

NOTE

Of MCOCA and Malegaon

Mubasshir Mushtaq writes :

The ongoing twist-and-turn in the investigation of the Malegaon bomb blast of September 29 is stranger than a John Grisham novel. At this point of time, it may be difficult to say with certainty in which direction the investigation will lead to, but there are enough inputs and indicators to make an assessment. Going by the various media reports, it seems that Anti-Terrorism Squad (ATS) has got nothing incriminating against the accused so far; the kind of evidence that will stand in a court of law. As one report in the *Hindustan Times* says, 'The hard evidence in the form of materials used in making and planting of the bomb, witnesses and other corroborative and supporting evidence is still missing'. The ATS has reportedly seized arms, cell phones, electronic timers, pen drive, telephone diary and some documents from the accused. The latest arrest of priest Dayanand Pandey makes the case murkier and high-profile as he had some "political contacts."

Narco test or truth serum as it is known is not a scientifically-proved and legally-approved method of investigation. Also narco tests are not fool-proof. A person of a military background like Lt. Col. Purohit can easily mislead the investigators. There is no guarantee that a person will only speak the truth in a so-called 'truth serum' test. Also evidence extracted under the test is not admissible in court. The sincerity of any investigating agency should not be measured on the basis of leaks it willingly provides to the media but its approach in the application of law on the accused. All the accused arrested so far have been booked under Indian Penal Code (IPC), Unlawful Activities Prevention Act and several sections of the Explosives Act. A careful reading of these statutes will reveal that one can easily get bail under these Acts. On the contrary, it is very difficult to get bail in Maharashtra Control of Organised Crime Act (MCOCA).

In MCOCA, confessional statement of the accused is considered as "substantive evidence" and it is enough to punish the accused. In IPC and other statutes confessional statement is not considered "substantive evidence". One wonders why the ATS is not imposing MCOCA on the Malegaon bomb blast accused as it had done in the earlier blast of 2006.

To impose MCOCA, there should be at least one previous criminal chargesheet against the accused. Jagdish Mhatra, who was arrested from Dornbivali in Mumbai, reportedly fulfils this legal requirement since a criminal chargesheet had been filed against him in a case of murder and extortion in 1996-97. One previous criminal chargesheet against any of the accused is enough to bring all the accused under the ambit of MCOCA.

Despite this, ATS is still "considering" and yet to apply MCOCA on the Malegaon blast accused. The same ATS had applied MCOCA on the 2006 blast accused immediately. People of Malegaon are curious to find out why this time the ATS is delaying the implementation of MCOCA. □□□