंबई में हुई.

पढ़ाई के बाद, बहुत कोशिश करनेके बाद भी कोई नोकरी नहीं मिली. इसिलिये मैं मेरे पिताजी के साथ मुंबई सेंट्रल, बेलासिस रोड यहाँ चष्मा और ताला चाबी बनानेवाला और कटलरी का स्टॉल चलाने लगा. मेरे पिताजी पिछले चालीस सालों से वहाँ स्टॉल चलाते हैं. मुझे नोकरी की सक्त जरूरत थी इसिलिये मैंने परदेशमें नोकरी करनेके लिए पासपोर्ट निकलवा लिया था.

सन १९९९ में एक दिन मैं कुर्ला जाते हुए रस्ते मे सिमी संघटन के दफ्तर के पास भीड देखके रुक गया और वहां देखने लगा. वहां कुछ किताबे रखी हुयी थी. साथ में बाबरी मसजीद, अकसा मसजीद (जेरुसलेम इस्त्राईल) की तस्वीरे लगाई हुयी थी. मैं वो तस्वीरे देखकर प्रभावीत हुवा और अंदर चला गया. दफ्तर के अंदर कुछ टेबल, कुर्सीया रखी हुई थी. मैं वहा बैठकर वहांके न्यूज पेपर पढ़ने लगा. इतनेमे एक आदमी वहां आया. उसने उसका नाम वकार बताया. उसने मेरा नाम पुछा और मेरेसे परिचय करा लिया. उसने मुझे सिमी संघटन के बारेमें जानकारी दी. तब मैंने उसे कहा की मेरी भी सिमी संघटन का काम करनेकी ईच्छा है. तब उसने मेरा पता पुछा और मुझे मुंबई मदनपुरा के पास एक्वानु सफा यहां के सिमी के दफ्तर का पता बताया. और वहां सिमी के दफ्तर जाने को कहां. वहां जाकर तुम सिमी संघटन में शरीक हो सकते हो ऐसा उसने बताया. हर शनिवार को ईशा की नमाज के बाद संघटन का कार्यक्रम चलता है ऐसी जानकारी उसने दी. अगले शनिवार को मैं मदनपुरा की घेलाभाई स्ट्रीट पर इक्वानु सफा दफ्तर में गया. वहां ईशा की नमाज के बाद कुरान और हादीस पढ़ाया जाता था.

इक्वानु सफा दफ्तर में मेरी मुलाकात डॉ. तन्वीर, खालीद, साजीद, सलीम, अनिस के साथ हुई. दिसंबर १९९९ में मेरी शादी हुई. शादी के बाद बीबी को न्यूमोनिया और टीबी की बिमारी हुई. उसका इलाज डॉ. तन्वीर के जरीए हुवा. उसके बाद डॉ. तन्वीर से मेरी अच्छी खासी जान पहचान हुई. अगस्त २००० मे मेरी बीबी को डिलीव्हरी के लिये फौजिया अस्पताल में डॉ. तन्वीर के मदद से दाखील किया. उस वक्त डॉ. तन्वीर और मेरी बारबार मुलाकात होती

रहती थी. हम दोनों हर शनिवार इक्वानु सफा, मदनपुरा यहां सिमी संघटन के कार्यक्रम में शारिक होते थे.

सितंबर २००१ में सिमी संघटन पर सरकार द्वारा कानूनी पाबंदी लगाई जाने के बाद, कुर्ला के सिमी के दफ्तर को सिल लगाया गया. डॉ. तन्वीर गिरफ्तार हो गया. इक्वानु सफा का दफ्तर एक चैरीटेबल ट्रस्ट की डिस्पेन्सरी होने के वजहसे उस जगह की मालुमात किसी को नहीं थी. इसिलिये हम कानून की गिरफ्त से बच गये. लेकिन उस जगह हमारे संघटन के कार्यक्रम बंद हो गये.

सन २००४ में अमरिकाने इराक पर किए हुए हमले के बाद डॉ. तन्वीर ने हमे हादीस का वास्ता देकर कहा की इरान, इराक, शाम (सिरीया) मिस्र (इजिप्त) इन देशोपर इजराईल हमला करनेवाला है. अमरिकाने इराकपर किया हुआ हमला तो उसकी शुरुवात है. इराक के बाद सबकी बारी आयेगी. हिंदुस्तान, पाकीस्तान, बांग्लादेश, नेपाल यहां से लढने के लिये जो लोग आयेंगे उन्हे जन्नत नसिब होगी. ऐसा हादीसने कहा है. तन्वीर हमें हादीस की किताबे पढने के लिये देता था. हमे अब तैयार रहना चाहिये ऐसा कहता था. डॉ. तन्वीर की नसियत से प्रभावित होकर हमे भी अब तैयार रहेना चाहिये ऐसा लगता था. फिर डॉ. तन्वीर ने हमे बाहर जाके ट्रेनिंग लेनी होगी ऐसा कहा. लेकिन कुछ दिन के बाद डॉ. तन्वीर अकेलाही देश के बाहर निकल गया.

कुछ दिन के बाद डॉ. तन्वीर मुझे आके मिला और उसने मुझे ट्रेनिंग जाने के लिये रजामंद कर लिया. उस वक्त मैंने उसे मेरा पासपोर्ट और आठ हजार रुपये दिये. १५-२० दिनके बाद मैं तन्वीर ने मुझे २०० अमरीकन डॉलर्स, इराणी व्हिसा और टिकट दिया और कहा की पहले इरान में तेहरान जाकर वहां की एक होटल में रुकना. वहां एक आदमी मिलेगा जो मुझे पाकीस्तान ट्रेनिंग के लिये ले जाएगा. बाकी बाते वहा मालूम पड़ेगी. वहां जादा बातचीत नहीं करना. अहले हादीस बनकर जैसा वो लोग कहे उसीमुताबिक रहेना ऐसा उसने कहा

४ अप्रैल २००५ को मैं रात को १२.३० बजे इरान के लिये जानेवाले हवाई जहाजसे रवाना हुआ.

मैंने इरान जाते वक्त मेरे घरवालों को मैं नोकरी के इंटरव्यू के लिये जा रहा हूँ ऐसा कहा था. इसलिये मेरे घरवाले मुझे हवाई अड्डे तक छोडने आये थे.

चार घंटके बाद मैं तेहरान पहुंचा. वहां मैंने मेरे साथ लाये हुए डॉलर्स रियाद में तफदिल कर लिये और एक टैक्सी लेकर वहां के होटल मेहर में जाकर रुक गया. होटल मेहर का पता औ दो फोन नंबर मुझे डॉ. तन्वीर ने दिये थे. मैं होटल में सामान रखकर तैयार होकर बाहर गया और टेलिफोन बुथसे दिये हुए फोन नंबर पर फोन किया तो उस तरफ से आजम चिमा ने फोन उठाया और उसने मुझे कहा की मेरा आदमी वहां आकर तुम्हे ले जाएगा.

उस रात १० बजे एक अब्दुल्ला नाम का आजम चिमा का आदमी मुझे मिला और उसने मुझे सुबह आने की बात की और वह चला गया. दुसरे दिन ६ अप्रैल २००५ की रोज सुबह १० बजे अब्दुल्ला ने मुझे ज्ञायदान जानेवाले बसमे बिठाया. मैं उस बससे दुसरे दिन दोपहर २.३० बजे ज्ञायदान पहुंचा. वहां एक आदमी मुझे लेने के लिये हाजिर था. उस आदमी का नाम अब्दुल रहेमान था.

उसने मेरा पासपोर्ट टिकट और पैसे लेकर एक घरमे ले गया. दुसरे दिन सुबह १० बजे पिकअप टैक्सीसे बॉर्डर क्रॉस करने निकले. तकरीबन ५० किलो मिटर जाने के बाद हम लोग बॉर्डर पहुंचे. अब्दुल रहेमानने वहां लगाई हुयी सेटींगसे हमने बिना कोई रोकटोक बॉर्डर क्रॉस किया. उसके बाद अब्दुल्लाने मुझे ऑटो रिक्शासे २ किलो मिटर ले जाकर एक कमरेमे ठहराया और वह खाना लाने निकल गया.

शाम ५ बजे हम दोनों लक्झरी बससे कोयटा जाने के लिये निगले. दुसरे दिन ९ अप्रैल २००५ की सुबह ११.०० बजे हम कोयटा पहुंचे, वहां अब्दुल रहेमान मुझे एक घर के तहखाने में छुपाया. उसी दिन शाम ६ बजे हम लक्सरी बससे बहावलपूर के लिये रवाना हुए.

दुसरे दिन १० अप्रैल २००५ की रोज दोपहर २.०० बजे हम बहावलपूर हायवे पे उतरकर वहांके एक घरमें गये. वह घर आजम चीमा उर्फ बाबाजी का है ऐसी जानकारी मुझे मिली. उस घर में एक कमरे में मैं सो गया. शाम ६.०० बजे आजम बाबाजी वहां आया. उसने मेरी पूछताछ की. वहां और ४-५ लोग थे. वह सब पंजाबी में बात करते थे. दुसरे दिन सुबह फिर बाबाजी और मेरी मुलाकात हुयी.

रात ९.०० बजे अब्दुल रहेमान और मैं मुजफराबाद के लिए रवाना हुए. दोपहर १.३० बजे मुजफराबाद पहुंचे. वहांसे ऑटो रिक्शा पकडकर ५ मिनिट की दूरी पर एक पहाड के निचे पहुंचे. वहा एक बडी नदी के पास बने चेकपोस्टपर अब्दुल रहेमान ने उसकी पहचान बताई और बाबाजी ने दिया हूवा खत उस पोस्टपर बताया. उस खतमें मेरा नाम अहमद लिखा था. उसके बाद हम ३ घंटे पहाड चढने के बाद मास्कर (आकसा) ट्रेनिंग सेंटर पहुंचे. वहां मुस्ताक नाम के आदमी को अब्दुल रहेमानने बाबाजीका दिया हुआ खत दे दिया. मुस्ताकने मुझे मेरी रहनेकी जगह बतायी. दुसरे दिन मेरे कमरे मे एक दाऊद नाम के आदमीने आकर मुझे विस्फोटक पदार्थोंके बारेमें जानकारी दी. दाऊद पाकीस्तानी था. वह भी ट्रेनिंग हासिल करने आया था. १४ अप्रैल २००५ की रोज मेरी ट्रेनिंग शुरू हुयी.

ट्रेनिंग के दौरान सुबह ५.०० बजे की फजर की नमाज के बाद मैं सो जाता था. फिर सुबह ९.०० बजे उठकर सुबह १०.०० बजे कलास, दोपहर १.०० बजे जोहर की नमाज, फिर दोपहरका खाना और आराम, उसके बाद असर की नमाज, उसके बाद कुरान और हादीस पढना, फिर मगरीब की नमाज के बाद तकरीर और इशा की नमाज के बाद शाम का खाना होता था. वहां इलेक्ट्रिकसिटी (बिजली) नही थी. किसीसे किसी को बात करना या मिलना जुलना मना था. ऐसे पांच दिन हमें विस्फोटक पदार्थोंके बारेमें जानकारी दी गयी.

उसके बाद दो दिन आराम दिया गया. उस वक्त मुस्ताकने मुझे विस्फोटक पदार्थोंका इस्तेमाल कैसे करना और विस्फोटक पदार्थोंका इस्तेमाल भीडभरी जगहोपर करके जादा से जादा जानमाल का नुकसान कैसे किया जाए इसके बारेमें जानकारी दी. उसने मुझे गुजरात में मुसलमानों के मारे जाने की बात कही. उसपर मैंने उसे कई बेकसूर बेवजह मारे जाने की बात कहनेपर वह मुझसे खफा हो गया. उसने अगले दो दिन ट्रेनिंग दिया नहीं.

इस ट्रेनिंगके दौरान तिसरे दिन एक गाडी आयी. उस पर पाकिस्तानी झंडा लगा हुआ था. उसमेंसे दो मिलीटरी अफसर उतरे. उनको देखकर सभी सावधान हो गये. उनको वहांके लोग कर्नल साब और ब्रिगेडयर साब करके बुलाते थे. उन्होंने मुझे और गिने चुने ६-७ बंदोको टाइम डिवाइसका इस्तेमाल करके, ३ महिने तक टाइम सेटींग करके टाइमबम बनानेकी ट्रेनिंग दी. वह अफसर आय.एस.आय. के अधिकारी थे.

यह बात मुझे बाद में बतायी गयी और मुझे यह भी कहा गया की, यह ट्रेनिंग सेंटर आय.एस.आय. के अंडरमे ही चलता है. उस दौरान आटोमॅटिक फायर आर्मस् चलाना, खोलना, जोडना और फायरिंग प्रकटीस दी गयी. फिर मुस्ताकने एक आदमी के पास खत देकर मुझे वहांसे भेज दिया.

सुबह ९.०० बजे मैं, दाऊद और हमारे साथ २/३ लोग ट्रेनिंग सेंटरसे निकलकर ११.०० बजे मुजफराबाद पहुंचे. वह सब लोग पाकीस्तानी थे इसलिये वहांसे निकल गये. दाऊदने मुझे चेकपोस्ट के पास कैम्पमे रुकवाया.

शाम सात बजे वहाँ से मिनी बससे निकलकर दूसरे दिन बहावलपूर पहुँचकर मैं आजम चिमा के घर गया। शाम को आजम बाबजी मुझे मिला। उसने मेरी ट्रेनिंग और सफर के बारेमें पूछताछ की। दिये हुए ट्रेनिंग का इस्तेमाल करके स्टॉक एक्सचेंज, फिल्म इंडस्ट्री जैसी भीड़भरी जगहोंपर धमाके करने को कहा।

उसके बाद अमिन को जादा से जादा लडके ट्रेनिंग के लिये भेजने की बात कहने को कहा।

फिर उसने मुझे एक विस्फोटक एक्सपर्ट हिंदुस्थानी लोगों को ट्रेनिंग देने के लिये जलद भेज रहा हूँ ऐसा कहा। मैं अब्दुल रहेमान के साथ उस रात वही ठहरकर दूसरे दिन सुबह ११.०० बजे कोयटा जाने के लिये निकलकर दूसरे दिन कोयटा पहुँचा। वहाँ एक तहखानेमें ठहरकर शाम ७.०० बजे बससे निकलकर दूसरे दिन सुबह ५.०० बजे तिफतान पहुँचे। वहाँ एक कमरेमें मुझे ठहराकर अब्दुल रहेमान बॉर्डर सेटिंग करके निकल गया। दोपहर ११.०० बजे एक आदमी ने हमें दोपहर १.३० बजे बॉर्डर क्रॉस करके दिया। इरान की सरहद में आने के बाद अब्दुल रहेमान ने मुझे मेरा पासपोर्ट, व्हिसा, टिकट और पैसे दे दिये। और वह निकल गया। मैं वहा से टैंकसीसे इरान एअर ऑफीस जाकर टिकट कनफर्म किया। फिर टैंकसीसे दूसरे दिन तेहरान पहुँचकर सिधा हवाई अड्डा गया। रात हवाई अड्डेपर गुजारकर सुबह ७.०० बजे की फ्लाईट में बैठकर दोपहर १२.०० बजे मुंबई हवाई अड्डा पहुँचा। मेरे साथ हवाई सफर में डोंगरीके रहनेवाले लडके थे। उसके साथ मैं उनकी सुमो गाडीसे वरली तक आया।

घर आनेके बाद घरवालों को मैंने इंटरव्यू के बारेमें बात करके मुझे वेटींगमे रखा है ऐसा कहा। ५-६ दिन के बाद डॉ. तन्वीर मुझे मिलने आया। मैंने उसे धमाकोमें बेकसूर आदमी मारेजाने की बात कहनेके बाद वहाँ के लोग खफाह होने की बात कही तो डॉ. तन्वीर ने मुझे कहाँ की मैंने तुझे पहलेही कहा था की उन लोगोंको क्रॉस नही करना। अब ठीक है। फिर मैंने उसे अमिन को जादा से जादा लडके ट्रेनिंग को भेजनेका संदेशा डॉ. तन्वीर को दिया और एक विस्फोटक एक्सपर्ट भी वहाँ से हिंदूस्थान आनेकी बात बता दी। उसके बाद डॉ. तन्वीर और मेरी मुलाकात होती रहती थी।

डॉ. तन्वीर ने फैजलसे पहिले ही मेरी पहचान करायी दी थी। मुंबई आने के बाद मैं हमेशा फैजल से संपर्क बनाये रखता था। फरवरी २००६ में फैजल के बांद्रा के घर में जलगांव के जुनेद ने मिटींग बुलवायी थी। उस मिटींग में मैं खुद, जुनेद, फैजल, एहतेशाम, तन्वीर, मुज्जमील और सोहेल हम सब शरीक थे। इस मिटींग में जुनेद ने मुंबई में बम धमाका करने के लिये और कौन कौनसे टारगेट चुनने है इसके बारेमें हमसे चर्चा की। उस मिटींग में जुनेद ने सब लोगों को टारगेट के बारेमें सर्व्हे करनेका हुकुम दिया। उस मिटींग के बाद फैजल मुझे और सोहेल को अपने साथ मुंबईका मुआयना करने लेके गया। मुंबई में हमने महालक्ष्मी मंदीर, दादर का सिध्दीविनायक मंदीर, कुलाबा मे वर्ल्ड ट्रेड सेंटर, शेअर बाजार, मुंबई के बडे शॉपिंग मॉल्स, और लोकल रेल्वे स्टेशन्स घुमे। लेकीन हमने देखा की शेअर बाजार, वर्ल्ड ट्रेड सेंटर और मंदीरोमे जादा सुरक्षा थी। लेकीन हमने देखा की लोकल रेल्वे स्टेशन पर सुरक्षा इंतजाम इतने पक्के नहीं थे। वहां भीड़ भी जादा रहती थी। इसलिये लोकन ट्रेन का टारगेट सही लगा।

मैं उसके बाद फैजल के संपर्क में हमेशा रहने लगा। उसी महिने में मैं खुद फैजल, एहतेशाम, तन्वीर, सोहेल और मुज्जमील एक साथ मिलकर मुंबईसे विरार जानेवाली लोकल ट्रेन में सफर करके वहां का जायजा लेने लगे। हमने देखा की शाम को जब ऑफीस छुटते है तब जादा भिड होती है। तब उस लोकल ट्रेन में धमाका करना आसान रहेगा और भिड में असानीसे घुलमिल जा सकता है ऐसा हमने सोचा।

उसके बाद फैजल ने मुझे बम के अंदर टाईमर डिवायसिस लगाने के बारे में पुछा। मैंने उसे बताया की ट्रेनिंग लेकर काफी समय हो गया है। अब मुझे उसके बारे में कुछ याद नही।

१० जुलै २००६ को फैजल से जब मैं मिला तो उसने बताया की "प्लॅन के मुताबिक बम तैयार किये गये हैं और ११ जुलै को लोकल रेल में धमाके होंगे. " ऐसा कहके फैजलने हमे अपनी जगह तैयार रहने के लिये कहाँ और इमरजन्सी में तेरे लायक कुछ काम होगा तो तुम्हे बताऊंगा ऐसा उसने कहा.

११ जुलै २००६ की रोज सुबह ८.४५ बजेसे लेकर शाम ७.०० बजे तक मैं मेरे कटलरी दुकान पर काम कर रहा था. शाम ७.०० बजे जुलियो नाम के बुढे ने मुझे पश्चिम लोकल रेल मे ३ बम धमाके होने की बात बतायी. उसी रात १०.०० बजे घर जाने के बाद मैंने टीव्हीपर बम धमाकोके बारेमें समाचार देखे.

1156. After going through the complete confessional statement of A.11, it will be revealed that the first few paras are relating to his educational and family background, and then how he came in contact with the people of SIMI. Then, in the middle paras, he states that how he came in contact with A.2 – Dr. Tanveer, Khalid, A.7 – Sajid Ansari, Salim, and Anees. Further, he states that how A.2 – Dr. Tanveer had convinced him to go for training in Pakistan. Thereafter he mentions how he went to Pakistan and obtained training. The highlighted portion of the statement is the only portion which is relevant.

The True Translation Of The Highlighted Portion

"Dr. Tanveer had already introduced me to Faizal. After coming to Mumbai, I always kept in touch with Faizal. In February 2006, Junaid of Jalgaon called a meeting at Faizal's house in Bandra. In that meeting, myself, Junaid, Faizal, Ehtesham, Tanvir, Mujjamil and Sohail, all of us were present. In this meeting, Junaid discussed with us about which other targets to choose for bomb blasts in Mumbai. In that meeting, Junaid ordered everyone to survey about the targets. After that meeting, Faizal took me and Sohail with him to inspect Mumbai. In Mumbai, we visited Mahalaxmi temple, Siddhivinayak temple in Dadar, World Trade Center in Colaba, Share Bazaar, big shopping malls of Mumbai, and local railway stations. But we saw that there was more security in the stock market, World Trade Center and temples. But we saw that the security arrangements at the local railway station were not that strong. There was a lot of crowd there. That is why the target of the local train seemed right.

After that I kept in touch with Faisal. In the same month, Faisal, Ehtesham, Tanvir, Sohail and Muzzammil along with me started travelling in the local train from Mumbai to Virar to survey the place. We noticed that in the evening when the office gets over, there is a lot of crowd. We thought that it

will be easy to carry out the blast in the local train and we can easily mingle in the crowd.

After that Faizal asked me about installing a timer device inside the bomb. I told him that it has been a long time since I took the training. Now I don't remember anything about it.

When I met Faisal on 10th July 2006, he told me that "according to the plan, bombs have been prepared and there will be explosions in the local trains on 11th July." After saying this, Faisal asked us to be ready at our places and said that if there is any work suitable for you in the emergency, then I will let you know.

On 11th July 2006, I was working at my cutlery shop from 8:45am to 7:00pm. At 7:00pm an old man named Julio told me that there had been three bomb blasts in the Western Local train. After returning home at 10:00 pm that night, I saw the news about the bomb blasts on TV."

Conclusion

1157. When we considered the relevant portion of the confessional statement of A.11 relating to the bomb blasts, it is noticed that this retracted confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1158. From the above relevant portion of confessional statement, it is evident that he does not mention anything about the bomb blasts and prior planning of it. He only states that in the month of February 2006 he along with A.2, A.3, A.4, A.9, and A.10 traveled in the local train from Mumbai to Virar to survey the places where the blasts could be carried out. He has not given any detail about events from March 2006 to 9th July 2006. Thereafter, he directly states that when he met A.3 – Faisal on 10th July 2006, A.3 told him that the bombs would be exploded on 11th July 2006 according to the plan. He also did not disclose the information as regards the trains they fixed as per plan to carry out bomb blasts, there timings, and what exactly the plan was.

1159. Thus, we find that many questions are not answered by A.11 to say that the confessional statement of A.11 is complete and truthful, and could be made the basis to convict him.

1160. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

A.12 - Naveed Khan

1161. A.12 – Naveed Khan was arrested on 30/09/2006 in Cr. No. 156/2006 in Mumbai Central Railway Police Station. He was in police custody for 24 days before recording of his confessional statement. According to him, his confessional statement is the outcome of torture inflicted on him.

1162. The record shows that the last application moved by the prosecution was on 13/10/2006 in Cr. No. 156/2006, i.e. after 19 days of provisions of MCOCA. In the last application dated 13/10/2006 for remand, it was the case of the prosecution that “It becomes incumbent for investigation agency to go to the root of the matter and to nab all the persons responsible for this crime, including persons from Pakistan as also the local associates, members and abettors, who are involved in the commission of this organised crime and the acts preparatory to the commission of this offence. Investigation is in progress, still many other aspects are to be verified, therefore, the custody of the accused persons is required.”

1163. This shows that, till few days before the confessional statement, it was the stand of the prosecution that thorough investigation is

required. It is to be noted that this was the status of investigation after more than 70 days of the incident.

1164. The confessional statement of A.12 was recorded on 23/10/2006 (Part-I) and 25/10/2006 (Part-II). The prosecution could not bring on record the reason for giving confessional statement by A.12 after 24 days of his police custody. And, particularly when, there was no sufficient evidence available with the prosecution.

1165. According to A.12, it was because of torture. He immediately at the earliest opportunity after he was referred to judicial custody retracted the statement.

Confessional Statement of A.12 - Naveed Hussain Khan

मेरा नाम नवीद रशीद खान है। मेरा जन्म कुवैत में हुआ है। मेरी उम्र २६ साल है। मैं October 2004 से फ़्लैट नं. ४३/४५ लेक शोर टॉवर्स, G-3, 'न्यू विद्यानगर कॉलोनी, नेरेडमेट', सिकंदराबाद, राज्य आंध्रप्रदेश पिन ५०००५६ यहाँ रहता हूँ। तारीख 13/08/2006 से मैं RSR sales service 404/2, A, Surekha chambers अमीर पेठ हैदराबाद, आंध्रप्रदेश यहाँ पर सेल्स मॅनेजर, टीम लिडर की हैसियत से नौकरी करता हूँ, मेरा फूफा, चाचा और चाचा के बच्चे आंध्रप्रदेश, हैदराबाद में रहते हैं।

मेरे पापा कुवैत में एक जर्मन कंपनी में पंप ऑपरेटर का काम करते थे। मैं कुवैत में इंडियन स्कूल ब्रांच मंगक में चौथी क्लास तक पढ़ा हूँ हम सब साल १९९० में INDIA आये और २१६/२१८ छत्रीवाला मॅशन, ३री मंजिल, कमरा नं २२ भेंडी बाजार बंबई ३ यहाँ पर रहते थे। यह घर मेरे दादाजी का था। २००१ में मैंने उस्मानीया, युनिवर्सिटी हैदराबाद से बीकॉम तक पढ़ाई की है।

२००१ में पापा के कुवैत से भेजे पैसे से 1/64, Topaz अपार्टमेंट, नर्मदा पॅराडाईज, मीरा रोड, यहाँ पर घर लिया। मैं यहाँ पर रहते समय अपने दोस्त इमरान से मिलने के लिये यारी रोड जाता था। इमरान पुराना मोबाईल खरीदकर बेचने का धंदा करता था। तब इमरान ने मीरा रोड पर रहने वाले अपने दोस्त मोहम्मद आलम के साथ मेरी पहचान करवाई थी। उसी दौरान आलम हमारे यहाँ Badminton खेलने और बातें करने के लिए अकसर आता था। इसी वजह से मेरी और मोहम्मद आलम की नजदीकी बढ़ गयी। आलम मीरा रोड में ESTATE AGENT का काम करता था। आलम के जरिये मेरी पहचान फैसल शेख उर्फ समीर से हुई। फैसल रंगीला किस्म का आदमी था और हम लोग साथ में अकसर डांस बार में जाते थे। इस दौरान मैंने कुछ अच्छी नौकरी ढूँढ कर सेटल होने की कोशिश की। मैं २००४ तक बंबई, में अलग अलग जगह में नौकरी करता था। लेकिन किसी भी एक नौकरी में सेटल नहीं हो सका, मेरी डांस बार जाने की आदत की वजह से बहुत पैसा खर्च होता था। इसी लिये

मेरा भाई मुझसे तंग आ गया और मेरी मेरे भाई के साथ अनबन होने लगी. उसी दौरान मेरे भाई की शादी हो गई उसी दरमियान मेरे पापा ने भी बंबई के भेंडी बाजार की एक औरत से दूसरी शादी कर ली. इस वजह से हमारे बीच झगडे होन लगे और मैं परेशान रहने लगा. इस कारण मैंने मई २००४ में हैदराबाद मेरे चाचा के पास जाने का फैसला किया, उस मुताबिक मैं चाचा के पास हैदराबाद चला गया. वहां पर मैंने तकरीबन डेढ़ साल अलग अलग जगह पर नौकरी की पर मैं सेटल नहीं हो पाया. २००६ के शुरुआत मैं मेरा भाई और भाभी हैदराबाद आये और मुझे बंबई आकर सेटल होने का मश्वरा दिया और बंबई वापस चले गये. इसी दौरान मेरे पिताजी भी हैदराबाद आये. उन्होंने भी मुझे बंबई में ही सेटल होने के लीये कहा. इस वजह से मैं फरवरी २००६ में मोहर्रम के दौरान बंबई वापस आया.

बंबई आने के बाद मैं नौकरी के तलाश में था और मैं मीरा रोड में अपने भाई के घर पर ही रहने लगा. मीरा रोड में मेरी मूलाकात आलम से होती रहती थी. मार्च २००६ के दूसरे या तीसरे हप्ते में मैं मीरा रोड मेरे भाई के यहाँ था. तब मुझे आलम ने फोन करके शम्स मस्जिद के पास बुलाया. जब मैं वहाँ पहुँचा तब आलम के साथ फैसल भी था, और तीन लडके और थे. जिनकी पहचान फैसल ने एहेतेशाम, आसिफ खान उर्फ जुनैद और डॉ तन्वीर ऐसे कर के दी. कुछ समय के बाद आलम वहाँ से निकल गया. लेकिन हम वही रुके रहे. उस वक्त फैसल ने एहेतेशाम मीरा रोड में ही शहादा पब्लिशिंग हाउस के जरिए तहरीकी और जेहादी किताबे छापता है और Publish करता है ऐसा बताया. हम बाते कर ही रहे थे उसी दौरान और एक लडका वहाँ पर आया जिसका नाम मोहम्मद अली ऐसे बताया गया. मो. अली को मैं वहाँ पर पहली बार मिला. वह फैजल का दोस्त था. और सिमी का काम करता है. ऐसे मुझे मालूम पड़ा. और वह गोवंडी में रहता है. बातों में मुझे पता चला की फैसल, डॉ. तन्वीर और मो. अली ये तीनों पाकिस्तान जाकर जिहादी तरबियत हासिल कर के आये है हम लोंगो ने शम्स मस्जिद की ओर बैठकर बातचीत की. बातचीत के दौरान मुझे पता चला की फैजल का लश्कर ए तोयबा के Commander आजम चीमा से DIRECT CONTACT है और फैजल शेख लश्कर ए तोयबा का WESTERN INDIA का जिम्मेदार है. उनकी बाते सुनकर मेरी सोच भी जिहादी किस्म की हो गई और मुझमें भी मुसलमान भाईयों के लिये कुछ करने की तमन्ना जागी. ये जानकर फैसल ने कहा कि जल्दी ही कोई बड़ी वारदात की तैयारी में हम लोग है. और मुझे भी कुछ काम दिया जायेगा ऐसा कहकर मुझे Contact मे रहने को कहा.

अप्रैल २००६ के पहले हफ्ते में मैं और फैसल लकी होटल के पास बांद्रा में खडे थे तब एहेतेशाम और मो. अली को भी फैसल ने बुलाया था. कुछ ही देर में वह दोनों वहाँ पर आये. हम लोगो ने पास ही की एक टपरी पर चाय पी और चलते चलते हम बांद्रा के तालाब के पास पहुँचे और वहाँ पर बैठे. कुछ देर बातचीत करने के बाद हम फैसल के बांद्रा वाले घर पर गये वहाँ पर पहले से ही दो लडके हाजिर थे. उनका नाम जमीर और सोहेल महमूद शेख ऐसे उन्होंने बताया. उनमें से सोहेल महमूद शेख पूना का रहने वाला था. हम लोंगो ने फैसल के घर देर तक बाते की तब फैसल ने बताया की गुजरात में हुए दंगे फसाद में मुसलमानों के जान माल का बहुत नुकसान हुआ है और इसी वजह से बंबई में गुजराती लोंगो को TARGET करना है और उसके लिये बंबई के लोकल ट्रेन के FIRST CLASS के डब्बे में धमाके करना ठीक रहेगा. ऐसा फैसल ने कहा. क्योंकि FIRST CLASS डिब्बे में ज्यादातर गुजराती लोग ही सफर करते है. WESTERN LINE पर शाम के वक्त धमाका करना ठीक होगा क्योंकि उस वक्त लोकल ट्रेन का हर डिब्बा खचाखच भरा हुआ रहता है. ये सारी बाते फैसल ने पाकिस्तान के आजम चीमा को बताकर FINAL कर ली है. फैसल ने हमे यह भी बताया की आजम चीमा बम धमाकों की वारदात को अंजाम देने के लिये कुछ EXPERT पाकिस्तानी बंदो को INDIA भेजने वाला है. और मुझे भी उस वक्त कुछ जिम्मेदारी दी जायेगी और

उसको दिलो जान से निभाना है ऐसा फैसल ने कहा. बम बनाने का काम मोहम्मद अली के गोवंडी वाले घर में बनाने का तय हुआ.

अप्रैल २००६ के LAST WEEK में शनीचर के रात ०८.३० बजे के दरमियान एहेतेशाम, डॉ. तन्वीर फैसल और मैं, मोहम्मद अली के घर पर गये, एहेतेशाम हमें मो. अली के घर लेकर गया क्योंकि वह उसका घर जानता था. हम लोगों ने मो. अली के घर का चारों ओर घूमकर जायजा लिया. १९ या २० जून २००६ को मैं और मो. आलम फैसल के घर बांद्रा गये वहाँ पर थोड़ी देर बातें करने के बाद फैसल के घर से बाहर घूमने के लिए गये कुछ देर हमने समुंदर किनारे बैठकर बातें की वहा पर फैसल ने मुझसे सायन के DISCOVERY ORCHESTRA बार के बारे में बातें की, इसके बाद फैसल के कहने पर रात ९.३० बजे के दरमियान हम सायन के DISCOVERY ORCHESTRA बार में पहुंचे वहाँ मैंने और आलम ने एक एक बियर पिया और फैसल ने ठंडा पिया उसके बाद रात एक बजे के दरमियान मैं मीरा रोड में मेरे घर पहुंचा.

जून २००६ के तीसरे हफ्ते मुझे आलम ने शाम ६.०० बजे के दरमियान बांद्रा में बुलाया. उसके बाद फैजल, मैं और मो. आलम DISCOVERY बार में गये. वहा शराब पिकर रात के १:३० बजे के दरमियान फैसल के घर वापस आये. तब मैंने कुछ पाकिस्तानी बंदोंको वहाँ पर देखा. देर होने की वजह से हम वही पर सो गये. २७ जून को भी हम घुमे फिरे और बाद में शराब पिये और देर रात तक लड़किया ENJOY की. उसके बाद हम फैजल के घर आये और वही पर रुके. उस वक्त भी मैंने कुछ पाकिस्तानी बंदो को वहाँ देखा.

दुसरे दिन फैसल ने मुझे बताया की अभी उसका घर छोटा पड रहा है. बार बार अपने लोगोंका आना जाना बढ गया है. इस वजह से Building वालों को Doubt आ सकता है. इस कारण उसके घर में ठहरे हुए कुछ पाकिस्तानी बंदोको दुसरी जगहपर Shift करना जरूरी है. इसलिए फैसलने उनमेसे कुछ पाकिस्तानी बंदो के रहने का इतजाम आसिफ खान उर्फ जुनैद के जरिये मिल्त नगर में किया है. उसके अगले दिन मुझे फैसल ने मिल्त नगर मे चलने को कहा. जाते वक्त रास्ते में फैसल ने बताया की उसके घर में आये हुये तमाम पाकिस्तानी बंदों को मिलने जाना है. थोड़ी देर बाद हम मिल्त नगर पहुँचे. मुझे फैसल ने कार बाहर ही पार्क करने को कहा. वहा से फैसल अकेला ही मिल्त नगर COLONY के अंदर गया. उस वक्त मैंने कार वहाँपर नजदीक ही एक CHINESE STALL के पास पार्क करके मैं बाहर खड़ा रहा. कुछ देर बाद फैसल वापस आया और वहाँ से हम दोनो बांद्रा आये.

३०/०६/२००६ को शाम ५:३० बजे के दरमियान फैसल मुझे मिरा रोड, नरेंद्र पार्क में मिला. वहा फैसल ने मेरी पहचान साजीद अन्सारी से करवाई. साजीद मिरा रोड में ही रहता है और वह मोबाईल रिपेअरींग, Electronic Remote दुरुस्ती का काम करता है.

7 जुलै २००६ को शाम के वक्त मैं फैसल के बांद्रा वाले घर में पहुंचा. १०-१५ मिनीट बाद फैसल की गाडी लेकर हम दोनो कार्टर रोड समुंदर किनारे, शाम ६:३० बजे गये. वहाँ पर पहले ही एहेतेशाम, डॉ. तन्वीर और जमिर और एक आदमी ऐसे लोग खड़े थे. उस आदमी को मैंने पहली बार देखा. फैसल ने उसकी पहचान बिहार का कमाल अन्सारी ऐसे करके दी. हम सब ने वहाँ पर BOMB BLAST के साजीश के बारे में बातें की. उसके बाद रात को १०:०० बजे के दरमियान मैं ट्रेन से मेरे घर मीरा रोड चला गया.

8 जुलै २००६ को सुबह मैं नींद से उठा. उसके बाद फैसल ने मुझे उसके बांद्रा वाले घर बुलाया. मैं दोपहर एक बजे के दरमियान वहाँ पर पहुंचा. वहाँ पहले से ही मीरा रोड का साजीद अन्सारी और दो पाकिस्तानी बंदे हाजीर थे. फैसल के कहे मुताबीक हम लोग मोहम्मद अली के गोवंडी वाले घर जाने की लिये निकले. उस वक्त मैं कार चला रहा था. हम जिस वक्त गोवंडी पहुँचे तब मो. अली के घर पे डॉ. तन्वीर और एहेतेशाम हाजीर थे. वहाँ पर मो. अली

भी हमे मिला. तय किये मुताबीक साजीद अन्सारी और दो पाकिस्तानी बंदे मो. अली के घर गये. उसमें से एक का नाम सोहेल शेख ऐसा बताया. ये सोहेल शेख असल में पुना का रहनेवाला है. लेकिन पिछले दो साल से पाकिस्तान में रहता है. उसने पाकिस्तान में ही जिहादी और हथियारों की तरबीयत हासील की है. और वह बम बनाने में एक्सपर्ट है. उसके बाद मैं और फैसल उसके घर बांद्रा गये. उस दिन मैं, फैसल के घर ही रुका. उस रात फैसल, मैं और कुछ पाकिस्तानी बंदे देर रात तक जिहाद और तहरीक के बारे में बातें करते रहे.

९ जुलै २००६ को दोपहर दो बजे हम निंद से जागे. उठने के बाद चाय नास्ता करते वक्त फिर हमने लोकल ट्रेन में बम धमाके के बारे में चर्चा हुई. उस वक्त फैसल ने मुझे मेरी जिम्मेदारी के बारे में खुलकर बताया की १० जुलै २००६ को बम तयार होने के बाद बमवाली बैग को सावधानी से गोवंडी से लाकर उसके बांद्रा वाले घर में रखना है और ११ जुलै को दोपहर को ३:३० से ४:०० बजे के दरमियान मुझे एक बम वाली बैग दी जायेगी और मेरे साथ एक पाकिस्तानी बंदा होगा. जिसका नाम अबु उमेद उर्फ अबु ओसामा ऐसे बताया गया. फैसल ने आगे कहा की मुझे पाकिस्तानी बंदे के साथ टैक्सी से चर्चगेट स्टेशन जाना है और बम वाली बैग लेकर दो नंबर प्लैटफॉर्म से शाम पौने छे बजे के दरमियान छुठनी वाली बोरीवली स्लो ट्रेन के फर्स्ट क्लासवाली बोगी में बमवाली बैग रखने की जिम्मेदारी मुझे दी गयी. फैसल ने मुझे ऐसे भी बताया की जो बंदे लोकल ट्रेनों में बम रखने के लिये जा रहे हैं उन्होंने अपने मोबाईल साथ में रखना जोखीम भरा होगा इसलिये कोई भी शख्स अपने साथ मोबाईल नहीं रखेगा ऐसा तय हुआ. उसी वजह से फैसल ने मुझे ११ जुलै को दोपहर ३:३० बजे बांद्रा के लकी होटल के सिग्नल के पास साजीद अन्सारी खडा होगा उसको मुझे अपना मोबाईल फोन देने के लिये कहा. वही मोबाईल फोन रात में मीरा रोड आकर साजीद से वापीस लेने के लिये फैसल ने मुझे कहा.

१० जुलै २००६ को तय किये मुताबीक मैं और फैसल रात के वक्त कार से मोहमद अली के घर गये. तब तक बम बनाने का काम पुरा हो चुका था. प्लान के मुताबीक सातो बम वाली बैग फैसल के घर पहुँचाना था. उसमे से चार बमवाली बैग हमने फैसल के कार में रखी. बाकी तीन बम वाली बैगों को मो. अली ने एक टैक्सी करके उसमे रखी. टैक्सी में मो. अली के साथ पाकिस्तानी बंदा सोहेल शेख और दुसरा एक पाकिस्तानी बंदा ये लोग भी बैठे और टैक्सी से बांद्रा जाने के लिये निकले. मैं और फैसल चार बमवाली बैगों के साथ फैसल के कार से बांद्रा के लिये निकले, कार और टैक्सी से हम लोग फैसल के बिल्डींग के पास पहुँचे. मो. अली ने टैक्सी से तीन बमवाली बैगों को बाहर निकाला और टैक्सी छोड़ दी, तब तक फैसल के घर से और दो पाकिस्तानी बंदे जीना उतरे. हम सबने मिलकर वह सातो बम वाली बैगों को फैसल के घर में रखवा दिया. उस वक्त फैसल के ध्यान में एक बात आयी और उसने मुझे बताया की उसकी मारुती कार अब उसके घर के पास रखना रिस्की हो जायेगा. इसलिये उसने मुझे वह मारुती कार उसके दोस्त रिझवान खान के अल हाफिज कम्पाउंड, मिल्लत नगर यहा पर पार्क करके चाबी रिझवान के पास देने के लिये कहा. उस मुताबीक मैंने फैसल की कार रिझवान के यहा पार्क करके लॉक की और चाबी रिझवान को दे दी.

११ जुलाई २००६ को दोपहर तक मैं नौकरी के वास्ते ऑफीस में गया. उसके बाद ३:३० बजे के दरमियान बांद्रा फैसल के घर ट्रेन से जा रहा था तभी मुझे फैसल का फोन आया और उसने मुझे जलदी बांद्रा पहुँचने के लिये कहा. उसने मुझे याद दिलाया की मुझे साजिद को लकी होटल के पास मेरा मोबाईल देना है. मैं बांद्रा स्टेशन उतरकर रिश्का से फैसल के घर के लिये निकला. बीच में लकी होटल के पास फैसल के हि मुताबिक मैंने अपना फोन साजिद को दे दिया. मैं सवा चार के दरमियान फैसल के घर पहुँचा. तय किये हुए मुताबिक मुझे बम वाली बैग फैसल ने दी और अबू उमेद के साथ चर्चगेट स्टेशन जाने के लिये कहा. उसके बाद मैंने बम वाली बैग लेकर अबू उमेद के साथ नीचे उतरकर बिल्डींग से थोड़ी दूर पर गन्ने के जूस की

दुकान के पास एक टैक्सी खड़ी देखी. उस टैक्सी में हम दोनों बैठे. बम वाली बैग मैंने मेरे बगल में ही सीट पर रखी थी. वह टैक्सी माहिम, वर्ली, हाजी अली, ताडदेव, नानाचौक, अपिरा हाउस, मरीन लाईस, चर्नी रोड, होकर श्याम ५.३० के दरमियान चर्चगेट पहुंची. टैक्सी वाले को मैंने १३० रु भाड़ा दिया और टैक्सी छोड़ दी. बाद में हमने रस्ता क्रॉस करके चर्चगेट स्टेशन जाकर २ फस्ट क्लास के टिकट निकाले और प्लैटफॉर्म नं. २ पर बोरिवली स्लो लोकल के फस्ट क्लास के डब्बे में चढ़े उस वक्त डिब्बे में थोड़े ही लोग हमारे साथ चढ़े, इसलिये हमें बैठने को जगह मिली. बैठने से पहले मैंने बम वाली बैग लगेज कैरियर पर रखी. जैसे जैसे ट्रेन आगे चली वैसे वैसे डिब्बे में काफी भीड़ हो गई. प्लैन के मुताबिक हम दोनों दादर स्टेशन उतर गये. स्टेशन के बाहर आने के बाद हम दोनों टैक्सी से मीरा रोड के लिये निकले. जाते समय अबू उमेद को मैंने फैसल के बांद्रा वाले घर के पास छोड़कर मैं आगे मीरा रोड चला गया. मीरा रोड पहुंचने के पहले ही मुझे बाहर के माहौल से लोकल ट्रेनों में बम धमाके हुआ है ऐसा मालूम पड़ा, मीरा रोड पहुंचने के बाद साजिद अंसारी से मैंने मेरा मोबाईल कलेक्ट किया. उस वक्त साजिद को भी बम धमाके की खबर मिल चुकी थी. वहाँ से मैं मेरे घर गया. उसी रात को मुझे फैसल का मेरे मोबाईल पर फोन आया और मुझे पुलिस से बचने के लिये एहतियात बरतने की हिदायत दी और माहोल ठंडा होने के बाद बंबई से बाहर जाने के लिये कहा. ८-१० दिन तक मैं घर में ही था और २२ जुलाई को मैं बस से हैदराबाद चला गया. २९ सितंबर २००६ को बंबई और हैदराबाद की पुलिस मेरे घर आयी और मुझे हिरासत में लेकर तारीख ३० सितंबर २००६ को बंबई लाकर मुझे बॉम्ब ब्लास्ट के केस में अरेस्ट किया.

पुलिस ने मुझे अरेस्ट करने के बाद मेरी पूछताछ के दौरान २२ अक्टूबर २००६ को मैंने खुद हो के फैसल की कार जिसमें बम वाली ७ बैग गोवंडी से बांद्रा लाई थी यह कार मैंने जहाँ रखी थी वह जगह मैं दिखाता हूँ ऐसा पुलिस को दो गवाहों के सामने बताया था. मैं पुलिस और गवाहों को अल हाफिज कम्पाउंड, मिल्लत नगर अंधेरी वेस्ट यहाँ पर लेकर गया और वहाँ White Maruti-800 Car No. MH-01-V-9568 मैंने पुलिस और गवाहों पंचो को दिखाई. उसके बाद मैंने पुलिस को रिजवान का घर दिखाया. रिजवान घर पे ही था. मैंने रिजवान से फैसल के कार की चाबी ली और हम लोग नीचे आ गये. उस वक्त रिजवान भी हमारे साथ नीचे आया. पुलिस ने पंचों के सामने कार का मुआयजा किया और कार के अंदर गौर से cheking कर के अलग अलग जगह से कपास की मदद से चार पांच sample पंचनामा कर के कार के साथ पुलिस ने जप्त किया.”

1166. After going through the complete confessional statement of A.12, it will be revealed that the first few paras are relating to his job, educational and family background, and then how he came in contact with the people of SIMI. Then he states that how he came in contact with PW-59 - Mohd. Alam and A.3 – Faisal. Further he states that he used to go to dance bar with A.3. The highlighted portion of the statement is relevant, the translation of the same is as under: -

The True Translation Of The Highlighted Portion

“On 7th July 2006, I reached Faisal's house in Bandra in the evening. After 10-15 minutes, we both took Faisal's car and went to Carter Road sea shore at 6:30 pm. Ehtesham, Dr. Tanveer and Zameer and a man were already standing there. I saw that man for the first time. Faisal introduced him as Kamal Ansari from Bihar. We all talked about the bomb blast conspiracy there. After that, at around 10:00 pm, I went to my house in Mira Road by train.

I woke up in the morning on 8th July 2006. After that Faisal called me to his house in Bandra. I reached there around 1 pm. Sajeed Ansari of Mira Road and two Pakistani men were already present there. As per Faisal's instructions, we left for Mohammad Ali's house in Govandi. I was driving the car at that time. When we reached Govandi, Dr. Tanveer and Ehtesham were present at Mohammad Ali's house. Mohammad Ali also met us there. As per the arrangement, Sajeed Ansari and two Pakistani men went to Mohammad Ali's house. One of them was named Sohail Sheikh. This Sohail Sheikh is actually a resident of Pune. But he has been living in Pakistan for the last two years. He has received training in Jihadi and weapons in Pakistan. And he is an expert in making bombs. After that Faisal and I went to his house in Bandra. That day I stayed at Faisal's house. That night Faisal, I and some Pakistani people kept talking about Jihad and Tehreek till late night. On 9th July 2006, at 2 in the afternoon, we woke up and while having tea and breakfast, we again discussed about the bomb blast in the local train. At that time, Faisal told me openly about my responsibility that after the bomb is ready on 10th July 2006, the bomb bag has to be brought carefully from Govandi and kept in his Bandra house and on 11th July, between 3:30 and 4:00 in the afternoon, I will be given a bomb bag and I will be accompanied by a Pakistani man. His name was told to be Abu Umaid alias Abu Osama. Faisal further said that I have to go to Churchgate station by taxi with the Pakistani man and I was given the responsibility of placing the bomb bag in the first class coach of Borivali slow train leaving from platform number 2 at around 5:45 pm. Faisal also told me that those who are going to plant bombs in local trains, it will be risky for them to carry their mobile phones with them, so it was decided that no one will carry mobile phones with them. For this reason, Faisal asked me to give my mobile phone to Sajeed Ansari who will be standing near the signal of Lucky Hotel in Bandra on 11th July at 3:30 pm. Faisal asked me to come to Mira Road at night and get the same mobile phone back from Sajeed.

On 10th July 2006, as per the plan, Faisal and I went to Mohammad Ali's house in a car at night. By then the work of making bombs had been completed. According to the plan, all the seven bomb bags were to be delivered to Faisal's house. We kept four bomb bags in Faisal's car. Mohammad Ali arranged a taxi and kept the remaining three bomb bags in it. Mohammad Ali was accompanied by Pakistani man Sohail Sheikh and another Pakistani man. They also left for Bandra in a taxi. I and Faisal left for Bandra in Faisal's car with four bomb bags. We reached near Faisal's building

in a car and taxi. Mohammad Ali took out three bomb bags from the taxi and left the taxi. By then, two more Pakistani men got down from Faisal's house by taking staircase. All of us together kept all the seven bombs in Faisal's house. At that time Faisal remembered something and told me that it would be risky to keep his Maruti car near his house now. So he asked me to park that Maruti car at his friend Rizwan Khot's Al Hafiz Compound, Millat Nagar and hand the keys over to Rizwan. Accordingly, I parked Faisal's car at Rizwan's place, locked it and gave the keys to Rizwan.

On 11th July 2006, I went to the office for work till noon. After that, I was going to Faisal's house in Bandra by train at around 3:30 pm when I got a call from Faisal and he asked me to reach Bandra quickly. He reminded me that I have to give my mobile to Sajid near Lucky Hotel. I got down at Bandra station and left for Faisal's house by rickshaw. In between, near Lucky Hotel, as per Faisal's instructions, I gave my phone to Sajid. I reached Faisal's house at around 4:15pm. As decided, Faisal gave me the bag containing the bomb and asked me to go to Churchgate station with Abu Umed. After that, I got down with Abu Umed carrying the bag containing the bomb and saw a taxi standing near a sugarcane juice shop a little distance from the building. We both sat in that taxi. I kept the bag containing the bomb on the seat next to me. The taxi passed through Mahim, Worli, Haji Ali, Tardeo, Nanachok, Opera House, Marine Lines, Charni Road and reached Churchgate around 5.30 pm. I paid the taxi driver Rs. 130 as fare and left the taxi. Later, we crossed the road, went to Churchgate station and bought two first class tickets and boarded the first class coach of Borivali slow local on platform no. 2. At that time, very few people boarded the coach with us, so we got a place to sit. Before sitting, I kept the bag containing the bomb on the luggage carrier. As the train moved ahead, the coach became very crowded. As per the plan, we both got down at Dadar station. After coming out of the station, we both left for Mira Road by taxi. While going, I left Abu Umed near Faisal's house in Bandra and went ahead to Mira Road. Even before reaching Mira Road, I came to know from the outside environment that there have been bomb blasts in local trains. After reaching Mira Road, I collected my mobile from Sajid Ansari. At that time, Sajid had also received the news of the bomb blast. From there, I went to my house. That very night, I got a call from Faisal on my mobile and he instructed me to take precautions to avoid the police and asked me to leave Mumbai after the situation cools down. I was at home for 8-10 days and on 22 July, I went to Hyderabad by bus. On 29 September 2006, the police of Mumbai and Hyderabad came to my house and took me into custody and brought me to Mumbai on 30 September 2006 and arrested me in the bomb blast case.”

Conclusion

1167. The law says that if a full and detailed confession is made in circumstances which make it unlikely that it was a result of coercion or

inducement, the fact that it is subsequently retracted may mean little or nothing (*Emperor vs. Krishna Babaji Chavan (supra)*).

1168. In light of the above referred well settled law position, when we considered the relevant portion of the confessional statement of A.12 relating to the bomb blasts, we found that this retracted confessional statement does not fall in the category of a 'full and detailed confession', for the reasons discussed hereunder.

1169. It is evident that A.12, at many places, stated that he participated in the discussion of planning of carrying out bomb blasts. But, at no place he gave any details of such plans or discussions.

1170. A.12 states that A.3 – Faisal asked him not to park maruti car near his house as it is risky and take it to Al Hafeez compound, Millat Nagar, near Rizwan Khot's house and park there and give keys to Rizwan. What was the risk in keeping the vehicle near the house of A.3 is not stated and made clear in the statement.

1171. According to A.1, he left from Bihar on 9th July and reached Mumbai on 11th July in morning. Whereas, according to A.12, he met A.1 on 07th July 2006 in the evening.

1172. The above discussion creates a doubt about the truthfulness of A.12's confessional statement.

1173. In these circumstances, the truthfulness of this statement is under the cloud of doubt.

Final Conclusion of All The Confessions

1174. We have discussed all the confessional statements in detail, and found that important information is missing in every individual statement which makes them incomplete.

1175. There are some common aspects. If we see each of the confessional statements, it can be realised that the earlier part of the confessional statement, i.e., the portion barring the relevant portion in bold, the narration is in detail and the information is provided in depth. Whereas, when it comes to the narration in relation to the bomb blasts, the information given by each of the accused is not only vague but also does not throw much light on the aspects, as regards which, the prosecution also could not find out any evidence. The crucial aspects like

- (1) in what containers the bombs were packed,
- (2) how were the bombs detonated,
- (3) what was the device used to trigger the bombs,
- (4) how the device got accurately activated, and most importantly,
- (5) who planted the bombs that exploded at Mahim and Bandra stations.

1176. These essential elements of the offence, about which only the perpetrators could possess the knowledge, are missing which creates doubt about the genuineness of the confessional statements or the truthfulness of the same. Furthermore, it can also be said that in absence of the essential information, none of the statements is complete in providing the necessary information about how the planning was

made, from where such material was procured, from whom the accused received the information of the required material, etc. and how the accused collected that material.

1177. It is a settled law that the use of word 'appears' in Section 24 of the Indian Evidence Act indicates a lesser degree of probability than would be necessary if 'proof' had been required. Therefore, section 24 provides that a confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the Court to have been caused by any inducement, threat, or promise. Such inducement, threat or promise need not be proved to the hilt. Thus, the above referred discussion makes all the confessional statements inadmissible and irrelevant and cannot be relied upon.

Similarity In Confessional Statements, As If They Are Copied

1178. There is yet another reason, in fact, which shocked our conscience. Upon examining the relevant portion related to bomb blasts of each of the confessional statements, we were surprised to find that certain portions of these statements are identical and appear to have been copied.

1179. It is beyond the realm of reasonable imagination that the sequence of names mentioned in two separate confessional statements would be exactly the same. While it is possible that the names of co-accused individuals may appear in multiple confessions, the precise order in which these names are listed should naturally vary from one statement to another.

1180. Likewise, the use of identical language and expressions, particularly when describing specific incidents, by different individuals, recorded at different times, is highly improbable. Yet, in the present case, such anomalies are evident, as illustrated in the comparative charts provided below.

CHART NO. 43

Confession of A.2	Confession of A.9	Confession of A.10	Confession of A.11
फरवरी २००६ में फैजल ने मुझे फैजल के घर पर बुलाया था. मैं फैजल के बांद्रा वाले घर पर गया. वहापर जुनेद, फैजल, एहतेशाम, मुजम्मिल, सोहेल, जमीर हाजीर थे.	इस साल फरवरी २००५ में जलगाव के आसिफ खान उर्फ जुनेद के बुलाने पर फैजल के बांद्रा के घर मिटींग हुई। उस मिटींग में गया था। मिटींग में जुनेद, फैजल, एहतेशाम डॉ. तन्वीर, सुहेल वगैरे हाजिर थे।	उसके बाद फैजल के घर में जलगाव के जुनेद ने मिटींग बुलवायी. उस मिटींग में मैं हाजिर था. उस मिटींग में जुनेद, फैजल, एहतेशाम, तन्वीर, मुजम्मिल और जमीर भी हाजिर थे.	फरवरी २००६ में फैजल के बांद्रा के घर में जलगाव के जुनेद ने मिटींग बुलवायी थी. उस मिटींग में मैं खुद, जुनेद, फैजल, एहतेशाम, तन्वीर, मुजम्मिल और सोहेल हम सब शरीफ थे.

CHART NO. 44

Confession of A.3	Confession of A.4	Confession of A.10	Confession of A.11
हम लोग <u>World trade Center</u> , <u>स्टॉक एक्सचेंज</u> , <u>महालक्ष्मी मंदिर</u> , <u>सिद्धीविनायक मंदिर</u> , <u>कुछ बड़े शॉपिंग मॉल</u> , <u>लोकल रेल्वे स्टेशन</u> में घूमे. तब मैंने पाया के, <u>स्टॉक एक्सचेंज</u> , <u>World trade Center</u> , और <u>मंदिर</u> में सुरक्षा के इंतजाम सख्त थे. लेकिन लोकल ट्रेन का टारगेट मुझे सही लगा. क्यों कि वहाँ सुरक्षा के इंतजाम इतने पक्के नहीं थे. और सभी रेल्वे स्टेशन भीड़ से भरे होते हैं.	फैजल ने बताया था की <u>वर्ल्ड ट्रेड सेंटर</u> , <u>स्टॉक एक्सचेंज</u> , <u>महालक्ष्मी मंदिर</u> , <u>सिद्धी विनायक मंदिर</u> , <u>कुछ बड़े मॉल्स</u> , <u>लोकल रेल्वे स्टेशन</u> इत्यादी टारगेट का जायजा लेने के लिए कहा था। फैजल, जमीर और सोहेल ये लोगो ने बम्बई का दौरा करने के बाद यह पाया की, रेल्वे ट्रेन्स टारगेट करना आसान है। क्यों की बाकी जगह सुरक्षा के इंतजाम अच्छे थे।	मुंबई में हमने <u>वर्ल्ड ट्रेड सेंटर</u> , <u>स्टॉक एक्सचेंज</u> , <u>महालक्ष्मी मंदिर</u> , <u>सिद्धीविनायक मंदिर</u> , <u>कुछ बड़े शॉपिंग मॉल</u> , और <u>लोकल रेल्वे स्टेशन</u> घूमे, लेकिन हमने पाया की <u>स्टॉक एक्सचेंज</u> , <u>वर्ल्ड ट्रेड सेंटर</u> और <u>मंदिरों</u> में सुरक्षा के इंतजाम सख्त थे. लेकिन लोकल रेल्वे स्टेशनपर सुरक्षा इंतजाम इतने खास नहीं थे. रेल्वे स्टेशन हमेशा भीड़ से भरे रहते हैं और वहाँ धमाके के बाद	लेकिन हमने देखा की शेअर बाजार, <u>वर्ल्ड ट्रेड सेंटर</u> और <u>मंदिरों</u> में जादा सुरक्षा थी. लेकिन हमने देखा की लोकल रेल्वे स्टेशन पर सुरक्षा इंतजाम इतने पक्के नहीं थे. वहाँ भीड़ भी जादा रहती थी. इसलिये लोकल ट्रेन

		जानोमाल का ज्यादा नुकसान होगा. इसलिए लोकल ट्रेन ही सही टारगेट होगा ऐसे डिसाईड हुआ.	का टारगेट सही लगा.
मैंने एहतेशाम, तनवीर, जमीर, मुजम्मिल और सोहेल के साथ बांबे से विरार जाने वाली लोकल ट्रेनों का सफर कर के वहाँ का जायजा लिया.	उसके बाद मैंने, फैजल, तन्वीर, जमीर, मुझम्मिल और सोहेल के साथ मे चर्चगेट से विरार जानेवाली लोकल ट्रेनो में सफर करके जायजा लिया था.	उसी महिने में मैं खुद, फैजल, एहतेशाम, तन्वीर, जमीर और मुजम्मिल एक साथ मिलकर मुंबई से विरार जानेवाली लोकल ट्रेन में सफर करके वहाँ का जायजा लेने लगे.	उसी महिने में मैं खुद फैजल, एहतेशाम, तन्वीर, सोहेल और मुझम्मिल एक साथ मिलकर मुंबई से विरार जानेवाली लोकल ट्रेन में सफर करके वहाँ का जायजा लेने लगे.
मई २००६ में ही आजम चीमा ने कुछ पाकिस्तानी बंदो को हिंदुस्तान भिजवाया. उनमे से बिहार के कमाल ने नेपाल बार्डर के रास्ते से दो लोगों को लाया. उनका नाम असलम और हाफिज उल्ला बताये गये, माजिद ने बांग्लादेश के ढाका बार्डर से ६ पाकिस्तानी बंदो को लाया उनके नाम साबीर, अबु बकर, कासम अली, अम्मुजान, अबु हसन और एहसान उल्ला ऐसे बताये गये. आते वक्त एहसान उल्ला ने अपने साथ १५ किलो RDX लाया था. हिंदूस्तान के हैदराबाद का रहने वाला अब्दुल रझाक जो फिलहाल पाकिस्तान में है वो गुजरात के कच्छ बार्डर से ३ पाकिस्तानी बंदो को लाया उनके नाम	मई २००६ मे आजम चीमा ने कुछ पाकिस्तानी बंदो को हिंदुस्तान भिजवाया था। उनमे से बिहार के कमाल अहमद मोहमद वकील अन्सारी ने नेपाल बार्डर के रास्ते दो लोगो को लाया था। उनके नाम अस्लम और हाफीज उल्ला और हाफीज उल्ला ऐसे बताये गये। मुझे फैजल ने बताया था की कमाल पाकिस्तानसे लष्कर ए तोयबा के ट्रेनिंग कैंम्पसे ट्रेनिंग करके आया है। फैजल से मुझे यह पता चला की माजीद ने बांगला देश के ढाका बार्डर से ६ पाकिस्तानी बंदो को लाया था। उनके नाम साबीर, अबु बकर, कासम अली, अम्मुजान, अबु हसन और एहसान उल्ला ऐसे बताये गये। आते वक्त एहसान उल्लाने अपने साथ १५ किलो आरडीएक्स	वहा पर कुछ देर के बाद कल्लु, छे पाकिस्तानी बंदो को लेकर आया। उसने नाम मुझे साबीर, अबुबकर, कासम अली, अम्मुजान, अबु हसन और एहसान उल्ला ऐसे बताये गये.	

अबु उमेद, सलीम और सोहेल शेख ऐसे बताए गये	लाया था। बाकी कुछ पाकिस्तानी बंदे कच्छ बॉर्डर से आये थे।		
बम बनाने का काम पाकिस्तान से आये हुओ सोहेल शेख और मीरा रोड का साजीद अंसारी और एक पाकिस्तानी बंदो ने किया।	बम बनानेका काम पाकिस्तानसे आये हुये सोहेल शेख और मीरा रोड का साजीद अन्सारी और एक पाकिस्तानी बंदे ने किया।		

CHART NO. 45

Confession of A.6	Confession of A.12
तब फैजलने हमे बताया की, गुजरात के दंगा फसाद में मुसलमानोंका भारी नुकसान हुआ है। इसीलिए बंबई के गुजराती लोगों को टारगेट करना है। काफी चर्चा के बाद मुझे फैजल ने जो लोकल ट्रेन का टारगेट बताया, वह सही लगा। वेस्टर्न लोकल के फर्स्ट क्लास डिब्बों में जादातर गुजराती लोग सफर करते हैं। शाम के वक्त बम धमाका करना ठिक होगा, क्योंकि उस वक्त लोकल ट्रेन खचाखच भरी होती है।	हम लोगों ने फैसल के घर देर तक बाते की तब फैसल ने बताया की गुजरात में हुए दंगे फसाद में मुसलमानों के जान माल का बहुत नुकसान हुआ है और इसी वजह से बंबई में गुजराती लोगों को TARGET करना है और उसके लिये बंबई के लोकल ट्रेन के FIRST CLASS के डिब्बे में धमाके करना ठीक रहेगा. ऐसा फैसल ने कहा. क्योंकि FIRST CLASS डिब्बे में गुजराती लोग ही सफर करते है. WESTERN LINE पर शाम के वक्त धमाका करना ठीक होगा क्योंकि उस वक्त लोकल ट्रेन का हर डिब्बा खचाखच भरा हुआ रहता है.
हमने किराया देकर टैक्सी छोड दी। फैजल के कारसे भी बमवाली ४ बैग निकाली गई। तब तक और पाकीस्तानी बंदे फैजल के घरसे निचे उतरे, और हम सबने मिलकर वो ७ बमवाली बैग फैजल के घरमें रखवा दी।	अली ने टैक्सी से तीन बमवाली बैगों को बाहर निकाला और टैक्सी छोड दी, तब तक फैसल के घर से और दो पाकिस्तानी बंदे जीना उतरे. हम सबने मिलकर वह सातो बम वाली बैगो को फैसल के घर में रखवा दिया.
एप्रिल २००६ के आखरी हप्ते में शनिवार के दिन इशा नमाज के बाद रात के साडे आठ बजे, ऐहतेशाम, डॉ. तन्वीर, फैजल और नावीद मेरे घर आये। हम सबने मिल कर मेरे घर के चारों ओर घूम के मेरे घर का जायजा लिया।	अप्रैल २००६ के LAST WEEK में शनीचर के रात ०८.३० बजे के दरमियान ऐहतेशाम, डॉ. तन्वीर फैसल और मै, मोहम्मद अली के घर पर गये, ऐहतेशाम हमे मो. अली के घर लेकर गया क्योंकि वह उसका घर जानता था. हम लोगों ने मो. अली के घर का चारों ओर घूमकर जायजा लिया.

CHART NO. 46

Confession of A.7	Confession of A.12
बातों में मुझे पता चला की, पाकिस्तानी बंदा सोहेल शेख असल में पुना का रहनेवाला है और वह पिछले दो सालों से पाकिस्तान में ही रहा है और उसने वहाँ पर जिहादी तरबियत, हत्यार और बम बनाने की एक्सपर्टाइज हासील की है.	ये सोहेल शेख असल में पुना का रहनेवाला है. लेकिन पिछले दो साल से पाकिस्तान में रहता है. उसने पाकिस्तान में ही जिहादी और हथियारों की तरबियत हासील की है. और वह बम बनाने में एक्सपर्ट है.
प्लान के मुताबीक मुझे बताया गया की जो बंदे लोकल ट्रेनों में बम रखने के लिए जा रहे हैं, उन्होंने अपने मोबाईल फोन साथ रखना रिस्की होगा. इसिलिए कोई भी बंदा अपने साथ मोबाईल नहीं रखेगा ऐसा तय हुआ है. उसी वजह से फैजल ने मुझे ११ जुलाई को दोपहर साडे तीन बजे बांद्रा के लक्की हॉटल के सिग्नल के पास पहुंचने के लिये और वहाँपर नावीद उसका मोबाईल फोन मुझे देगा. वह मोबाईल फोन मेरे पास लेकर रखने के लिये कहा.	फैसल ने मुझे ऐसे भी बताया की जो बंदे लोकल ट्रेनों में बम रखने के लिये जा रहे हैं उन्होंने अपने मोबाईल साथ में रखना जोखीम भरा होगा इसलिये कोई भी शर्क्स अपने साथ मोबाईल नहीं रखेगा ऐसा तय हुआ. उसी वजह से फैसल ने मुझे ११ जुलै को दोपहर ३:३० बजे बांद्रा के लक्की हॉटल के सिग्नल के पास साजीद अन्सारी खडा होगा उसको मुझे अपना मोबाईल फोन देने के लिये कहा.

CHART NO. 47

Confession of A.3	Confession of A.4	Confession of A.6
उस मुताबिक मैं गोवंडी का मोहम्मद अली, हैद्राबाद का जावेद, जलगांव का जुनेद, मीरा रोड का साजिद, मेरे दोस्त ऐहतेशाम, जमीर, सोहेल शेख और डॉ तन्वीर से लगातार contact में रहा.	मैं, हैद्राबाद का नावेद, गोवंडी का मोहम्मद अली, जलगांव का जुनेद, मीरा रोड का साजीद, जमीर, सोहेल शेख, और डॉ. तन्वीर लगातार फैजल के कॉन्टैक्ट में रहते थे।	मेरे अलावा इस काम को अंजाम देने के लिए साथ में फैजल, जलगांव का आसिफ खान उर्फ जुनेद (जो पहले महाराष्ट्र सिमी का अध्यक्ष भी था), हैद्राबाद का नाविद, मीरा रोड का साजीद अन्सारी, ऐतेशाम सिध्दीकी, जमीर महम्मद, डॉ. तन्वीर, और पुना का सोहेल मेहमूद शेख और फैजल का भाई मुझम्मिल शेख भी मदद कर रहे थे।

CHART NO. 48

Confession of A.6	Confession of A.7
बम बनाने के लिए कुछ घरेलू बर्तन इस्तेमाल किये गये। पाकीस्तान में बसा सोहेल शेख और दुसरा पाकीस्तानी बंदा इन दोनों ने असले को मिक्स करके मसाला किया, और उसके बीच डिटोनेटर्स फिक्स कर दिया।	बम बनाने के लिए घरेलू बरतनों का इस्तेमाल किया गया. सोहेल शेख और एक पाकिस्तानी बंदे ने मिलकर आर.डी.एक्स., अमोनियम नायट्रेट और डिझेल की सहायता से सात बॉमोका मसाला तयार किया और उसके बीचोबीच डिटोनेटर फिट किये.

1181. The above referred charts speaks volume about the credibility, reliability, and truthfulness of each of the confessional statements. These charts strengthen the case of the defence that the accused have not given the confessional statements but their signatures were obtained forcefully. The accused persons also, in their complaint before the Sessions Judge as well as in their deposition, claimed that they have not given any confessional statements, and that their signatures were taken on some papers forcefully by the ATS Officers.

II) The Confessional Statements Vitate Because Of The Torture Inflicted On Accused To Extort The Same.

1182. We have seen that, eleven accused allegedly gave confessional statements. These accused are A.1 to A.7 and A.9 to A.12. These confessions were recorded between the period from 04/10/2006 to 25/10/2006. We have already seen that total 7 DCPs recorded these confessional statements. It is to be noted that all the accused who have allegedly given the confessional statements, retracted them at the first available opportunity, on referring the accused to judicial custody from police custody. It is further pertinent to note that the retraction was on one of the grounds namely, torture and ill treatment by the police.

1183. It is a settled law that, to base a conviction on confessional statements, the Court must satisfy itself that it was voluntary and true.

1184. It is well known that, in most of the cases, police are in habit of extorting confessions by illegal and improper means, including by causing torture. It is a settled law that confessions obtained in this

manner must be excluded from evidence as it is not safe to receive a statement made by an accused under any influence of fear or favour.

1185. The main thrust of the argument is that the accused were in prolonged police custody spanning from 24 days to 76 days. During this period, and just before recording the confessional statements of the accused, while seeking remand of the accused, it was the consistent case of the prosecution that the accused are not co-operating.

1186. However, immediately after invocation of the provisions of the MCOCA on 24/09/2006, the first confessional statement was recorded on 04/10/2006 and then there was a series of such statements which continued till 25/10/2006. Therefore, it is the case of the defence that the confessional statements are not voluntary but the result of continuous torture in police custody.

1187. If we go into the history, we can get the evidence of police atrocities from 1817, i.e. for more than two centuries.

1188. As back as in the year 1817, passing of Bengal Police Regulation 1817 is the example. This shows that for more than two centuries, the safeguards and checks are tried to be placed on malpractices of police officers by enacting necessary provisions. Even in the recent Bhartiya Sakshya Adhiniyam 2023, the Section 22 and 23 are provided which are corresponding to the old provisions Section 24 to 27 of Indian Evidence Act, 1872.

1189. The Bengal Police Regulation 1817 had its object for reducing the regulation into one regulation with amendments and modifications,

several rules have been passed for the guidance of *Darogas* and other subordinate officers of police.

1190. Clause (1) of S. 19 of the Regulation laid down that “whenever any person may be apprehended and brought before a *darogah*, or other police officer, under the provisions of this Regulation, the examination of the prisoner shall be taken, without oath, in the presence of three or more credible witnesses, who are to attest the examination; and the police officer presiding at the inquiry shall question the prisoner fully regarding the whole of the circumstances of the case, the persons concerned in the commission of the crime, and, if any property may have been states or plundered, the persons in possession of such property, or the place where it has been deposited. In the event of the prisoner's making free and voluntary confession, it shall be immediately written down, if practicable, in the language best understood by the person confessing, and in the presence of three or more credible witnesses, who can sign their names, and are not officers of the police or connected with the *thana* establishment, if no persons can be found who may be able to read or write, the most respectable persons in the village shall be required to bear witness, and to affix their marks in attestation of the writing. The party confessing, as well as the witnesses, shall be allowed to read the same when finished, or, if unable to read, the police officer recording the confession shall invariably read it over in the presence of the party and witnesses, before it is signed and attested, and shall state, at the foot of the paper, the day of the week, date, hour, and place at which it may be taken; the original confession, bearing the signatures of the party and witnesses, shall invariably be transmitted to the Magistrate, and not a copy; and the police officer presiding at the inquiry, as well as the person by whom the confession

may be taken down in writing, shall subscribe their signatures to the papers in attestation of its authenticity.” Again, clause (2) of the same section provided that “no compulsion shall be used either towards parties or witnesses for the purpose of obtaining any information whatsoever; and police officers are strictly enjoined not, on any occasion or under any pretext whatever, to encourage a prisoner apprehended upon a criminal charge to confess the same, or to excite the hopes or fears of a prisoner by holding forth a prospect of pardon, or using threats, or otherwise persuading or intimidating the prisoner with the view of inducing him to confess: any species of maltreatment inflicted on a prisoner or witness by a police officer, landholder or farmer, or by any other person whatever whether with a view to extort a confession or to procure information will subject the offender to exemplary punishment, on conviction, before the Magistrate or Court of Circuit. After laying down these stringent rules, clause (3) of the section goes on to say: “whenever a confession may be taken at night, or at any other place than the police thana, the special reasons for its having been so taken shall be stated in the darogah's report. [*Queen Empress vs. Babu Lal and Another*, reported in ILR (1884) 6 All 509]

1191. The authorities, referred to herein below, will depict that for more than 100 years such atrocities and malpractices have been noted by various courts in its judicial pronouncements. Some of such observations, right from 1884, are referred to hereunder: -

A) Mahmood J - These legislative provisions leave no doubt in my mind that the legislature is bad in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and that those malpractices went

to the length of positive torture; nor do I doubt that the Legislature, in laying down such stringent rules, regarded the evidence of police officers as untrustworthy, and the object of the rules was to put a stop to the extortion of confession, by taking away from the police officers the advantage of proving such extorted confessions during the trial of accused persons. [*Babu Lal (supra)*]

B) Straight. Offg. C.J.:— my experience in this Court has conclusively satisfied my mind of two things; first, that in almost every case of serious gravity or difficulty, the primary object towards which the police direct their attention and energies is, if possible, to secure a confession; secondly, that such confession, if subsequently retracted, is, as an item of judicial proof, unless corroborated by strong and independent evidence, positively worthless. It requires no very vivid imagination to picture what too often takes place when two or three of these not very intellectual or highly-paid police officials are called away to a village to investigate a grave crime, of which there are no very clear traces. Naturally it is much the easier way for them to begin by endeavouring to obtain a confession from the suspected person or persons, instead of by searching out the clue to the evidence from independent sources, and seeing what entranceous proof there is. [*Babu Lal (supra)*]

C) Ray, C.J.:— Spontaneity & faithful reproduction are the two vital needs in determination of admissibility of confession, & they have been sufficiently well-impressed upon the statutory provisions in relation to them. Section 24, Evidence Act, rules out confessions caused by inducement, threat, or promise as irrelevant to a criminal proceeding. Section 25 rules it out on the simple ground that it is

made to a police officer by a person accused of any offence. The police officer is a person in authority within, the meaning of S.24 & he is the person to whom is attributed the greatest zeal to detect, the offence, & who is likely to exaggerate every ground of suspicion into proof. It is not so much from consideration of credit as from consideration of public policy that law declares a confession made to a police officer as irrelevant. [*Bala Majhi (supra)*]

D) K.C. Dasgupta, J. - If it is permissible in law to obtain evidence from the accused person by compulsion, why tread the bard path of laborious investigation and prolonged examination of other men, materials and documents? It has been well said that an abolition of this privilege would be an incentive for those in charge of enforcement of law "to sit comfortably in the shade rubbing red pepper into a poor devil's eyes rather than to go about in the sun hunt' up evidence". (Stephen., History of Criminal Law, p. 442). [*State of Bombay vs. Kathi Kalu Oghad and ors. AIR 1961 SC 1808*]

E) The Evidence Act which was enacted in 1872 bears relevance to the then situation in which the police were practically the only enforcement agency available to the Government and they had acquired notoriety for the adoption of several gross malpractice involving torture and other pressure tactics of an extreme nature to obtain confessions from accused persons. More than 100 years have rolled by since then. We are aware that the police are still not totally free from adopting questionable practices while interrogating accused persons. [*Kartar Singh(supra)*]

F) ...we with the years of experience both at the Bar and on the Bench have frequently dealt with cases of atrocity and brutality practiced by some overzealous police officers resorting to inhuman, barbaric, archaic and drastic method of treating the suspects in their anxiety to collect evidence by hook or by crook and wrenching a decision in their favour. We remorsefully like to state that on few occasions even custodial deaths caused during interrogation are brought to our notice. We are very much distressed and deeply concerned about the oppressive behavior and the most degrading and despicable practice adopted by some of the police officers even though no general and sweeping condemnation can be made. *[Kartar Singh(supra)]*

G) In all custodial crimes that is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. **(D.K. Basu..vs.. State of W.B., reported in (1997) 1 SCC 416)**

H) Custodial interrogation exposes the suspect to the risk of abuse of his person or dignity as well as distortion or manipulation of his self incrimination in the crime. No one should be subjected to physical violence of the person as well as to torture. Infringement thereof undermines the peoples' faith in the efficacy of criminal justice system. Interrogation in police lock-up are often done under conditions of pressure and tension and the suspect could be exposed to great strain even if he is innocent, while the culprit in custody to hide or suppress may be doubly susceptible to confusion and manipulation. *[Kartar Singh(supra)]*

I) Torture is such a terrible thing that when a person is under torture he will confess to almost any crime. Even Joan of Arc confessed to be a witch under torture. Hence, where the prosecution case mainly rests on the confessional statement made to the police by the alleged accused, in the absence of corroborative material, the courts must be hesitant before they accept such extra-judicial confessional statements. [Arup Bhuyan..vs.. State of Assam, reported in (2011) 3 SCC 377]

1192. The above referred authorities show that it is the experience of the Judiciary for centuries that some overzealous police officers resort to inhuman and drastic methods in extorting confession.

1193. Learned Counsel Shri. Chaudhary submitted that in the present case, within a few days of the recording of their confessions, all the accused have complained of coercion and torture. On 9.10.06, i.e. the very day that they were produced before the Learned Trial Judge by the ATS to be transferred to judicial custody, the accused retracted their

confessions. Subsequently, in their complaints as well as in their statements and evidence u/s 313, 314 and 315 Cr.PC, they gave detailed accounts of the torture inflicted on them by the ATS. The accused have stepped into the box as defence witnesses, giving evidence on oath and offered themselves for cross-examination. Their evidence, therefore, merits acceptance, since the cross examination has been limited to denials and suggestions. Apart from that, their evidence has also been corroborated by medical and other evidence. To buttress this argument, the defence has placed reliance upon the judgments viz. *Dudh Nath Pandey v. State of U.P.* reported in (1981) 2 SCC 166, *State of U.P. v. Babu Ram* reported in (2000) 4 SCC 515, *Munshi Prasad v. State of Bihar* reported in (2002) 1 SCC 351.

1194. It is further argued that it is well known and judicially acknowledged that torture does not always leave tell-tale marks. Not allowing a person to sleep, making him person stand the whole night with his arms tied above his head, or stretching his legs to 180 degrees, as has been repeatedly testified to by the accused, will not leave visible scars on the body, no matter how much this may bruise the mind or injure the psyche. Notwithstanding these handicaps, the accused' evidence on oath that they were tortured is corroborated by medical evidence to a very substantial degree that more than suffices to give the 'appearance of torture required under Section 24 of Indian Evidence Act to render the confessions irrelevant in law.

1195. It is submitted that the fact that medical evidence of torture is available for only some and not all accused will not detract from the strong suspicion that all the confessions in this case were obtained under torture. If so many accused have been tortured, the threat of

torture will loom large for all the accused, which is relevant under Section 14 of the Indian Evidence Act and therefore, be sufficient to vitiate their confessions under Section 24 Evidence Act.

1196. On the other hand, the learned SPP opposed the arguments of the defence vehemently by denying the allegations of torture. It is argued that the accused were regularly medically examined and reports are on record which falsify the case of the defence of torture. It is submitted that whenever the accused were produced before the Court, no complaint of any sort was made. It is, therefore, submitted that the allegations are an afterthought.

1197. Before we proceed to examine the allegations about torture, it is to be noted that there are two sets of accused. In respect of the first set of accused, we have material on record namely complaint made by the accused in writing, 313 statements, and medical evidence. In respect of second set of accused, though there are 313 statements and complaints, medical evidence is not available.

1198. The first set of accused are of A.1, A.5, A.6, and A.7. Whereas, in second set of accused are A.2, A.3, A.4, A.9, A.10, A.11 and A.12. Out of these accused, except A.1 – Kamal and A.3 – Faisal, all the accused entered into witness box. And therefore, in addition to their 313 statements and complaints to the court, oral evidence is also available on record.

1199. In the above referred backdrop, we now proceed to examine the allegations made by each of the accused as regards torture allegedly inflicted on them by the police for extorting confession and the

evidence relating to the same. We will deal with the complaint and evidence of each of the accused independently. We will first deal with the first set of the accused, i.e., the evidence of A.1, A.5, A.6 and A.7, and then, we will proceed to examine the evidence of the second set of the accused namely, A.2 to A.4, A.9 to A.12.

A.1 – Kamal Ansari

1200. A.1 - Kamal Ansari was arrested on 20/07/2006. He was the first person arrested in this case. He was in continuous police custody till 09/10/2006 i.e. for a period of 2 months 20 days. As soon as he was transferred to judicial custody he made a complaint on 09/11/2006.

1201. Moreover, under Section 313 and 314 of Cr.P.C., he made a detailed allegation of torture.

1202. The medical reports relating to A.1 show that from 09/08/2006 to 15/08/2006 A.1 was taken to hospital and Emergency Medical Services (EMS) were given to him. The record shows that A.1 was also referred to ENT Surgeon.

Complaint to the Court

1203. On 09/11/2006, A.1 made a complaint to Session Judge giving a detailed account of torture inflicted on him during his police custody. He states that on 20/07/2006, he was brought to Bombay at Chandan Chowki. There, the police started beating him. He was not able to understand why they were beating him, and they asked him, “What SMS did you send in Bombay?” and they kept beating him. At that time he was not able to remember. After some time he replied that a few days back, he had sent an SMS to his brother-in-law. That SMS was

sent by his younger brother Jamal Ahmed, who works in Delhi. A.1 in his complaint further stated that on 3rd or 4th July, he received a religious message from his younger brother Jamal Ahmed on his mobile. A.1 liked that message very much and he forwarded it to many of his friends. He probably did it on 9th or 10th July. Then those policemen beat him even more. Even when he kept telling them his story, they kept hitting him with belts and hands and feet.

1204. It is further stated that police further asked him that who exploded the train bombs in Bombay? SIMI people or LT people?" to which he replied, "he does not know." They became even more angry and started beating him. He was further forced to admit that he is a member of LT and they have exploded the bombs, and some SIMI men are also involved in it. A.1 further states that after some time they took him to another room and started beating him and after some time he became unconscious. When he opened his eyes, he was lying on the floor with handcuffs and without a bed-sheet. A commander was sitting on a chair there. He asked him to wash his hands and face. He gave him water and tea. The same treatment was given to his *Dulha bhai* and Khalid. It was the 21st of July, when they brought him again to a place called Kala Chowki, where he was unconscious for one night.

1205. A.1, in his complaint, further states that on 26th July at 11:00 AM, he was questioned again, PI sachin Kadam asked him "do you know Qamaruzzama?" He said no. Then they started beating him. They beat him a lot and started telling him that you say you know Qamaruzzama, he said he does not know, then they asked "do you know Badriuzzama?" He said one of his friends name is Badriuzzama, then PI Sachin Kadam abused him and said how do you not know his

brother, his brother's name is Qamaruzzama. The next day they brought a young boy of about 24 years of age in front of him and asked him if he knew this boy. He said no. Then they let him go. They further asked him if there are people named Faisal, Sajid, Asif, Tanveer, Mujammil, Zameer, Ehtesham in his village. He said one of these people is a man named Sajid in his village and the other is his nephew named Asif. They asked "How old is he?" he said Sajid is (50) fifty years old and Asif is (8) eight years old and he studies in Delhi. They talked among themselves and said he is very ill, keep him in the lockup. But before this he was taken to the hospital but he was told not to tell anything to the doctor, otherwise he would be in a very bad condition. From the hospital, he was brought to Bhoiwada lockup and kept there.

1206. It is further stated that on 1st August 2006, he stopped eating and drinking from morning till evening and in the evening they took him to Chandan Chowki. The same old sahab, the same Punjabi (J.J. Singh) and Sunil Deshmukh and one other man were standing in a room. They made him sit on an iron cot. A new sahab said that you have become weak, we will give you Glucose. They started giving him glucose. He got scared and started crying. Then he told the old sahab (Raghuvanshi) not to remove his kidney and Raghuvanshi got him an injection and he fainted. He regained consciousness the next day. Then A.1 brought to Kala Chowki, there Sachin Kadam and all the others started beating him and after some time they started saying, you are a Muslim and how do you know Sanskrit, he said that all my friends are Hindus and he also speaks a little Sanskrit with them but he does not know how to read and write. They started beating him more, after that blood started flowing from his left ear and he could not hear anything. He was lying there in pain all night, the next day they put him in

Bhoiwada lockup and got him medically examined, but threatened him that “we will get you treated, so do not say anything”, he did the same, they just brought painkillers, they took him to a hospital but did not treat him and refused to tell the doctor, the pain in his ear was increasing.

1207. A.1 further stated that one day the ear pain increased a lot. On 4th or 6th August, they told him to show his ear to a doctor but do not say about assault. He told this to the doctor at K.E.M. Hospital and she was a lady. She prescribed some medicine and did an ear test. When the ear pain reduced a bit, she stopped giving the medicine.

1208. He states that, finally, on 14th August, he told the judge about his ear pain. Judge scolded the police and they put him in Bhoiwada lockup. On the same day, 14th August, at night, he was taken to the lockup by the same officer. They took him to Dr. AN Rao again where Raghuvanshi, J.J. Singh, Bajaj, Sachin Kadam were all sitting. Then Sachin Kadam said, “He has complained to the judge. AN Rao said, he has pain in his ear, hit his ear more. Then Sachin Kadam started slapping his ear hard. After that, they called the commander from outside and made him turn his legs 180°. He was in a lot of pain. The next day they took him to KEM hospital, got his ear checked and gave him medicines. On the third day, they took him from Bhoiwada to Chandan Chowki and did not give him food or water from morning to evening. In the evening, some new people came to the same room along with Sachin Kadam and Sunil Deshmukh. They made him lie down on the cot and gave him Glucose and an injection. He fainted.

1209. It is further stated that, on 11th September, A.1 was produced in the court. He complained to the judge that he was having severe pain in his eyes and was unable to see clearly. After that he was put in Bhoiwada lockup.

1210. It is further stated that on 16th Sept. he was taken for medical examination and then to Kala Chowki. There his videography was done in front of Bajaj, J.J. Singh and other officers. After that he was beaten up badly, his legs were turned 180° and he was beaten up by saying, "Say and confess that you came to Mumbai". He was tortured a lot. In the evening, they used to blindfold him and tell him to say whatever they had written and would tell him to say this and that too in a soft tone. After that, they would beat him more, ask him to confess and beat him more, put cockroaches in his vest and rat in his underwear, made him lie down on the tracks and poured water in his nose. Due to this, he would get severe pain in his chest and sometimes his breathing would stop. DCP Bajaj there used to tell him to agree to what we say and confess, and he would say he does not know anything, then DCP Bajaj said, he agree that "you don't know anything and you are innocent, but have you not heard the saying, a frustrated cat scratches the pole and you are the pole and I am the cat, I have not got anything, I am scratching you", A.1 said "kill me but don't beat me", DCP Bajaj said "I won't kill you, I have a pen, with this pen, I will make your life hell, your entire family will come on the road, your children will beg, you agree with me and accept it or else keep suffering". After that they took him to Bhoiwada.

1211. It is stated that, the next day, Mr. Raghuvanshi called him from Bhoiwada lockup and made him sit upstairs and started telling him in

private that "you are innocent, you have small children too, do one thing for me" A.1 asked what? He said "how much do you earn in a month?" A.1 said around 3500, he said "I will give you four lakh rupees, if you say so I will send it to your home first. But you do as I say, you become a witness." A.1 said "He does not know anything nor does he know anyone, and he is a son of a soldier, how can he falsely implicate someone in a wrong thing." On that Raghuvanshi said that you will not agree, this time he called a commander and said "I want his moving/jumping picture." After he left, the commander brought A.1 to Kala Chowki. And there they made him naked and put some liquid through the penis using a syringe which caused so much burning sensation that he felt like scratching and biting his entire body and he would scream and shout loudly and they would beat him with a belt and take photographs from the smaller room. They beat him so much that his kidney started paining and there was blood in urine for three days and his hydrocele swelled and then they took him to KEM hospital on 27th Sep and got him treated there, got sonography done of both the kidney and hydrocele.

Observations As Regards The Complaint

1212. This detailed account of torture is difficult to read and imagine the barbarity of police, and if it is accepted as true and correct, it surely depicts inhuman, barbaric and drastic methods applied by police to extort confession from A.1. The nature of torture mentioned in the complaint will shock the conscience of anyone. The narration shows that the incidences stated are not vague and general but with details namely the dates, place, the names of the officers and the nature of torture.

1213. It is of general knowledge that there is something which is called as third degree method, which police resort to during investigation. But no one can tell the exact nature of torture the police inflict during such third degree method, with such detailed narration, except the one who underwent the same.

1214. Therefore, looking at the contents of the complaint and the minute details given by A.1 in his complaint, it cannot be thrown away at the outset as an afterthought or false. But, we must find out whether there is any material on record which would corroborate such barbaric and inhuman torture.

Medical Evidence

1215. A.1 did his schooling upto 7th standard in Basopatti, which is a small town in Madhubani district in the state of Bihar. From the record, it appears that he was not knowing English language. In this backdrop, it is imperative to note that all the medical reports in respect of medical examination of A.1 were in English and produced on record during the trial.

1216. The first evidence of prosecution witness was recorded on 18/12/2007. Thus, all the evidence relating to his medical examination was brought on record by the prosecution subsequent to this date.

1217. Whereas, all the medical reports of A.1 are in English, and since medical terminologies are used, even we faced difficulty on some occasions to understand the same, and we had to seek assistance of the

learned counsel for both the parties to understand the same. Moreover, there is no evidence on record which would suggest that immediately after the medical examination, the copies of the reports were provided to A.1.

1218. In the circumstances, it can safely be said that on the date of complaint made by A.1 on 09/11/2006, he had no knowledge about the contents of any of the medical certificates and accordingly make allegations in the complaint. The relevant certificates related to A.1 were exhibited on 06/02/2012, i.e., after more than five years of his complaint of torture. Therefore, if A.1 had any opportunity to look into such evidence, he got it after more than five years of his complaint.

1219. In light of above referred aspects, let us examine whether the medical reports of A.1 even slightly suggest any truthfulness in his complaint of torture.

1220. Medical reports between dt. 09/08/06 and dt. 15/08/06, Exh. 2121 and Exh.2122 speaks about Complaint of Giddiness (O.P.D) by A.1 and shows symptoms with giddiness x (for) 2 days, Left ear pain, decreased hearing from the left ear, patient referred from EMS IVO for left ear ache; Tinnitus (left ear); History of giddiness along with change in posture. Complaint of ear ache since 10-12 days; History of bud usage; Right ear minor abrasions.

1221. Medical reports Exh. 2149 dt. 21/09/06 shows pain in right iliac fossa & history of vomiting. Complaint of Pain in back radiating to right flank & groin since 3 days + vomiting; Similar complaints in past by A.1.

1222. Medical report Exh.2151 dt.23/09/06 shows the patient is not willing to tell complaints but the patient is moaning. Further, Exh.2152 dt.23/09/06 shows that the patient brought in view of cooing sounds making through mouth and when asked to patient, says no any symptoms after asking deeply; history of pain at groin; pricking pain at inguinal region; history of vomiting twice yesterday; tenderness at inguinal region. Complaint of pain in abdomen.

1223. Medical reports Exh.2152 dated 27/09/06 shows pain in abdomen in right scrotal pain, pain in abdomen since 3 days; pain in back; pain in inguinal region in backside. History of vomiting; history of hematuria 10 days back; per abdomen tenderness present. Complaint of back pain since 5 days; history of injuries to back 5 days back; tenderness present in the lower lumbar region and paraspinal region; Evidence of min Free fluid in pelvis and pancreas and midline obscured by bowel gas; increased cortical echogenicity urinary bladder distended; impression: medical renal disease & minimum ascites; mild free fluid in tunica vaginalis; a large hypoechoic area noted surrounding the cord at its attachment to epididymis measuring 1.8 x 1.8 cm; signs of cord hematoma.

Ocular Evidence of Doctors

1224. PW-182 Dr. Gond, a medical officer at KEM Hospital, in his deposition stated that the entry at sr. no. 22551 shows that the same patient was brought on 21/9/06 by PC-21504 of the ATS at 6.15 p.m. He himself gave the history. He complained of pain in right iliac fossa and gave history of vomiting. His vitals were normal, there was no external injury seen. He was given injection Cyclopam and was referred

to ESR (Emergency Surgery Registrar). The findings of the ESR under Dr. Abhay Dalvi were complaint of pain in back radiating to right flank and groin since three days, no history of vomiting, bowel/bladder complaints, nausea, similar complaints in past. On examination, general condition fair, vitals normal, per abdomen soft, no tenderness, guarding or rigidity. The impression was renal colic. He was advised i/v Spasmo, 1 amp stat, USG Kidney Urine Bladder. The finding after the USG was that no abnormality was detected and the patient had symptomatic relief. He was advised tablet Spasmo and Rantac for 7 days.

1225. Further, PW-182 in his deposition stated that entry at sr. no. 22620 shows that the same patient was brought on 23/9/06 by PC-32085 of the ATS at 10.15 a.m. Patient was not willing to tell complaints, but patient is moaning. The findings of the EMR were brought in view of cooing sounds making through mouth, when asked to patient no any symptoms after asking deeply. History of pain at groin, pricking pain at inguinal region, sonography done to rule out renal colic - normal. History of vomiting twice yesterday, no history of fever/dyspnoea. He was referred to ESR in view of pain at inguinal region. The ESR had referred him for x-ray chest PA and abdomen standing. The findings after seeing the x-rays were within normal limits. The findings of the ESR on the continuation sheet at 11.00 a.m. are that the patient was brought by PC, history self, same complaints as made to EMS. On examination, general condition moderate, afebrile, vitals normal, per abdomen soft, no tenderness, guarding or rigidity. He was advised injections of Spasmo Proxyvon 1 intramuscular stat and continue capsule Spasmo Proxyvon and tablet Rantac.

1226. It is further stated that the next entry behind the OPD case paper Ext.2145 shows that the same patient was brought on 25/9/06 by PC-5041 of the ATS for routine medical checkup. He himself gave the history. He had no complaints. His vitals were stable, there was no external injury seen and he was clinically fit. Dr. Amit Sharma had examined him. The next entry in the continuation sheet of Ext.2151 shows that the same patient was brought on 27/9/06 by PC-33419 of the ATS for routine medical checkup. He himself gave the history. He complained of pain in abdomen and right scrotal pain. He was referred to ESR for evaluation. Dr. Amit Sharma had examined him. The continuation sheet of the same day shows that at 12.10 p.m. he was seen by ESR under Dr. Rajiv Satoskar. Patient gave history himself, brought by PC -1155 and is under custody of ATS, Bhoiwada. He complained of pain in abdomen, back and inguinal region right side from three days and history of vomiting, but no history of loose motion/constipation, fever, burning micturition. History of hematuria ten days back. On oral examination, his general condition was fair, afebrile, vitals normal, per men tenderness present, but no guarding or rigidity. No abdomen Inguinal swelling. Patient was advised to USG abdomen and scrotum and was referred for an orthopedic opinion for back pain.

313 Statement

1227. A.1 maintained the complaint of torture in his 313 statement wherein he states that he was tortured by the police and ATS by using 3rd degree method. From Mumbai Airport, he was brought to A.T.S Chandan Chowki and was subjected to third degree torture. Then from there he was taken to Kala Chowki and there too he was only beaten

and thrashed. His signature was taken on a blank paper and his video was made in which whatever he was taught to write, that statement was made by beating him, which is false. His TIP parade has not taken place. He further stated that on 09/10/2006 he had also made a verbal complaint in the MCOCA Court to Judge about the third degree torture and forceful signing of blank papers by the ATS and have made a written complaint about the third degree torture done on him by ATS, physical and mental illegal Narco test, threats of implicating family members, forcing him to become witness of apology.

Conclusion

1228. The above referred evidence not only corroborates the complaint of A.1 of torture and its truthfulness but also the fact that police warned him not to disclose about the torture meted out to him by them to the doctor. Medical report Exh.2151 and the evidence of PW-182 support the said statement of A.1. This fact falsifies the case of the prosecution that there was no torture as the accused never complained of such torture to the Court.

1229. The torture was barbaric and inhuman, and it exposes the frustration, the officers might have at the relevant time for obvious reasons. In the words of A.1, "बजाज ने कहा मैं मानता हू तु कुछ नहीं जानता और तु बेकसूर है पर तुने एक कहावत नहीं सुनी खिसायनी बील्ली खम्बा नोचे और तु खम्बा है और मैं बिल्ली मुझे कुछ नहीं मिला मैं तुझे नोच रहा हूँ" (Bajaj said, I agree that you don't know anything, you are innocent, but have you not heard the saying a frustrated cat scratches the pole and you are the pole and I am the cat I have not got anything I am scratching you).

1230. The medical report and the evidence of PW-182 lead us to only conclusion that the record sufficiently shows the torture inflicted on A.1 before recording of his confessional statement. Hence, we are of the firm view that A.1's confessional statement is inadmissible in evidence and cannot be relied upon to base the conviction.

A.5 - Mohd. Majid

1231. A.5 – Mohd. Majid was arrested on 29/09/2006 in Cr. No. 156/2006. He was in police custody for 26 days before his confessional statement. A.5 asserts that his confessional statement is the outcome of the torture inflicted on him.

1232. It is argued by the defence that A.5 stated in his complaint that he was brutally tortured. He was forced to sign the confession. He was beaten with a belt on his back and legs. His legs were tied with ropes and were stretched to 180°. Even electric shocks were given to his private parts.

1233. It is further argued that this torture was described in the first complaint made as soon as he was transferred to judicial custody on 09/11/06. He further says that he was threatened not to make any complaint to anybody. It is pertinent to note that 10 days before the confession, on dt. 14/10/2024, A.5 was suddenly referred to EMS, the documents relating to it are not on record. The doctor who was on duty for EMS does not state why A.5 was referred for EMS.

1234. On the other hand, learned SPP denied the fact of torture and stated that whenever A.5 was produced in the Court, he never made

any complaint of torture. It is therefore, argued that the allegations of torture are false and incorrect.

Complaint to the Court

1235. On 09/11/2006 A.5 made a complaint stating therein that he was arrested on 28th October 2006 at 7:30 p.m. from a workshop at Raja bags. Thereafter, he was taken to Naskaldanga Police Station. From their officer Vijay Salaskar and officer Phadke took him to Airport and he was taken to Mumbai. He was taken to Bhoiwada Police Station, then to its general Lockup till the 3rd day in Lockup he was neither asked nor questioned anything. Then somebody posing from Human Rights came and questioned him. He claimed innocence before him and by the time he left, two officers from ATS, one person whom he knows as Tawde and the other person whom he could identify started beating him up. They kicked and punched him.

1236. It is further stated that on the same day some constable and Havalgars forced him down and beat him on his sole and with stick repeatedly beat him on his sole with sticks. They forced him to walk for an hour in the lockup. He was not given anything to eat though he was on fast.

1237. He states that physical and mental torture continued till 11th October 2006. He states that he vividly remembers that Salaskar on 8th October 2006 and on 9th October 2006 stripped him naked and made him parade before the staff. Thereafter, he blindfolded him and beat him continuously until he falls down due to exhaustion. This continued from morning to evening.

1238. It is stated that, whenever he was produced before the court, he was told not to speak anything in the court or if he speaks, they would torture him again.

1239. On 14/10/06 his medical examination was done. Then, he was taken to one Jaijeet Singh who beat him badly with kicks and blows. He asked him to repeat a story that he narrated and told him to maintain it to whoever interrogates him or otherwise he will be beaten up. He used to tell him to repeat it everybody he came across. Each time he made a mistake he was beaten up by the officers. His legs used to be tied by officers of ATS and stretched 180°. Jaijeet Singh used to beat him for long hours and ask him to accept the story he was narrating.

313 Statement

1240. A.5's Section 313 statement states that he would like to draw the learned court's attention to exhibit 'E', dated 09/11/2006. Wherein he has retracted his forceful confession, which was taken from him, wherein the ATS had physically and mentally tortured and abused in their custody.

1241. In the exhibit 'E', he has specified the atrocities done by the ATS on him. It is stated that he was forcefully picked up from his shop on 28/09/2006 by ATS with the help of local Police in the guise of making some inquiries. He was never explained the reason for being picked up by the ATS or the local Police. No arrest panchnama was done on the spot. Therefore, he can say that he was not legally arrested.

Ocular Evidence of A.5

1242. A.5 entered the witness box as DW-43. A.5 deposed that ACP Tawde made him sit at his feet and started beating him by feet. He asked him why he was beating him and ACP Tawde told him that he would soon come to know about it. When A.5 started arguing with him, he called 2-3 constables, handcuffed his hands behind him and by making him lie down on the floor started beating him by belt on his back and legs. This continued for many hours. Officer Phadke came with some constables in the same night and took him to the office of Vijay Salaskar at Kurla. They asked him as to when he had gone to Pakistan for training and when he had gone to Bangladesh. He told them that he had not gone out of Kolkata and he does not know about all these things. They said that he would soon know what he has done. They removed all his clothes and made him lie on a bench, handcuffed his hands below the bench, two persons sat on his back and legs and the others started beating him by belt on his legs and continued beating for a long time, after which he fell unconscious. After he regained consciousness, they asked him to stand on a stool and jump on the floor. His legs had swollen because of the beating. The two officers then started telling him the story that they had prepared. They told him that he had crossed the border and gone to Bangladesh and had brought some Pakistanis with him and those persons are involved in the Mumbai train blasts. He told them that he had not done any such things and that they are making false allegations. They took his statement till late night. He was handcuffed to a window and made to stand there for the whole day on 02/10/06 and not allowed to sit for even a minute. Sometimes they used to ask him to take the posture of a stool and then used to give weights in his hands. He felt giddiness and was not able to even sit in the bathroom.

1243. He further deposed that he was observing roja on 04/10/06. Vijay Salaskar tortured him heavily on that day to the extent of giving electric shocks to his private parts after making him naked. This type of torture continued for many days, sometimes in the morning, sometimes in the afternoon and sometimes in the evening. PIs Phadke, Alaknure and Dalvi tortured him heavily on 07/10/06. His clothes were removed and he was handcuffed behind the back, blindfolded and veiled. He was heavily beaten by hands, legs and sticks. This went on for one or two days. He was taken to the Bhabha Hospital on 11/10/06, before which he was threatened not to say anything there or else they would beat him more after coming back. His thumb impression was obtained and his face was not shown to the doctor by removing the veil. He was then taken to the Kalachowki ATS office, kept in a small soundproof room. A Punjabi officer Jaijeet Singh came to meet him, made him sit near him and on his asking A.5 told him about his entire life. When he finished, he told A.5 to say something more that would sound good to his ears. A.5 told him that he does not know anything more than what he said. Thereupon he said to Alaknure, who had come with him there, that he had not looked after him properly and therefore, he is not telling the truth. He sent a constable and called many hawaldars and constables and told them to open him up. They removed all his clothes, handcuffed him behind, made him to sit on the floor, tied ropes to his both legs, a constable sat behind him holding and pulling his hairs and two constables pulled the ropes tied to his legs. It was intolerable for him when they pulled more. They were beating him on his legs with sticks and belt. He cried and begged for mercy and then they left him. He told them that he is ready to do whatever they say and he should be released from there.

1244. The prosecution could not shatter the evidence of A.5. Except giving suggestions, nothing could be brought out by the prosecution contrary to the evidence led by A.5, in examination-in-chief.

Medical Evidence

1245. In the above referred backdrop of allegations of torture, we will now examine the medical examination reports of A.5.

1246. Medical Report (Exh.2200) Dt.26/10/06 shows swelling in the right foot & tenderness in both thighs of A-5.

1247. Similarly, the Medical Report (Exh.2196) Dt.25/10/06 speaks about history of headache since 1 month; general condition fair; Vitals stable; Complaint of irritability; referred to Psych OPD.

Ocular Evidence of Doctors

1248. Let us, therefore, refer to the oral evidence of PW-182 Dr. Parmeshwar Gond of K.E.M Hospital Regarding Medical Examination of A.5.

1249. He deposed that the entry at sr. no. 24704 shows that the same patient was brought on 14/10/06, at 8.30 a.m, by HC-9772 of the ATS. He was referred to EMS for investigation (Exh.2218). Dr. Dhiraj Dongre had examined him.

1250. He states that swelling on the right foot with tenderness in both thighs can be a result of trauma or exercise. Medical officers like him can notice these things. According to PW 182, if a wound is infected

there can be fever with chill. One may suffer a headache if he is mentally tortured or not given food. Capsule Doxycycline is an antibiotic. Paracetamol is given for headache and fever. If a doctor wants to observe a patient, he may ask for follow up. Then, after going through Exh.2079, he states that he asked for a follow up after three days.

1251. PW-183 Dr. Yelkar of Bhabha Hospital deposed that the Health Screening Sheet of the Byculla District Prison (Exh.2200) shows the injury of swelling on right foot and tenderness in both thighs. He further stated that police bring the custody patients for general examination as to whether he is sick or for any reason and whether he has any complaints. It may be that custody patients are produced before medical officers for examination to keep check on police torture. He had come across patients who have complained about assault by police. He admits that he did not notice the injuries mentioned in Ext. 2200 on the patient Mohd. Majid when he examined him on 25/10/06 as he did not examine him by asking him to remove his clothes.

1252. On 24/10/06, Part I of the confession of A.5 was recorded. And on 25/10/06, prior to recording of Part II of confession, he was produced before the medical officer PW-183 Dr. Yelkar at about 10:25 am on the orders of DCP. He was produced before the hospital for check up. The officer referred A.5 to a Psychiatrist. A.5 was produced before the Doctor on 25/10/06 at 10:25 am, and part-II of confession was recorded at 12.10 p.m.

1253. PW-182 & PW-183 are confronted with the Byculla report during their cross-examinations. They admit the mention of swelling

on right foot with tenderness on both thighs, can be a result of trauma or exercise, Medical Officer like him can notice these things in the Byculla Report.

Conclusion

1254. The above referred evidence sufficiently hints at the possibility of torture being inflicted on A.5 to extort his confession. Since the prosecution could not effectively answer to the allegations made by the defence regarding the torture, the evidence brought up by the defence remained unshaken. Thus, in view of language of Section 24 of Indian Evidence Act, we are of the opinion that the confessional statement of A.5 is inadmissible in law.

A.6 - Mohd. Ali

1255. A.6 was arrested on 29/09/2006 in Cr. No. 156/2006 Borivali Railway Police Station. However, as per A.6, he was taken in custody much before this date. He was in police custody for 26 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1256. It is argued by the defence counsel that on 7/11/2006, the brother of A.6 filed a complaint in the Special Court. He had been trying to visit A.6 in Arthur Road jail; he was not being allowed to meet his brother. Then, he made a complaint to the Court; he was allowed to meet A.6. A.6 told his brother how he was tortured in the jail and he was hung upside down and beaten. Therefore, A.6's brother

made an application in the court regarding this. The learned trial Judge ordered the patient to be taken to J.J. Hospital. In this complaint, the brother mentions that A.6 told him that he was forced to sign a confession, and that he will be falsely implicated in the Malegaon blast case.

1257. Furthermore, learned defence counsel argued that A.6 said that his hands and legs were tied behind his back, he was beaten on the sole of feet, and he was hung upside down and beaten up on the body and arms. In the medical report (Exh.2220) 15 'days' is cancelled and it has been changed with 15 'years'.

1258. It is further argued that X-ray reports that were advised, are not on record. The findings of X-ray are also not mentioned. When he was transferred to judicial custody and shifted to Nagpur Jail, they got an MRI done of his shoulder. It was made when he was in judicial custody on 14/03/2009 (Exh.2498. This MRI scan was done at the Government Medical College at Nagpur).

1259. Furthermore learned Counsel submitted that on 14/10/2006, 10 days before his confession he was suddenly sent for EMR and EMS under a letter sent by PI ATS. On 14/10/2006, at 3.20 pm, A.6 is taken by PC No...ATS for EMS. It is not a casual or routine report written by medical officers. Then, he was brought for check up on 19/10/2006 by PC for the complaint of giddiness. This is 5 days before confession. On 19/10/2006 at 2.50 pm seen by lecturer, complaint of alleged history of giddiness in morning, difficulty is walking seem to be one of the symptoms, treatment required, tablets given.

Complaint to the Court

1260. A.6 made a complaint dated 23/11/2006 (filed in the Court on 09/11/2006) to the Session Judge stating therein that he had been framed in this case and had nothing to do with this case, directly or indirectly. All the allegations levelled against him by ATS are false and baseless. In police custody, he was mentally and physically tortured, his statement was extracted through police pressure and threats. At times, he was told to sit in front of the camera, smiling and relaxing, so that his story sounds correct. He denies all the allegations levelled against him by ATS and take back his statement.

1261. He states on 17/10/06, he was taken for a narco test. After this test on 20/10/06 at around 23.00 hrs. at Kala chowki ATS office Officer Sachin Kadam Showed him Photo of Malegaon Blast and abused him and told that "what all you have done in Malegaon and Mumbai blast you have told us." He told them that it is not possible that the case in which he was not connected in any way, he could tell about it. He told the officers to show the CD of Narco analysis test. They did not show him that CD and started assaulting him. He was assaulted by 4 to 5 officers. They forced him to create/make any dummy story and again assaulted him. He was so scared that he had to repeat the statements made by them.

1262. It is further stated that on 21/10/06 in the morning, he stated to officer Sachin Kadam that he in no way connected with this case. At that time, he was taken before Raghuvanshi who had come to Kalachowki "B" Office. He was crying in front of him and begged him to have mercy on him. Raghuvanshi told him that if he will not admit

and not become an approver, he would be implicated in Malegaon Bomb blast Case. Raghuwanshi directed the other officers that they should assault him so much till evening. First, Raghuwanshi hit him (A.5) on his back, where he was experiencing pain since before. He shouted and sat down. At that time he was assaulted on his head by belt and fist blows. He shouted due to pain but the officer Sachin Kadam, Tajne, Raghuwanshi and Khandwelkar did not show any mercy on him and continuously assaulted him. Then ACP Dhamle came there and assaulted him by means of belt and fist blows on head, hands and told If he does not create any story on Malegaon Blast his entire family members would be implicated falsely in this case and harassed in the same manner and would be assaulted by making them naked. He was beaten so mercilessly that he had to repeat to what the officers were saying.

1263. A.6, in his complaint, further stated that Raghuwanshi used to take such other person's names whom he had never met before or had not heard of and Raghuwanshi is also told him to say that these persons had come to his house. He was also told by Raghuwanshi to tell that Pakistanis had come to his house and his house was used to make bombs. He had to say yes and agree to whatever they were saying as he was scared that he would be beaten again.

1264. It is further stated that on 26/10/06 when he was brought before this Court for remand, he was threatened by ATS officers Tajne, Raghuwanshi, Sachin Kadam, Khandwelkar that if he tells anything to this Hon'ble Court or to his advocate, his family members would be implicated in this case & would be harassed in similar manner and he would be implicated in Malegaon Blast Case. He state that the ATS

officers come to Arthur Road Jail and threatens all the accused persons. He state that on the direction of this Hon'ble Court, he was taken for medical examination, he was not properly examined by the medical officers as there was an ATS officer.

313 Statement

1265. A.6's 313 statement says that ATS took him and three other people to Shivdi court. Sachin Kadam threatened him outside the court that do not say anything in the court or else you will be beaten up after the court. Due to fear of the beating, he did not say anything in Shivdi court. His remand was taken there till 13th October. After bringing him from court to Kala Chowki, Tajne, Sachin Kadam and Kolhatkar thrashed him with a stick and said now they are taking him to his house. They warned him not to say anything to family members or else they will strip him naked and beat him in front of his family members.

1266. It is further stated that he was made to stand all day and was tortured daily. On 17/10/06 his narco test was done in Bangalore, Dr. Malini is from ATS. Before the test she scratched his ear with her nails and slapped him on the cheek. Then, on 20/10/2006 at 11 pm, he was brought from Bhoiwada to Kala Chowki. There Sachin Kadam abused him and said, see this photo of Malegaon blast. Sachin Kadam told that he stated everything in the narco test that he did the Malegaon and Mumbai local trains blasts. A.6 said that this cannot be possible, he is innocent. He was not shown the Narco test CD. Sachin Kadam then started hitting him, blindfolded him, tied both his hands behind his back with a rope, removed all his clothes, except the lower inner wear, started hitting him on his hands, back and below his legs with the

bandage. He kept screaming and shouting, when one man got tired of hitting, another one would start hitting him. In this manner, the beating continued till 2 am. Then Sachin said that we will meet you again at 8 am. Then he was made to stand the whole night. His whole body was shivering with pain.

1267. A.6, in his 313 statement, further stated that on 21/10/2006, he was asked to remove his clothes and was left in just his underwear. First CP Raghuvanshi started beating him, after that ACP Dhavale, Khanvilkar, Sachin Kadam, all of them were continuously beating him, ACP Dhavale was also abusing him and his family members. He threatened him that if he does not tell the story they made, then they will bring his entire family here and strip them naked. He kept screaming but they did not stop beating him. A.6 further stated that ATS tortured him the most on 20, 21 and 22 October of 2006 by using third degree torture. Bagwe hit him hard on his back which caused pain in his back. This pain was gradually starting from 29/9/2006. He was beaten that day too. He told Bagwe that his back bone is broken, then he punched him harder on his back and in the evening Gohite hit him hard on the same place. He was beaten intermittently throughout the day. At 8 pm Sachin Kadam and Tajne said that we will keep beating you like this until you agree to our story as made. A.6 said don't trap him in a false case, leave him, have mercy on his family. Tajne said, then get ready to be beaten, then he started beating him continuously. At 10 o'clock in the night, he was made to lie down in a dark room; his legs and back were swollen due to the beating.

1268. It is further stated that on the morning of 22nd October, Sachin Kadam came to him and said, now 'tell me whether you will tell our

story or not'. He said don't trap him in a false case. Then Gaikwad, Sachin Kadam, Havaladar Sangram started beating him again. He was helpless due to the beating. Then he said he will do whatever they say, but don't beat him more. Then Sachin Kadam said, "You have come to the line, now you are speaking the truth". Then he gave him tubes of Soframycin and said, apply it everywhere, the marks of beating should not be visible. And then a Havaladar held his hand and made him walk on a stone slab. They would tell him to hit his hands against the walls so that the swelling would reduce. After making him walk for an hour or two, the swelling reduced a bit, then Gaikwad and Officer Sachin Kadam gave him a false story of both the cases, Malegaon blast and Mumbai train blast. Because of the fear of beating, he started memorising that story and agreed to what they said.

1269. Thereafter, on 23/10/2006, he was asked to take a bath in the morning. After bathing, he was given clean clothes to wear, then the officer Gaikwad gave him the written stories of both the Malegaon blast and Mumbai train blast case, and told him to memorize them again. When he read the Mumbai train blast story, he said, everything written in this is a lie. The same story was given to him to memorize at night also. It was written that on 8th, 9th, and 10th July of 2006 a bomb was made at his house. Pakistanis from outside came to his house. He said all this is a lie, no bomb was made at his house. Pakistanis from outside did not come to his house. All this is a lie. Then Gaikwad and Sachin Kadam threatened him to beat him up. They asked A.6 to quietly memorize the story properly. Saying this, Officer Gaikwad put his pistol on his head. He was forced to memorize that story.

Ocular Evidence of A.6

1270. A.6 entered into the witness box as DW-42. In his oral evidence, A.6 deposed that on 31/07/2006 at 10-10:30 pm officer Shailesh Gaikwad took him to the Nagpada ATS Office. There A.6 saw a person in the room with his hands tied above his head. Later he came to know that the person was A.4 - Ehtesham Siddique. A.6 further states that Shailesh Gaikwad handcuffed him and made him sit on the floor. A.6 asked him why he was handcuffed and that they had released him earlier. He told him that he would release him on the next day morning. A.6 told him to inform his family as they would be worried, but he did not do so. A.6 was handcuffed throughout the night and was not given anything to eat.

1271. He further deposed that he was thereafter daily taken from Bhoiwada to Kalachowki and made to stand throughout the day naked and blindfolded in the torture room and not given any food though it was the month of ramzan.

1272. He further deposed that he was taken to the Kalachowki torture room from Bhoiwada at 11.00 p.m. on 20/10/06, where Sachin Kadam and Tajne were present. Kadam said to him that during the narco test he had told everything that he had done in the Malegaon case and the railway blasts case. He said that this is not possible, that he is innocent and he did not say anything in the narco test and asked them to show the CD, thereupon he said that A.6 was talking more and then he ordered Khanvilkar, Bagwe commander, *bhai* commander and Sangram constable to tie his hands behind. They did so and made him sit and

started beating him by belt one after another after the first one got tired. They removed all his clothes except underwear. He was beaten on his palms by belt. When his hands were swollen after the beating after some time, they banged his hands on the walls. They beat him till late night. There was swelling on his hands, legs and back. There was blood in his urine. He was left in a dark room and Sachin Kadam said that he would meet in the morning. He was made to stand for the whole night, his entire body was shivering with pain. Sachin Kadam took him to the AC torture room, that is by the side of ACP Dhawle's office, in the morning on the next day, blindfolded him and asked him what he had said in the night swearing on his children. He said that he swears on his children that he is innocent. Raghuvanshi told Kadam that he is very strong and will not listen to them and to beat him in such a manner that his face would not be recognizable till evening. Raghuvanshi beat him first. Khanvilkar, Tajne, Kadam, ACP Dhawle, ATS constable Sangram, Bagwe, *bhai* commander tied his hands behind and started beating him repeatedly on his legs after removing his clothes, except underwear. He was shouting and screaming that he is innocent. ACP Dhawle abused his wife and threatened that they would bring all his family members there and strip them naked. Raghuvanshi came there during this period and told him to listen to what they say or they would kill him in encounter they had killed Khwaja Yunus and that no one could do anything to the police. He said that if he does not listen to what they say, his family members would be involved in the case. They were continuously beating him. Bagwe commander gave punches on his back at the place where he had been beaten on 29/09/06. PI Mohite also beat him at the same place. He told them that his shoulder had broken, thereupon they said that they would break his other shoulder

also. In between, they banged his hands on the wall and made him to walk on metal (khadi) that was outside the torture room.

Medical Evidence

1273. In light of this evidence, let us examine the medical examination evidence. Medical reports (Exh.2220) dt. 03/10/06 show complaint of shoulder pain (left side) ; Complaint of pain in (left) scapular region for 15 yrs. *(15 'days' has been scratched and 15 'years' has been written)*; No history of trauma, TB, External Injury, General condition fair; Tenderness present in left scapula.

1274. Medical reports (Exh.2230) dt.19/10/06 show Complaint of giddiness; referred to EMR for giddiness & lower BP. Undergone narco analysis 2 days back; complaint of giddiness since yesterday. Complaint of alleged history of giddiness since morning; difficulty in walking; vitals stable; history of fractured of the right rib cage about 15 years back; signs of old fracture

Ocular Evidence of Medical Officer

1275. In this backdrop of medical reports, PW-182 Dr. Gond deposed that on 03/10/06 he complained of left shoulder pain, no other complaints, therefore, he was referred to an orthopedic expert. The notes of the orthopedic surgeon on the continuation sheet show that the patient was complaining of pain in the left scapular region since 15 years, but there was no history of trauma, TB or external injury. On examination: GC fair, afebrile, vitals 06 stable. Local examination did not show swelling, deformity, tenderness, DNVD-Nil on the left shoulder. Left shoulder-ROM show pain in overhead abduction, other

movements are painless and free, no crepitus. There was no swelling and deformity on the left scapula, but tenderness was present. He was advised x-ray of left shoulder, scapula with humerus AP and after the x-ray the advise was shoulder immobilization, strict limb elevation and action.

1276. Further, PW-182 in his deposition stated that the same patient was brought on 19/10/06. He had complained of giddiness. On examination: GC moderate, conscious, afebrile, pulse rate 90 per minute, respiratory rate 20 per minute, BP 100/60, RS/ CVS/CNS/PA-NAD. He was referred to EMR for giddiness and lower BP (Exh.2229, 2230). Behind the OPD case paper are the observations and findings by the EMS Registrar that no previous history of any major illness. Undergone narco analysis two days back, fasting since morning-roja. Complaint of giddiness since yesterday. No vomiting, dyspnea, weakness in any limb or headache. On examination: afebrile, pulse 100 per minute, BP 110/70, CNS-S1 S2-normal, RS clear, CNS-conscious oriented, PA-soft, no tenderness guarding rigidity. He was referred to lecturer, who saw him, but gave similar findings and was prescribed medicines. X-ray chest was suggestive of old fracture right rib cage.

1277. The evidence referred herein above raises doubt regarding the possibility that A.6 was subjected to torture in order to extract his confession. The prosecution failed to effectively counter the allegations of torture raised by the defence, and the defence's evidence remained unshaken. Therefore, we are of the view that the confessional statement of A.6 is inadmissible in law.

A.7 – Mohd. Sajid

1278. A.7 was arrested on 29/09/2006 in Cr. No. 156/2006. He was in police custody for 26 days before recording of his confession. He claims that his confession is the outcome of torture inflicted on them.

1279. Learned Sr. Counsel Nitya Ramakrishnan stated that on 25.10.2006, defying the court's order, A.7 was not produced before the Court, and instead, he was taken to the DCP for recording Part II of his confession, between 11 am to 2:30 pm.

1280. Learned defence counsel argued that immediately on being put in judicial custody a written complaint was filed on next day. There are statements under section 313 and 314 of Cr.PC. It is not that the accused was waiting for medical evidence to arrive before making complaints. The accused was saying from very first day what has happened to him.

1281. Learned Sr. Counsel Nitya Ramakrishnan stated that A.7 was in police custody from 29.09.2006 to 01.11.2006. On 22.10.2006 his mother saw him limping and injured, scarred. Thereupon, the medical examination of A.7 at the private J.J. Hospital in the presence of his family doctor was made, which revealed extensive injuries, which were stated to be more than 5-7 days old.

1282. Furthermore, Learned Sr. Counsel submitted that A.7 is examined at Byculla District jail and found to have bilateral black eyes and contusions. The terror of complaining was so much that the detenu bore abuse after abuse. So the fact that A.7 did not complain does not

mean that there was no abuse, but instead that the terror was so intense that he dared not complain.

1283. On the other hand, learned SPP submitted that no doubt A.7's mother had made a complaint to the Court and that, although he was directed to be produced before the special judge in the morning, he was not produced till the afternoon at 4.40 p.m. Yet, it is a matter of fact that the accused was not in the custody of the investigating officer to produce forthwith before the Court and he was in the custody of the DCP, the custody with DCP was in the nature of the judicial custody and therefore without DCP handing over the custody of the accused he could not have been produced before the Special Court. Since the DCP was in the process of completing his quasi-judicial duty of recording the confession till that part was over the accused was not handed over to the Investigating Officer and in case even thereafter as mandated by law he was immediately produced before the CMM. The accused had not made any complaint before the CMM nor before the Special Court when he was produced at 4.40 p.m. It is argued that when the Special Court asked him to roll his sleeve and show his hands even the Special Court could not find any injuries on him alleged by his mother in her application. And therefore, no blame can be attributed to the Investigating Officer for not producing the accused before the Court.

1284. A.7 was transferred to judicial custody on 27/10/2006 and on 09/11/2006, he made a complaint to the Court about torture. In the complaint he stated that although his arrest was shown as per police record on 29/09/2006 he had been detained in Kala Chowky ATS Unit since 25/09/2006. He had been beaten up badly on 20th and 21st of October 2006. During same day they obtained signature on a blank

paper and narrated some false story as to his involvement. On 22/10/2006 he was taken to his home for recovery of sim card where his mother observed the injury marks on his body and face and made an application for production and medical examination which subsequently proved that he had around eight contusions on his body and two healing ulcers on his buttocks. He could not say anything on 25th and 26th October 2006 regarding cause of injury and he said that police did not beat him. He did so because he was under constant threat of police that they will again beat him. He states that the injuries as mentioned in the medical examination report of 25/10/2006, were sustained because of police violence and torture in custody for confession. During custody he was shown to many people saying that remember this person, "he is Mohd. Sajid and you will have to identify him whenever you will be called". He then states that on 25/10/2006 he had been taken to DCP Mohite to give a statement, already prepared bearing his signature. He did not allow him to read the same.

313 Statement

1285. In a statement recorded under Section 313 of the Cr.PC, in his answer to question no. 1838, A.7 has specifically stated that he was tortured between 19/09/2006 to 23/09/2006. Similarly, in an answer given to question No.2651 he states that on 25/07/2006 he had gone to his native place and when he contacted his elder brother on phone, he told him that ATS officer had called him. He then immediately came back on 15/08/2006. On 18/08/2006 he contacted ATS officer Shri Shailesh Gaikwad who asked him to reach ATS office at Nagpada. He reached at his office at 04:00 p.m. along with his elder brother Dr. Javed Ansari. PSI Shailesh Gaikwad asked his brother to go home and then he started beating and abusing him along with PSI Sunil Mane,

Constable Shailesh Mane, Redekar and other ATS officials. Then he states that on 19th, 20th, 21st and 22nd October, 2006 he was taken to Kalachowki Office of ATS and was brutally tortured by third degree method to accept the false story of ATS. The Chief of ATS Mr. K.P. Raghuwanshi personally beaten him. PI Tajne, PI Khanwilkar, API Varpe, Dinesh Kadam, PSI Kolhatkar, Sachin Kadam, ASI Awari, ACP Dhawale and other staff continuously tortured him.

1286. He further states that on 22/10/2006, he was taken to his residence at Meera Road. The officers Tonpi and Kandharkar insisted his mother to give them the sim card of his mobile phone. It was not found therefore, they took the empty packet of Airtel Recharge Card of his mobile phone. According to him, when his mother saw him she noticed torture marks on his face and hands. Due to heavy torture, he was limping at that time and she noticed that also. He further states that he also made signs of torture by his hands to his mother, but remained silent about that as he was too much frightened. He further states that thereafter his mother made a complaint before the Court on 24/10/2006 which was marked as MA No.302 of 2006.

Ocular Evidence of A.7

1287. A.7 has also entered into the witness box and has given evidence on oath as DW-46. He deposed that he was taken to Kala Chowki ATS Office on 19/10/2006. Tajne and Khanwilkar asked him what did he state in the Narco Test. He told them that he did not give any wrong answers, but stated that he is innocent and falsely involved. According to A.7, they beat him badly and taken him to Bhoiwada in the evening. In the night, he was kept in a lock up with A.8, for some reason. He was again taken to Kalachowki on 20/10/2006 after he broke the fast,

where Khanwilkar, Tajne and Sachin Kadam were present and Khanwilkar told him that he had stated the truth during the Narco Test. They played the CD of Narco Test to him and he was shocked to see that in place of his reply to the question as to how many bombs were prepared, the reply was seven. According to him, anyone could see that the CD was edited because the words were not in sync with the video. He said to Khanwilkar that CD is edited, thereupon Khanwilkar started beating him by hands and legs. He was taken to the torture room and all the officers and constables of Kala Chowky and ACP Dhawale again tortured him. He was stripped and naked and many shocks were given to his private part. His hands were tied behind. A person caught him from behind and forced him to sit on the floor and his legs were stretched 180 degrees. He was beaten on his palms and soles by belts and sticks. He used to be beaten continuously for 10 minutes and asked to press paper balls and to jump from chair on many ropes below. They again beat him similarly after the swelling used to reduce and this continued for the whole night.

Medical Evidence

1288. Then the report dated 24/10/2006, prepared at 12:25 p.m. (Exh.2110) states that he was taken for routine medical check up. It further shows that at the time of medical examination A.7 was fainting. The medicines which were given shows that Tablet Rantac, ORS two packets, Glucose Water were advised to be taken.

1289. It is significant to note that in a report dated 24/10/2006 which was before recording Part-I of the Confessional Statement of A.7, there is a mention that when he was examined he was fainting. This remark

speaks volume about the physical and mental condition of A.7 just before recording of his Part-I.

1290. On the same day i.e. on 24/10/2006, the application moved by the mother of A.7 for medical examination of A.7 by registered Medical Practitioner along with Government Medical Hospital. The learned Special Judge, on the same day, ordered to produce A.7 on 25/10/2006 without fail at 12:00 noon in Court.

1291. It is pertinent to note here that after recording Part-II and before taking A.7 to the Court, as directed by the Special Court to produce him, he was taken for medical examination. On the same day, i.e. on 25/10/2006, he was examined at 04:30 p.m. as a routine medical check up. The doctor found him in a state of giddiness.

1292. Thus, from the report dated 24/10/2006 of medical examination of A.7 before recording of Part-I and report (Exh.2112), dated 25/10/2006, after recording Part-II, show that prior to recording Part-I he was fainting and after recording of Part-II he was in a state of giddiness. These two reports are sufficient to draw an inference of an unfit mental and physical condition of the accused.

1293. On perusal of record, it can be seen that on 25/10/2006 at around 04:40 p.m. A.7 was produced before the Court despite the order of the Court to produce A.7 before the Court, without fail at 12:00 noon. He was not produced before the Court, as directed, but was taken to the office of DCP, where his Part-II was recorded. It is evident from the record that the fact issuing directions by the Special

Court to produce A.7 at 12:00 noon on the same day was not brought to the knowledge of the DCP who recorded Part-II of A.7.

1294. A.7 was produced at 04:40 p.m. before the Court instead of 12:00 noon. The Court had noticed black circles under the eyes. Accordingly, A.7 was referred to J.J. Hospital for his complete body check up with direction to the Superintendent of J.J. Hospital to get done thorough medical check up and send report of it on 26/10/2006 till 12:00 noon, without fail. The learned Court further permitted Medical Practitioner Dr. Ashfaq Ubare to remain present at the time of medical check up of A.7 and to observe without any interference.

1295. Thereafter, as directed by the Court, A.7 was medically examined in the J.J. Hospital on 25/10/2006 at 07:00 p.m. The medical report Exh.1744 mentions that he was brought to the hospital by PI Khandekar and staff of ATS as per Court's order.

1296. The report further states that A.7 had no complaint of any assault in police custody or by any other person or any other authority. It is further noted that patient A.7 does not complain of having any injuries. But as per Court's order he was thoroughly examined and no fresh wounds were noted, however, 11 old wounds were noted on examination. It is recorded that all the wounds are more than 5 to 7 days old and are not within 24 hours. The nature of wounds noted are as under :

- (i) Contusion – 10 to 12 c.m. over it. Shoulder extending over it. Arm no tenderness.
- (ii) Contusion – 8 x 3 c.m. Lt. Shoulder posterior aspect.
- (iii) Contusion – 4 x 2 c.m. Lt. Scapular region of back.
- (iv) Contusion – 4 x 2 c.m. Rt. Side Supra Scapular of back.

- (v) Contusion – 3 x 1 c.m. Rt. Shoulder posterior aspect.
- (vi) Contusion – 3 x 2 c.m. Rt. Shoulder just at base of neck.
- (vii) Contusion – 6 x 4 c.m. Lt. Thigh lateral aspect.
- (viii) Contusion – 5 x 4 c.m. Rt. Thigh lateral aspect.
- (ix) Old scab Rt. Forearm dorsal aspect 1 x 0.5 c.m.
- (x) Old scab Rt. hand dorsal aspect 0.5 x 0.5 c.m.
- (xi) Old epidermal skin exfoliation seen over both buttocks.”

1297. Thus, we have five medical examination reports of A.7 within the span of four days from 21/10/2006 till 25/10/2006. Reports dated 21/10/2006, 23/10/2006, 24/10/2006 and 25/10/2006, except the report of J.J. Hospital, none of the report discloses any injury/wound on the body of A.7. Whereas, the report of J.J. Hospital discloses 11 injuries of more than 5 to 7 days old.

1298. It thus, can be said that on the date of medical examination of A.7 on 21/10/2006 these injuries were present on the body of A.7 and also at the time and date when the other reports were recorded.

1299. The report dated 25/10/2006 recorded at 04:30 p.m. in Tejpal Hospital i.e. just 2½ hours before the medical examination conducted by J.J. Hospital, does not record any injury. Thus, it is evident that after 2 ½ hours of recording of Part-II and medical examination conducted by Tejpal Hospital, the doctors of J.J. Hospital found 11 injuries. Thus, it creates suspicion about the credibility of such report in which no injury was disclosed despite those were on the body of A-7 from the period prior to report dated 21/10/2006. It is also evident that the A-7 was in police custody from 29/09/2006 and he was in police custody during the above referred medical examinations.

1300. On 26/10/2006 A-7 was transferred to Byculla Jail in judicial custody. Thereafter, health screening of A-7 was conducted on the same day i.e. on 26/10/2006 wherein following injuries were noted :

- (i) Contusion over Lt. Shoulder
- (ii) Contusion over Lt. Scapula
- (iii) Black eye bilaterally
- (iv) Contusion on both buttocks.
- (v) The age of all these injuries was recorded as a week back.

1301. It is interesting to note that on 25/10/2006 in the medical report of J.J. Hospital there is no mention of above referred injury No.3 recorded in Health Screening at Byculla District Prison.

Ocular Evidence of DCP

1302. PW-102 DCP Mohite admits that it is necessary to find out whether the accused is tortured or harassed by the police. One of the ways to find it out is to see whether accused has any body injuries. He admits that he did not try to find it out in the case of A-7 on 25/10/2006. He further states that he cannot say whether he will be shocked to know that when the doctor examined the accused on 25/10/2006, he found 8-10 injuries on his person that may have been caused within a period 5-6 days.

1303. We have seen that the learned Special Judge noticed black circle marks under the eyes which were visible. However, PW-102 did not even see the said injury marks by the naked eyes.

Ocular Evidence of Medical Officer

1304. Dr. Nandratna Sadashiv Paikrao (PW-181), who was attached to G.T.Hospital, a Government Hospital, as Medical Officer since July 2006, was examined by the prosecution. He admits that the document

Exh.1744 shows 11 injuries and all are the external injuries. The injuries were 5-7 days old. He further admits that screening sheet (Exh.2133) issued by Byculla District Prison shows four injuries aged one week back.

1305. The prosecution examined another doctor, *i.e.*, PW-182, Dr. Parmeshwar Vyankatrao Gond. He admits that A.7 had 11 injury marks having age 5-6 days old. He then states that these are signs of trauma, but he cannot say whether they were signs of police torture. He then deposed that Medical Officers like him should have noticed these injury marks. He then states that these marks were not there when A.7 was examined on 23/10/2006, therefore, they were not mentioned in the entry in the register and the case papers. He then states that he cannot say whether the Medical Officer who issued Exh.1744 gave wrong age of injuries. He states that swelling on right foot with tenderness in both thighs can be a result of trauma or exercise. He then says that Medical Officers like him can notice these things.

1306. PW-182 states that if a person is not given food he can suffer from giddiness.

1307. After A.7 was transferred to judicial custody, immediately he made a written complaint of torture on 09/11/2006 vide Exh.4199. In reply to the same the prosecution denied the allegation. The prosecution, while denying the allegation of torture, has stated in the reply that as per the guidelines issued by the Supreme Court, the accused was also periodically examined by the Medical Officers of Municipal/ Government Hospitals and even when the accused was produced before these doctors, the accused never made any such

complaint of ill-treatment or assault nor does any medical examination report support or substantiate the allegations.

1308. Despite the report of the J.J. Hospital dated 26/10/2006 and Health Screening report of Byculla District Prison, it is stated by the prosecution that no medical examination report support or substantiate the allegation of torture.

1309. Therefore, the evidence discussed above casts serious doubt on the likelihood that torture was inflicted on A.7 to extort confession. The prosecution has not been able to effectively refute the defence's allegations of torture, and the evidence of A.7 has remained unshaken. Thus, in view of language of Section 24 of Indian Evidence Act, we are of the opinion that the confessional statement of A.7 is inadmissible in law.

1310. Now, moving to the second set of the accused namely, A.2 to A.4 and A.9 to A.12. As regards these accused, there is no medical evidence available on record as it was in relation to A.1, A.5, A.6 and A.7.

1311. It is argued that the fact that medical evidence of torture is available only for some and not all accused will not detract from the strong suspicion that all the confessions were obtained under torture. If so many accused have been tortured, the threat of torture will loom large for all the accused, and be sufficient to vitiate their confession under section 24 of the Indian Evidence Act.

1312. At this juncture, it would be beneficial to refer to section 24 of the Indian Evidence Act, which reads thus: -

Section 24 of Indian Evidence Act:

“A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”

1313. The Hon’ble Supreme Court of India, in the case of *Navjot Sandhu (supra)* while interpreting the expression ‘appears’ used in section 24 of Indian Evidence Act, has held thus: -

“27. ...Section 24 lays down the obvious rule that a confession made under any inducement, threat or promise becomes irrelevant in a criminal proceeding. Such inducement, threat or promise need not be proved to the hilt. If it appears to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression “appears” connotes that the court need not go to the extent of holding that the threat, etc. has in fact been proved. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer..

29. ...Before acting upon a confession the court must be satisfied that it was freely and voluntarily made. A confession by hope or promise of advantage, reward or immunity or by force or by fear induced by violence or threats of violence cannot constitute evidence against the maker of the confession. The confession should have been made with full knowledge of the nature and consequences of the confession. If any reasonable doubt is entertained by the court that these ingredients are not satisfied, the court should eschew the confession from consideration...

1314. The Hon’ble Supreme Court, in the case of *Kartar Singh (supra)* has held thus: -

“383. Neither the Evidence Act, 1872 nor the Code, nor its predecessor defined “confession”. This Court in *Palvinder Kaur v.*

State of Punjab [(1952) 2 SCC 177 : 1953 SCR 94, 104 : AIR 1952 SC 354 : 1953 Cri LJ 154] ruled that : (SCR at p. 104)

“A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.”

Therefore, confession means an admission of certain facts which constitute an offence or substantially all the facts that constitute the offence, made by a person charged with the offence which is the subject-matter of the statement. In *Pakala Narayana Swami v. King-Emperor* [66 IA 66, 81 : AIR 1939 PC 47 : 40 Cri LJ 364] Lord Atkin, held at p. 81 thus:

“An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession.”

Sections 24 to 30 of the Evidence Act deal with provability or relevancy of a confession. A confession made by an accused person is irrelevant if it appears to the court to have been caused by inducement, promise or threat having a reference to the charge proceeding from a person in authority. By Section 25 there is an absolute ban at the trial against proof of a confession to a police officer, as against a person accused of any offence. The partial ban under Section 24 and total ban under Section 25 applied equally with Section 26 that no confession made to any person while the accused is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person. Section 27 makes an exception to Sections 24, 25 and 26 and provides that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. The provisions in Sections 28 to 30 are not relevant for discussion. The fascicule of Sections 24 to 30 aim to zealously protect the accused against becoming the victim of his own delusion or the mechanisation of others to self-incriminate in crime. The confession, therefore, is not received with an assurance, if its source be not omni suspicious mojes, above and free from the remotest taint of suspicion. The mind of the accused before he makes a confession must be in a state of perfect equanimity and must not have been

operated upon by fear or hope or inducement. Hence threat or promise or inducement held out to an accused makes the confession irrelevant and excludes it from consideration. A confession made to a police officer while the accused is in the custody or made before he became an accused, is not provable against him on any proceeding in which he is charged to the commission of the said offence. Equally a confession made by him, while in the custody of the police officer, to any person is also not provable in a proceeding in which he is charged with the commission of the offence unless it is made in the immediate presence of the Magistrate. Police officer is inherently suspect of employing coercion to obtain confession. Therefore, the confession made to a police officer under Section 25 should totally be excluded from evidence. The reasons seem to be that the custody of police officer provides easy opportunities of coercion for extorting confession. Section 25 rests upon the principle that it is dangerous to depend upon a confession made to a police officer which cannot extricate itself from the suspicion that it might have been produced by the exercise of coercion or by enticement. The legislative policy and practical reality emphasise that a statement obtained, while the accused is in police custody, truly be not the product of his free choice. So a confessional statement obtained by the law enforcement officer is inadmissible in evidence.”

1315. It is, thus, evident that the expression ‘appears’ connotes that the Court need not go to the extent of holding that the violence or threat of violence, etc. has in fact been proved. If the facts and circumstance emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court shall refrain from acting on such confession.

1316. In light of the above referred well settled principle of law, though there is no medical evidence available in relation to A.2 to A.4 and A.9 to A.12 in support of torture as the medical reports show that the conditions of these accused were normal and they never made any complaint about ill treatment, it cannot be ignored that similar were the certificates of A.7 prior to his medical examination as per the direction of the Court in the J.J. Hospital on 25/10/2006 wherein 11 wounds

were noted of having age of 5-7 days. Whereas, all the reports in those earlier 5-7 days did not indicate any wounds. Thus, the medical certificate, in which there is no mention of any torture, cannot be believed to be true. Therefore, we have to examine the evidence adduced by the above referred accused, except A.3, who did not enter into the witness box. Whereas, as regards A.3, we will examine the complaint made by him and his 313 statement.

A.2 - Dr. Tanveer Ansari

1317. A.2 was first arrested on 23/07/2006 in Cr. No. 77/2006 of Mumbai Central Railway Police Station. He was in police custody for 75 days before recording of his confession.

Complaint

1318. On 09/11/2006, A.2 made a complaint to Session Judge stating therein that his confession was taken forcefully by making him sign on blank papers. They physically tortured him to make him confess.

313 Statement

1319. In his statement under section 313 of CrPC, he states that he was taken to Byculla DCB CID Unit-III office, where they started beating him and asking him something which he has nothing to do. They were beating him very ruthlessly and asking him the Railway Blast thing which he has nothing to do and which he told them very honestly but they were not listening to him and then when he was severely injured at side of left ear and eye side and his face was swollen

and his nose and gums were bleeding and whole body was hurt and painning then they stop beating and then police officer Mr. Hargude and other police personnel transferred him from the DCB-CID, Unit-III to DCB-CID Unit II, Jacob Circle, Saat Rasta, Mumbai.

1320. He further states that during this period, police officers Mr. Hargude, Mr. Azam patel, Mr. Shashtri, Mr. Arif Patel and other officers whom he doesn't know by name, but he can recognize them if they again came before him, made enquiries with him and tortured him very severely. He can't forget their inhuman, unpredictable and brutal and ruthless methods of tortures which they did to him.

1321. He further states that Mr. K.P.Raghuvanshi and Mr. A.N.Roy also enquired with him. Mr. A.N.Roy started beating, kicking with his leg and hand to him and tortured him and told the police officers to book him in the case.

1322. He further states that when he was in police custody of A.T.S. Mumbai, he was constantly tortured mentally and physically even he told them that he is innocent and nothing have done wrong and being a Doctor his job and nature is to save lives, not to kill people.

1323. He further states that but the A.T.S. officer Mr. Kolhatkar, Mr. Sachin Kadam, Mr. Gaikwad, Mr. Varpe, Mr. Mandge. Mr. Dhamankar, Mr. Khanvilkar, Mr. Tajne, Mr. Bhawdhankar, Mr. B.B. Rathod, Mr. Iqbal Shaikh, Mr. Wadhankar, Mr. Vijay Kadam, Mr. R.R. Joshi, Mr. M. Agarwal, Mr. Khandekar, Mr. Tawde (A.C.P.), Mr. shengal (ACP), Mr. S.L. Patil (A.C.P.), Mr. Naval Bajaj (DCP), Mr. Jaiswal (Addl. C.P.), Mr.P. Raghuwanshi (Jt. C.P.) and then the C.P. of

Mumbai, MR. A.N. Roy, and many police havaladar and constables such as, Joshi, Bhai commander, Jadhav, Amit, Tekavle, Indap, Sanjay, Avinash, Adam and many whom he remembers by face. These people tortured him day and night, pressurised him and took his signature on blank papers and on which something was written in Hindi and on some papers in Marathi but he was not allowed to read those papers before they took signature. In fact, he was never allowed to read any written papers, on which they took his signature.

Ocular Evidence of A.2

1324. A.2 entered into witness box as DW-41. He deposed that he went for his duty at the hospital as usual on 20/07/06 and after taking the rounds during the day, was tackling an emergency case in the ICCU at about 7.00 - 7.30 p.m., Dr. Atiya was with him. Some persons in plain clothes came and took him to the Unit-III of the DCB CID at Byculla. They tied him to a chair in the office and started beating him by hands and belt without giving him any opportunity to speak. There was great pain in his left eye and it started swelling and bleeding started from his nose and gums because of a forceful blow given by Shastri.

1325. Officer Hargude started making inquiry with him about the blasts without asking his name and address. He told him that he does not know about it. He told A.2 that they knew everything about him, that he had a case of SIMI against him. He should tell them correctly as to who have done the blasts. He started abusing and threatening A.2 that if he does not tell the truth, they will beat him more and hang him. Azam Patel and Shastri again started beating him.

1326. He deposed that there is a room 6' x 4' on the back side of that office. Two constables took him to that room, removed all his clothes and started beating him by flour mill belt, saying that they would hang him to the hooks and would do his encounter by shooting him, which they have done earlier with many people. They abused and threatened him repeatedly asking him as to who had done the blasts and he was not allowed to go home or to go outside for having food.

1327. He further deposed that Officer Hargude took him in handcuffs and veil on his face to Nagpada in the night of 22/07/06. They took him to a room in that police station. There were three persons, one of them was A.3 - Faisal. He was taken to a room attached to that room after some time. He was made to sit on the floor in front of CP A.N.Roy. He asked him about the blasts and he (A.2) told him the same things and the history about his whereabouts before, during and after the blasts. CP A.N.Roy started beating him by legs and hands. He started shouting and crying. Two constables caught him. He told them to take him away and book him in the case. He used filthy language and abused him. He came to know later on that out of the persons he had seen there, K.P. Raghuvanshi was one. Hargude took him back to the office of Unit-II and he was illegally detained there upto 24/07/06 and was tortured throughout the day by different means like keeping him naked, starving him, not providing medicines for his injuries, not showing him to any doctor or taking him to any hospital. They did not produce him before any court. Many officers other than the DCB CID officers used to interrogate him during this period in a room by the side of the main building. He used to be beaten there by flour mill belt and then interrogated. He was not allowed to meet his family members. Handcuffs were put on his hands and legs also.

1328. He further deposed that he was suddenly taken out after midnight on 24/07/06 by the officers of the DCB CID and taken to the ATS office of the Kalachowki. He was not told anything as to why he was detained and where he was being taken. He saw some officers there, whose names he came to know later on as B.B. Rathod, R.R. Joshi, ACP Shengal and 3-4 constables. They interrogated him about the blasts throughout the night and tortured him and threatened not to tell anyone about the torture. He told them the same things. He was taken to the Mazgaon court at about 10.00 a.m. in handcuffs and veil and threatened not to say a single word or else they would do his encounter and torture his family.

1329. He further deposed that he was taken to Kalachowki and put in a room having double doors. The room had air conditioner and tiles on the floor. His clothes were removed and the AC was switched on full, the flaps were pointed downwards and he was kept in that room for a long time and thereafter taken out and handcuffed in the outside room. He met DCP Nawal Bajaj in that room during police custody, who introduced himself, inquired with him and he told him all that he stated above. The ATS constables used to come inside and torture him as soon as Naval Bajaj left.

Conclusion

1330. The above referred ocular evidence of A.2 and his 313 statement give a detailed account of torture. The prosecution, while cross-examining A.2, except giving suggestions nothing could be brought on record contrary to the evidence of A.2. Thus, it can be said that the evidence of A.2 remained intact and unshaken. In these circumstances,

in view of the language of section 24 of Indian Evidence Act, the confessional statement of A.2 – Tanveer is inadmissible as it appears to have been extorted by torture.

A.4 - Ehtesham Qutubuddin Siddique

Complaint

1331. In his complaint dt. 9/11/06 to Session Judge, A.4 has stated that on 13th September 2006, Raghuvanshi ATS chief told him that ATS is falsely implicating him in this case. That he must plead guilty, and that he will be released after four to five years of imprisonment. ATS Chief promised to give him 25 lakh rupees in cash, afterwards, ATS Chief also assured him that after his release from jail he would help him to get settled in some other part of the country to lead a respectful and peaceful life. ATS Chief warned him that if he doesn't plead guilty, he would face the consequences and would have to face the torture. That ATS Chief also said that his family members would come in problem and that ATS will also harass and torture his family. Then they took him to ATS, Bhoiwada and Kalachowki. A.4 further states that he was tortured 3rd degree from 15th September 2006 to 6th October 2006 and his narco test analysis was also done for 3rd time between the said period.

1332. Further, A.4 states the ways in which ATS used to torture him in police custody. He was made to sit down on the floor and both hands were tied. Thereafter, his both legs were stretched in the opposite direction in direction of 180 degree. This maltreatment was repeated continuously. He was given shock treatment by making him naked.

There was one machine for giving shock treatment. They used to tie wire on his leg's thumb then they used to give shock treatment at regular intervals. That he was also given shock on his private part, at regular intervals. That they used to tie him upside down (i.e reverse) and his both hands were tied by rope. Then they used to pour water in his nose at regular intervals. They used to ask whether he was pleading guilty and used to continue with the same torture when he used to deny pleading guilty. The above torture was given to him often between his arrest period till 6/10/2006. They warned him that if he does not sign the confessional statement, his brother and father will also be involved in the bomb blast case. They also warned that ladies members of his family would be brought by them and thereafter they would be molested. A.4 states that he was forcibly made to sign on some ready made statement/document and some blank papers.

S.313 Statement

1333. In his handwritten 313 statement, A.4 states that on dt.28/07/06, ATS chief KP Raghuvanshi met him and asked some questions, to which he denied any involvement in the blast. That ATS Chief directed ATS officers Shailesh Gaikwad, Vilas Joshi and Kishan Shengal to torture him so that he cannot be identified. They removed all the clothes from his body and made him fully naked. They tied the electric wires on his private part and also tied the wires in his thumbs of both legs and passed the heavy current in those wires by a current-supplying machine. He was made to sit down on the floor, they tied his both hands to his back. A constable kept both his legs in between A.4's back and hands and two other constables stretched his legs in opposite

directions so that both legs made an angle of 180°. They also beat him with belts. This all torture continued up to 2 hours.

1334. A.4 further states that during the period of police custody, when the officers produced him before the court, they threatened him not to complain against the police, otherwise, he would be tortured more. That this threat was given to him up to 09.10.06. ATS officers also produced him before medical officers at KEM Hospital various times between 29.07.2006 to 9.10.2006. At that time, they also threatened him not to make any complaint against the police otherwise be ready for dire consequences. Initially on 04.08.2006, he made complaint of police torture before medical officer of KEM Hospital. That he complained pain in thigh due to police torture, medical officer referred him to orthopedic department. X-rays were taken out of whole body.

1335. A.4 further states that after this complaint, he was taken to ATS chandan chowki, where again he was severely tortured. Police inspector Sunil Deshmukh tortured him with 3rd degree methods and threatened him that if he made any further complaint, his brother and father would also be arrested in this case. ATS officers, including DCP Naval Bajaj had conducted a narco test at ATS office, Chandan Chowki Unit in the presence of an officer from FSL Mumbai who had a mark of chickenpox on his face. Due to abovesaid torture and threatening, he never complained anywhere further except on 6.10.2006 when he was taken to Sion Hospital. The doctor (PW-171) had advised for chest x-ray, CBC and urine test. But these test were not conducted.

1336. A.4 further states that on 24.08.06, he was taken to DCB CID Unit-II at *Saat Rasta* where he was tortured with 3rd degree methods by

PI Hargude and PSI Azam Patel. On 25.08.2006, he was produced before additional CMM Mazgaon and taken back to ATS office bhoiwada. Again on the same day, he was taken back to DCB CID unit-II by police officer Dabhade, where he was again tortured by PI Hargude and PSI Azam Patel. On 26.08.06, he was taken back to ATS office Bhoiwada.

1337. A.4 further states that on 13.09.2006 when ATS Officer Khandekar was taking him to ATS office, Khandekar told him that he had told everything about the blast in the Narco Test. He was surprised on hearing that when he was not involved in the blast then how could he tell everything about the blast. He was directly taken to Nagpada Head office. K. P. Raghuvanshi took him in a separate room and told him that he will have to accept everything that they are saying. Raghuvanshi also told him that if he accepts the story of ATS then he will be released very soon. A.4 told him that he will not accept anything which he did not do. K.P. Raghuvanshi threatened A.4 that, if he does not accept the crime then he should be ready to face horrible things for his family members and also face third degree torture. He also induced A.4 by giving promises of huge amounts and a settled life in any part of the country. When A.4 refused, he told A.4 that he has pressure to solve the case, and that therefore A.4 had to accept the crime. He called PI Vasant Tajne and handed over A.4 to him. PI Tajne (PW-161) took A.4 to Kalachowki where he was tortured in the following ways :- He was made to sit down on the floor, with both hands tied on the back. One Constable kept his both legs between A.4's both hand and back. One side of two separate ropes were tied near the ankle of both legs, two constables pulled the ropes in opposite directions so that both legs made an angle of 180°. ATS officer PI

Khanwilkar (PW-168) used to beat him on the palms of both hands and sole of both legs with a flour mill belt, when he got tired he directed to other Constables, who then beat A.4 more severely so that the color of palm & sole become blue. ATS officers removed all his clothes and made him completely naked. First they tied two separate electric wires on both thumbs of his legs and passed the current, then they tied a wire on his penis also, and passed the current by a Current Supplying Machine. ATS officers used to tie him upside down. His both legs used to be tied to an iron rod and both hands used to be tied on the back side, then they poured the water at regular intervals.

1338. A.4 further states that they also used to threaten him that, if he does not plead guilty, lady members of his family will be molested. That his father and brother would also be booked in this case. These all things happened from 13.09.2006 to 25.09.2006. During this period ATS Chief K. P. Raghuvanshi, ATS officers S.K.Jaiswal, Jaijeet Singh and Naval Bajaj also threatened him and tortured him with a belt. PI Tajane, Khanwilkar, API Kolhatkar and PSI Sachin kadam tortured him with third degree methods on the direction and supervision of the Senior officer. C.P. A.N.Roy (PW-185) also tortured him with a belt. These all things happened at Kalachowki, Bhoiwada. On 25.09.2006, ATS officer again took him to Bangalore for a Narco test. Dr. S. Malini conducted the Narco test at all times.

1339. A.4 further states that one day Addl. CP Jaijeet Singh called him on the 2nd floor of Bhoiwada office and told him that if he would accept what they are saying, then they will not torture him. A.4 said him why he should accept that which he has not done. He told A.4 that he has accepted all the facts in the Narco Test, to which he told

Addl.C.P Jaijeet Singh to show him the CD of the Narco Test. When he showed the CD, A.4 immediately recognised that the video CD was edited because he has some knowledge of video editing. When he told him that this is an edited video, he became angry and removed his shoes and beat A.4 with his shoes on his head until there was bleeding in the head.

1340. A.4 further states that on dt.05.10.06, he was taken to the office of DCP Zone-IV in the evening by PI Tajne. When DCP asked him to give a confession, he refused to make a confession, then he was taken back to the Bhoiwada ATS Office. The whole night, he was tortured by PI Tajne and other constables with all the methods of torture. Second day i.e on 06.10.2006, in the morning he was again taken to the DCP Zone-IV office. On this day the behaviour of DCP Karale (PW-104) was totally changed. He had two printed pages with him. He gave these two pages to A.4 for reading and signing. That on reading he told A.4 that the answers of all questions are totally wrong. He told A.4 that he has to sign otherwise he will torture him more severely than ATS. PI Tajne and PSI Deore were also present there. They took his signature forcefully on both pages. API Randive (PW-106) took him to the Sion Hospital for medical checkup. He made the complaint of torture to the medical officer and the medical officer had advised for CBC, Chest X-Ray, and urine test. The advice of the medical officer was not followed. API Randive brought him to Matunga and lodged in the Matunga lockup. On 07-10-2006 PJ Tajane and PSI Deore and other constables came into the lockup and took his sign forcefully on some printed papers. In the evening, he was taken to Killa Court by API Randive and ATS officer PSI Deore. They produced him before some person where ATS officer Tajane and one another ATS officer were present.

Oral Evidence of A.4

1341. Let us now appreciate the ocular evidence of A.4 - Ehtesham Siddique regarding his torture in police custody. He states that the ATS officers took him to the second floor in a room of the lockup and made him lie down on a bench and then started beating him with a flour mill belt. After torturing him for quite a long time, officer Shailesh Gaikwad started asking him one question that when he had gone to Pakistan. He repeatedly told him that he had not gone to Pakistan as he had never gone out of India. They also checked the calls on his mobile and kept it on the table. At that time there was a call on his mobile and he received it. However, they snatched the mobile from him and canceled the call. He was inquired and tortured there for two hours and thereafter taken to Nagpada. Constable Tushar Sawant recorded his statement in the night upto 1.30 a.m. He was handcuffed to a window.

1342. A.4 further deposes that Officers Vilas Joshi and Shailesh Gaikwad continuously tortured him in the morning and evening from 25/07/06 upto 28/07/06. They had taken away his mobile. They had taken his search on 24/07/06 in the night and had taken Rs. 25,000/- that were in his pocket and PAN card and debit card and had kept them in a cupboard. K.P.Raghuvanshi came there at about 4.00 p.m. on 28/07/06, inquired with him about the bomb blasts and as he did not know anything about that he told him so. Raghuvanshi then directed officers Shailesh Gaikwad, PI Vilas Joshi and ACP Kisan Shengal to torture him to such an extent that he would not be recognizable. The three officers then started torturing him with the help of constables, gave shocks to his private parts, beat him by belt on his palms and soles by making him lie down on bench and after the beating was over, two

constables banged his palms on the floor and his soles on the wall. They did this in order to hide any signs of beating.

1343. A.4 further deposes that he was again taken to Nagpada on dt.03/05/06. PI Vilas Joshi, PSI Shailesh Gaikwad and constables tortured him for the whole of the day saying that he should admit having done the bomb blasts, and when he did not say anything they took him in front of DCP Nawal Bajaj. DCP Bajaj told him that the officers had told him that A.4 had admitted having done the bomb blasts. A.4 complained to DCP Bajaj that they were torturing him to admit having done the bomb blasts. DCP Bajaj directed that those two officers should not interrogate him. They took him to the Bhoiwada lockup in the morning of 04/08/06 and put him in the lockup. He was taken to the KEM hospital on that day. He complained to the medical officer that the police have beaten him and that there is pain in his thigh. The medical officer referred him to the orthopedic department. His entire body was x-rayed and he was given pain killers. When he was taken out of the hospital and put in the police vehicle, PI Sunil Deshmukh threatened him not to complain or they would cut him. He and other constables took him to Chandan Chowki. He was made to lie down on a bed. Some people came there with injections and glucose bottles and told him that they were treating him for the pains that he had. An officer of the FSL, who had chickenpox marks on his face, was amongst them. He told them not to give A.4 an injection, but they tied his hands and feet to the bed. He saw that. K. P. Raghuvanshi, Nawal Bajaj and Addl. CP Jaijeet Singh had also come there. Saline bottle of glucose was given to him and they gave him an injection saying that a person speaks the truth by its effect. Then they started making inquiries with him and he gave answers. That he fell unconscious and regained

consciousness in the morning. They brought him back to Bhoiwada on 05/08/06. En route the constable told him that he was subjected to narco test, during which the officers who inquired with him said that he is not involved in the bomb blasts.

1344. A.4 further deposes that he was produced before the Mazgaon Court on 14/08/06 and remanded to police custody upto 25/08/06. That his both hands were tied to the windows behind him at Kurla and he was kept in that position till morning. He saw in the night that PI Salaskar and officer Phadake were severely torturing a person. He realized that the person was by name Mohd. Alam Gulam Qureshi when he gave evidence as PW-59 in the court. He also saw officer Alaknure beating A.6 Mohd. Ali and taking him from there. They brought an old person there after some time. He came to know later that he was A.3 Faisal's father. Officers Phadke and Dalvi and constables forcefully removed his clothes and made him naked and paraded him. They were pressurizing A.3 Faisal to accept the crime of the bomb blasts or all his family members would be similarly treated. They brought a veiled woman there, whose veil was forcefully removed in front of all. There were other accused there. A.4 came to know later on that they were accused Tanveer, Muzzammil and Sohail. Thereafter, Muzzammil was tied similarly to the window that was by A.4's side. Faisal was taken to the cabin of PI Salaskar and he heard his loud shouts from there. Officers Phadke, Alaknure and constables came near him and started pulling the hairs of his beard. He was beaten by hands and legs by all the officers and constables who went by that place.

1345. A.4 further deposes that he was then taken to the detection room in Kalachowki. There were handcuffs fixed in the four corners of

that room and he was handcuffed to one of them. Sound absorbants were fixed in all four corners. There were two doors to that room, one opening outside and one opening inside so as to prevent sound from going outside. Addl. C.P. Jaijeet Singh, API Khanvilkar, PI Tajne, API Kolhatkar, PSI Sachin Kadam, constable Salvi and 2-3 constables came in the room at midnight bringing rope and belt with them. They opened his handcuffs and tied his hands behind his back and he was made to sit on the floor with his legs stretched in front. A constable sat behind him on a chair entangling his legs in A.4's arms that were tied behind. Ropes were tied to A.4's both legs, the other ends of which were in the hands of two officers. Two constables started stretching his legs outwards. Addl. CP sat on a chair opposite to A.4 and continuously asked only one question as to who had committed the bomb blasts. Whenever he replied that he did not know, his legs used to be stretched more and they were stretched up to 180 degrees. Addl. CP left after one hour. Officer Khanvilkar then untied his hands and beat him on his palms by belt, because of which his palms became blue. All left thereafter after handcuffing him again. The AC of that room was switched on so that he would feel the cold as he did not have any blanket. He passed blood from the urine on the next day. He told them to do his medical checkup as he had the problem. Officer Tajne told him that there is no need for a medical checkup and that the problem will be solved automatically.

1346. A.4 further deposed that he was taken to the office of PI Tajne on the next day. Raghuvanshi, Jaijeet Singh, Jaiswal, Tajne, Khanvilkar and Sachin Kadam were present there. Sachin Kadam was distributing sweets to the officers and asked him whether he would eat the sweets because their persons had done a blast at Malegaon. K.P. Raghuvanshi

told him that he should sign some papers before a senior officer and that they would not do anything to him. He told Raghuvanshi that he would not sign on any falsely written thing. He was then taken to a room by the side of the detection room. There was a handcart in that room. He was made to lie down on it and his entire body was tied by rope. His upper body portion was lowered, a cloth was put on his face and they started pouring water in his nose and mouth. This went on for about half an hour intermittently and he was feeling difficulty in breathing. DCP Nawal Bajaj and an officer of the FSL, who had come in the Chandan Chowki earlier, came there. They checked his blood pressure. Nawal Bajaj then scolded the other officers and asked them whether they wanted to kill him. DCP Bajaj said that he was not to be killed, but was to languish in jail. He was untied and all of them left.

1347. A.4 further deposes that Tajne, Khanvilkar and Sachin Kadam came with some constables on the next day, removed all his clothes and tied his hands to a rod above his head. At that time he was dangling one feet above the floor. They attached two wires to the thumbs of his legs and one wire to his private parts. They then switched on the power supply from a machine and they did this for about 15 minutes and then left. He felt the shocks at the places where he was tied by the hands and in the entire body. He was untied after an hour and made to lie down. Those three officers returned in the night, made him sit on a chair by the wall and fixed his head to the wall with plastic tape. They then dripped single drops of water on his head for two hours. He repeatedly asked them as to why they were doing so. They told him that they are only following orders. Because of the water drops falling on his head, there was pain in his head radiating upto the chest. He was then taken to Kalachowki and beaten on his soles by belt. He was again taken to

Bangalore on 25/09/06 by flight, kept in the lockup and Dr. Malini conducted narco test on him on 26/09/06, which was videographed by a cameraman, who did the same work every time. There used to be injuries on both earlobes every time when the narco test was conducted.

Conclusion

1348. The above referred ocular evidence of A.4 and his 313 statement give a detailed account of torture. The prosecution, while cross-examining A.4, except giving suggestions, could not bring any record contrary to the evidence of A.4. Thus, it can be said that the evidence of A.4 remained intact and unshaken. In these circumstances, in view of the language of section 24 of Indian Evidence Act, the confessional statement of A.4 – Ehtesham is inadmissible as it appears to have been extorted by torture.

A.9 - Muzzammil Ataur Rehman Shaikh

1349. A.9 – Muzzamil was arrested on 27/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 70 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1350. A.9 made a complaint dt.02/11/06 (filed in the Court on 09/11/2006) to the Session Judge wherein he has stated that Crime Branch Unit -IV handed him to ATS on 27/07/2006 and someday he was produced in front of Magistrate Garde, who remanded him till 09/08/06. That he was taken to Bhoiwada lockup then he was made

naked and beaten day and night though he pleaded that he was innocent but the officers become deaf, and showed him some photo and asked him about them whom he never knew but they kept on telling that he had to tell that he knew them and they continuously tortured him and finally they connected him to those people whom he never saw ever, but when he said “yes” then they relieved him for sometime.

1351. He further states that one day ATS officers gave him some papers and instructed him to memorize it and told him that if he cooperates and does as he has been told to, he will be released soon, but when he read the content of it he was shocked to know that the content written on it was of him and the blunder was, he visited Pakistan illegally, took arms training, knowing bomb making formula and some bomb making formula was also there and they informed him, that he had to go for Audio Video Recording and he had to say, as it is in the session, he flatly refused, so they took him to torture room and started torturing him mercilessly, they even stretched his legs to 180°. He was crying pleading but they didn't listen. He fainted and the pain was beyond his bear, and this session continued. Finally, he agreed and he did the audio video recording as per their wish. After that, they did not allow him to sleep for two nights.

1352. He further states that on 14th August, he was sent to Kurla along with other accused including his elder brother Faisal in the custody of P.I Salaskar at Branch Anti Robbery Squad. These accused were beaten mercilessly. A.9 and A.3 were made naked and then they called his father and his *Bhabhi* at the Police station and his father too was made naked in front of all of them. He & Faisal and his father were

made to stand in front of each other and his father was beaten in front of him, he was abused and insulted. They all were pleading and crying but the PSI Dalvi, Phadke & constable Awte didn't listen. They called in his bhabhi and snatched away her Burkha (veil) and used filthy language and they forced Faisal & him to take the responsibility of the Blast no matter they did or didn't and if they don't accept they warned that she (his Bhabhi) would be molested in front of all of them whole night. This horrifying scene was going on the whole night. His old father, Faisal, and he were made to stand. That his Bhabhi is having a 1½ year old child and she was detained illegally for 5 days.

1353. He further states that on 16th August in the night they all were sent back to Bhoiwada lockup there again the routine of torture started, they all were forced to accept those things they never did. That some of the officers agreed that all arrested accused were innocent and commented that as they failed to find the real culprits they had to frame the blast charges on the arrested accused because if they discharge the arrested persons from the case, it will be a huge embarrassment.

1354. He further states that it was a routine to go for a medical check up every alternate day but the officer used to prevent him from saying any medical problem to the doctor there and also warned the same every time before going to Court.

S.313 Statement

1355. In his handwritten 313 statement dated 19/07/2012, A.9 states that after telling the facts to officers about his Iran visit they took him to their lockup and started beating him brutally. There they kept him

for 5 days, and every day they kept on trashing him and they use to give him 3rd degree torture and they were pressuring him and forcing him to admit that he was a part of Mumbai train blast and for that reason he visited Pakistan. ATS Officer Sachin Kadam, PSI Nikam, P.I. Chavan and Other Crime branch officers used to come and used to torture him. At one stage, they didn't let him sleep for 48 hours. Everyday they use to ask him same set of questions again and again and they use to torture him. In the same lockup he met one person called Feroz Deshmukh, and they use to torture him before A.9.

1356. He further states that on 27th July 2006, he was taken to the Kalachowki office of ATS, and out there he saw his brother Faisal for the first time since his detention. He was sitting on the floor and was handcuffed and he looked in a very bad state. After showing A.3 briefly to him they put his veil back. After that they took them to Bhoiwada Lock up.

1357. He further states that on 28th July 2006, for the first time they were produced before the Hon'ble Magistrate at Mazgaon, and they were given 14 days' police custody. After that their police custody was again and again extended and they were finally sent to Judicial Custody on 9th October 2006. On 9th October 2006, he made a complaint in the Special Court regarding torture and false allegation against them by ATS, and retracted his confessional statement which he never gave before DCP & he was forced to sign the statement without reading it.

1358. He further states that during his entire police custody, he was subjected to all kind of mental and physical torture. The ATS officers used to narrate their version of the story and they used to force him to

say it before the handy camera. He used to refuse saying their false version. But they used to torture and threaten him. Because of this torture and pressure, he narrated the story before the handy camera. During his police custody they used to take his signature on many sets of paper, which had something written on them. They used to never let him read the content written on it. They also used to take his signature on a blank sheet of paper and for this they used to beat Faisal in front of him. And they also used to beat him in front of his brother Faisal.

1359. He further states that during his police custody they used to take him to different police stations and also used to take him to different hospitals for check ups. But they never used to let him talk to any of the doctors nor was he examined thoroughly by the doctors. In all the hospitals out there they used to put his thumb impression on some medical case papers.

1360. He further states that he was detained at kurla office (ATS) where Encounter Specialist Mr. Vijay Salaskar and his team used to brutally torture him and they use to pressure him to admit things which he had not done. They had also detained his Father and his sister-in-law (his brother Rahil's wife) for 4 days. At one stage they humiliated his father to such an extent that he was paraded naked before him and his brother Faisal. Some of his co-accused had also witnessed the incident and they even took his sister-in-law's veil and while doing this they warned him that they will go to any extent if he does not agree to confess their version of train bomb blast. After all this assaulting and torturing they used to put him back in the Lock up.

1361. A.9 further states that he also saw his cousins Noman Sultan Shaikh, Khalida Iqbal khan, Bilal Shaikh and Mohsin Khan in the same Lock up. A.T.S officers used to torture his cousin Noman Shaikh in front of him and they used to beat and threaten him that if they don't agree to their version of story then they will implicate all of them in the 7/11 blast Case.

1362. A.9 further states that he was approached by ATS officers and they tried to convince him that he should become their approver in this case and in return they promised him that he will be given special facilities and they will go soft on him in this case. The Jail Officers also tried to coax him to be an approver. When he refused, the Jail Officials and Staff started harassing and threatening him. Later on they wanted to shift him to other jail, and he also came to know that they were doing something to his other co-accused, and when they all refused to go some other Jail without the permission of the court, they started beating them brutally and they forcefully shifted them to different jails (Nagpur, Kolhapur and Ratnagiri).

Oral Evidence of A.9

1363. A.9 deposed that PSI Nikam, PI Chavan, Sachin Kadam and many other officers tortured him continuously for five days. They tortured him to such an extent that they did not allow him to sleep for 48 hours. They used to beat him on his legs, back and used to ask him to admit what they say about him and his brother. He was not taken for medical examination during this period and was not produced before any court.

1364. A.9 further deposed that he was produced in the court at Mazgaon in the morning on 28/07/06, before he was threatened that he should not say anything and keep quiet and he should tell the court that he has no problem. He tried to speak in the court, but was not allowed. They were brought back to Kalachowki and he was tortured sometimes at Bhoiwada and sometimes at Kalachowki. He was taken to the torture room on the second floor of Bhoiwada on 12/08/06, where many police officers had come. They were A.N. Roy, Raghuvanshi, DCP Nawal Bajaj, PI Kolhatkar and many others. These superior officers also beat him on that day. The only reason for which he was being beaten was to narrate their story about his involvement in the bomb blasts. He was continuously tortured and his cousin sister Khalida was also brought there many times and made to sit for long periods. ACP Patil continuously threatened her that she would also be involved in the case. He did not meet his parents during this period. He was taken to different chowkis during the police custody period.

1365. A.9 further deposed that he and some of his co-accused were taken to the Kurla Crime Branch office and kept there from 13th to 16/08/06. His father and sister-in-law Rifah Rahil Shaikh were also detained there for the said four days. His father was tortured and stripped naked before his co-accused. He does not know since when they were kept there and why they were kept there. They beat his father and misbehaved with his sister-in-law by pulling her veil. The team of Vijay Salaskar, PSI Dalvi, API Phadke, Salaskar and other policemen tortured them and told him that if he does not accept their story they would go to any extent with his sister-in-law and used bad words in her connection.

1366. A.9 further deposed that his police custody remand was extended from time to time for 85 days and he was beaten and threatened before being produced every time before the court not to say anything to the court. He was taken for medical checkup many times during police custody, but was not physically checked by the doctors, not allowed to speak with the doctors, the veil was not removed at any time, but only his thumb impressions were taken. There was no necessity of telling the doctors about the torture, because the injury marks were visible, but even then the doctors did not ask him anything.

Conclusion

1367. The above referred ocular evidence of A.9 and his 313 statement give a detailed account of torture. The prosecution, while cross-examining A.9, except giving suggestions, could not bring any record contrary to the evidence of A.9. Thus, it can be said that the evidence of A.9 remained intact and unshaken. In these circumstances, in view of the language of section 24 of Indian Evidence Act, the confessional statement of A.9 – Muzzammil is inadmissible as it appears to have been extorted by torture.

A.10 - Suhail Mehmood Shaikh

1368. A.10 – Suhail Shaikh was arrested on 25/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 73 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

Complaint

1369. In November 2006, A.10 made a complaint to the Session Judge stating therein that on 21/07/06 around 10'o Clock in the morning Crime Branch unit-II Bombay came to his residence at Pune, picked up him along with his passport, and escorted him to government rest house at Pune. There was room where he was taken in and tortured and beaten rigorously for nearly ½ an hour and they mention a name Rahil (grant road), Faisal, whom he didn't know. They even ask him about his visit to Iran, which he told them that he visited in November 2002. Then he was taken to the Bombay at saat rasta police station in Bombay. There he was kept illegally till 24th July.

1370. It is further stated that during this period he was beaten and tortured again, his food, water and sleep was prevented, beside him there were other people, who were beaten and thrashed, among them one old man was also there. Crime Branch mentioned few more names to him and ask him about them, whom he didn't saw ever. Later his statement was taken and in that he was shocked to know names were added as well mentioned in it that he not only know them but even he met them, but when he denied, he was beaten more, finally he had to say yes, out of fear.

1371. He further states that, on 26th July, he was produced in the court in front of Magistrate, who remanded for 14 days PC then it was routine to get PC in the name to an inquiry into an investigation for nearly 75 days of ATS custody.

1372. He further states that on 14/08/2006, he was sent to Kurla in Officer Vijay Salaskar's custody, along with other accused. That was the

time he saw the other accused, Faisal, Muzammil, Dr. Tanveer, Ehtesham and Zameer and it was the first time, he saw them at such a close distance. There at Kurla ATS office, Officer Phadke, Dalvi and constable Awate, started beating and torturing him and the other accused. They forced and made Faisal and Muzammil naked and their old father Ataur Rahman naked too, and beat them with the belt in front of each other. It was the worst moment of his life. He was shaken, the father and young sons, standing naked in front of each other, they were pleading and sobbing, and worst part is that one of veiled lady of Faisal's family was called in, her veiled was snatched apart from her and the officer used filthy language and forced Faisal to take the responsibility of the Bomb Blast, if not, she will be molested in front of them. Faisal and Muzammil pleaded before them like small kids, this scene was horrifying. The whole night, all were made to stand and Faisal, Muzammil, and their father were standing naked till morning, and the joke was that in the morning, the same officers were celebrating Independence Day.

S.313 Statement

1373. In his 313 statement, A.10 states that on 21st July 2006, 10 a.m. in the morning, DCB CID Unit-II's team of officers and Constables came to his house under the guise of enquiry, they took him in their custody, searched him, and took his mobile from his trousers' pocket. After that they searched his house illegally and found his Passport, which they took in their custody. Then they took him to the government's Rest house in Pune near Circuit House. There he was beaten mercilessly for half an hour. Then from that Government's Rest House he was brought to Bombay at Crime Unit II-Saat Rasta Police

Station. He was kept illegally there upto 24th July 2006's night, then in the night he was handed to the ATS.

1374. It is further stated that during the 21st to 24th July 2006, he was beaten mercilessly with sticks on the soles of his legs. He was made naked and hung inverted sometimes. He was beaten with the flour-mill belt. He was made to stand whole night without food, water, and sleep. He was tortured, humiliated physically and mentally. Some kind of Chemical was injected into him, and then he was questioned. He was then handed over to ATS on the night of 24th July 2006. From Saat Rasta, he was taken to Bhoiwada lock up. Again, the routine of beatings, torture, humiliation was continued and meted out. Then on 26th July, he was produced in Mazgaon Court in front of Hon'ble Judge Mr. Garde, who gave him in the custody of ATS for 14 days. The ATS said the date of his arrest is wrong and a lie, he was kept illegally from 21st to 25th of July 2006. In these 5 days of illegal arrest, he was not checked medically.

1375. He further states that on 26th July the ATS obtained his Custody from Mazgaon Court, and then it was routine to get his custody, under the guise of 7 different offences and Blast. Then finally, after 80 days of total custody, MCOCA was invoked and declared that the offence was "SINGLE LARGER CONSPIRACY". During the custody of ATS, he was constantly tortured, the ATS officers Mardke, Kolhatkar, Sachin Kadam, Khanvilkar and others assaulted him saying that he had committed the bomb blast. They pressurized him for giving Confession. During this period, they obtained his signature on some blank pages as well as some written documents. The contents of those written documents were never explained to him.

1376. It is further stated that, while in police custody after torturing him mentally and physically, he was taken to medical officers at some hospital. However, neither he was questioned by the medical officer nor he was properly or thoroughly examined. The accompanying ATS officers used to provide all the information to the concerned medical officer on some occasions.

1377. It is further stated that while in police custody, in order to put further mental and psychological pressure and to torture him, he was handed over to the Squad of Police officers Vijay Salaskar and he was detained under his custody at Kurla Office. There also he was assaulted, ruthlessly beaten and brutally tortured. He was made to stand the whole night-handcuffed with the window bar. The said torture he had put in writing in front of Hon'ble Judge M.M.Bhatkar, which is Exh. K.1. dated 9/11/2006. These all inhumane treatment and physical and mental third degree torture created an immense pressure on him. It was enough to succumb and to agree and take responsibility for any offence and crime doesn't matter whether he had committed or not.

Oral Evidence of A.10

1378. A.10 deposed that he was handed over to the ATS on 24/07/06. he was continuously beaten from 21st to 24/07/06 and made to stand for the whole night with his hands tied above. He was not given food and water and was continuously asked about his Iran trip. He was beaten by belt on the soles of his legs. He was taken to the Bhoiwada ATS office on 24/07/06, kept separate in room no. 2 on the first floor. He was then sent to the 2nd floor. He does not know the name of the officer, but he stripped him naked and beat him by belt for a long time,

then asked him to wear his clothes and then inquired with him. He was not allowed to sleep for whole of the night.

1379. A.10 further deposed that officers Bagwe, Tonpi, Rathod, Sachin Kadam and Dinesh Kadam beat and tortured him and inquired with him for the whole of the day on 25/07/06. He was not taken to any hospital from 21st to 25/07/06. He was produced before judge Garde in Mazgaon court on 26/07/06. He remanded him to 14 days police custody. His beating and torture continued after return. He was made to sit on the floor and his legs were stretched 180 degrees. He used to shout and cry. He was taken to KEM Hospital on 27th or 28/07/06 and before he was taken in front of the doctor, the officer and constable who had taken him there, threatened that if he complained about his physical condition and trouble, they would beat him and torture him more than before. Nothing happened after he returned back from the hospital.

1380. He further deposed that he was taken out of his cell on 02/08/06 and taken to the second floor. Commissioner Roy, Jaijeet Singh, Bajaj, Sunil Deshmukh, Khanwilkar, Sachin Kadam and other officers were present there and when he reached there he saw A.2, A.3, A.9 and A.11 sitting on the floor without clothes. He was also stripped and they all were beaten by belt on the palms and soles. This continued upto afternoon after which he was sent back to his cell. They were taken to the KEM Hospital after every two days during this period on condition that they should not talk with each other, not make any complaint to the medical officer and not tell him about any physical problem if asked. If sometimes the medical officer asked them, the officer or constable used to reply that there is no problem. It usually

happened that the doctor did not ask them anything, but obtained our thumb impression.

1381. He further deposed that he, A.2 - Tanveer, A.3 - Faisal, A.4 - Ehtesham and A.9 - Muzzammil were taken to Kurla Police Station on 14/08/06 to the Anti-Robbery Cell. Officers Dalvi, Phadke, Awte and some officers and constables, whose names he does not remember now, took him to a separate room, stripped him and beat him heavily. He was handcuffed to a window. He saw Tanveer, Faisal, Ehtesham and Muzzammil also handcuffed in the main hall and being beaten. This was going on till late night. The A.3 and A.9's father was brought there along with a veiled woman member of their family. They (accused) all were naked at that time and the officers and constables were using filthy and dirty language. They stripped A.3's father's clothes, abused and misbehaved with him. Officer Dalvi scolded the woman and used bad language and took off her veil. The A.3 and A.9 were beaten heavily during this period. They were pleading and crying on seeing the misbehaviour with their father. When their father tried to hide his modesty, he was beaten on his hands and told to hold the hands high. The officers were threatening the A.3 and A.9 to tell what they did and even if they do not know they should take the responsibility of the blasts and that their father would take the responsibility. They also threatened him to take the responsibility of the blasts or else they would bring his women family members there and would strip them in their presence and the drug addicts would be asked to molest them. It was continued during the whole night upto the next morning. They were handcuffed to high windows so that they could not sit or sleep.

1382. He further deposed that Officer Mandke beat him continuously after 17/08/06 for many days and used to utter bad words about Prophet Mohammad and say bad things about Islam. He harassed him mentally and physically in such a manner that he thought that he had hatred not only against him but against entire Islam and his interaction was not connected with interrogation. He was produced every ten days or fifteen days in the Mazgaon court before Judge Garde, prior to which the officer or constable taking him there used to warn him not to make any complaint and used to threaten him that if he complained he knows the consequences as he is in their custody.

Conclusion

1383. The above referred ocular evidence of A.10 and his 313 statement give a detailed account of torture. The prosecution, while cross-examining A.10, except giving suggestions, could not bring any record contrary to the evidence of A.10. Thus, it can be said that the evidence of A.4 remained intact and unshaken. In these circumstances, in view of the language of section 24 of Indian Evidence Act, the confessional statement of A.10 – Suhail is inadmissible as it appears to have been extorted by torture.

A.11 - Zameer Ahmed Latifur Rehman Shaikh

1384. A.11 – Zameer Shaikh was arrested on 25/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 72 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

1385. A.11 made a complaint of torture to the Special Court on dt.02/11/2006 (filed in the Court on 09/11/2006) wherein he has stated that during the Police Custody Remand, it was a routine to abuse and torture physically and mentally. That he was provided with written papers to memorise by pressure and coercion and made to say as per contents for audio and video recording. That before the DCP, he was told to sign some papers without allowing him to read. On refusal to do so, he was warned of further police torture. A.11 further states that DCP himself accepted in front of him that he has ample pressure from higher authority to do so.

S.313 Statement

1386. In his handwritten 313 statement dt.18/07/2012, A.11 states that he was duly interrogated by the officers of the Crime Branch with regard to his movements on 11th July 2006, his mobile and call details. He cooperated with police officials and gave all the required details asked by them. During this period, police officer Mr. Hargude made enquiries with him and tortured him by Hi-tech methods physically and mentally. That on 26/07/2006 he was threatened by police officers of ATS for not complaining when he was to be produced before the Metropolitan Magistrate court for remand. At that time he was frightened and was under tremendous pressure.

1387. He further states that during the period of his police custody with ATS, he was constantly tortured physically & mentally. The ATS officers assaulted him saying that he had committed the bomb blast. During this period, through torture they obtained his signatures on some blank pages as well as on some written documents. The contents of these documents were never explained to him. They also forcefully

video recorded him making statements which were provided by the ATS officers. The harassment didn't end till police custody but when he was in Judicial Custody he was approached by ATS officer Sachin Kadam to become an Approver and implicate others with the promise of money as well as early release.

1388. He further states that during his police custody period, after torturing whenever he was taken to hospital for medical check-up, he was threatened beforehand that he should not complain to the medical officers, by the accompanying ATS personnel, however neither was he questioned by the medical officers nor was he properly examined. The accompanying ATS personnel used to provide all the information to the concerned medical officer. On some occasions on seeing his dilapidated condition he was referred to another department where he was never taken. Medical paper exhibit - shows this malpractice. And due to fear he used to keep quiet before the medical officer as well as before the Hon'ble Court whenever produced.

1389. He further states that before his arrest in this case he had heard the name of encounter specialist police officer Mr. Vijay Salaskar. During his police custody for the purpose of torture, he was sent there firstly on 14/08/2006, where he saw A.3, A.2 & A.10. There they were tortured physically along with him by PI Salaskar and his staff namely Mayekar, Alaknure, Phadke. Due to the torture, his condition deteriorated there and for that reason he was urgently sent back to Bhoiwada Police Station in the night between 14th and 15th August 2006, to avoid any legal complication that might have arisen due to his health problem.

Ocular Evidence of A.11

1390. A.11 entered into the witness box as DW-45. He deposed that he was handcuffed to an iron table in a big room in the Crime Branch, Unit-II office. There were many such people handcuffed there, including two handcuffed to his table. We were taken one by one before a superior lady officer at about 10.00 or 11.00 a.m, whose name he came to know later on as Meera Borwankar. He was taken before her when his turn came and she asked him about his name, address, work and Iran visit. He gave all details to her. He was thereafter taken to a dark room, where 2-3 persons like him were present without clothes. A policeman in civil dress undressed him. They were made to stand opposite each other with their hands stretched above the head and then he went away without giving them their clothes. A policeman came after 1-2 hours and gave him his clothes. Till that time the others had been taken out and he was alone there. He was taken to a backside room where 3-4 persons were sitting on the floor by the side of the bench. He heard sounds of torture from a nearby room and persons were taken there one by one. He was taken inside when his number came, stripped and beaten by flour mill belt on his back, buttocks and legs. He had not eaten anything since morning, therefore, his health deteriorated.

1391. A.11 further deposed that he pleaded his ignorance, therefore, he was again taken back to torture room, ropes were tied to his legs and they were stretched 180 degrees twice or thrice. He was then handcuffed to a table as his health deteriorated more and kept in the same position for the whole night. He was not able to eat the roti and daal that they gave him, till the evening on 22/07/06. He was again

taken to the torture room in the evening, made to sit on the floor outside the room. He saw a boy being carried out from that room. He saw the apparatus of saline hung there when he went inside. He was forced to lie down on a bed type table and a needle was forced in the backside of his hand. Some items were attached to his chest and stomach. There was an electronic appliance that was connected. Water like substance was administered through the needle. There were 3-4 persons in civil dress there. One out of them having a French beard, gave an injection in the needle. He became unconscious within 10-15 seconds. He realized that it was the afternoon of the next day, i.e., 23/07/06 when he regained consciousness and he was handcuffed in the other room to a table.

1392. A.11 further deposed that he was taken to Kalachowki sometime during the period of three days thereafter. He was handcuffed to a ring out of four rings on the door in a room. He was kept sitting there for the day and taken back in the evening. This happened twice or thrice upto 31/07/06. He was called on the upper floor in the afternoon on 31/07/06, where other people were being interrogated and he was also interrogated. He was taken to a room in a corner, undressed and beaten severely by belt on back, buttocks and feet. He saw the agent Fahim @ Raju standing handcuffed in that room, his condition was not good and he appeared frightened. A.11 was tortured severely and was not able to even stand properly. He asked an officer to give him some medicine, but he said that he would get him treated from a doctor. However, he was not given any treatment though a person in civil dress had come there and the officer had told him to give him medical treatment.

1393. A.11 further deposed that he was not taken for medical examination to any hospital except KEM for the so called medical and Kalachowki, He had not given any memorandum and had not taken the police anywhere and there was no recovery from him during this period. He was made to run in the night of 31/07/06. He was not given any medicine or medical treatment on 31/07/06 or 01/08/06. He was again undressed and tortured in the room upstairs on 02/08/06. A.N. Roy and a Punjabi officer wearing a *pagdi* were also there. He was taken running to a last room and asked to bang his hands on the floor. He had seen the A.2 at that time. The torture continued off and on upto 14/08/06 in the name of interrogation. He was taken to Kurla in the evening of 14/08/06. A constable showed him an officer and told him that he is Vijay Salaskar and had done many encounters and that he should tell the truth to him. There were other officers there including Alaknure. He saw A.2, A.3 and A.10 there and two ladies, one in *salwar kameez* and one in *burkha*. He was beaten there by sticks. He became semi-unconscious because of the severe beating.

Conclusion

1394. The above referred ocular evidence of A.11 and his 313 statement give a detailed account of torture. The prosecution, while cross-examining A.11, except giving suggestions, could not bring any record contrary to the evidence of A.11. Thus, it can be said that the evidence of A.11 remained intact and unshaken. In these circumstances, in view of the language of section 24 of Indian Evidence Act, the confessional statement of A.11 – Zameer is inadmissible as it appears to have been extorted by torture.

A.12 - Naveed Hussain Khan

1395. A.12 – Naveed Khan was arrested on 30/09/2006 in Cr. No. 156/2006 in Mumbai Central Railway Police Station. He was in police custody for 24 days before recording of his confessional statement. According to him, his confessional statement is the outcome of and the result of torture inflicted on him.

Complaint

1396. On 09/11/2006, A.12 made a complaint to the Session Judge stating therein that on 20th Oct, 2006 a false and doctored Compact Disc was played before him and when he objected that it is a manipulated version of his narcoanalysis test, they started abusing him and hitting him with belts. Inspector Tajne and Addl. C.P Jai Jeet singh beat him with sticks and kicked him. Jaijeet Singh kicked him on his face. He was forced to do a 180° stretching of his legs due to which he bled urine for 3 consecutive days.

S.313 Statement

1397. A.12, in his statement under section 313 of Cr.PC, states that he was remanded in police custody till 13th Oct. 2006. After the arrest, he was taken to kala chowki ATS police station and interrogated about his movements on 11-07-2006, his mobile and call details. He cooperated with the polices officers and gave them all the details asked by them. During this period, officers Mr. Vasant Tajne, Mr. Arun Khanvilkar, Mr.Sachin Kadam made inquiries with him. The whole day these officers used to ask him about SIMI, whether he went for training or not and what he knew about the train blasts. He used to tell them that he did not know anything about it. So they used to beat him with sticks

and belts and used to kick & punch him. He used to plead before them that he did not know anything about it, but they never listened to him. In the custody of the A.T.S, he was constantly tortured. They threatened him that if he said anything against their wishes then his brother will be pulled in the case, his parents will be harrassed, his uncles and aunt in Hyderabad would be harassed every day.

1398. It is further stated that on the night of 21st Oct, 2006, he was taken to KalaChowki ATS police station. The Officers there, P.I Sunil Deshmukh and P.I. Tajne told him that he had told everything in the Narco-analysis test according to what they wanted him to say, then they showed him a video-clip of Narco-analysis Test, and when he said that it was edited and manipulated clip, They told him not to use his brains and started hitting him with belts on his head, then they took him to a small room with one way glass & no windows. There they stripped him and tied his hands behind his back and his legs together & started beating him on the soles of his feet with belts. They kept assaulting him saying that you have committed bomb blasts. Then they stretched his legs to 180° and continued hitting him. Then one officer named Jaijeet Singh came in that room and started kicking him and abusing verbally. Then they beat him with sticks. After the beating was over they took him out of that room and handcuffed his right hand to the railing above the door in the other room, in such a way that he would not be able to sit. He remained standing the whole night. They did not allow him to sleep. When they took him out of that room, he saw another accused being brought in and then he heard his screams through the door and the sound of belt slapping against flesh. After a long time,

another accused was brought out; he saw that his hands and feet were swollen. He was Sajid Ansari Accused no. 7.

1399. Furthermore, he has stated in his 313 statement that during Police Custody Mr. A.N.Roy and Jt.C.P. Mr. K.P. Raghuvanshi had tortured him in the Nagpada office and said that “do what we say and you will be released, we will make you an approver in this case & you will be provided protection and rewarded in Cash as per your needs, set-up a business for you wherever you want to settle down, all this will be taken care of. This happened on 22nd Oct 2006. While in police custody after torturing him physically and mentally, he was taken to some hospital. However, neither was he questioned by a Medical Officer nor was he provided any treatment and properly examined.

Ocular Evidence of A.12

1400. A.12 deposed that he was taken to another police station of the ATS thereafter, which he came to know as Kalachowki ATS unit. PI Vasant Tajne, API Arun Khavilkar and PSI Sachin Kadam made inquiries with him and asked him if he knew anything about SIMI or whether he went for any training and what he knew about the train blasts. He told them that he does not know anything about it, but they started beating him with sticks, belts, kicks and punches. He used to plead with them that he does not know anything about what they were asking him, but they did not listen to him.

1401. He further deposed that Officer Arun Khanvilkar came there on 12/10/06 and told him that he would be produced before the judge on the next day and that he should not complain to the court about any ill-treatment or anything against the ATS. He was on and off taken from

Bhoiwada to Kalachowki during the first police custody period and sometimes he was kept there for more than 2-3 days, during which he was taken to the torture room, where he was stripped, beaten on the hands, palms and soles of his feet.

1402. He further deposed that he was taken to Bangalore on 14/10/06, kept in the local police station lockup. He was taken in veil, therefore, he could not see the name of the police officer. Officers Tajne, Khanvilkar, Dinesh Kadam accompanied him and DCP Nawal Bajaj and S.K. Jaiswal came at the hospital. He was taken inside an operation theatre before noon early morning, where there were several machines to gauge heart beats, blood pressure, ECG, etc., and the narco analysis test was completed on the same day. Dr. S. Malini came there, she was an expert in anesthetics, she gave instructions to her assistant about how much anesthetic should be injected. He became semi-unconscious after the anesthetic was injected. However, he was able to understand whatever was asked to him. She had asked him a question inquiring as to who are lodged in the barracks next to him in the lockup. He remembered two names, that of Abdul Wahid and Sajid so he gave the names. A plucker or tweezers was used for twisting his ears. He was in semi-conscious state and he wanted to get rid of the torture. Dr. Malini kept repeating some names and when he repeated the names, the torture stopped. Then she started again with a new set of names and sentences and when he repeated the sentences the torture stopped. This continued for about one and a half hours.

1403. He further deposed that he was taken to Kalachowki ATS Unit in the night of 21/10/06 in the office of ACP Tawde. PIs Sunil Deshmukh and Tajne said that he has said everything according to

what they wanted him to say in the narco analysis test. They showed him a CD and played it on the computer screen. He told PI Tajne that it is an edited and manipulated CD as it was jumping between seconds in the bar and there were obviously not the questions that were asked to him. PI Deshmukh said to him that he should not use his brain and he picked up a belt and starting beating him on his head and started giving abuses. He was then taken to the torture room where he was stripped and his hands were tied behind his back. He was made to sit on the floor with his legs extended before him. His legs were tied at the ankles. One constable sat on him and one started beating him on his soles. PI Tajne continued the abusing. A senior officer by name Jaijeet Singh came there and started beating and abusing him and said that he had done the bomb blasts. His legs were stretched to 180° and they continued beating him. This went on for about two hours. Jaijeet Singh went out of the room and the constables gave him newspapers to make balls and he was made to jump from the chair on the floor where there were knotted ropes. He was then taken out of the room and handcuffed to a railing above the door outside the room in such a position that he would not be able to sit.

Conclusion

1404. The above referred ocular evidence of A.12 and his 313 statement provide a detailed account of torture inflicted upon him. The prosecution, while cross-examining A.12, except giving suggestions, could not bring any material to effectively contradict or discredit the evidence of A.12. Thus, it can be said that the evidence of A.12 remained intact and unshaken. In these circumstances, in view of the language of section 24 of Indian Evidence Act, the confessional

statement of A.12 – Naveed is inadmissible as it appears to have been extorted by torture.

A.3 - Mohd. Faisal Ataur Rehman Shaikh

1405. A.3 was first arrested on 27/07/2006 in Cr. No. 77/2006 in Mumbai Central Railway Police Station. He was in police custody for 70 days before recording of his confession. He alleges that his confession is an outcome of the torture inflicted on him.

1406. Learned Counsel Shri Chaudhary states that after confession A.3 was produced before the special court on 09/10/2006. Learned Counsel states that on 09/10/2006 A.3 orally submitted that he was tortured and that his confession was recorded under pressure. Therefore, the confession was retracted on 9-10-2006.

1407. Learned Counsel states that on 31-7-2006, the Doctors came to Bhoiwada Police Station and examined A.3, A.9, A.10 and A.11. Learned Counsel submits that this is completely unprecedented. The Doctor was from KEM. And the doctor who came was not just a junior doctor or any other doctor, it was the Emergency Surgery Registrar (ESR). Learned Counsel states that the thing which compounds the suspicion of something unusual is that, two days before, and two days later, i.e. on 29/07/06 and on 02/08/06, they take them to the hospital. However, on 31-7-2006, and only on this day and only for these four persons : A.3, A.9, A.10 and A.11. ESR paid a visit and came to the police station.

Complaint

1408. A.3 made a complaint on dt 09/11/06 wherein he stated that he was arrested on dt.19/7/06 from near Meera Road at around 11:30 pm and taken to saat-rasta Unit no. 2, that he was detained in a room and suddenly some young police officers barged in and started beating him up. That they continued beating him up till almost an hour or more. That he began feeling dizzy so he requested them to let him know why he was being assaulted. He can identify the personnel who assaulted one.

1409. A.3 further stated that his father was brought to Custody at *saat-raasta* on dt.20/07/06 and kept detained there till dt.27/07/06. That during this time, his father was humiliated and in front of him and he too was humiliated. That he was constantly questioned about the Bombay Blasts and asked to give clues about it. On his denial of having any information about it he was beaten up by K.P. Raghuvanshi and A-N. Roy. That A.N. Roy told him that he has never beaten up anybody ever as much as he beat him on that day. That few days later, Jaijeet Singh called him at his office through some officers and beat him with fist blows, kicks and slapped him. Then he was taken to Kurla ATS office where Inspector Salaskar, Warpe and Phadke and Dalvi and one Alaknoor beat him mercilessly. They would not allow him to sleep continuously for days and nights. That on one day he was stripped naked by Salaskar and for four days he was not allowed to wear any clothes. That at the Kurla ATS office his father was stripped naked and paraded before him and his younger brother Muzzammil Sheikh. Similarly, his Sister-in-law Rifah Sheikh was asked to drop her veil (*Burkha*).

1410. A.3 further stated that he used to be threatened that if he spoke about the atrocities committed on him to the court, he would be beaten up badly and his family would be implicated in this case. The officer used to insert some chemical through his anal aperture and penis. It used to burn him continuously and it used to make him cry. That under such torture, he was made to sign on blank papers. That his hairs were pulled and uprooted by them. This was done to him at Kala chowki and repeated at Bhoiwada Lock up.

1411. That his legs used to be stretched 180° apart by Nawal Bajaj and Jaijeet Singh and if he cried they used to slap him and make him silent. That his Narco Analysis Test was unofficially conducted at *saat-rasta* lock up. Few Doctors had come there. They were not from Mumbai. That he was made to memorize a script by ATS officer Jaijeet Singh which was asked to be repeated before a videographer. At that time K.N Shengal and Sunil Deshmukh made him repeat the script several times. That the two officers Shengal and Deshmukh would beat him mercilessly if he made any mistake in repeating the script.

313 Statement

1412. In his 313 Statement, A.3 has stated that whatever statement the ATS police have written in English-Hindi-Marathi, he did not know what they have written in it and when they have written it and during some inquiries they used to write it after asking him, even that he did not know what they were writing and they did not tell him later what they had written. They just kept taking signatures on written papers and blank papers from him through beating and degree torture.

1413. A.3 further states that he was tortured a lot in the crime branch too. That later he came to know that his father and cousin brother were also tortured. That during this time the crime branch could not get any specific information from him or any information related to the 7/11 train blasts because he did not know anything about this and he had no connection with the 7/11 train blasts.

1414. A.3 further stated that on 27-07-2006, ATS brought him and his brother (A.9) to Kala Chowki. They were kept separately there and the inquiry began. That from 27-07-2006 itself, ATS started torturing them. That night, they tied him up without any reason and started beating him with a belt. Then on 28-07-2006, in the afternoon, they both were made to stand in the court where he told the judge that he was innocent, but the judge, without paying attention to his words, sent him to the ATS police custody. That after this, it was as if ATS had got a license to torture him and keep him awake the whole night, keep him naked for 24 hours, abuse his parents and religion, treat him like an animal and torture him with new methods of third degree torture. That the way they were beating him and torturing him with new methods was beyond his tolerance. He was in agony due to their cruelty and torture and he started praying to Allah for death. That during this time, many different policemen used to come and question him and used to write the story of ATS according to their wish and forcibly take his signatures etc. and then go away. He was so helpless that he would sign on the papers to save himself from their oppression and torture and out of fear. That he did not even know on which papers they were taking his signature. That his signature was taken many times on blank papers. He was not even conscious. Just after signing, he would get

relief from torture for a few hours that day, due to which he would sign to save himself from torture and out of fear.

1415. A.3 further states that Meera Borwankar madam sent him to Saat Rasta Unit-II through Mr. Hargude. That there also he saw Ehtesham Siddiqui in the evening. Both of them were kept in separate rooms. Similarly A.N. Roy called him to the Nagpada office and tortured him and then said “look, your life is ruined, if you cooperate with us then maybe we will also think something about you.” That he had become so helpless and miserable that he was doing whatever they were saying. But he was not able to understand what they wanted him to do by repeatedly scaring, threatening, and beating.

1416. A.3 further states that the next day, Shengal and Sunil Deshmukh took him out of the lockup and with DCP's officers sent him to Chandan Chowki. DCP Bajaj was also there. Everyone was very angry and furious with him. Then he was tied up and beaten so much that he fainted. That night, they stripped him naked at Chandan Chowki and tied him to a chair. They put a cloth in his mouth and put a 5-litre water bottle on his head. They poured water on his head drop by drop. It seemed as if the water droplets were dripping on his head and going through his throat. That he was tied up in such a way that he could not even move. The whole night passed in that painful torture. That he started praying for death. He was not able to bear it. He was crying a lot. At 5 in the morning he was opened and told to take some rest, because he had promised while crying that he would sign wherever asked. Then at 1 o'clock DCP Bajaj, Shengal and Deshmukh took his signature on many papers which were written in Hindi.

1417. A.3 further states that whenever they took him for medical examination during PC, they used to threaten him not to complain. Due to fear, he never complained to the medical officer. But that doctor was also from ATS. His condition was so bad that he could not even walk properly, but even after seeing this, they did not write anything on the report and did not check him up. Sometimes they used to take his thumb impression. He was tortured so much that his condition was very bad due to which sometimes his medical was not done for 5 days or sometimes for many days. Twice the doctor was called to the police station and the check up formality was completed. What kind of check up was that, the doctor just looked inside the lock-up and after asking the name, wrote something and went away. He was tortured very mercilessly in the Kurla police station anti-robbery cell. That for many days he was not taken for medical treatment. If his medical record is checked, it will be clearly known that he was not taken for medical check-up for many days.

1418. A.3 further states that the Crime Branch Unit II stopped his bike near his house in Mira Road and arrested him and that since 19th July 2006 he is in police and judicial custody. He, his brother and his entire family and relatives were harassed and tortured. At Kurla Police Station, Mr. Salaskar and his unit members stripped his father naked and tortured his father in front of him, his brother and other arrested people and pulled off the *burkha* of his brother's wife and removed it from her face and body and were talking about raping her. In these circumstances, which self-respecting person is not helpless on the actions of ATS and Crime Branch? He too said helplessly that he will

sign wherever the ATS officers tell him to. And that he will accept whatever the officers say.

Conclusion

1419. Only because he did not enter into the witness box, it cannot be said that there was no torture, particularly considering the evidence of other accused person about the torture, who succeeded in showing that their confessional statement is the outcome of torture. This detailed narration of torture with all the specific details creates doubt about torture to extort confession. Thus, in view of section 24 of Indian Evidence Act, the confessional statement of A.3 cannot be held admissible in law to base conviction.

1420. For these very observations and reasons, we have refrained from relying on the confession made by A.3 before PW-40 Arvind Singh, Assistant Director, E.D. under the Foreign Exchange Management Act (FEMA).

ROLE OF CMMs IN THE CONFESSION PROCEEDINGS

1421. Much arguments were made on the point of infirmities in the role played by the learned CMM and procedure adopted by him in verifying the confessions of the accused. Objection has been raised on the ground that the learned CMM did not record accused's statement under his signature. It has also been argued that the learned CMM failed to notice the visible injuries on A.5 and A.7 when they were produced before him. The production of A.5 at the home of the acting

CMM S.Y. Shisode is also objected on the ground that he was produced contrary to the law.

1422. However, as on every ground, right from the invocation of MCOCA, the confessional statements have held to be not admissible, the relevance go into the merits of the role of the CMM and other challenged have lost its efficacy. Therefore, we will not delve upon the same.

RECOVERY OTHER THAN RDX, GRANULES AND DETONATORS

1423. Since we have considered all the evidence and material produced by prosecution to establish the offence and have reached to the definite conclusion that the prosecution has failed to bring guilt home against the accused in the present case, and no offence is made out against the accused, it is necessary to deal with an issue which was not decided for the reason to be dealt with at the end of scrutiny of the part relating to confession.

1424. Following is a chart showing the other recoveries made from the respective accused: -

CHART NO. 49

Name of the Accused	Articles Seized
A.2 – Tanveer Ansari	Hospital Search (Exh.458): Three bottles recovered from Tanveer's hospital locker situated in ICU: 1) One black plastic bottle having label of 'Hydrogen Peroxide Solution' of 500 ml, ingredients, manufacturer's name etc. 2) One brown glass bottle having the label of 'Acetone' of 500 ml, ingredients, manufacturer's name, etc.

	3) One brown glass bottle having the label of 'Sulphuric Acid' of 500 ml, ingredients, manufacturer's name, etc. House Search of his brother's house (Exh.485): i. 3 books having name Teherik-E-Milat: Atankvaad ka zimmedaar kon, ii. One book related to SIMI having name - 'April 2004, Tehrik-E-Millat, Ashiya, Shaikh Ahmed Yasin sukoon se so gye, Israeli kabhi sukoon se nahi reh sakenge – Hamas, iii. One book named 'Sahi Disha Me Shatra Shakti: SIMI Sangarsha Yatra Ke 25 Varsh', iv. One book- related to SIMI, v. One local map of Mumbai wherein on the left side 'Map of Mumbai' and on the right side 'Tourist map of Mumbai' was written. (Some places were marked with green and red ink on the map), vi. One International Map - shows the countries - Iran, Afghanistan, India, Muscat, and Oman. This map is a Xerox copy. (Map has one telephone no. i.e. 00966507551451 and one email ID - gudu_sir@yahoo.com) Passport Agent Office Search (Exh.450): Passport of Tanveer Ansari recovered from travel agent
A.3 – Mohd. Faisal Shaikh	House Search (Exh.533): i. Cardboard box, ii. a plastic bag in which there is cotton on which there is black powder-like substance (As per the CA Report: Cyclonite (RDX – used as high explosive) and charcoal are detected in the exhibit.), iii. A black coloured rexine pouch containing: - A train ticket from Howrah to Mumbai dated 20/05/2006. - Two train tickets from Howrah to Mumbai dated 22/05/2006. - ATM Card of ICICI Bank - One learning licence and one driving licence, - Currency notes of Rs. 1000/ - 30 notes of denomination of 500 Saudi Riyals (15,000 Saudi Riyals)

	- A train ticket from Mumbai to Howrah dated 14/05/2006 iv. Letter of Oriental Insurance Co. in the name of insured Nizamoddin Abdul Siddhique, v. Motorcycle Documents. The registration book of Bajaj pulsar motor cycle no. MH-01-TA- 9542 in the name of Mohd. Muzamil Aatur. Certificate of insurance of New India Assurance Co. in the same name, vi. One leave and license agreement, vii. Two books titled 'April 2004, Tehrik-E-Millat, Ashiya, Shaikh Ahmed Yasin sukoon se so gye, Israeli kabhi sukoon se nahi reh sakenge – Hamas', and two books titled 'Tehrik-E-Millat Atankwad ka jimmedar kaun', viii. Four books, two having green cover and two having pink cover titled SIMI, Sangharsh yatra ke pachis varsha, ix. Xerox copy of the map of part India, Pakistan, Afghanistan, Iran etc., (Some places were marked with green and red ink on the map), x. The receipt dated 10/01/05 of Bajaj choice center for Rs. 59500, xi. Key of the flat of mohd. Faisal bearing the words china, xii. Motorola, reliance and Sony Ericson mobile handsets, sim cards , batteries, etc. Recoveries from Railway Track (Exh.1108): One Plastic bag was recovered which is brown in colour, damaged and torn at some places measuring 30cm × 45 cm covered in mud. Inside the plastic bag, another thin white plastic bag torn at one place and covered in mud. That plastic bag contained: i. 7 rubber gaskets labeled as 'Kanchan' in white colour and soaked in mud, ii. 5 pressure cooker whistles of stainless steel fitted with black plastic cap. Kanchan is marked on the surface of the plastic cap, iii. 5 pieces of electric wire with red and white coloured PVC insulation. The length of the pieces of wires are 12cm, 28 cm, 28 cm, 60cm and 82 cm, iv. Printed Circuit board with wire and other

	material. There also a black wire attached to the circuit with intermediate black switch with NOKIA marking - cylindrical in shape and terminating in a pin generally used for headphone connection of a mobile, v. Copper Brown and white coloured plastic bag (Cyclonite (RDX) is detected)
A.6 – Mohd. Ali	House Search (Exh.716): - Pressure cooker of 5 litre with the lid, whistle and steam plate, the khaki wrapper with label, two seals and white thread.
A.7 – Mohd. Sajid Ansari	Office Search (Exh.1480): i. One torn plastic bag with Priyagold and Magic-Gold written on it ii. One soldering gun- old & used of MAXGOLD Co. iii. 4 pieces of Soldering wire iv. Round metallic ‘dabbi’ of soldering paste of Quick fix company. v. One printed Circuit board, vi. One multimeter of UNI-T company, Model No. DT830D having two wires-one red & one black . On black of the sad multimeter 3030598732 is paste, vii. 2 tweezers made of steel. viii. 1 screwdriver with green handle, ix. One white packet- empty with title Easy Recharge Card-Airtel printed on front. On the backside a sticker is affixed with following particulars: Mob no. 9867244681 SimNo. 899192000003206618F x. Electrical components consisting of - 22 resistors, 2 capacitors, 1 coil, 8 transistors, 9 LEDs, 6 Diodes.
A.9 – Muzzammil Ataur Rehman Shaikh	House Search (Exh.534): i. Three CPUs ii. One hard disk iii. One mobile phone, sim card and battery. iv. One airtel company sim card v. one pouch containing 30 DVDs vi. one 80GB Hard Disk vii. Map of mumbai, viii. two books titled April 2004, Teherik-E-Milat, and Atankwad ka jimmedar kaun, ix. one book having green cover titled SIMI sangarsh

	yatra ke pachis varsh, x. the statement of marks and passing certificate in the name of Muzzamil, one driving licence, brown leather purse, identity card of Oracle Co. (Two pieces), a white blank plastic card, ICICI Bank card, the plastic bag with label, brown paper outer envelope, passport, blank identity card of ALL India Association of Unani Medical Colleges, two blank identity cards of Z.V.M Unani Medical College and hospital.
A.10 – Suhail Mehmood Shaikh	House Search (Exh.758): i. Indian Passport of A.10, ii. 6 books - Two books were titled 'SIMI, Student Islamic Movement of India'. The address of SIMI's office of Delhi was at the bottom of the front cover. Two books were titled 'Millat-e-Tehrik, Atankwad Ka Jimmedar Kaun' and two books were titled 'April-2004 Tehrik-e-Millat'. iii. 4 audio cassettes (Art. 253 1 to 4) - Some cassettes were titled 'Al-Quran' and some were titled 'Beauty of Islam'. iv. Mobile phone of A.10 (Art. 252), v. One map of the Middle East showing half of India. (Art. 250). A route from Salet, Tehran in Iran up to Muzaffarabad in Pakistan was marked on this map. There were some numbers in handwriting and e-mail Ids. vi. One map (Art. 248) was titled 'Map of Mumbai'. Certain spots in Mumbai - Veer Savarkar Marg, Dadar, Mahalaxmi Temple, Reserve Bank of India, etc. were marked in red ink encircled by green ink on this map. vii. ISD Rate Card (Art. 248B), etc.
A.11 – Zameer Ahmed Latifur Rehman	House Search (Exh.527): i. One Passport (Art. 133) ii. One xerox map containing part of India, Pakistan & Afghanistan. There was a number, an email id and some other thing written on the map in Urdu.

Shaikh	(Art. 134) iii. One Book titled Tehrik-e-millat, Atankwad ka jimmedar kaun (Art-135). iv. One book titled Tehrik-e-millat, Asia, April-2004 (Art-136). v. One map of Mumbai which had markings on it with red and green ink. (Art. 137) vi. A booklet titled 'latest road map of Mumbai & Navi Mumbai'. (Art. 138) vii. A black leather purse. (Art. 139) viii. A driving license no. MH-01-97 50299 in the name of Zameer Ahmed Latif-ur-rehman Shaikh. (Art. 140), ix. An ATM Card of Canara Bank in the same name. (Art-141). x. An ATM of Canara Bank in the name of Mohd. Zubair Ansari NY. (Art-142) xi. A pocket diary (Art-143) xii. 3 visiting cards and two chits of Sun-n-Sand. (Art-144 1 to 5) xiii. Currency notes - 6 currency notes of Rs.100/-, 10 currency notes of Rs.50/-, 3 currency notes of Rs.10/- and 1 currency notes of Rs.5/-. total Rs.1135/-. (Art. 145 colly)
A.13 – Asif Khan Bashir Khan	House Search (Exh.665): i. Twenty- two (22) books and the spiral binded book in Urdu- Art-285 (1 to 23) Book in english - Article 286 Outer cover of Frontline weekly- Article 287, Pamplet of Vector Classes- Art- 288, Visiting card of Bombino-collection- Article 289 ii. A file containing educational and other documents in the name of Ansari Mohd. Imran of School and polytechnic of Indore and Bhopal - Art 290 (1 to 26), iii. Urdu Newspaper- Article 290A iv. Plastic Bag bearing the name Japan store, Lucknow containing Urdu and English newspapers, some magazines, four CDs- Art-292 colly. v. 2 CPUs from Article 293 to Article 294. vi. One printer - Art 295

	vii. One monitor- Art 296 viii. The application for NOC to society/information to police along with agreement of leave and license- Art- 297 collly ix. Reliance energy bill- Article 298

1425. The Hon'ble Supreme Court of India, in the case of ***Vernon v. State of Maharashtra***, reported in (2023) 15 SCC 56, has held thus:

“32. As it would be evident from the analysis of the evidence cited by the NIA, the acts allegedly committed by the appellants can be categorised under three heads:

32.1. The first is their association with a terrorist organisation which the prosecution claims from the letters and witness statements, particulars of which we have given above. But what we must be conscious of, while dealing with prima facie worth of these statements and documents is that none of them had been seized or recovered from the appellants but these recoveries are alleged to have been made from the co-accused.

32.2. The second head of alleged offensive acts of the appellants is keeping literatures propagating violence and promoting overthrowing of a democratically elected Government through armed struggle. But again, it is not the NIA's case that either of the two appellants is the author of the materials found from their residences, as alleged. None of these literatures has been specifically proscribed so as to constitute an offence, just by keeping them.

32.3. Thirdly, so far as AF is concerned, some materials point to handling of finances. But such finances, as per the materials through which the dealings are sought to be established, show that the transaction was mainly for the purpose of litigation on behalf of, it appears to us, detained party persons. The formation of or association with a legal front of the banned terrorist organisation has also been attributed to AF, in addition. The High Court while analysing each of these documents individually did not opine that there were reasonable grounds for believing that the accusations against such persons were not prima facie true. Those offences which come within Chapters IV and VI of the 1967 Act, charged against the appellants, are Sections 16, 17, 18, 18-B, 20, 38, 39 and 40.

35. In none of the materials which have been referred to by the prosecution, the acts specified to in sub-clause (a) of Section 15(1) of the 1967 Act can be attributed to the appellants. Nor there is any

allegation against them which would attract sub-clause (c) of Section 15(1) of the said statute. As regards the acts specified in Section 15(1)(b) thereof, some of the literature alleged to have been recovered from the appellants, by themselves give hint of propagation of such activities. But there is nothing against the appellants to prima facie establish that they had indulged in the activities which would constitute overawing any public functionary by means of criminal force or the show of criminal force or attempts by the appellants to do so. Neither there is allegation against them of causing death of any public functionary or attempt to cause death of such functionary. Mere holding of certain literatures through which violent acts may be propagated would not ipso facto attract the provisions of Section 15(1)(b) of the said Act. Thus, prima facie, in our opinion, we cannot reasonably come to a finding that any case against the appellants under Section 15(1)(b) of the 1967 Act can be held to be true.

47...We have also observed earlier that mere possession of the literature, even if the content thereof inspires or propagates violence, by itself cannot constitute any of the offences within Chapters IV and VI of the 1967 Act.”

1426. In the case of *Jyoti Babasaheb Chorge vs. State of Maharashtra*, reported in 2012 SCC OnLine Bom 1460, this Court held thus: -

“33. That the possession of certain literature having a particular social or political philosophy would amount to an offence, though such literature is not expressly or specifically banned under any provision of law, is a shocking proposition in a democratic country like ours. A feeble attempt to put forth such a proposition was made by the Learned SPP in the oral arguments. Such a proposition runs counter to the freedoms and rights guaranteed by Article 19 of the Constitution. In this regard, a reference may also be made to a decision of the Gujarat High Court, on which reliance has been placed by Shri Mihir Desai. (Criminal Miscellaneous Application Nos. 12435 to 12437 and other connected applications, decided on 18.11.2010). The applicants therein had been alleged to be in contact with a person involved in Naxal movement and serious charges of offences punishable under Section 121-A, 124-A, 153-A, 120-B etc. of the IPC were leveled against them along with offences punishable under Sections 38, 39 and 40 of the UAP Act (as it stood then). Certain documents such as agenda of a meeting, in which one of the items was to pay homage to a dead Naxalvadi who was killed in encounter and some literature about revolution and lessons of Communist Party of India (Maoists/Leninists) containing, inter alia,

features of Guerrilla Warfare etc. was seized from the applicants. While releasing the applicants on bail, the High court observed that the seizure of the so called incriminating material, by itself, cannot show participation in an activity prohibited by law. It was held that mere possession of such literature, without actual execution of the ideas contained therein, would not amount to any offence.

1427. In view of the above referred judgments, the recovery of literature namely, books and maps recovered from the accused, become irrelevant and not sufficient to connect them with the alleged offence or to base conviction.

1428. As regards the remaining articles, namely CPUs, cooker, wires, circuit boards, soldering gun, etc. also lose its significance and become irrelevant having observed and held that the prosecution has failed to establish the offence beyond reasonable doubt against the accused.

TRAVEL TO PAKISTAN

1429. Similarly, it was argued by the prosecution that A.1, A.2, A.3, A.6, A.9, A.10 and A.11 went to Pakistan through Iran or some other route and it was tried to be proved by way of Passport and other evidence produced on record. However, even if the said evidence is held to be sufficient to establish the accused's visit to Pakistan, the same, in itself, is not sufficient to indicate or suggest or to establish the fact of commission of bomb blasts by these accused. Since the prosecution failed to establish the offence on all the grounds, the fact whether the accused visited Pakistan to obtain training or not would become irrelevant.

CALL DETAIL RECORDS (CDRs)

1430. The prosecution tried to connect the accused with the offence by obtaining CDRs. The CDRs of the accused were examined and the same were destructed and not relied upon by the prosecution. The accused initially demanded the CDRs which were denied to them, and when they approached to the service provider under Right to Information Act, it was opposed. Lastly, the accused approached to this Court, whereupon this Court directed to provide the CDRs. However, by that time the period of preserving the CDRs was lapsed and the service provider was required to retrieve the CDRs and provide the same to the accused. However, the complete CDRs could not been provided to the accused. In the above referred backdrop, the defence vehemently argued that this Court may draw adverse inference for destructing the material evidence.

1431. Learned Counsel Shri. Chaudhary submits that among all the issues where the defence has been curtailed and the right to a fair trial has been severely compromised, the most egregious and far-reaching violation is the destruction of the Call Detail Records (CDR). It is submitted that despite repeated applications by the accused requesting access to the CDR, the authorities claim that the records have been destroyed. Each time, a reply was given stating that the prosecution is neither relying on the CDR, nor has it been filed with the charge sheet, and hence, they are not obligated to provide it. It is further submitted that even when the accused sought the CDR through RTI applications to MTNL, the Anti-Terrorism Squad (ATS) intervened by instructing

MTNL not to give the details of CDR, which shows the extraordinary lengths the prosecution has gone to suppress this material evidence.

1432. Furthermore, it is submitted that in the remand applications and charge sheet, the prosecution has repeatedly asserted that the accused were in contact with wanted accused based in Pakistan, including members of Lashkar-e-Taiba, and that the accused had undergone militant training in Pakistan and were involved in illegal activities. The prosecution itself claims that the CDRs would establish the accused's contact with terrorists and Lashkar-e-Taiba operatives in Pakistan. It is argued that if the CDR was so critical to substantiate these serious allegations, why such vital evidence was destructed and of what the prosecution attempted to conceal by doing so.

1433. In light of the rival contentions, let us see the importance of CDR in the present case.

1434. It is the case of the prosecution that the first arrest (of A.1) in this case was made on the basis of an information received by PW-161 about a phone number from which a religious SMS was sent which created suspicion. Further, from the very beginning, the prosecution asserts that the accused were in contact with the key conspirator Azam Cheema and members of the terrorist organization Lashkar-e-Taiba.

1435. It is of common knowledge that a CDR can reveal details about phone calls, including the date, time, duration, and numbers involved (both calling and receiving). It can also show the locations (cell tower information) where the calls were made or received.

1436. Therefore, the alleged connection of the accused with Azam Cheema and members of the terrorist organisation Lashkar-e-Taiba could have been established with the help of CDRs.

1437. Furthermore, there are certain facts in this case, which could have been established by the prosecution by bringing the CDRs on record by showing the location of the mobile numbers of the accused. Some of them are as follows: -

- (a) Conspiracy meetings used to be held at A.3's house in Bandra, wherein A.4, A.9, A.10, A.11 were present.
- (b) In March 2006, PW-59 met A.3 A.2, A.4, and A.13 near Shams Masjid where A.3 asked PW-59 to call A.12 there.
- (c) The confession of A.12 and A.7 mention that on the day of blasts, A.12 gave his mobile to A.7 at about 4:15pm near the signal of Lucky Hotel in Bandra, which A.7 took to his house in Mira Road.
- (d) That A.2, A.4, A.6, A.7, and A.13 were present at A.6's house in Govandi on 8th,9th, and 10th July 2006 while the bombs were being prepared.
- (e) A.5 brought 6 Pakistanis from Kolkata to Mumbai in may 2006.
- (f) A.1, in his confessional statement, has mentioned about visiting Mumbai twice.
- (g) If it is the case of the prosecution that as per the planning, it was decided not to carry the mobile phones, CDR could have proved it that the mobile phones of the accused were at their home at the relevant time.

1438. It is to be noted that the prosecution has failed to bring any satisfactory evidence on record to corroborate the above facts. Therefore, in absence of such satisfactory evidence, the prosecution ought to have brought the CDRs of the accused on record which would have clearly established their locations at the relevant time. It is to be noted that the prosecution had obtained the CDRs but not relied upon it or filed along with the charge sheet.

1439. Let us now see the evidence as to why the CDRs were not brought on record. PW-186 Chief IO deposed that the work of scrutiny of CDRs was done by technical cell. PI Wadke was in-charge of the cell. He had informed him that most of the mobiles are not in the names of the accused and there is no useful lead in CDRs. Secondly, as per the Al-Qaeda Manual and training given to the accused, they were not supposed to use their mobile phones for operational purposes. This fact was also revealed from their confessional statement. Therefore, no importance was given to the CDRs.

1440. At this juncture, it is important to note that though the prosecution has referred to Al-Qaeda Manual for many things, nothing is brought on record about it.

1441. Furthermore, even if it is accepted that the mobile numbers were not in the name of the accused, the prosecution had knowledge about the mobile number which the accused were using, and such number are the part of the record. However, even the CDRs of such numbers are not produced on record, or relied upon by the prosecution.

1442. CW-1 PI Sunil Wadke filed an affidavit in the Court in which he states that he destroyed after a year since no relevant information was found. Further when he was asked who told him to destroy/delete the CDRs, he does not answer the question.

1443. CW-1 further states that one year after filing of charge-sheet they would enquire with the IO if the CDR was required. If the IO said the CDR was not required, he used to tell the DCP and then delete the CDR after getting direction from the DCP. Furthermore, CW-1 states that he had informed DCP Dumbre about deleting the data.

1444. On perusal of the record, it can be seen that there is no record or information about who directed CW-1 to delete the CDRs. Furthermore, there is no station diary entry or any record about deleting the data.

1445. It is evident from the above referred evidence that the prosecution was in the possession of the CDRs. However, they did not bring them on record. Furthermore, when the defence applied in the Trial Court to get the CDRs exhibited, the same was rejected. However, the CDRs were brought on record subsequent to the order of this Court in Criminal Appeal No. 973/2012 wherein the Single Judge Bench of this Court allowed the same.

1446. We have already seen that from the very beginning, the prosecution's case was that the accused were in contact with the key conspirator Azam Cheema and members of the terrorist organization Lashkar-e-Taiba. However, despite this assertion, the prosecution failed to place the CDRs on the record. When questioned on this omission,

the prosecution candidly stated that it was not relying on the CDR, and therefore did not bring it on record.

1447. Notably, it was only after the defence produced the CDRs on record that the prosecution altered its stance, contending that the CDR of all accused show that accused were in constant-contact with each other to hatch the conspiracy. In view of the prosecution story that they all are SIMI Activists and most of them were knowing each other, by referring to a landline number on which according to the prosecution, these accused used to make phone calls, is not sufficient to establish the offence. This evidence does not show more than a fact that they were in contact. Considering the fact that they were SIMI Activists and knowing each other, such evidence does not have much relevance.

1448. It is pertinent to note that the prosecution had sought the police custody remand of the accused on the ground, inter alia, that the accused were in contact with Pakistanis, Azam Cheema and his associates. Yet, even after the defence produced the CDR, the prosecution failed to establish any nexus between the accused and Pakistani nationals, including Azam Cheema and his associates.

1449. The CDR was of critical importance, particularly because the first arrest in the present case was made on the basis of a mobile number allegedly belonging to A.1, from which a religious SMS was sent, arousing suspicion in the minds of the Anti-Terrorism Squa (ATS).

1450. The Hon'ble Supreme Court of India, in the case of *Union of India v. Ibrahim Uddin*, reported in (2012) 8 SCC 148, has held thus: -

“24. Thus, in view of the above, the law on the issue can be summarised to the effect that the issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot lose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents, etc. as is required under Order 11 CPC. Conduct and diligence of the other party is also of paramount importance. Presumption of adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.”

1451. Thus, it is a well-settled law that the presumption of adverse inference can be drawn if other larger evidence is shown to the contrary.

1452. We have earlier seen that the prosecution's case is that conspiracy meetings were held at the residence of A.3 in Bandra, attended by A.4, A.9, A.10, and A.11. Additionally, the prosecution has alleged that in May, PW-59 met A.3 and others near Shams Masjid, where A.3 instructed PW-59 to call A.12 to the said location. It has also emerged from the confessional statements of A.12 and A.7 that on the day of the blasts, A.12 handed over his mobile phone to A.7 around 4:15 p.m near the signal of Lucky Hotel in Bandra.

1453. The prosecution could have easily established the location and movement of the accused at the aforementioned relevant places and times through the CDRs. Instead, the CDR was destroyed. This act raises serious doubts over the integrity of the investigation conducted by the investigating agency and amounts to a grave violation of the right to a fair trial.

1454. In light of the above discussion, this conduct of the ATS is not only relevant under section 8 of the Indian Evidence Act, but also invites an adverse inference under illustration (g) of section 114 of the Indian Evidence Act. Thus, as we have seen that there is not a single evidence brought by the prosecution on record, we are of the opinion that, in the present case, the reluctance of prosecution to bring the CDRs on record and destruction of the same raises an adverse inference against the prosecution.

ALTERNATIVE HYPOTHESIS

1455. Much arguments were made on the alternative hypothesis in the form of Riyaz Nawabuddin and Sadiq Israr Shaikh.

1456. This Court, in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in (1984) 4 SCC 116, has held thus: -

“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 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“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.”

1457. The principle number 4 in the above referred judgment directly addresses alternative hypothesis, i.e. any plausible alternate version consistent with innocence must result in acquittal. Here, in the present matter, after discussing available on record, we have already held that the prosecution has not established the offence against the accused by bringing in record cogent evidence against the accused as a proof beyond reasonable doubt. In these circumstances, we do not think it necessary to go into the issue of alternative hypothesis.

SUMMARY

1458. The summary of the above referred discussion is as under.

1459. In this case, the prosecution has mainly relied upon three planks of evidence namely, 1) eyewitnesses, 2) recoveries, and 3) confessional statements.

1460. The prosecution has examined total eight eyewitnesses, which we have categorised as under: -

- i) The taxi drivers who drove A.3 and A.13 to Churchgate (PW-63 & PW-77),
- ii) The witnesses who saw the accused planting bombs in the trains (PW-57, PW-60, PW-62, & PW-74),
- iii) The witness to the assembling of bombs (PW-75),
- iv) The witness to the conspiracy (PW-59),

1461. Before we discuss the credibility and truthfulness of each of the witnesses, we dealt with a challenge raised by the defence to the T.I. Parades conducted on 07/11/2006 by Shri. Barve as SEO, on the ground that on the date of T.I. Parade, i.e., 07/11/2006 he had no authority to act as SEO and conduct the T.I. Parades.

1462. On examining the evidence, we recorded the finding that Shri. Barve had no authority on 07/11/2006 to conduct the T.I. Parades. Accordingly, the T.I. Parades wherein A.1, A.3, and A.13 were identified by PW-57, PW-62, PW-77, PW-60 and PW-63, became inadmissible, including that of A.12.

1463. However, considering the well-settled law that the dock identification is a substantive evidence, we then scrutinised the ocular evidence of each of the witnesses and their dock identification.

1464. The first category of witnesses, namely, PW-63 and PW-77, who are the taxi drivers and who claimed that A.13 and A.3 respectively, traveled in their taxis upto Churchgate on the date of the incident, i.e. 11/07/2006, were held to be not trustworthy and cannot be made basis

for conviction. This conclusion was recorded considering various aspects including the aspect that they were silent for 100 or more days after the incident, and on 03/11/2006 gave the statement to the police that A.3 and A.13 traveled in their taxis. Since the T.I. Parades in which they identified A.3 and A.13 were conducted by Shri. Barve, we were required to discard the said evidence of T.I. Parades.

1465. In absence of T.I. Parades, the dock identification of the accused is after more than four years. Therefore, we examined whether there was any special reason to trigger the memory and recollect the face and description of the accused to enable the witnesses to identify them after such a long gap. Thereupon, we observed that both the witnesses could not get sufficient opportunity to interact, to observe and to store the face of the accused in memory. Hence, we held that their evidence is not safe to base conviction.

1466. As regards, second category of witnesses, who claimed to have seen the accused planting bombs in the trains. These witnesses are PW-57, PW-60, PW-62, and PW-74. Except the T.I. Parade in which PW-74 identified A.4 – Ehtesham, the T.I. Parades relating to PW-57, PW-60 and PW-62 have been discarded for the same reason that Shri. Barve had no authority as SEO to conduct the T.I. Parades.

1467. PW-57, PW-60 and PW-63 identified A.1, A.13 and A.3 respectively. Except PW-60, other witnesses gave their statements under section 161 of Cr.PC after 100 or more days, that means they were silent for such a long period and did not disclose the fact of sighting the accused, which we have found very abnormal in the facts

of the case. These witnesses identified the accused in the court after more than four years. We, therefore, again examined the evidence of the witnesses to find out whether there was any special reason for these witnesses to recollect the faces of the accused after such a long period and for that we tried to find out whether these witnesses had sufficient opportunity or interact or observe or to see the accused to enable them to recollect their faces after such a long period.

1468. On scrutiny of evidence of PW-57 and PW-62, we do not find any such special reason or any other reason for triggering of their memory and to recollect the faces of A.1 and A.3. Therefore, on this count and the other reasons recorded, we have observed that the evidence of these witnesses cannot be made basis for conviction.

1469. As regards PW-60, who gave his S.161 statement immediately on fourth day of the incident. The first arrest was made on 20/07/2006, and there were continuous arrests thereafter. Yet, he was not called for T.I. Parades for four months.

1470. From the evidence of PW-60 and PW-186, it has come on record that PW-60 visited Bhoiwada police station in the last week of October 2006, and during the said period, A.13 was in the said prison. The complaint of A.13 and his oral evidence indicate that A.13 was shown to PW-60 in the last week of October 2006, before the T.I. Parade. Thus, on this ground and the other grounds recorded, this witness was not considered as safe to rely upon.

1471. The evidence of PW-74 was also not relied upon on the ground that he appears to be a stock witness. The evidence available on record shows that he acted as a panch witness in four crimes out of which three were of DCB CID and two cases were related with PI Tajne (PW-161).

1472. The third category of witnesses is relating to a witness PW-75 Amar Sardar Khan, who claimed to have seen the A.2, A.4, A.6, and A.7 during assembling of bombs in the house of A.6 – Mohd. Ali. This witness gave statement under section 161 of Cr.PC on 28/10/2006. This shows that he was silent for more than 100 days and did not disclose the said fact to the police though he was called by the police as a suspect in the present case. Moreover, though in the chief he stated that he saw the accused and some more persons making bombs when he entered into the house of A.6, in cross-examination, he changed his version and stated that he did not enter into the house of A.6 but his friend Ajmeri Shaikh, who accompanied him, told him the said fact. Admittedly, the prosecution has not examined Ajmeri Shaikh.

1473. This witness was also a witness in Ghatkopar blast case. Thus, since the defence succeeded in shattering his oral evidence in cross-examination, for this reason and other reasons recorded, we have not considered his evidence worth relying.

1474. The fourth category of witness is relating to a witness PW-59, who claimed to be a witness to the conspiracy. However, though he deposed that he saw the accused discussing some issues on certain occasions, he admits that he was not knowing about the subject on which they discussed in such meetings. Furthermore, though he stated

the names of all the Pakistanis whom he met twice, he failed to tell the name of a bar dancer with whom, as per his own version, he had a very close association for a period of about one month. Thus, on these grounds and other grounds mentioned while discussing his evidence, we have not found this witness trustworthy.

1475. There are other eyewitnesses. One is PW-85 Lalji Pande, who gave his statement under Section 161 of Cr.PC on 27/07/2006 and a supplementary statement on 21/08//2006, and who helped to draw two sketches of the suspects. However, he was not called for T.I. Parade and even though he was examined as a prosecution witness, he was not asked to identify the accused in the Court. Thus, no evidence of any substantive nature could be brought by the prosecution through this witness.

1476. The other eyewitnesses are those who have though given their statements under section 161 of Cr.PC within a short span of the incident and gave the description of the suspects, they have neither been called for T.I. Parade nor been examined as prosecution witnesses. Therefore, we have drawn an adverse inference for not examining the material witnesses.

1477. Now, as far as the evidence relating to recoveries is concerned, the recoveries are of RDX, granules, detonators, cooker, printed circuit boards, soldering gun, books, maps, etc. Out of these articles, the material and substantive evidence is of recovery of RDX, granules and detonators which are directly connected with the blasts. However, we have observed that the evidentiary value of these recoveries does not

attach any importance on the ground that the prosecution failed to establish and prove the proper custody and proper sealing, which ought to be intact till the articles were taken to FSL.

1478. The circuit boards recovered from A.3 and A.7 are of no help to the prosecution to establish the present offence as the prosecution failed to bring any evidence on record and to establish the type of bombs used in the present crime. Though the prosecution brought on record the technical report of the expert about the circuit board, it failed to establish the type of the bombs used in the present crime. Thus, the said recovery is not relevant.

1479. The recovery of the other articles like books, maps, CPUs, etc. are also not sufficient even if the recoveries are held to be proved, to establish the present crime against the accused.

1480. The last plank of the evidence on which the prosecution has placed heavy reliance was the confessional statements. However, on all the tests relating to voluntariness and truthfulness of the confessional statements, the prosecution failed.

1481. The confessional statements held to be inadmissible on numerous grounds, some of which are as follows:-

- (1) No relevant material was available with the authority to reach to a subjective satisfaction about the compliance of pre-requisites for grant of prior approval.
- (2) The prior approval suffers from non-application of mind.

- (3) The two chargesheets against A.13, which have been relied upon for grant of prior approval, do not satisfy the pre-requisites to constitute 'continuing unlawful activity'.
- (4) Shri. Jaiswal, who granted the prior approval, did not enter into the witness box to prove the contents of the letter of prior approval. Mere identification of signature of Shri. Jaiswal by PW-174 does not prove the contents of prior approval.
- (5) Identical Part-I and Part-II of some of the confessional statement.
- (6) Variation in the correspondence made by the concerned DCPs, before or after recording of confession, in mentioning of offences.
- (7) Absence of Certificates, as mandated by Sub-Rule 6 of Rule 3 of the MCOC Rules, at the bottom of the confessional statement of A.1, A.3, and A.10.
- (8) Failure to establish by oral evidence of the concerned DCPs, the voluntariness of the confessional statements, in absence of such certificate or even where the certificate is there but does not fulfill the requirement of Sub-Rule 6 of Rule 3 of the MCOC Rules.
- (9) Confessional statements were not found to be truthful and complete on various grounds, including some portions of the same were found to be similar and copied.
- (10) The accused succeeded in establishing the fact of torture inflicted on them to extort confessional statements, etc.

1482. Furthermore, the defence prayed for drawing adverse inference in not supplying CDRs. On examining the record, we found substance in the case of the defence.

1483. In these circumstances, having held that the prosecution has utterly failed to establish the offence beyond the reasonable doubt against the accused on each count, it is unsafe to reach the satisfaction that the Appellants/Accused have committed the offences for which they have been convicted and sentenced. Therefore, the impugned Judgment and Order of conviction and sentence is liable to be quashed and set aside. In the result, the aforesaid Confirmation Case is liable to be answered in the negative, and all the Appeals deserve to be allowed.

1484. Before passing the order, we place on record, the words of appreciation, and acknowledge the pain-taking efforts of the advocates appearing on behalf of the prosecution Spl. PP Sr. Adv. Shri. Raja Thakare, learned counsel Shri. A.M.Chimalkar, Adv. Shri. Siddharth Jagushte, and the defense counsels Sr. Adv. Shri. S. Nagamuthu, Sr. Adv. Shri. Muralidhar, Sr. Adv. Ms. Nitya Ramakrishnan, Adv. Shri. Yug Chaudhary, and Adv. Ms. Payoshi Roy, who effectively assisted the Court to go through the huge record (169 Volumes and around 44,500 pages) and to reach at a right conclusion.

1485. We also appreciate and acknowledge the untiring efforts taken by our Research Assistants / Law Clerks, Mr. Puneet Sharma and Mr. Vallabh Nare, who have effectively assisted us throughout this matter.

1486. Now, we pass the following Order : -

i. We, hereby, refuse and deny to confirm the death sentence imposed on A.1, A.3, A.4, A.12 and A.13, in MCOC Special Case no. 21/2006 vide impugned judgment and order dated 30/09/2015, passed by the learned Special Judge of Special Court No. 1 under MCOCA and NIA Act, at Mumbai. The Confirmation Case No. 2 of 2015 stands answered in the negative, accordingly;

ii. The Criminal Appeal No. 71 of 2019, No. 72 of 2019, No. 553 of 2021, No. 554 of 2021, No. 555 of 2021, No. 556 of 2021, No. 557 of 2021, No. 333 of 2022, No. 655 of 2022, No. 1075 of 2023 and No. 1104 of 2023 are hereby allowed and thereby the impugned Judgment and Order dated 30/09/2015, in MCOC Special Case No. 21/2006, passed by the learned Special Judge of Special Court No. 1 under MCOCA and NIA Act, at Mumbai, is hereby quashed and set aside;

iii. Accused no. 1 died during the pendency of the Confirmation Case. However, the ultimate result of the Confirmation Case and the Appeals shall be extended to the Accused No. 1 too. Thereby, the impugned Judgment and Order dated 30/09/2015, in MCOC Special Case No. 21/2006, passed by the learned Special Judge of Special Court No. 1 under MCOCA and NIA Act, at Mumbai, is hereby quashed and set aside in respect of Accused No. 1 too;

iv. Accordingly, A.1 - Kamal Ansari (deceased) is hereby acquitted for the offences punishable under Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 9-B(2) Explosives Act, 1884 - Sentenced to imprisonment for 3 years, Sec. 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) of Prevention of Damage to Public Property Act, 1984;

v. A.2 – Tanveer Asnari is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 9-B(2) Explosives Act, 1884;

vi. A.3 - Mohd. Faisal Shaikh is hereby acquitted for the offences punishable under Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 201 IPC, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 19

(UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA, 1999, Sec. 3(5) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984);

vii. A.4 - Ehtesham Qutubuddin Siddique is hereby acquitted for the offences punishable under Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984), Sec. 9-B(2) (Explosives Act, 1884);

viii. A.5 - Mohamad Majid Mohamad Shafi is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999;

ix. A.6 - Shaikh Mohd. Ali Alam Shaikh is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999, Sec. 3(1)(ii) & 3(2) MCOCA,1999, Sec. 3 (4) MCOCA,1999, Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884;

x. A.7 - Mohammad Sajid Margub Ansari is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 201 IPC, Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA,1999, Sec. 3(1)(ii) & 3(2) MCOCA,1999, Sec. 3 (4) MCOCA,1999, Sec. 6 r/w 4(ii) Explosive Substances Act, 1908;

xi. A.9 - Muzzammil Ataur Rehman Shaikh is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA,1999, Sec. 3(4) MCOCA, 1999;

xii. A.10 - Suhail Mehmood Shaikh is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1)

UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999;

xiii. A.11 - Zameer Ahmed Latifur Rehman Shaikh is hereby acquitted for the offences punishable under Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 120-B IPC r/w 16 (UAPA, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 120B of IPC r/w 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999;

xiv. A.12 - Naveed Hussain Khan Rasheed Hussain Khan is hereby acquitted for the offences punishable under Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3(4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2)(e) (Prevention of Damage to Public Property Act, 1984);

xv. A.13 - Asif Khan Bashir Khan is hereby acquitted for the offences punishable under Sec. 302 r/w 120-B IPC, Sec. 307 r/w 120-B IPC, Sec. 326 r/w 120-B IPC, Sec. 120-B r/w 121-A

and 122 IPC, Sec. 120-B r/w 123 IPC, Sec. 120-B of IPC r/w 13(1) UAPA, 1967, Sec. 201 IPC, Sec. 325 r/w 120-B IPC, Sec. 324 r/w 120-B IPC, Sec. 3(b) (Explosive Substances Act, 1908), Sec. 6 r/w 4 (ii) Explosive Substances Act, 1908, Sec. 9-B(2) Explosives Act, 1884, Sec. 16 (UAPA Act, 1967), Sec. 20 (UAPA, 1967), Sec. 10 (a) (i) (UAPA, 1967), Sec. 3(1)(i) MCOCA, 1999, Sec. 3(1)(ii) & 3(2) MCOCA, 1999, Sec. 3 (4) MCOCA, 1999, Sec. 152 (Railways Act, 1989), Sec. 151 (1) and 153 (Railway Act, 1989), Sec. 3 (2) (e) (Prevention of Damage to Public Property Act, 1984);

xvi. The Appellants shall be forthwith released from the respective jail, if they are not required to be detained in any other case;

xvii. All the Appellants shall execute a P.R. Bonds in the sum of Rs. 25,000/- each, under Section 481 of Bharatiya Nagarik Suraksha Sanhita, 2023 (correspondingly U/s. 437A of the Cr.PC) for their appearance, in case an appeal is preferred;

xviii. The said Confirmation Case and the Appeals stand disposed off in the aforesaid terms.

(SHYAM C. CHANDAK, J.)

(ANIL S. KILOR, J.)