

**IN THE COURT OF SPECIAL DESIGNATED JUDGE FOR
CONDUCTING THE SPEEDY TRIAL OF SERIAL BOMB BLAST
CASES, AT AHMEDABAD.**

**SESSIONS CASE NO.38 OF 2009 (MAIN)
AND OTHERS.**

- L.As. for the concerned Accused.
- Shri H.M. Dhruva : L.Sp.PP for the State

JOINT ORDER BELOW EXH.:433 & EXH.:2881

1. Read both the applications Exh.:433 and 2881 with the record and proceedings of above numbered Sessions Cases. Heard. The accused have moved these applications with a prayer to disclose the name of secret witnesses which are mentioned in the charge-sheet and to supply the statement under Section 164 of Cr.P.C., accordingly.
2. The Court has perused the submissions of both the parties with legal citations with its thoughts as placed along with Section 44, 44(2), 44(3)(B) of Unlawful Activities Act, Section 16 of TADA, Section 30 of POTA Repealed w.e.f. 21st September, 2004, Section 17 of National Investigation Agency Act and

Section 164, 173, 204, 207, 230, 231, 242 of Cr.P.C., - 2010 and Section 135, 138 and 155 of Evidence Act, Article 22(5)(6) of Constitution of India.

3. Mr. R.K. Shah, Mr. L.R. Pathan, Mr. M.M. Shaikh, Mr. Vatsa learned Advocates from the accused jointly and severally read the facts of the application Exh.:433 and Exh.:2881 with legal citations (1) **1994 Criminal Law Journal SC Page 3139 Kartarsinh Vs. State of Punjab para 297**; (2) **2004 Criminal Law Journal SC Page 2050 Zahira Habibullah H. Shaikh Vs. State of Gujarat & Ors., Para 39 & 42**; (3) **2004(9) SCC Page 580 Peoples Union for Civil Liberties and Others Vs. Union of India para 54 & 61** in detail and descriptive form with said legal proviso. The learned Advocates emphasized much on the point of fair trial and finally prayed to allow the application as prayed for.

4. Per-contra learned Special P.P., Mr. Dhruva also read the said legal proviso with (1) **GLR 2004 Page 1978 Zahira Habibullah M. Shaikh & Ors., Vs. State of Gujarat & Ors., para 44, 45**; (2) **2004(9) SCC Page 580 Peoples Union for Civil Liberties and Others Vs. Union of India para 54 to 61** in detail and descriptive form. Further submitted that this is a very

serious nature of the case with the charge and still in some FIR, the investigation is on. Moreover, there is no special proviso for protection to witnesses in law. This requires point of discussions, till today. Section 230 of Cr.P.C., is not mandatory. It is up to the prosecution to decide to whom he wants to examine or to drop or to summons. The prosecution is the master of his own case. The court has no power for the same. Learned Special P.P. Shri Dhruva further argued out that if as per the say of the accused, the prosecution fails to comply Section 207 or 208 of Cr.P.C., then it is merely irregularities not illegalities and for that the trial cannot be read as illegal. The prosecution is ready to comply the same as per the order of the Court as deem fit, proper, considering the nature-change of the present case, finally prayed to pass just, legal order, accordingly.

5. Considering the submission of both the learned Advocates with the legal citations and the relevant proviso, it is hereby made out clear that both the parties are agreed to the relevant proviso for the settled law. So, it is not necessary to state the said legal proviso and citation to repeat the discussions of the legal thoughts. The Court is of the opinion that so far concerned to

declaration of name of secret witnesses, the Court feels that the witness categories are not defined in law as formal or potential witness and looking to the nature of the trial with the charge of the present case on hand, it is admitted by both the parties that the trial is of serious nature. Section 230 of Cr.P.C., lies on the discretionary powers of the Court and as per the citations of learned Advocate Mr. Shah in **1994 Criminal Law Journal Page 3139 Kartarsinh Vs. State of Punjab**, it is held that so far concerned to the disclosure of names and the addresses of the witnesses, the discretion lies with the Court on the weighty reasons and its wisdom may decide not to disclose the identity and the name of the potential witness whose life may be in danger. Further, in **2004 Criminal Law Journal Page 2050 Zahira Habibullah M. Shaikh & Ors., Vs. State of Gujarat & Ors.**, in which the Hon'ble Apex Court has expressed the view on the concept of fair trial at para 39 & 44 which is taken into consideration while passing the order on this application. The same view is also expressed in **2004(9) SCC Page 580 Peoples Union for Civil Liberties and Others Vs. Union of India para 54 & 61.**

6. In view of the above legal opinion and

thoughts expressed by the Hon'ble Apex Court, the Court feels that so far as concerned to the fair trial and concept of qua human rights protection with protection of witnesses, these rights of accused are not absolute and may be restricted to a reasonable content in the interest of fair administration of justice and for ensuring that the victims and witnesses depose without any fear or danger to their lives and property. There are three types of witnesses (1) victim witnesses who are known to accused (2) victim witness not known to accused (3) witness whose identity is not known to accused. So far concerned to the witness at sr.no.3 need to protect under the law from trauma and against the disclosure of identity. Further, each one has inbuilt right to be dealt with fairly in criminal trial, the denial of fair trial is much as injustice to the accused as is to victim and the society. Fair trial means a trial in which bias or prejudice for against the accused witnesses or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence, that also is not result in a fair trial. Even so the process of justice should not harass the parties and from that angle the Court may wait the circumstances. Their case need for protecting the witness. Time

has come when serious and undiluted thoughts are bestowed out for protecting witnesses so that ultimate truth is presented before the Court and justice comes and that a trial is not reduced to mockery. The State has defined role of play in protecting the witness. Such view is also expressed in **198 Law Commission Report of August, 2006** by the Law Commission.

7. The need for expose and exercise of a general power to grant the protection to a witness and preserve his or her anonymity in a criminal case has been universally recognized as being in the interest of community and the administration of justice to ensure that the serious offence like terrorist acts or organized crimes are effectively prosecuted and punished. It is notorious fact that the witness who gives evidence which is unfavourable to accused in trial for (say) a terrorist offence would expose himself to severe reprisal which can result in death or severe reprisal injury to him or his family members. It is first necessary to take notice of special statutes dealing with the specific type of offence where such protection is granted. In recent times the cases where witnesses are turning hostile at a trial due to threat is no longer confirm to cases on perusal. Even in other types of evidences falling under the Indian Penal Code or other

special statutes, these elements has reached alarming proportion. There is therefore need as in other countries to generally empower the Court in such case where muscle, power, political power, money or other methods employed against the witnesses can for the purpose of protecting the witnesses could give evidence without any fair, reprisal and witnesses do not turn hostile on account of threats by the accused. Therefore by these discussions and reasons the Court is of the opinion that the present applications at Exh.:433 and 2881 deserves to be allowed conditionally as per the following order. Hence, the following order is passed:

O R D E R

- Applications Exh.:433 & Exh.:2881 are hereby conditionally and partly allowed.
- The prosecution is hereby ordered to disclose the name of secret witnesses to the accused three days prior to examination, accordingly.
- It is further ordered that the prosecution shall provide the confessional statement and other statement of secret witnesses to the accused prior to three days of exam. The prosecution shall keep in secret the

names of the witnesses and concerned relatives with addresses, accordingly.

Pronounced in the open court today
on this 3rd day of **July, 2015**.

Date: 03-07-2015 (PANKAJKUMAR CHANDRAKANT RAVAL)
DESIGNATED JUDGE
SPECIAL COURT FOR CONDUCTING SPEEDY
TRIAL OF SERIAL BOMB-BLAST CASES,
AHMEDABAD, GUJARAT.
(CODE NO.: GJ00402)

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