

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.107 OF 2026**

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1. Rajendra Chaudhary S/o
Vikram Singh Chaudhary @
Dashrath @ Samander @ Badal Yadav
@ Laxman Das Maharaj,
Age: 43 years, Occ: Service,
R/o: Dhakad Seri, Depalpur,
Indore, Madhya Pradesh-453 115.
2. Dhan Singh S/o Shiv Singh @ Ram
Lakhan Das Maharaj @ Subhash @ Lakhan,
Age: 45 years, Occ: Service,
R/o: Hanuman Chowk, Hatod, Indore,
Madhya Pradesh-453 112.

.. Appellants
(Accused Nos.15 & 16)

Vs.

1. Union of India
Represented by its Secretary,
Ministry of Home Affairs, North Block,
New Delhi-110 001.
2. State of Maharashtra
Represented by Home Secretary,
Ministry of Home Affairs.
3. Director General of Police
Special Task Force, Police Head
Quarters, Shahid Bhagat Singh Road,
Mumbai-400 001.
4. The Additional Director General
Anti-Terrorism Squad,
Through Chief Public Prosecutor,
High Court (A.S.), Mumbai.
5. The Director General
Central Bureau of Investigation,
Plot No.5B, 10th Floor, B-Wing CGO
Complex, Jawaharlal Nehru Stadium
Marg, New Delhi-110 003.
6. Additional Superintendent of Police,

CBI STF.

Having its office at
13th Floor, Plot No.C-35A,
Near MTNL Exchange, G Block,
BKC, Bandra (East), Mumbai-400 098.

7. The Director General,
National Investigation Agency (NIA),
CGO Complex, Lodhi Road,
New Delhi-110 003.

8. Superintendent of Police,
National Investigating Agency,
Having its office at
7th Floor, MTNL Building,
Peddar Road, Kambala Hills,
Mumbai-400 026.

.. Respondents

**WITH
CRIMINAL APPEAL (STAMP) NO.2772 OF 2026**

1. Manohar S/o Ram Singh Narwaria @
Digaria @ Sumer Thakur,
Age: 43 years, Occ: Service,
R/o: C/o Rama Singh,
Gurda Khedi, Indore,
Madhya Pradesh-453 111.

2. Lokesh Sharma S/o Gopal Krishan
Sharma @ Kalu Pandit @ Ajay Tiwari @ Tiwari,
Age: 49 years, Occ: Service,
R/o: 180, Sanghi Street,
Dr. Ambedkar Nagar, Mahu,
Indore, Madhya Pradesh-453 441.

.. Appellants
(Accused Nos.14 & 17)

Vs.

1. Union of India
Represented by its Secretary,
Ministry of Home Affairs, North Block,
New Delhi-110 001.
2. State of Maharashtra
Represented by Home Secretary,
Ministry of Home Affairs.

3. Director General of Police
Special Task Force, Police Head
Quarters, Shahid Bhagat Singh Road,
Mumbai-400 001.
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Anti-Terrorism Squad
Through Chief Public Prosecutor
High Court (A.S.), Mumbai.
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Central Bureau of Investigation,
Plot No.5B, 10th Floor, B-Wing CGO
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BKC, Bandra (East), Mumbai-400 098.
7. The Director General,
National Investigation Agency (NIA),
CGO Complex, Lodhi Road,
New Delhi-110 003.
8. Superintendent of Police,
National Investigating Agency,
Having its office at
7th Floor, MTNL Building,
Peddar Road, Kambala Hills,
Mumbai-400 026.

.. Respondents

...

Mr. Girish Kulkarni, Senior Advocate a/w Mr. Abhishek Kunchikor, Mr. Himanshu Indise & Mr. Sujay Shingade, Advocates for the Appellants in Appeal (Stamp) No.2772/2026.
Mr. Kaushik Mhatre a/w Mr. Sanket Dhawan, Mr. Prakash Salsingikar, Mr. Vighneswar Subramanian & Mr. Himanshu Mane, Advocates for the Appellants in Appeal No.107 of 2026.
Ms. Manisha Jagtap, Advocate for the Respondent-UOI in both the Appeals.
Mr. Anil C. Singh, Additional Solicitor General a/w Mr. Chintan

Shah, Special PP, Mr. Krishnakant Deshmukh & Mr. Adarsh Vyas, Advocates for the Respondent-NIA in both the Appeals.
Mr. Kuldeep Patil a/w Mr. Anay Joshi, Mr. Digvijay Kachare, Ms. Saili Dhuru, Mr. Sumitkumar Nimbalkar & Ms. Sanika Joshi, Advocates for the Respondent-CBI in both the Appeals.
Mrs. M. M. Deshmukh I/C PP a/w Mr. K. V. Saste, Addl. PP for the Respondent-State.
Mr. Sandip Salave, PI, NIA, & Mr. Akhilesh Singh, PI, NIA, Mumbai present.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
SHYAM C. CHANDAK, J.**

**RESERVED ON : 15th APRIL 2026
PRONOUNCED ON : 22nd APRIL 2026**

JUDGMENT

Per, Shree Chandrashekhar, CJ:-

These criminal appeals filed under section 21 of the National Investigation Agency Act, 2008 (in short, NIA Act) seek to challenge the order dated 30th September 2025 framing charges against the appellants in Special Case No.8 of 2013. By the said order, the Special Judge (under NIA Act), City Sessions Court, Greater Mumbai framed charges under nineteen heads against the appellants, namely, (i) Manohar Ramsingh Narwaria @ Digaria @ Sumer Thakur (ii) Rajendra Vikramsingh Chaudhari @ Dashrath @ Samander @ Badal Yadav @ Laxman Das (iii) Dhan Singh Shiv Singh @ Ram Lakhan Das Maharaj @ Subhash @ Lakhan, and (iv) Lokesh Sharma @ Kalu Pandit @ Ajay Tiwari.

2. The gist of the allegations against the appellants is that they along with the accused persons, namely, Dr. Farogh Iqbal Ahmed Magdumi, Shaikh Mohd. Ali Alam Anamat Ali Shaikh, Aasif Khan Bashir Khan @ Junaid @ Abdulla and Mohd. Jahid Abdul Majjid Ansari and a few other unknown persons entered into a criminal

conspiracy between January 2006 to September 2006 to commit terrorist acts at various places more specifically at Malegaon in the district of Nashik by causing bomb blasts. It is alleged that the appellants and the other accused persons triggered a series of bomb blasts on 8th September 2006 which was a Friday between 1:45 pm to 2:00 pm at Hamidiya Masjid, Bada Kabrastan and Mushawarat Chowk at Malegaon on the occasion of Shab-e-Barat and caused death of 31 persons and grievous hurt to 312 persons and severe loss, damage and destruction of the properties. The appellants have been asked to face the trial mainly for the offences punishable under sections 302, 307, 326, 325, 324, 327, 436, 295 read with sections 34 and 120-B and under section 153-A of the Indian Penal Code; sections 6A and 9B of the Explosive Act, 1884 read with sections 3, 4, 5 and 6 of the Explosive Substances Act, 1908 and; section 15 read with sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 in connection to the crime registered as First Information Report No.RC-03/2011/NIA-DLI which is commonly known as Malegaon Blast-2006.

3. The primary submission made on behalf of the appellants against the order framing charge is that there is no such evidence collected by the NIA so as to ask them to face the trial in Special Case MCOC No.8 of 2013 corresponding to RC-03/2011/NIA-DLI dated 6th April 2011 *vide* Exhibit No.766.

4. Section 21 of the National Investigation Agency Act, 2008 provides that an appeal shall lie from any judgment, sentence or order, except an interlocutory order of a Special Court to the High Court both on facts and on law. Section 21 apparently confers wide powers on the High Court to examine the propriety

and legality of any judgment, sentence or order passed by a Special Court. Unlike other statutory provisions, section 21 makes a statutory requirement to be followed by the High Court in an appeal under section 21 that the appeal so laid by the aggrieved party must be examined on facts collected by the NIA having regard to the applicable law on the subject. In the matters of discharge from the criminal liability, the High Court shall be entitled to scrutinize and assess the materials collected by the NIA to find out whether there is sufficient material to proceed against the accused person. In doing so, the High Court shall keep in mind the principles governing a discharge application under section 227 Cr.P.C. which provides that if the Judge forms an opinion upon consideration of the record of the case including the documents and after hearing the submissions of the accused and the prosecution that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. The expression “not sufficient ground for proceeding against the accused” enjoins upon the Judge to apply his mind and not to act as mere Post Office before framing the charge against the accused person at the behest of the prosecution. At this stage, the Judge is not required to weigh and balance the evidence but he has to merely sift the evidence in order to find out whether or not there is sufficient evidence against the accused person. The language of section 228 Cr.P.C. also indicates that the Judge shall frame a charge only upon forming an opinion that there are grounds to presume that the accused person has committed the offence. This is also relevant law as held in “*Almohan Das*”¹,

¹ Almohan Das & Ors. v. State of W.B.: (1968) SCC Online SC 85.

that a Magistrate conducting an inquiry is not intended to act merely as a recording machine but is entitled to sift and weigh the materials on record whether there is sufficient evidence for commitment. Before that, the law was laid down in "*K. P. Raghavan*"² wherein the Hon'ble Supreme Court observed that a Magistrate inquiring into a case under section 209 Cr.P.C. is not to act as a mere Post Office, and has to come to a conclusion that whether a case before him is fit for commitment of the accused to the Court of Sessions.

5. Briefly stated, two crimes were registered at Azad Nagar Police Station *vide* Crime No.95 of 2006 under sections 302, 307, 324, 325, 326, 121-A, 120-B and 34 of the Indian Penal Code; sections 4 and 5 of the Explosive Substances Act read with sections 3, 6 and 9-B of the Explosive Act and Crime No. No.96 of 2006 under sections 302, 307, 324, 325, 326, 121-A, 120-B and 34 of the Indian Penal Code; sections 4 and 5 of the Explosive Substances Act read with sections 3, 6 and 9-B of the Explosive Act. The Maharashtra Police claimed that one fake bomb was also found on 13th September 2006 at Mohammadia Masjid Shopping Complex and Crime No.3088 of 2006 was registered under sections 153-A and 505(2)(3) of the IPC at City Police Station, Malegaon in district Nashik.

6. After initial investigation conducted by the Maharashtra police, the Anti-Terrorism Squad, Mumbai renumbered the aforementioned case as Crime No.07 of 2006 after it took over the investigation in those three cases by virtue of an order dated 23rd October 2006 passed by the Director General of Police, Maharashtra. The ATS added further offences in the Report and

² K. P. Raghavan & Anr. v. M. H. Abbas & Anr.: (1966) SCC Online SC 76.

started investigation also under sections 3(1)(i), 3(2), 3(3) and 3(4) of the MCOCA; sections 10, 13, 16, 17, 18, 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967; sections 6 and 9(b) of the Explosive Act, 1884; sections 3, 4, 5 and 6 of the Explosive Substance Act, 1908; section 12(1)(c) of the Passport Act, 1967 and; section 7 of the Criminal Law Amendment Act against 13 accused persons, namely, A1 Noorul Huda Samsudoha, A2 Shabbir Ahmed Masiullah, A3 Raees Ahmed Rajjab Ali Mansuri, A4 Dr. Salman Farsi Abdul Latif Almi, A5 Dr. Farogh Iqbal Ahmed Magdumi, A6 Shaikh Mohd. Ali Alam Anamat Ali Shaikh, A7 Aasif Khan Bashir Khan @ Junaid @ Abdulla, A8 Mohd. Jahid Abdul Majjid Ansari and A9 Abrar Ahemd Gulam Ahmed. However, A10 Riyad Ahmed Shafi Ahmed, A11 Ishtiyahq Ahmed Mohd. Issaq, A12 Munnawar Ahmed Mohammed Ahmed and A13 Muzammil were shown as wanted accused persons. A charge-sheet was laid by the ATS on 21st December 2006 in Crime No.07 of 2006 and the trial Court took cognizance of the offence and registered the crime as MCOC Special Case No.23 of 2006. At that time, this was the prosecution's case as narrated by the ATS that the aforementioned accused persons were members of the Students Islamic Movement of India (SIMI). They formed an organized crime syndicate and committed illegal acts in pursuance of a criminal conspiracy with an object to promote insurgency and to overthrow the Government. This is the case projected by the ATS that A6 Shaikh Mohd. Ali Alam Anamat Ali Shaikh visited Pakistan on 1st February 2003 and received terrorist training. Thereafter, A2 Shabbir Ahmed Masiullah was also sent for undergoing terrorist training in Pakistan. The ATS further

claimed that there was a meeting of the accused persons after the marriage of Noorul Huda Samsudoha in May 2006 and they decided to cause bomb blasts in Muslim populated area to infuriate Muslims for causing riots. A6 Shaikh Mohd. Ali Alam Anamat Shaikh and A7 Aasif Khan Bashir Khan @ Junaid @ Abdulla procured the materials including 20 kilogram RDX for making the bombs and handed over the same to A2 Shabbir Ahmed Masiullah who stored the materials in his godown at Malegaon. It was on the instructions of two Pakistani nationals in 4th week of July 2006 that Muzammil provided guidance to other accused persons for making the bombs which was prepared at the godown of A2 Shabbir Ahmed Masiullah. They purchased bicycles from Hindu shop owners for the operations and caused bomb blasts on the busy day of Shab-e-barat which was a Friday.

7. After the trial Court took cognizance of the offences and registered MCOC Special Case No.3 of 2006, the CBI came into picture by virtue of Notification dated 5th February 2007 and registered BS-2/2007/S/0001/CBI/STF/MUM. After further investigation, a supplementary charge-sheet was filed by the CBI on 11th February 2010 against the aforementioned thirteen accused persons. In the meantime, A2 Shabbir Ahmed Masiullah and other accused persons were arrested. In the course of further investigation, the CBI collected CD of intercepted conversation etc. and received forensic voice examination report from the CFSL. The CBI intercepted conversation of the accused persons which were stored in Sony audio cassette. It contained a voice of Mohammed Jahid Abdul Majid Ansari and others. The CFSL report gave a positive

information confirming that the voice samples were matching with the voice of Mohammed Jahid Abdul Majid Ansari in linguistic and phonetic features. The CBI further claimed that Mohammed Amin Choudhary gave a statement that Abrar Ahmed Gulam Ahmed was the son-in-law of his maternal uncle Iqbal Choudhary. The said accused visited him around 8:00 pm on 8th September 2006 and disclosed that he was aware of the accused persons who were involved in Malegaon bomb blast. The CBI laid in evidence the confidential letter dated 1st February 2010 from Pradip Sawant to Additional SP CBI/SPF regarding Customer Application Form of Mobile No.9823436809 which belonged to Abrar Ahmed Gulam Ahmed. This witness further confirmed that necessary permission was obtained for secret interception of Mobile No.9823436809. The CBI produced another witness to confirm that a call from Mobile No.9823436809 was recorded in hard-disk of the computer kept in the technical room of ATS.

8. However, the Government of India directed the NIA *vide* its order dated 4th April 2011 to take over the case for further investigation and the NIA registered RC-03/2011/NIA/DLI on 6th April 2011. Quite surprisingly, the NIA filed a supplementary charge-sheet on 25th May 2013 against Manohar s/o Ram Singh Narwaria, Rajendra s/o Vikram Singh Chaudhary, Dhan Singh s/o Shiv Singh, Lokesh s/o Gopal Krishan Sharma, Sunil s/o Shyamlal Joshi, Ramchandra s/o Gopal Singh Kalsangara, Ramesh s/o Venkat Mahalkar and Sandeep s/o Vishwas Dange. Among these accused persons, Sunil Shyamlal Joshi was shown as dead, Ramcharan Kalsangara was described as absconding, and Ramesh Mahalkar and Sandeep Dange were described as

wanted accused persons. In its supplementary charge-sheet, the NIA stated that one Assemanand who was an accused made a confessional statement wherein he made a disclosure that Sunil Joshi had told him that the Malegaon bomb blasts were handy work of his boys. According to him, it was proposed in the meeting held in June 2006 that Malegaon may be a suitable place which has 86% Muslim population and Sunil Joshi assured that during the Diwali his persons would cause bomb blasts in Malegaon. The NIA recorded statements of a few accused persons among A1 to A11 who had previously suffered disclosure statements in MCOCA and were in judicial custody. According to the NIA, those accused persons stated that their confessions were recorded by the ATS under duress and pressure and they retracted their confessional statements. For example, the confessional statement of Abrar Ahemd Gulam Ahmed was recorded on 19th December 2006 and 20th December 2006 by a Deputy Commissioner of Mumbai Police. He gave his confessional statement also before the Chief Metropolitan Magistrate on 20th December 2006 and moved an application on 21st December 2006 for turning approver but, later on, he retracted from his earlier statement before the NIA. There were protected witnesses out of whom C3 and C4 stated before the NIA that they were not present at the time of seizure of soil samples from the godown of Shabbir Ahmed Masiullah. The protected witness A-369 was a key witness for the ATS who gave his confessional statement under section 164 of the Code of Criminal Procedure on 23rd November 2006 but, thereafter, he became traceless. However, the NIA claims that it examined him and he retracted from his previous statement under section 164

Cr.P.C. He gave a new statement under section 164 Cr.P.C. which contradicts his previous statement.

9. In the counter affidavit filed on behalf of the respondent nos.7 and 8, the NIA states that the appellants, namely, Manohar Narwaria, Rajendra Chaudhary, Dhan Singh and Lokesh Sharma filed their discharge applications on different dates between 14th January 2020 to 15th March 2020 *vide* Exh. Nos.645, 649, 653 and 654 which were disposed of as not pressed on 15th September 2025. It is further stated that the order framing charge made on 30th September 2025 is a well reasoned order based on appreciation of evidence produced with the charge-sheet and no interference is called for, at this crucial stage. In this counter affidavit, the NIA states that the evidence collected by it in course of further investigation did not match with the materials collected by the ATS and CBI. However, except narrating the incident and filing of the charge-sheet and supplementary charge-sheets by the CBI and NIA, nothing relevant has been stated by the NIA so as to support the order framing charge.

10. Mr. Girish Kulkarni, the learned senior counsel for the appellants contended that the appellants cannot be put on trial on the same set of materials which were collected by the ATS and CBI and, more particularly, because the evidence collected by the NIA is inadmissible in evidence and not sufficient to put the appellants on trial. Supporting him, Mr. Kaushik Mhatre, the learned counsel submitted that the disclosure statements made by the appellants before the NIA and so-called pointing evidence relied upon by the NIA or the retracted statements of 12 witnesses recorded on 29th and 30th July 2011 can not be a

valid ground to discard the prosecution story in the charge-sheet filed by the ATS which was adopted by the CBI and cognizance of the offence thereon was taken by the Special Judge on 21st December 2006. The learned counsel referred to the decision in “*Gireesan Nair*”³, “*Vinay Tyagi*”⁴ and “*K. Chandrashekhar*”⁵ and submitted that there is no legally admissible evidence collected by the investigating agency in course of further investigation on the basis of which a charge for committing any of the offences under nineteen heads as indicated in the order dated 30th September 2025 can be framed against the appellants. Mr. Mhatre, the learned counsel contended that the Test Identification Parade conducted by the NIA has no evidentiary value and that cannot even be considered as an independent circumstance in the chain of circumstances required to be proved by the NIA (*vide*, “*Gireesan Nair*”). The learned counsel further submitted that the NIA has conducted a fresh and new investigation in the garb of further investigation which is impermissible in law (*vide*, “*Vinay Tyagi*”). *Per contra*, Mr. Anil C. Singh, the learned Additional Solicitor General appearing for the NIA submitted that there are additional incriminating materials collected by the NIA such as arrest panchanama, pointing out discovery and disclosure statements, TIP evidence, production-cum-seizure memo, handwriting specimen, finger prints and FSL reports which *prima-facie* disclose participation of the appellants in the crime.

11. The disclosure statements of the appellants were not recorded in the presence of a Magistrate under section 164

³ *Gireesan Nair v. State of Kerala*: (2023) 1 SCC 180.

⁴ *Vinay Tyagi v. Irshad Ali*: (2013) 5 SCC 762.

⁵ *K. Chandrashekhar v. State of Kerala & Ors.*: (1998) 5 SCC 223

Cr.P.C. and the NIA relies upon the statements made by the appellants while they were in their custody and led them to the places where planning and preparation of the bomb blasts took place. The Latin phrase "*habemus optimum testem confitentem reum*" which means "we have the best witness, a confessing defendant" was the guiding thought in earlier times. Lord Sumner said that the rules of common law relating to confessions were "as old as Lord Hale". Lord Sumner made the following noteworthy statement of law in "*Ibrahim*"⁶ :-

"It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority. The principle is as old as Lord Hale."

12. The jurisprudence on Criminal Law in India does not recognize the general perception that "he would never have confessed unless he was guilty". The Indian Evidence Act, 1872 does not recognize the confession of a person accused of an offence admissible in evidence. Section 25 makes a confession to a police officer inadmissible against the accused person. Similarly, section 26 puts a bar on a confession of a person in the custody of a police officer being proved unless it is made in the immediate presence of a Magistrate. However, the statement made by an accused person in the police custody can be utilized by the prosecution provided it relates distinctly to the facts discovered in consequence of the information supplied by the accused. The disclosure statements of the appellants and other materials collected by the NIA cannot be relied upon to frame charges against them. The disclosure statements given by the

⁶ Ibrahim v. The King: (1914) A.C. 599.

appellants cannot be used against them and the recovery of any incriminating articles six years after the occurrence and, that too, from a place accessible to general public shall not come within the sweep of section 27.

13. The NIA seeks to rely on the evidence of identification of the appellants in test parade. The Test Identification Parade refers to a process by which a witness confirms the identity of the suspect. In the Test Identification Parade, the suspect is mixed up with several “fillers” who may be prisoners, actors, police officers or common citizen and stand side by side. The evidence of the Test Identification Parade is required to be appreciated having regard to the background of entire case and not in isolation. A Test Identification Parade is conducted under section 9 of the Indian Evidence Act as a part of investigation and it is not considered as a substantive piece of evidence. It is never considered such a piece of evidence on which conviction of an accused can be recorded. There is requirement in law that the witnesses should have spoken about descriptive features and particulars of the accused persons before he was put on the Test Identification Parade. There is also a necessity for conducting the Test Identification Parade without delay. The reason is that the accused person may be shown to the witnesses or there may be an occasion for them to see the photographs of the accused person. In “*Budhsen*”⁷, the Hon'ble Supreme Court set aside the conviction of the accused person which was based solely on the identification made in a Test Identification Parade. There are decisions where the evidence of Test Identification Parade was found not worthy of consideration

⁷ Budhsen v. State of U.P.: (1970) 2 SCC 128.

on account of the delay and the accused person was acquitted on that ground alone. In “*Subash*”⁸ the delay was of three weeks; “*Dr M.V. Ramana Reddy*”⁹ refers to a delay of 10 days; and there was a delay of one month in “*Rajesh Govind Jagesha*”¹⁰. The Test Identification Parade conducted by the NIA about six years after the occurrence would have no probative value. This also is not a ground available to the NIA to make use of the evidence of Test Identification Parade as corroborative evidence on the ground that the appellants were put on “6 pack”¹¹ immediately after their arrest.

14. Notwithstanding that, the materials gathered by the NIA in course of further investigation are found sufficient by the Special Judge to frame charges on nineteen heads against the appellants. The appellants have been charged for causing death by triggering a series of bomb blasts in furtherance of a criminal conspiracy to incite hatred leading to riots. For framing a charge against an accused person for a serious crime like murder etc. which may invite punishment for death, the trial Court must be on guard to see whether there is sufficient material for proceeding against the accused person. Mr. Kaushik Mhatre, the learned counsel for the appellants-Rajendra Chaudhary and Dhan Singh contended that the disclosure statement of Assemanand recorded in the course of the investigation in Makkah Masjid blast case by the Central Bureau of Investigation is a piece of inadmissible evidence. The said disclosure statement of Assemanand was not found to be voluntary by the trial Courts at Ajmer and Hyderabad and he is

⁸ Subhash v. State of U.P.: (1987) 3 SCC 331.

⁹ State of A.P. v. Dr. M. V. Ramana Reddy: (1991) 4 SCC 536.

¹⁰ Rajesh Govind Jagesha v. State of Maharashtra: (1999) 8 SCC 428.

¹¹ A term used in USA for Test Identification Parade

not a listed witness in the supplementary charge-sheet filed by the NIA. The discharge applications filed by A1, A2, A3 and A5 to A9 were opposed by the ATS on several grounds. The ATS opposed the discharge applications on the ground that the disclosure statements of A1, A2, A3 and A5 to A8 were recorded under section 18 of MCOCA and they confirmed their confessional statements when they were produced before the Magistrate. A-369 who was produced by the ATS gave a statement under section 164 Cr.P.C that the first set of accused persons had prepared bombs along with the Pakistani nationals. A Test Identification Parade was conducted by the ATS on 18th December 2006 in which A-396 identified A6 and A7 who were present in the godown at the time of preparation of the bombs in July 2006. Several literature of banned organization SIMI were recovered from the possession of A1 and A4. Besides other evidences such as voice sample, FSL reports etc., the ATS relied on an order passed by the trial Court under section 306 Cr.P.C. granting pardon to A9 and he became an approver. However, the Special Judge in his order dated 25th April 2016 referred to the supplementary charge-sheet filed by the NIA, the retracted statements of A1 to A3 and A5 to A8 and A-369 and held that A1 to A9 were projected as accused persons by the ATS merely on suspicion because they had criminal antecedents. In *"Damu Gopinath Shinde & Ors."*¹², the Hon'ble Supreme Court reiterated that conviction of an accused can be based on his retracted confession even though recorded by the Magistrate under section 164 Cr.P.C. The discharge applications filed by A1, A2, A3 and A5 to A9 *vide* Exh. Nos.501, 505 and

¹² State of Maharashtra v. Damu Gopinath Shinde & Ors.: (2010) 6 SCc 269.

508 in MCOC Case No.23 of 2006 were allowed by the Special Judge on 25th April 2016. The Special Judge further held that A-4 who appeared in person and did not file any application for discharge was also entitled to similar treatment and discharged him.

15. This is an admitted case that no person has come forward to make a statement before the NIA that he has seen any one of the appellants engaged in the bomb blasts. The case of the NIA solely rests on circumstantial evidence which is primarily in the nature of confessional statements by the appellants and Assemanand and the retracted statements of the witnesses and the first set of accused persons sent up for trial by the ATS and CBI. This is also a matter of record that on receiving the information about disclosure statement made by Assemanand the Central Government passed the orders dated 22nd March 2011 and 4th April 2011 directing the NIA to take over Crime No.07 of 2026. There seems to be considerable force in the argument that the NIA conducted a fresh and *de-novo* investigation inasmuch as it has relied on the retracted confessional statements of the accused persons who were sent-up for trial by the ATS and CBI. In “*Vinay Tyagi*”, the Hon'ble Supreme Court held that no investigation agency is empowered to conduct fresh, *de-novo* or reinvestigation in relation to the offence for which it had already filed a report in terms of section 173(2) Cr.P.C.

16. Lord Russel Killowen rendered an opinion in “*Sheo Swarup*”¹³ that the High Court in its conduct of an appeal should and will act in accordance with the rules and principles well-known and recognized in the administration of justice. A

¹³ Sheo Swarup v. King Emperor: AIR 1934 PC 227(2).

criminal trial is not like a fairy tale where one is free to give flight to one's imagination and fantasy. [*vide*, "*Jagir Singh & Ors.*"¹⁴]. To recapitulate, the NIA projected an altogether new story that the appellants and other accused persons entered into a criminal conspiracy to commit terrorists acts with an intention to strike terror in the minds of the people. They were given arms and bomb preparation training at Bagli (MP) under the supervision of Sunil Shyamlal Joshi, Ramchandra Gopal Singh Kalsangara and Lokesh Sharma. In the supplementary charge-sheet, the NIA narrated its story on how appellants along with the wanted accused persons made preparations, planning and procurement of materials and caused the bomb blasts. However, what is important to keep in mind is that the NIA created the prosecution story mainly on the basis of confession and spot discovery statements of the appellants. The new story propounded by the NIA is based on retraction of confessional statements made by A1 to A3 and A5 to A8 and A-369. In the supplementary charge-sheet dated 22nd May 2013, the NIA has described the spot verification by the appellants as under:-

“(xxvii) During the course of further investigation, the important locations at Malegaon where the accused persons got down from the bus and the places where IED/bombs were planted have been identified by arrested accused Rajendra Chaudhary (A-15), Dhan Singh Shiv Singh (A-16) and Manohar Narwaria (A-14). The spot identifications were done by the arrested accused persons after recording their disclosure memorandums. All the three arrested accused persons also identified the spot at the bus stand at Jalgaon where they got down from the bus and also the spot from where they boarded private bus to Indore after plantation of the bomb at Malegaon on 08/09/2006. All the four arrested accused persons were taken to Bagli where they identified the place of training camp in which the assembling of IED/bomb was demonstrated. They also identified the spot where the explosion of IED/bomb was demonstrated. A map from forest department, Bagli (M.P.) indicating the above spot was collected during investigation. The arrested accused persons also

¹⁴ State of Punjab v. Jagir Singh & Ors.: (1974) 3 SCC 277.

identified the bouse where the bombs/IED used at Malegaon bomb blast was prepared.”

17. On the other hand, the ATS claimed that the accused Mohd. Jahid Majjid Ansari was one of the planters of the bomb at Malegaon. The ATS is supported by the CBI on every particulars of the case and relied on the evidence collected by the ATS. However, the NIA says that on the day of the blast the said accused was located at Fulsawangi in the district of Yavatmal which is about 400 km from the blast site. According to the ATS, the responsibility of purchasing bicycles was entrusted to A3-Munnawar Ahmed Mohammed Amin but the NIA claims that Rajendra Chaudhary went to a Cycle shop and purchased Atlas cycle in the name of Badal Yadav. The NIA further claims that Manohar Narwaria went to another Cycle shop and purchased a Hero Jet cycle in the name of Sumer Thakur. This new story of involvement of the appellants is based on the disclosure statements suffered by the appellants. In *“Pulukuri Kotayya & Ors”*¹⁵, it was held that the information as to past user or past history of the object produced would not relate to any discovery of a fact. The materials collected by the NIA to show that the appellants purchased bicycles which were used in the crime are hearsay evidence. This was a fact known to the Investigating Agency that bicycles were purchased and used in the crime by the first set of accused persons who were sent up for trial by the ATS and CBI. The NIA has projected an entirely different story and states that the investigation of the case is still continuing and further evidence is being collected against the accused persons and requested the Special Court to permit it to continue further investigation of the case as per the

¹⁵ Pulukuri Kotayya & Ors. v. King-Emperor: 1949 SCC Online PC 47.

provisions of section 173(8) Cr.P.C. The NIA completely ignored the charge-sheet laid by the ATS which gives a vivid narration of the entire planning by A1 to A13. The ATS collected incriminating materials from the place of incident and those materials were sent for forensic examination. This is the report of the Forensic Science Laboratory (FSL) that there were traces of RDX in the soil samples collected from the place of occurrence and the godown of A2 Shabbir Ahmed Masiullah and both the samples were found to be the same. There is another FSL report which confirmed the presence of RDX and Ammonium Nitrate, charcoal, fuel oil etc. in the samples.

18. The Special Judge overlooked the inherent contradiction and intrinsic improbability in the prosecution story as put forth by the NIA. There is no explanation coming forth as to how the voice samples and FSL reports collected by the ATS and CBI can be ignored by the trial Court. The things as stand today give two contradictory versions of the incident and both stories as floated by the ATS and NIA cannot be reconciled by any stretch of imagination. The evidence collected by the ATS in course of the investigation is not wiped out from the record and have to be considered by the trial Court even if the appellants are required to face the trial. There seems to be no answer in law as to how the trial Judge can deal with the materials collected by the ATS which implicates another set of accused persons. The case seems to have reached a dead end.

19. This is well settled that the Court while considering the question of framing the charges has undoubted power to sift and weigh the evidence for the limited purpose of finding out whether a case is made out against the accused person. The

Court shall be within its powers to frame the charge against the accused person if the materials placed before it disclose grave suspicion which is not properly explained by the accused person to the Court. In "*Ramesh Singh*"¹⁶, the Hon'ble Supreme Court held that the Court is not required to meticulously examine the truth and veracity of the evidence which the prosecutor proposes to adduce at the initial stage of the trial. More precisely, the Court is not required at this stage to see that there is sufficient ground for conviction of the accused person or that the trial is sure to end in his conviction. In "*Chandra Deo Singh*"¹⁷, the Hon'ble Supreme Court observed that unless the Magistrate finds that the evidence laid before him is self-contradictory or untrustworthy, the process cannot be refused if the evidence laid before him makes out a *prima-facie* case. In "*Superintendent and Remembrancer of Legal Affairs, West Bengal*"¹⁸, the Hon'ble Supreme Court held that even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused person in respect of the commission of that offence. This is also quite well settled that the accused person is not required to undergo the rigors of trial if he is able to demonstrate before the Court that the order framing charge is based on such evidence collected by the Investigating Agency which does not involve the accused person in the crime. (*vide*, "*Rajiv Thapar & Ors.*"¹⁹). In

¹⁶ State of Bihar v. Ramesh Singh: (1977) 4 SCC 39.

¹⁷ Chandra Deo Singh v. Prokash Chandra Bose & Anr.: (1963) SCC Online SC 4.

¹⁸ Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & Ors: (1979) 4 SCC 274.

¹⁹ Rajiv Thapar & Ors. v. Madan Lal Kapoor: (2013) 3 SCC 330.

"N. Suresh Rajan"²⁰, the Hon'ble Supreme Court held that the trial Judge is required at this stage to examine the probative value of the materials without going deep into the matter. In "Sajjan Kumar"²¹, the Hon'ble Supreme Court laid down the following principles:

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

²⁰ State of T. N. v. N. Suresh Rajan & Ors.: (2014) 11 SCC 709.

²¹ Sajjan Kumar v. CBI: (2010) 9 SCC 368.

20. The diagonally opposite stories in the charge-sheet filed by the ATS and the NIA lead nowhere. The witnesses proposed by the NIA are mostly hearsay witnesses. The materials collected by the NIA regarding purchase of bicycles etc. even if found truthful and admissible, cannot be considered as incriminating material against the appellants. A further investigation does not start with recording the statement of the accused person in a case. The further investigation is carried for the purposes of recording the evidence of a few more witnesses and for collection of additional materials to add other offences or another accused person. This is a mystery why the NIA did not collect fresh materials and started recording the retracted statement of the accused persons A1 to A3 and A5 to A8. The retracted statements of a few witnesses on which the NIA seeks to lay a case against the appellants can also not be admissible evidence. A witness who gives two versions of a story and retracts his previous statement becomes an unreliable witness and his testimony is liable to be discarded.

21. For the foregoing reasons, we hold that there is no sufficient material on record to proceed against the appellants. The Special Judge did not apply his judicial mind to the materials laid before him and considered the materials which are not admissible in evidence to frame charges against the appellants, namely, (i) Manohar Ramsingh Narwaria @ Digaria @ Sumer Thakur (ii) Rajendra Vikramsingh Chaudhari @ Dashrath @ Samander @ Badal Yadav @ Laxman Das (iii) Dhan Singh Shiv Singh @ Ram Lakhan Das Maharaj @ Subhash @ Lakhan, and (iv) Lokesh Sharma @ Kalu Pandit @ Ajay Tiwari.

The order dated 30th September 2025 framing charges against them is set aside and the appellants are discharged. They are also discharged of the liability of bail bonds furnished by them.

22. Criminal Appeal No.107 of 2026 and Criminal Appeal (Stamp) No.2772 of 2026 are allowed.

[SHYAM C. CHANDAK, J.]

[CHIEF JUSTICE]