

:1: Common Order on Exh.6061,6084 & 6086

IN THE COURT OF THE HON'BLE DESIGNATED SPECIAL JUDGE
CONSTITUTED UNDER THE NIA ACT, 2008
[FOR MALEGAON BOMB BLAST, 2008]
FOR GREATER MUMBAI AT MUMBAI.

ORDER ON EXH.6061

IN

NIA SPECIAL CASE NO.1 OF 2016
(RC.05/2011/NIA/DLI)

The State of Maharashtra
(Through National Investigation Agency)
Vs.

...Prosecution

1. Pragyasingh Chandrapalsingh Thakur
@ Sadhvi @ Swami Purna Chetananand Giri
2. Major Ramesh Shivji Upadhyay
3. Sameer Sharad Kulkarni
4. Ajay Eknath Rahirkar
5. Lt. Col. Prasad Shrikant Purohit
6. Swamy Amrutanand Dev Tirth @ Sudhakar
Udaybhan Dhar Dwivedi
7. Sudhakar Omkarnath Chaturvedi

...Original Nos of Accused 1,4,5,6,9,10,11

WITH

ORDER ON EXHIBIT NO.6084
(Victim/Intervenors' Application)

Pragyasingh Chandrapalsingh Thakur @ Sadhvi
@ Swami Purna Chetananand Giri and others.

...Accused

V/s.

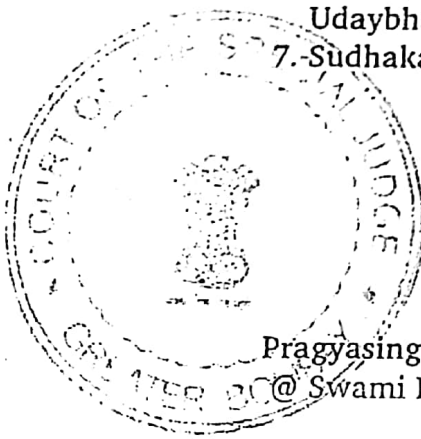
The State of Maharashtra
(at the instance of National Investigating
Agency, (NIA) New Delhi)

...Prosecution

With

Nisar Ahmed Sayyed Bilal
Age 59 yrs., Occ. Retired.
Permanent residing at 552,

...Victim/Intervenor



Copy applied on 02/10/19
Copy received on 02/10/19
Copy despatched on 02/10/19
Signature 9.10.19

C-3466
Payment of court charges
Date Recd. No 731572

22/10/19
Asst. Superintendent
City Civil and Sessions Court
Gr. Bombay

:2: Common Order on Exh.6061.6084 & 6086

Islampura, Galli No.12,
Malegaon, Nashik.
(Father of victim namely Sayyed Azhar, who died
in said bomb blast incident on 29.09.2008.)

WITH
ORDER ON EXHIBIT NO.6086
(Journalists' Application)

1] Sharmeen Hakim Indorewala

Age : 27 yrs.,

Occ. : Principal Correspondent, Mumbai Mirror

Address : 36/37, 4th floor, Lucky Building,
16th Pakmodia Street, Hussainya Marg,
Mumbai - 400 003.

2] Sunilkumar M. Singh

Age : 50 yrs.,

Occ.: Associates Editor, NDTV India

Address : Flat No.14, 5th floor,
Janardhan Apartment, Behind Somwar
Bazar, Malad West, Mumbai - 400 064.

3] Vidya Kumar

Age : 41 yrs.,

Occ. : Associate Editor, India Today Group,

Address : 1201, 12th floor,
2A, One India Bulls,
Lower Parel, Mumbai - 400 013.



4] Sadaf Modak

Occ. : Senior Correspondent, Indian Express,

Address : 103, Mudit Gardens, Sector 12/A,
Plot : 17/1, Koparkhairane,
Navi Mumbai - 400 709.

5] Neeta Suresh Kolhatkar

Age : 52 yrs., Occ. : City Editor, Free Press Journal

Address : Jagannath Niwas, 2nd floor,
Awantikabai Gokhale Cross Lane, Mumbai - 400 004.

1/2

:3: Common Order on Exh.6061,6084 & 6086

6) Sunil Baghel

Age : 43 yrs., Occ : Journalist, Mumbai Mirror

Address : A-45/202, Sector 3, Shanti Nagar, Mira Road (E).

7) Santia Gora

Age : 29 yrs., Occ : Journalist Correspondent, Mumbai Mirror

Address : R 203, Gokul Garden, 90 ft. Road,
Thakur Complex, Kandivali(East), Mumbai - 400 101.

8) Rebecca Samervel

Age : 35 yrs.,

Occ : Assistant Editor, Times of India

Address : A 504, Vastu Park,
Evershine Nagar, Malad West,
Mumbai 400 064.

9) Ranjeet Singh

Age : 33 yrs., Occ : Journalist, ANI

Address : 318, B5, Shramjeevan Building,
Wadala TT, Wadala (East), Mumbai - 37.

10) David Delima

Age : 27 yrs. Occ.: Reporter, Mumbai Mirror,

Address : Holly, Edenwoods, Pokhran.

11) Narsilspal Benwal

Age : 26 yrs. Occ: Reporter, Free Press Journal

Address : Q/372, RBI Staff Quarters,
ST Road, Chembur, Mumbai - 400 071.

In the matter of

The State of Maharashtra

(at the instance of National Investigation
Agency)

...Prosecution

Vs.

Pragyasingh Chandrapalsingh Thakur @ Sadhvi
@ Swami Purna Chetananand Giri and others.

...Accused

CORAM : HIS HONOUR THE SPECIAL JUDGE SHRI. V.S.PADALKAR
(C.R.26)

DATED : 1st day of October, 2019.

Learned Special Public Prosecutor Shri. Avinash Rasal, for NIA.
Learned Counsel Shri. Prashant Maggu, for accused No.1.
Learned Adv. Shri. Pasbola and adv. Parte, for Accused No.4.
Shri. Sameer Kulkarni(accused No.5) in person.
Ld. Advocate Ms. Apte for accused No.6.
Learned Counsel Shri. Shrikant Shivade, for accused No.9
Learned Counsel Shri. Ranjeet Sangale, for accused No.10.
Learned Counsel Shri. Ranjit Nair, adv. Ashish Kanojia holding for
Learned Adv. Sanjeev Punalekar, for accused No.11.

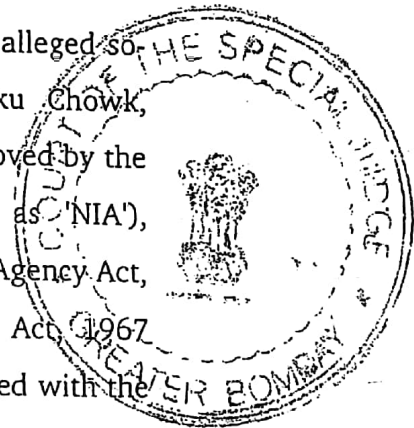
Senior Counsel Shri. B.A. Desai for intervenor (Exh.6084)
Senior Counsel Shri. Rizwan Merchant for Journalists (Exh.6086)

COMMON ORDER
(Dictated in Open Court)

As the common issues are involved in these above applications,
hence, common order is passed.

At a belated stage, after about 11 years of the alleged so-called incident which occurred on 29/09/2008, at Bhiku Chowk, Malegaon i.e. Bomb Explosion, this is the first application moved by the National Investigation Agency (hereinafter referred to as 'NIA'), Mumbai, under Section 17(1) of The National Investigation Agency Act, 2008 and 44(1) of The Unlawful Activities (Prevention) Act, 1967 (hereinafter read as 'Respective Acts') with a prayer to proceed with the present matter through 'In camera' proceeding.

2. The admitted fact is that, initially the crime was investigated by Anti Terrorists Squad(ATS), Mumbai and thereafter by National Investigation Agency (NIA). ATS and NIA had filed charge-sheets. Now,



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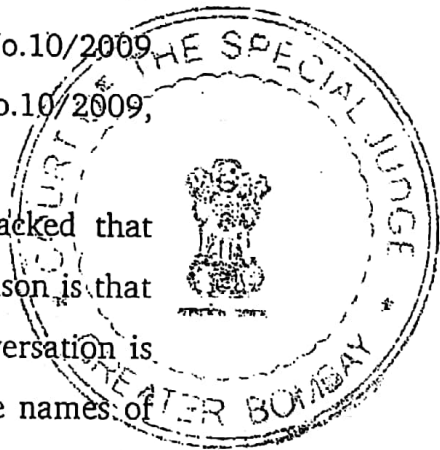
by imposing exemplary costs.

The Court is not reviewing or recalling any order passed and in fact, deciding a fresh application of NIA for 'in camera' trial. The earlier order which was passed on Exh.2773 and other three applications Exh.3754, 3010, 3204 do not exist after framing of the charge. There was no any order to conduct trial under 'in camera' till the end of the trial. In my considered opinion, and nowhere the law permits under NIA and UA(P) Act, to grant for protection and right is available to accused. In fact, in Section 17 and 44 of the Respective Acts, nowhere the Legislature while enacting provisions used word 'accused'.

Submission of accused No.5 – Sameer Kulkarni in person

86. The main objection of accused No.5 to the application of NIA is that the name of some witnesses who ordered/cited as truncated witnesses had been disclosed by the then ACP Mohan Kulkarni and Special Public Prosecutor Rohini Salian, by filing M.A. No.10/2009 dated 20/01/2009. An index is annexed in said M.A.No.10/2009, wherein the names of truncated witnesses is shown.

Accused No.5 Sameer Kulkarni then vehemently attacked that there is no need to allow 'in camera' proceedings and the reason is that the CDs were provided to all the accused wherein the conversation is recorded and the accused had already got in knowledge the names of the witnesses (though he has stated some name of witnesses at the time of submission, it is not reported) The furthermore submission is that even in Criminal Writ Petition No.1474/2017, discloses the names of some witnesses who are truncated witnesses, when the matter was pending before the Hon'ble High Court and Apex Court. There was no



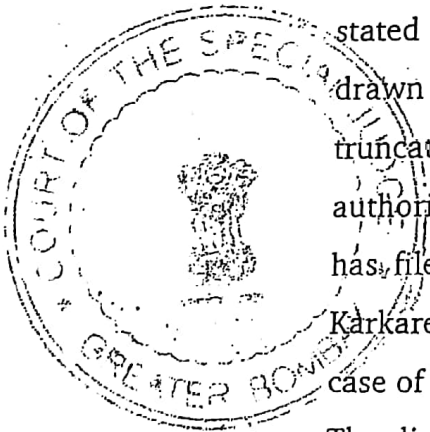
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restrictions nor proceeding was heard 'in camera' before Hon'ble High Court or Hon'ble Supreme Court at any time.

87. According to him, NIA did not put forth the case with utmost sincerity and security protection is given to prosecution, accused No.1 and 9. Accused No.4 has claimed protection and he was allowed to appear for one time in six months period, but he has not given protection. At last, it is his submission that it is his second life after his arrest as the media had disclosed his identity after arrest. He has no bias on media, ATS officer as well as NIA. He has relied on the case of *Swapnil Tripathi vs. Supreme Court of India in Writ Petition (Civil) No.1232/2017*, decided by the Hon'ble Apex Court, on September 26, 2018 wherein case of *Naresh Mirajkar*, (1966)3 SCR 744 is referred. He prayed to reject the application.

88. I do agree with the said submission on the point of names as stated by him were already disclosed by the NIA Authority. He has drawn my attention to some papers and shown the names of some truncated witnesses which were already noted in these papers. The NIA authority did not refute this submission of accused No.5. Accused No.5 has filed one paper Exh.6203, print showing interview with Hemant Karkare in respect of Malegaon Bomb Blast. He has also relied on the case of *Swapnil Tripathi*, wherein the point of open trial is considered. The discretion of the court to grant permission is also considered as to which factors will have to be considered are as under :-

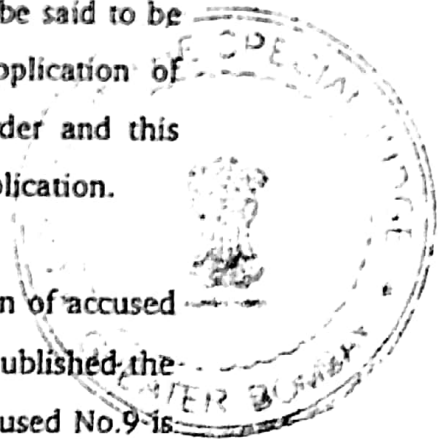
- (a) the need for a fair trial;
- (b) the desirability of open justice;



(c) the principle that media have an important role in the reporting of the trial as eyes and ears of the public;
(d) Court obligations to the victims of offences; and
(e) the interests and reasonable concerns and perceptions of the parties, victims and witnesses are main factors to be considered. Even live streaming of Court proceeding is discussed in the said case.

89. Accused No.5 in person again has stated on 09/09/2019, that the documents filed by accused No.9 Lt. Col. Purohit were received by him from the Ministry of Defence, so also by accused No.4 under Right to Information Act. These documents were filed on record as per Section 91 of the Code of Criminal Procedure. Military papers are truncated and were filed and presented before the Court by Ministry of Defence. Therefore, while opposing the application of accused No.9, it is stated by accused No.5 that the papers placed on record cannot be said to be the privileged documents. In this regard, separate application of victim/intervenor is decided on merits with reasoned order and this argument cannot be taken into consideration in present application.

90. Accused No.5 further made attack on the submission of accused Nos.1 and 9 and has stated that as per NIA, website had published the news for search of two absconding accused. The say of accused No.9 is that these two absconding accused Ravindra Kalsangra and Sandip Dange were killed, did not have force or base nor anybody have complained till this date for registration of crime and issuance of FIR. Accused No.5 by oral submission invited my attention that till this



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date, on behalf of NIA, only one application was filed for 'in camera' proceeding in Ahmadabad Special Court, which came to be rejected. Accused No.5 also criticized the submission of accused No.9 - Lt. Col. Purohit, and has stated that in one breath, accused No.9 is blowing hot and cold. In an appeal preferred by accused No.9, his stand was that the provisions of Unlawful Activities (Prevention) Act, 1967 cannot be applied and in other words, he took a different stand before this Special Court by stating that under UA(P) Act, the proceeding should be initiated by 'in camera' trial.

The protection to accused No.9 and his security cannot be considered by this Court as the Court is not provided with any security as per the statement made by accused no.5 in his submission.

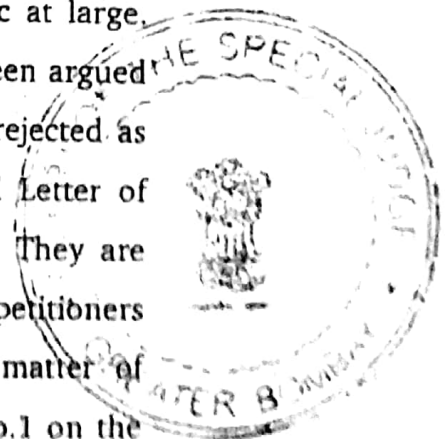
91. It is a true fact that, on behalf of NIA authority not a single paper is placed on record showing that in the matters wherein the charge-sheets have been filed under UA(P) Act by NIA Authority in various NIA Courts, had a same prayer for 'in camera' trial of the matter. Some matters instituted on behalf of NIA, even are pending in other Courts at City Civil & Sessions Court, Mumbai, but it is not known as to whether the similar type of prayer for 'in camera' trial is prayed by NIA authority or not? The UA(P) Act provisions are stringent provisions, against banned organizations for scheduled offences, actions will be taken under this Act. The NIA authority even did not submit a piece of paper before this Court about action taken under Sections 17 and 44 of the Respective Acts in pending matters before other courts, even in 2006 Malegaon Bomb Blast Case, NIA did not point out about filing of application for 'in-camera' trial. The accused no.5 though has stated that

NIA filed application for in-camera trial in NIA case, before Special Court at Ahmadabad, however, no record is filed to that effect by accused no.5 or by NIA Authority. In the said Bomb Blast occurred in the year 2006 at Malegaon Masjid, it is pending in another Court at City Civil and Sessions Court (Special Judge), Mumbai, wherein more persons died than to present case in bomb explosion. The NIA did not clarify or submit explanation by filing relevant record about taking action for filing application for 'in-camera' trial in pending matter filed by NIA under UA(P) Act, 1967, in various Courts in the Country.

The same and substance is that silence or non filing of record by NIA for taking or initiating proceeding u/s 17 and 44 of NIA Act, itself shows that there is no endanger to the life of witness.

Reply argument of Ld. Adv. For Journalists-Intervenors, by Smt. Gayatri Gokhale and Shri. Rizwan Merchant.

92. Media, social media and electronic media represented the democracy by eyes and ears and as a mouthpiece of public at large. Merely, on the basis of some technical defects which have been argued by accused No.1, the application of Journalists may not be rejected as the Journalists are ready to submit their identity card and Letter of Authority issued from the respective Head of Department. They are ready to abide the conditions. Out of 11 Journalists, six petitioners were representing before the Hon'ble High Court in the matter of *Sohrabuddin*. While criticizing the submission of accused No.1 on the point of Norms and Code of Conduct, her submission is that for the purpose to work as Media before the Hon'ble High Court and Supreme Court, the Hon'ble Supreme Court has framed the said Rules,



[Handwritten signature]

correctly noted in published print, but, I find that sometimes the head note requires rhetoric simile like for e.g. 'Rain batting', आभाळ 'फाटले' (Heavy rain fall), धरती 'दुभंगली' (Earthquake) शहर 'खड्डयात' (Potholes)

'खड्डयाने' वाट लावली' सुरक्षा 'वान्यावर' it is permissible to use such words. Considering this aspect, some restrictions are put forth on Journalists/correspondents while printing/publishing the matter of Court hearing.

108. Thus, the totality of the argument if considered as argued by Mr. Maggu, Ld. Counsel for accused No.1, it finds to me that Mr. Maggu, not only put forth the case of accused No.1, but also put forth the case of accused No.9 as well as NIA. In respect of the printed matters in the newspaper, it is very necessary to answer here itself, that, the media is also used by accused No.1 by giving interview to media with Advocate. In fact, the media role is very clear that they are bent upon to print, publish the matter as per actual events took place in the Court during the course of evidence so as to provide correct information to public at large being main pillar of the Democracy.

Accused No.5 has pointed out that for own profit, media is being used by other accused by giving interview even since the time they were in custody. For cross checking of fair trial, media be permitted to attend the court date hearings on the basis of their fundamental rights of speech and expressions and also Journalists are the 'eyes and ears of democracy'.

109. Recently, 'The Maharashtra Witness Protection and Security Act, 2017' is passed and is in effect. None of the parties to the present

conduct 'in camera' trial. Conducting trial in a transparent manner and way is one of the criteria to reject the prayer of 'in camera' trial.

I conclude this order by noting my views and observation in the light of the point of security as argued before me by the parties, in Marathi language ; •

‘सत्य हे भयमुक्त असते’ सचोटीने, निर्भिडपणे, निसंकोचपणे सत्याचा मार्ग पत्करून कार्य करणाऱ्यास भयाची भीती केव्हाच नसते.

या भयमुक्त वातावरणात सत्याची कास धरून काम करणे म्हणजे सचोटीने, प्रामाणिकपणे न्यायप्रणालीच्या नियमांनुसार काम चालविणे आहे.

‘भय कशाचे व कशाकरता?’ हा प्रश्न दुय्यम व गौण आहे, असे माझे प्रांजल मत आहे, कारण न्यायालयात कार्यरत असतांना कामात सचोटी व सत्याची किनार असते, म्हणूनच भयमुक्त वातावरणात निर्भिडपणे काम करू शकतो.

सरकारचे म्हणणे की, सदरचे प्रकरण हे संवेदनशील आहे, पण सरकार या बाबतीत असंवेदनशील दिसून येत आहे, कारण कोणतीच सुरक्षा देण्यात आली नाही व याचे कारण संबंधितांनाच ठाऊक. खरंच, जर हे प्रकरण संवेदनशील असते, तर सुरक्षा ही सर्वांनाच दिली गेली असती, पण....

‘असो, या वातावरणात काम करण्यास तयार आहोत, कारण हा मार्ग सचोटीचा निर्भिडपणाचा व सत्याचा आहे’.

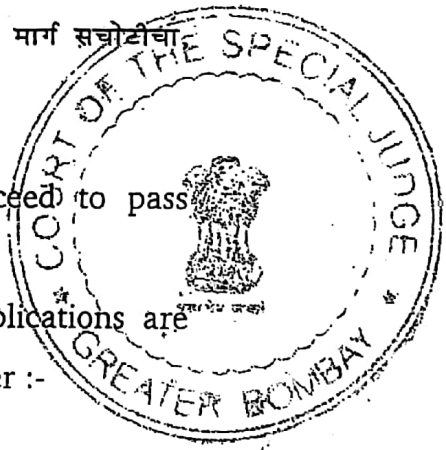
The points are accordingly answered and I proceed to pass following order ;

My observations while passing order on these applications are restricted to these applications only. Hence, following order :-

ORDER

1] Applications at Exh.6061, 6084 and 6086 are disposed of, in following manner.

- i) The application of NIA for recording the evidence and conducting trial 'In camera' proceeding stands rejected
- In respect of issue of evidence of truncated witness/s,



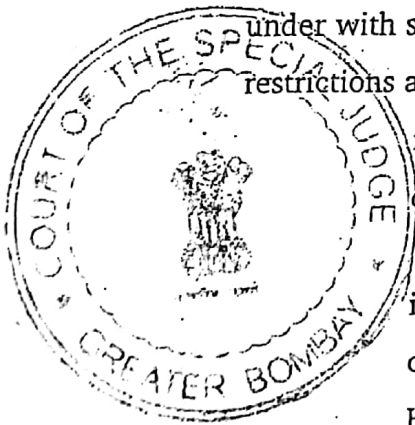
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whether to allow media / journalists / correspondents of any Newspaper/Electronic devices, the Court has reserved its right whether to allow to print entire evidence or part thereof.

2] The application filed by victim/intervenor - Nisar Ahmed for conducting the matter with some intervention/interruption in the duties of the Ld. Special Public Prosecutor stands dismissed and objection for conducting 'In camera' trial is allowed.

i} The victim/intervenor is allowed only to assist the Learned Special Public Prosecutor and submit the written arguments only after grant of 'Leave by the Court' after the conclusion of evidence, as per Section 301(2) of Code of Criminal Procedure.

3] The application filed by Journalists/intervenors is allowed as under with some restrictions, as agreed by Ld. Advocate with additional restrictions are as under ;



i} The application to object the application of NIA, for 'In camera' trial, is allowed.

ii} Media/Journalists/Correspondents shall submit true copy of the Identity Card issued by their respective Media House.

iii} Media/Journalists/Correspondents or any other person attending the Court hearing, shall not use any type of electronic devices in Court precinct/hall.

iv} Media/Journalists/Correspondents, shall not report the name and address of witness examined by the Prosecution and report the matter as per factual position of hearing of matter and not to add personal or editorial note in publication of the matter. •

v} Media/Journalists/Correspondents, shall not conduct debate, interview, interaction, discussion of any kind on subject matter, to print/publish/display the same in any whatsoever manner till the end of the trial.

vi} Interaction, interview with the party concerned matter is permitted subject to restriction that, conversation record copy be placed with an affidavit of media person/s immediately before the Court.

vii} In case of breach of conditions as noted above or if any committed, legal action will be taken in accordance with provisions of Law.

4] The persons attending the Court hearing shall co-operate to the Police Security Guard, of this Court for security purpose.

1.10.2019
(V.S. PADALKAR)

Special Judge

Under NIA,UA(P)Acts

City Civil & Sessions Court.

Gr. Bombay.

01/10/2019.

Dictated on : 01/10/2019.
Transcribed on : 01/10/2019.
Sign on : 01/10/2019.

checked by
A. D. Tadhin
MAJESTY
dated this 02 day of OCT 19
09/10/19
For Registrar
The District Court, Mumbai
AS