

## INVESTIGATION OF PAKISTAN ISI RELATED CASES

By B Srinivasulu, SP, Intelligence, Hyderabad

### **I.S.I.**

Inter Services Intelligence Agency (ISI) is Pakistan's premier Intelligence agency. The thrust for subversive activities and secessionism by Pakistan's ISI is a matter of grave concern and threat to the integrity and sovereignty of the country. Besides whipping up communal passions and abetting terrorism, the ISI has been making efforts to destabilise our country through subversion, sabotage and espionage by exploiting the fundamentalists.

### **OBJECTIVES OF ISI**

The main objectives of ISI are:

1. Waging low intensity/proxy war
2. Keeping India pre-occupied with domestic problems
3. Escalating violence in J&K
4. Creating Communal disharmony and chaotic conditions across the country.
5. Aiding & abetting insurgency in the North East.
6. Patronising underworld dons like Dawood Ibrahim, Abu Salem, Chota Shakeel, Aftab Ansari, Rasool Party etc., Pumping of fake

currency to destabilize Indian economy, identify fundamentalist elements, train them in Pakistan and launch them in India for disruptive activities.

7. Establishing sleeper cells wherever possible etc.,

## **SUBVERSION**

- Creation of agents of influence at key levels in the Govt. and Non-Govt. sectors
- Moulding of public opinion to their line of thinking and
- Indulging in covert & overt activities, detrimental to the interests of the state.

## **SABOTAGE**

- Causing destruction to the national properties like vital installations and core sectors like,
  - ◆ Defence Establishments,
  - ◆ Railways, Dams, PSUs,
  - ◆ Power Stations etc.,

## **ESPIONAGE**

Etymologically espionage means *“practice of spying or using spies, especially to obtain secret information”*.

## **IMPORTANT ISI SPONSORED MILITANT OUTFITS**

1. Lashkar-e-Taiba (Pasban-i-Ahle Hadees) (1993)
2. Hizbul Mujahideen (HUM) (POK & Pakistan) (1989)
3. Harkat-ul- Mujahideen (HUM) (Pakistan) (1985)
4. Al Jihad - Pak
5. Al Badar - Pak (Splinter group of HuM)
6. Jaish-e-Mohammad (Al Furqan) - Pak (1999)
7. Al Qaeda - Osama bin Laden (1998)
8. Deenadar Anjuman - India (1924) (Jamat e Hizbullah Mujahideen - Pak)

## **ISI MODULES UNEARTHED IN ANDHRA PRADESH**

<b>Sl.No.</b>	<b>Name of the Module</b>	<b>Remarks</b>
<b>1.</b>	<b>Hizbul Mujahideen- 1992</b>	<b>Assassination of Sri G. Krishna Prasad, Addl. SP</b>
<b>2.</b>	<b>Ikhwan-ul-Muslimeen - 1993 -'94</b>	<b>Recruitment for Kashmir militancy</b>
<b>3.</b>	<b>Tanzeem-Islahul-Muslimeen- 1993-'94.</b>	<b>Hyderabad Serial Bomb Blasts</b>
<b>4.</b>	<b>Al-Jehad -1994</b>	<b>Recruitment for Kashmir militancy</b>
<b>5.</b>	<b>Muslim Mujahideen - (1995/1997)</b>	<b>Asghar Ali Gang-Mirza Fayaz escape</b>

6.	Salim Junaid Gang (LeT) -1998	Subversion& conspiracy
7.	Wali Mohammed Jahid -1999	Subversion& conspiracy
8.	Indian Muslim Mohammadi Mujahideen (LeT) -1999/2000	Explosions in public places& killings of Hindu leaders
9.	Deendar Anjuman (2000)	Explosions in religious places
10.	Hizbul Mujahideen 2001	Explosions in public places in northern India
11.	Abdul Azeez Gang 2001	Subversion& conspiracy
12.	Vizag Espionage Case- 2001	Espionage of Naval Establishments
13.	Ashique Ali -- 2002	Pak M.I. Espionage Case
14.	LeT- 2002	Bomb blast near Saibaba Temple, Dilsuknagar, RR.Dist.
15.	Asghar Ali Gang/ Gujarat conspiracy -2003	Haren Pandya's Murder

**ARRESTS & SEIZURES:** About (140) persons including (4) Pak Nationals, belonging to different militant outfits of Pakistan (sponsored by I.S.I.) were arrested and about 25 Kgs of RDX, 1 AK-47, 10-pistols, ammunition, gadgets like VHF sets, Remote Control Devices, timer pencils, detonators, huge quantity of gelatine, fuse wire and a lot of incriminating documents etc., were seized from the accused persons in the state.

### **RELEVANT LAWS**

Pak I.S.I. agents and other anti-national elements who indulge in anti national activities usually commit offences pertaining to Conspiracy,

Espionage, and violence of various kinds by using arms and explosives causing loss to life and damage to property. They also involve in offences under Passport Act, Circulation of fake currency, kidnapping, wrongful confinement, extortions and murder by using firearms, which attract violation of Arms Act. Therefore sections under Official Secret Act 1923 (Espionage), Indian Penal Code, Explosive Substances Act, Arms Act, The Passport Act, 1967, APCOCA, POTA etc., are applied to prosecute the culprits for committing such offences.

The following points and procedures may be kept abreast of during the investigation of above-mentioned cases:

**I. The Official Secrets Act, 1923 (ACT NO. 19 OF 1923)**  
**(ESPIONAGE CASES)**

1) As per Official Secrets Act 1923 in case of espionage cases it is stated "No court shall take cognisance of any offence unless a complaint is made by an order or under the Authority from the appropriate Government.

2) As per the Act in cases of espionage proceedings are launched against the accused with the approval of Union Home Minister.

3) In all such cases unless the charge sheet is filed within a period of 90 days from the date of arrest of the accused, the courts have discretion to release the accused on bail.

4) The following documents are to be sent at the earliest by investigating officer to Ministry of Home Affairs, I.S. Division, Government of India through State Government for according prosecution sanction after examination process.

- a) Copy of FIR
- b) Brief facts of the case.
- c) Copies of the documents seized from the accused.
- d) Opinion of District Legal Authorities.
- e) Opinion of Military Authorities.
- f) Seizure Memo.
- g) Draft sanction order.
- h) Statements of witness.

5) If any of the above documents are in local language or Hindi, the same are required to be sent in English as well. The above listed documents are examined to establish whether disclosure of the information is prejudicial to safety or interest of the state.

6) After obtaining the views of Ministry of Law, sanction is issued with the approval of Home Minister.

## **II. Indian Penal Code**

### **1. OFFENCES AGAINST THE STATE (Chapter VI IPC)**

- ❖ Whoever wages war against the Govt. of India or attempts to wage such war, or abets the waging of such war, shall be punished with death or imprisonment for life and also liable for fine.

In order to constitute an offence of waging or attempting wage war, it is necessary to prove the following:

1. The accused waged war or attempting wage war or abetted such war.
2. Such was against Govt. of India.

In order to get the conviction on such a charge it is not enough to show the position of armoury and ammunition. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and their intention in resisting the troops was to overwhelm and defeat the troops and then to go and crush any further opposition which they might meet until either leaders of the movement succeeded in obtaining the position of machinery of Govt. or until those in possession of it yielded to the demand of the leaders.

- ❖ Collection of arms etc., with intention of waging war against Govt. of India. Concealing with intent to facilitate design to wage war.

## **2. SEDITION**

- ❖ Whoever by words, either spoken or written, or by signs or by visible representation, or otherwise brings, or attempts to bring into hatred or contempt, or excites, or attempts to excite disaffection towards the Govt. established by law in India shall be punished with the imprisonment for life to which fine may be added, or with imprisonment which may extend to three years to which fine may be added or fine.

Applicability of Sedition – Promoting enmity between different groups – Mens Rea on the part of accused has to be established to attract Sec. 153-A. Raising slogans only a couple of times by few persons which neither evoked any response or any reaction from anyone in the public can neither attract the provisions of sec. 124-A nor Sec. 153-A IPC. Some more overt act is required to prove the charges.

### **III. EXPLOSIVE SUBSTANCES ACT 1908**

In connection with cases pertaining to the above Act, the materials are seized under the following two conditions.

- 1) Live Explosive materials.
- 2) Materials after explosion.

On receipt of information, I.O. should take the following steps:

- a) The area around the explosive should be vacated.
- b) Posting guard should preserve the scene.
- c) The area should be barricaded, preferably with sand bags.
- d) Take the help of explosive experts to defuse the live explosive materials / the materials after explosion.
- e) While conducting the scene of offence panchanama take photo/video graph the scene in the presence of mediators.
- f) Wherever possible video graph during seizures at scene of offence or from the possession of the accused.
- g) Seized articles have to be packed and sealed properly and panch chits have to be affixed to the seized materials in the presence of panchas

at the place of seizure. Ensure that panch chits affixed to seized materials are intact up to trial of case.

h) Obtain sanction orders from competent authority i.e. District Magistrate/ Collector

#### **IV. INDIAN ARMS ACT 1959**

- ❖ No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provision of this Act and rules.
- ❖ No one shall manufacture, sell, transfer, convert, repair, test and expose any firearm without valid license.
- ❖ Whoever is in possession of unlicensed firearms are liable to be punished u/s 25 Arms Act. Whereas who uses unlicensed weapon is liable for punishment u/s 27 Arms Act.

#### **Seized fire arms should be sent to ballistic expert to get the opinion such**

**as:**

- 1 Whether seized Arm is a fire arm or not
- 2 Whether firearm was used or not. In cases of shooting, fired and empty cartridge cases, spent bullets, wads are also seized from the scene of offence and sent to ballistic expert to know whether the above seized articles fired from firearm used in the commission of offence.
- 3 Every offence under this Act is cognisable offence As per section 38.

- 4 No prosecution shall be instituted against any person in respect of any offence u/s 3 without the previous sanction of the District. Magistrate/District Collector/ Commissioner of Police in city.

#### **V. IMMIGRATION AND PASSPORT RELATED CASES**

- ❖ Immigration Control means entering one country from another country for the purpose of visit or settlement in the former. International Law recognizes the right of every country to control immigration and every country is to decide whether to admit a foreigner and if so on what terms and conditions.
- ❖ Immigration control and laws are framed by each country to regulate the foreigners' traffic, keeping in view its security, foreign relations and its economic interest, the principle of reciprocity and above all, the requirement of security of the nation.
- ❖ Immigration control is also to check its own nationals who may after committing crimes, terrorist act, try to escape from the country. Immigration Rules comprise **Foreigners Act 1946, Registration of Foreigners Rules 1992, The Passport Act 1967, the Emigration Act 1983 with Emigration Rules, 1983.**
- ❖ Any person contravening the Passport Act is prosecuted under Sec. 12 of Passport Act. As per Sec. 15 of the Act, no person shall be prosecuted without the sanction of Central Govt. or Such officer or Authority as may be authorized by the Govt. by order in writing in this behalf. In A.P., Principal Secretary (Home) to the Govt. is competent authority to give such sanction.

## **TYPES OF OFFENCES UNDER PASSPORT ACT:**

1. Photo Substitution
  2. Page Substitution
  3. Impersonation
  4. Central stitches tampered
  5. Date Stamp of Arrival or Departure (along with number)
  6. Forgery of date of issue of Visa
  7. Alteration of validity of Visa
  8. Exchange of Boarding Cards
- ❖ The movements and activities of Foreigners are regulated as per Foreigner Act 1946 and as per registration of Foreigners Rules 1952. The Foreigner who has Visa of above 180 days should register with FRO (Foreigners Registration Officer). Commissioner of Police is FRO in metropolitan cities and S.P. is FRO in districts. Whereas a Pakistani National has to register with FRO within 24 hours.
  - ❖ Whenever the foreigner moves from the given address in the Visa, he has to take permission of FRO and inform the FRO of his next destination on his arrival.
  - ❖ Any person who contravenes or attempts to contravene or failed to comply with any provisions made under this act shall be punished, if a foreigner with imprisonment & fine or if not a foreigner, with a fine.

## VI. THE PREVENTION OF TERRORISM ACT- 2002 (POTA)

Under this Act, “terrorism includes acts committed with any lethal weapons and offences include inviting support for a terrorist organization, addressing the gathering of terrorism sympathizers and assisting in arranging a meeting where support is expressed for a terrorist organization or its activities. In a nutshell, terrorism indicates acts to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section.

The persons committing following offences can be booked under POTA :

- a) Member of an association declared under Unlawful Activities (Prevention) act, 1967 and for aiding such association and possession of unlicensed firearm etc.
- b) Terrorist act resulting in the death of any person or any other offence punishable with the imprisonment for a term which shall not be less than 5 years but which may extend to imprisonment for life and shall also be liable for fine.
- c) Person, who conspires, advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act.
- d) A person who voluntarily harbours or conceals or attempts to harbour or conceal any person knowing that such person is a terrorist.

- e) Person who is a member of terrorist gang or terrorist organization, which is involved in terrorist activity.
- f) Who acquires property from the commission of terrorist act or acquires through terrorist funds.
- g) Person who threatens a witness or any other person in whom such witnesses may be interested with violence or wrongfully confines the witness, or does any other unlawful act etc.
- h) Possession of unauthorized arms and ammunition specified in Col. (2) and (3) of category I or Category III (a) of Schedule I to the Arms Rules 1962, in a notified area.
- i) Possessing Bombs explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare in any area, whether notified or not.
- j) Person who aids any terrorists contravening the provisions of Explosives Act 1884, the Explosives Substances Act, 1908, the Inflammable Substances Act, 1952 or the Arms Act, 1959.
- k) Possessing proceeds of terrorism and also about the property to be forfeited to the Central Govt. or State Govt.

POTA is booked against persons who are members of organization, which are listed as terrorist organization as per section 18 (Chapter III) of POTA.

The following points should be kept in mind while investigating the POTA cases:

- 1) POTA cases have to be investigated by not below the rank of the Assistant Commissioner of Police in Metropolitan areas and in Districts D.S.P. or a police officer of equivalent rank as per section 51.
- 2) A confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical or electronic device like cassettes, tapes or sound track from out of which sound or images can be reproduced, shall be admissible in the trial of such person for an offence under this Act. The following precautions have to be scrupulously observed by the officer who is recording confession of accused under this Act.
  - a) Officer shall explain in writing to such person (accused) that he is not bound to make a confession and that he does so, it may be used against him. Provided that when such person prefers to remain silent the police officer shall not compel or induce him to make any confession’.
  - b) Confession shall be recorded in an atmosphere free from threat, or inducement and shall be in the same language in which the person makes it and obtain signature or thumb impression of such person on each page of the statement.

**Note: If the officer does not know the language in which accused gives his confession statement, he can take the assistance of official translator and take signature of translator in all the pages of confession statement and cite him as witness during trial.**

- 3) The person from whom a confession has been recorded, shall be produced before the Court of a Chief Metropolitan Magistrate or the court of a Chief Judicial Magistrate along with the original statement

of confession, written or recorded on mechanical or electronic device within forty-eight hours.

- 4) Chief Judicial Magistrate or Chief Metropolitan Magistrate shall record the statement, if any made by the person so produced and get his signature or thumb impression and if there is any complaint of torture, such person shall be directed to be produced for medical examination before a medical officer not lower in rank than an Assistant Civil Surgeon and there after he shall be sent Judicial custody.

### **INTERCEPTION OF COMMUNICATION UNDER POTA**

- 1) A public servant, acting under the supervision of the investigating officer authorized to conduct the interception, may conduct an interception in whole or in part.

- 2) When the investigation officer believes that such interception may provide, or has provided evidence of any offence involving the terrorist act has to forward a letter to the Superintendent of Police who is supervising the investigation, who has to submit an application in to the competent authority (Principal Secretary Home) for authorizing or approving interception of wire, electronic or oral communication. Each application shall include the following information.

Identity of the investigating officer with departmental authorization, statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued including the details of the offence description of the nature and location of facilities etc.,

- 3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

- 4) In case of emergency the officer not below rank of Additional Director General of police or a Police officer of equivalent rank can accord permission when there is immediate danger of death or serious physical injury to any person, conspiratorial activities threatening the security or

interest of the State. The concerned officer after authorizing shall send the order to competent authority for approval.

5) The Competent Authority shall immediately after passing the order under section (1) of section 39, but in any case not later than seven days from the passing of the order, submit a copy of same to the Review committee constituted under Section 60 along with all the relevant underlying papers, record and his own findings, in respect of the said order, for consideration and approval by Review Committee

6) As per Section 45 the evidence collected through the interception of wire, electronic or oral communication shall be admissible as evidence against accused in the Court during trial of a case;

7) The Court will not treat above communication as evidence unless each accused has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorized or approved not less than ten days before trial, hearing or proceeding. Provided further that, the period of ten days may be waived by the Judge trying the matter, if he comes to the conclusion that it was not possible furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

8) The accused has to be produced in POTA designated Court.

9) In POTA the accused can be kept in judicial custody for a period of 180 days subject to condition that prior to the expiry of 90 days remand period the P.P. has to file an application in the Court with specific reasons for the detention of accused in judicial custody beyond 90 days and also has to indicate the progress of investigation.

10) The accused cannot be released on bail for 1 year from the date of arrest even if charge sheet is filed within 180 days. I.O. can appraise P.P. about above provision for the dismissal of bail application moved by accused.

11) No bail shall be granted to a person accused of an offence punishable under this Act, if he is not Indian citizen and has entered the

country unauthorized or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

No court shall take cognisance of any offence under this act without prior sanction of Central Govt. or the case may be, the State Govt.

## **VII. A.P. CONTROL OF ORGANISED CRIME ACT 2001.**

- ❖ Organized Crime means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of such syndicate, by use of violence or threat of violent 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.
- ❖ Mafia gangs committing the organized crimes like Kidnappings, Wrongful confinement, Extortions, threatening calls, land grabbing, etc. are booked under this act.
- ❖ A confession made by a person before a police officer not below the rank of the S.P. and recorded by such police officer either in writing or any mechanical devices like cassettes, tapes or sound tracts from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator. Provided that, the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.
- ❖ A police officer not below the rank of Supdt. of Police supervising the crime may submit an application in writing to the competent authority

(not below the rank of Secy. to (Home) Govt. for an order authorizing are approving the interception of wire/electronic/oral communication by the I.O when such interception may provide or has provided evidence of any offence involving an organized crime.

- ❖ An officer not below the rank of Addl. Dir. Genl. of Police in emergency situation may authorize in writing the Investigating Police Officer to intercept the communication. For interception of Communication, the procedure, which is followed in POTA 2002, is also followed in this act.
- ❖ The court proceedings under this act may be held in Camera, if the Special Court so desires.
- ❖ No information about the commission of an offence of Organised Crime under this act shall be recorded by a police officer without the prior approval of a police officer not below the rank of Dy. Insp. Genl. of Police. No investigation of an offence under the provisions of this Act shall be carried out by a police officer not below the rank of Dy. Supdt. of Police.
- ❖ No special court shall take cognizance of any offence under the Act without the previous sanction of a Police Officer not below the rank of Addl. Dir. Genl. of Police.
- ❖ If the investigation is not completed within 90 days, the special court can extend the remand period up to 180 days on the report of Public Prosecutor indicating the progress of the investigation and the special reasons for the detention of accused beyond the said period of 90 days.

## **LAPSES OBSERVED IN THE INVESTIGATION OF ISI RELATED CASES**

Some of the cases booked against I.S.I. agents and anti-Nationals were acquitted due to lapses on the part of investigating officers.

Following are some of the grounds for acquitting the cases by courts.

### **1) Cr. No. 20/98 U/s 438 and Sec. 3 and 4 of E.S. Act and 152 of Railway Act of Ghatkesar Police Station - JUNAID MODULE 1998**

- 1) Investigating officer failed to prove the presence of accused persons at the scene of offence.
- 2) Investigating officer while recording the statement of eyewitness who saw the accused suspected to have committed offence he did not record complete descriptive particular of the suspect and recorded vague statement.
- 3) Investigating Officer should not give any room to the suspicion by the court that eye witness saw the arrested accused in Police custody before test identification parade. Because in this case in his statement, eyewitness stated that he visited Uppal and Ghatkesar PSs, while accused was in police custody.

Due to the above statement of eyewitness, the court expressed doubt that eyewitness might have seen the accused in police custody before identification parade. Though eyewitness identified the accused in test identification parade, his version was not given much importance because he did not see the accused while planting the explosive.

4) Investigating officer filed charge sheet in the court without taking sanction from competent authority, which is required as per section 7 of Explosive Substances Act.

**2) Cr. No. 155/98 u/s 120 B, 121, 121 A, 122, 124 A, 153 A, 153 B, 302, 307, 436, 428 r/w 511 IPC Secs. 25 (1) (a) and 35 of Arms Act, Sec. 5 of ES Act., Sec. 3, 10 (3) (b), and 12 of Passport Act 1967 and Sec. 3 (2) (a) and 14 of Foreigner's Act of CCS, detective Department, Hyd - JUNAID MODULE 1998**

5) The Investigating officers seized the explosive substances from the possession of the accused, but failed to prove in the court that they have packed and sealed the seized materials immediately after seizure in the presence of panchas.

6) Investigating officers have kept seized materials for one month in their office without sending them to F.S.L at the earliest without giving any explanation in their case diaries and gave room to the court for suspicion.

7) Investigating officers sent the seized articles to F.S.L. without panch chits. Therefore the court presumed that the articles seized from the possession of accused and seized articles sent to F.S.L are not the same.

8) Panch witnesses have turned hostile and did not speak about seizures by investigating officers in the court. Wherever possible videos may be used during conducting panchanama of scene of offence and seizures.

9) Investigating officer has failed to identify the accused person, whom he has arrested while deposing evidence in the court.

10) I.O. has failed to prove the accused as 'Pak Nationals', who illegally infiltrated from Pakistan.

11) To avoid above lapses in future investigating officers should take the advise of legal officer during investigation of cases.

12) SHO in the event of doubt about the jurisdiction regarding occurrence of any incident he should immediately issue F I R, protect scene of offence and complete the preliminary investigation and

transfer the case to the concerned after taking permission from the superiors to avoid contradictions.

**3) Cr. No. 151/93 of CCS, DD, Hyd. (Gowher Ameen Mir, Nissar Ahmed Bhatt and 10 others) - IUM Conspiracy case**

- 13) The Designated court issued NBWs against accused and the same were executed and two accused persons were produced before Executive Magistrate and obtained Police Custody. The officer competent to record the statement under TADA had recorded the confession statement of the above two accused persons who were in police custody issued by the Executive Magistrate. Therefore the court considered the above police custody as not legal and did not consider the confession statement recorded by the above officer.
- 14) Arms and Explosives, which were seized from the possession of the accused, were not sealed in the presence of Panchas. Hence the designated court acquitted all the accused persons from whom the articles were seized under Explosives Substance Act, Arms Act.
- 15) In this case Gowher Ameen Mir(A1) and Nissar Ahmed Bhutt (A2) were found guilty for the offences u/s 120-B, 124-A, 153-A, 153-B IPC and Sec. 3 (3) and 5 of TADA Act, 1987.

**4) TADA Special Case No. 29/94 @ 3/95 and 13/95 (Dr. Mohd. Jalees Shafiullah Ansari and 12 others) of TADA Court, Mumbai:**

- 16) The thorough examination of scene of offence is necessary to connect the accused to the scene of offence. In this case the chance print found on the iron pipe seized at the scene of offence in Boiwada bomb blast case tallied with the fingerprints of Jalees Ansari and seizure of explosives from his possession was also proved and he was convicted.
- 17) The remaining accused persons in the above case were acquitted due to the following lapses:
- (i) Bombay Police and CBI during the seizures did not bother to confirm the credentials of Panch witnesses and people from lower state of society without proper educational background and without proper address were taken as Panchas and court did not believe their version.
  - (ii) Bombay police conducted test identification parade of the accused in the Police Stations and Police Offices in the presence of Special Executive Magistrates (SEM), who are not law graduates and have no knowledge about the legal procedures. TADA Special Court observed that test identification parade should be conducted in jails during judicial custody by the competent Judicial I class Magistrate.
  - (iii) Officers of and above the rank of Ss.P. who recorded the confession statement did not take necessary precautions/measures and did not follow the procedures to make the court believe that confession statement of the accused which were recorded were voluntarily, free from any pressure and in free atmosphere.

- (iv) While recording the confession statement the accused persons were in police custody for more than two or three months with the investigating agency. Therefore, Court observed that investigating agency i.e. Police might have compelled the accused to give above mentioned confession statement.
- (v) Officer recording such confession statement should take following precautions as per the observation by the TADA court:
  - a) Police officer should ask the accused and record the statement as to how long the accused is in police custody? He should also verify and mention in his proceedings that from where the accused has been produced before him and also mention in his proceedings about the date and time mentioned in PSR, GD and other records about the production of the accused.
  - b) The Officer also record in his proceedings while taking confession statement by asking the accused as whether any body induced or compelled him to give confession statement. He should also give some time to the accused and again when the next time the accused is present, the officer has to repeat the same questions and then record the confession statement.
  - c) The Special TADA court held that the voluntariness of the accused is the soul of the confession. So it is the preliminary duty of the officer who records the confession statement to first ascertain as to why the accused felt it necessary to give the confession statement. Unless this fact is got confirmed from the accused, it is difficult to conclude that the accused is giving his statement voluntarily.

- d) The Confession Statements recorded by the officers did not connect the accused to the bomb blasts incidents occurred in Mumbai as no further evidence were collected to connect the accused. For Ex. in a case the accused confessed that he went to Dubai but I.O. did not bother to verify at the Immigration Check-post and collect concerned records for corroboration.
- e) I.O. in the above case also failed to prove the conspiracy and other offences against the (12) other accused except Dr. Jalees Ansari, who was convicted under TADA and Explosives Substances Act. .
- (vi) After recording the confessional statement, the statement has to submit to the court and accused should also be produced.
- (vii) The TADA court preferred that confession statement should be recorded only in judicial custody by the Magistrate.

***Suggestion:*** *In view of the above observations, it is suggested that the I.O., while investigating such important cases should study the provisions of law and the procedures to be observed while conducting Panchnama, selecting Panchas, seizures, recording of confessional statements etc., and also take the help of Legal Advisor during the investigation.*