

(2004) 10 GUJ CK 0047
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No's. 3331 and 5302 of 2003

C.R. Patil and C.E. Patil

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 06-10-2004

Acts Referred:

Banking Regulation Act, 1949 — Section 35(A)
Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 114, 120B, 34, 408, 409

Citation : (2005) CriLJ 1231 : (2005) 25 GLH 313

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : K.S. Nanavati, N. Chudgar and P.A. Mehta, in Criminal Misc. application No. 3331 of 2003 and N.D. Nanavati and Shakeel A. Qureshi, in Criminal Misc. application No. 5302 of 2003, for the Appellant; Arun D. Oza, Public Prosecutor for Respondent No. 1, M.B. Gandhi and Rajeshwar J. Dave, in Criminal Misc. Application No. 3331 of 2003 and Arun D. Oza, Public Prosecutor for Respondent No. 1 in Criminal Misc. Application No. 5302 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : C.R. Patil Vs. State of Gujarat and Others, (2009) CriLJ 332 : (2008) 11 JT 20 : (2008) 12 SCC 741

D.H. Waghela, J.—These bail applications, pending since June 2003, have a chequered history during their pendency and preceding that. Offences against several accused persons, including the petitioners, were first registered vide F.I.R. dated 23.10.2002 with D.C.B. Police Station, Surat and the applications of the petitioners for anticipatory bail u/s 438 of the Code of Criminal Procedure were rejected by the Sessions Court on 27.11.2002. Upon their filing similar applications in this Court, by order dated 7.2.2003, assurance and undertakings of the petitioners to repay the amounts due to the complainant bank, then running into Rs. 55 crores, were recorded, and the applications were allowed

without entering into the merits of the prima facie case appearing against the petitioners. The petitioners having failed to abide by the undertakings, the subsequent bail applications of the petitioners were rejected as withdrawn.

1.1 Thereafter, the present applications were presented, one of them through jail, the petitioner initially appeared as party-in-person and, again, they offered to repay the entire amount due to the complainant bank by surrendering and offering for sale the immovable properties under their control, the market value of which was stated to be exceeding Rs. 100 crores. By a detailed order dated 25.7.2003, a broad consensus for grant of immediate prayer for interim conditional bail was recorded upon an agreed formula for the earliest possible realization of money for the bank, in public interest. The arrangement agreed upon was to be operated with full co-operation of the petitioners and in good faith and on that understanding the petitioners were released on temporary bail for the period upto 15.10.2003 on several important invited and agreed conditions. When the applications were heard on 13.10.2003, it was submitted for the respondents that due to administrative reasons and incompetence of the staff of the bank, the recovery could not be expeditiously made and a further period of two months was required to be given for realization of the bank's dues from the properties offered for sale by the petitioners. Therefore, again by consent and consensus, the hearing was adjourned to 15.12.2003 and the interim bail granted by the order dated 25.7.2003 was extended on the same terms and conditions till 19.12.2003.

2. As recorded in the order dated 19.12.2003, admittedly, not a single paisa of the complainant bank's dues was realized and it was absolutely clear and undisputed that the arrangement which was envisaged by the order dated 25.7.2003 had not worked at all and, therefore, the cause for granting temporary bail to the petitioners was lost. The administrator of the bank who could not effect any recovery in five months was informed by a letter dated 18.12.2003 of the Registrar of Co.Op. Societies that the Government had decided to take the bank into liquidation. However, instead of arguing the petitions on merits, the learned counsel on both sides sought time to argue, but the petitioners were ordered to surrender to jail by 20.12.2003 while the final hearing was fixed on 16.1.2004 as suggested by the learned counsel. Thereafter, again, rather than arguing the petitions on merits, a prayer for temporary bail was pressed mainly on the basis of the minutes of the meeting held on 5.2.2004 under the auspices of the Chief Secretary of the State Government, according to which, the secured and unsecured advances of the bank were quantified and broad terms and conditions of the sale of properties consisting of about 3800 units, known as C.R. PATIL NAGAR, were finalized. It was submitted by the learned Public Prosecutor that the Government was seriously addressed to the task of effecting recoveries for the complainant bank which was closed and, upon a clear consent expressed by the learned Public Prosecutor and the advocate appearing for the complainant bank, the petitioners were admitted to temporary bail, subject to conditions and clarifications, by the order dated 13.2.2004. The hearing of the applications was

adjourned to 15.6.2004 as suggested by the learned counsel for allowing to the parties sufficient time for working of the arrangement that was arrived at under the auspices of the Government. The hearing was adjourned, by joint request of the parties, from time to time thereafter till 13.8.2004 on which day the learned Public Prosecutor as well as the learned counsel for the complainant bank strongly objected to the grant of bail as also extension of the earlier order granting temporary bail. The applications were heard from time to time within the limited time available to the Court and, on 27.8.2004, the order not extending the temporary bail was made. Even thereafter, the hearing continued intermittently and the petitioners were treated as in judicial custody on condition of remaining personally present in the Court. On 24.9.2004, even after conclusion of the arguments, the last deal under the auspices of the government having admittedly failed, a fresh proposal for repayment to the bank was made on behalf of the petitioners and the hearing had to be adjourned for consideration of the proposal by the respondents. Ultimately, the order dated 29.9.2004 rejecting the applications of the petitioners was made for which detailed reasons are recorded herein.

3. Although the bail applications of the petitioners have been fully argued on merits for the first time, the bail applications of the other co-accused persons have been decided on merits by this Court by the detailed judgment in Mohammed Ali Pirbhai Dodhia Vs. State of Gujarat, . After dealing with similar arguments on behalf of the other accused persons, it has been concluded therein that a prima facie case of involvement of the petitioners of that case in the alleged offences, including the offences punishable under Sections 409 and 114 of the Indian Penal Code, was made out and accordingly applications of most of the petitioners were rejected. That judgment was carried in appeal and the criminal appeal was allowed by the Hon'ble Supreme Court by order dated 27.2.2004 of which the material part reads as under:

"Leave granted.

We notice from the order of the High Court dated 13.2.2004 the main accused in this case has since been granted bail upto 18.6.2004 with a view to make as much as recovery possible.

Learned counsel for the appellants in these appeals submits that since the main accused has been released on bail by a consent order of the High Court, the appellants herein also should be given the benefit. We find no reason why the appellants should not be given the benefit of the said concession given to the first accused. Even though the main accused is released only till 18.6.2003, we do not think the said condition should be imposed in this case so far as these appellants are concerned."

Obviously, the phrase "the main accused" in the above order refers to the petitioners herein. Therefore, the argument of the petitioners that the decision of this Court refusing bail to the other co-accused persons has been reversed by the

Hon"ble Supreme Court is misleading and, as the main beneficiary of the acts amounting to the alleged serious offences, the prima facie conclusions drawn in the aforesaid judgment apply to the petitioners. It was observed as under in paragraph 9 of the aforesaid judgment of this Court:

"9. It was apparent from bare reading of the F.I.R. that the Board of Directors and the officers of the Bank were in control of the funds of the bank and it was, prima facie, disposed and dealt with in a way that no prudent banker would do even in absence of clear guidelines of the Reserve Bank of India and other banking regulations. The result has been a special audit, closure of the bank's operations and loss of crores of rupees for the bank at least for the present. The F.I.R. lodged after audit of transactions of the complainant bank clearly alleges, with details of the modus operandi, deception, breach of trust and forgery in the matter of granting huge loans to accused Nos. 13 to 16. The minimum requirement of securing the debt by proper documentation have not only been overlooked, but by overwriting the figures, even larger loans than applied for were sanctioned, temporary advances to the tune of about 11 crores of rupees were given and bank guarantees to the tune of 9.96 crores of rupees were also provided for the benefit of a particular group of borrowers comprising of accused Nos. 13 to 16...."

The accused Nos. 13 to 16 referred hereinabove are the borrowers, including the petitioners and their company, loans to whom led the complainant bank into such financial mess that thousands and thousands of depositors and shareholders of the bank had to see cessation of the normal operation of the bank which is subsequently taken into liquidation. In view of the above background and in view of the fact that, by now, the investigation is completed and chargesheets dated 18.3.2003 and 5.5.2003 are already filed, a detailed discussion of the material appearing against the petitioners is neither necessary nor advisable except to the extent required for appreciating the main arguments of the parties. It has, however, to be noted at this stage that the main accused person, namely, Shri C.R. Patil, was shown as an absconding accused person in the first chargesheet dated 18.3.2003 and the offences alleged against the accused persons are punishable under Sections 408, 409, 420, 467, 468, 471, 120B, 34 and 114 of the Indian Penal Code.

4. It was argued on behalf of the petitioners that the petitioners were bona fide borrowers of the bank and huge loans were sanctioned to them and their companies on furnishing securities as a part of banking business and, therefore, prima facie case of involvement of the petitioners in any of the serious offences was not made out. Even assuming that some irregularities were committed in sanctioning loans to the petitioners or their companies, on the one hand the complainant bank had taken appropriate civil remedies on the basis of the same documents which are alleged to have been forged or concocted and on the other hand the petitioners have made strenuous and honest efforts to repay the amounts due to the bank by making all the properties pledged to the bank

available for sale by the bank. It was also submitted that the petitioners were bona fide businessmen having several other properties and the investigation having been completed, there was no likelihood of the evidence being tampered or of jumping the bail. It was vehemently argued that bail should not be denied to the petitioners merely on the assumption of complicity in the crimes allegedly committed by others who were, in the facts of the present cases, already released on bail. It was also pointed out on behalf of the petitioner in Criminal Misc. Application No. 5302 of 2003 that he had resigned on 29.7.2000 from the directorship of the loanee company before the huge loans were sanctioned to it and, therefore, having not derived any benefit from the alleged offences and having no criminal record, he should be released on bail.

4.1 The learned senior advocates appearing for the petitioners relied upon several judgments in support of their submissions. The judgment of the Supreme Court in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, was relied upon for the proposition that the object of bail was to secure the attendance of the accused at the trial and bail ought not to be refused or withheld for punishment. It is, however, also observed in that judgment that: "...the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. Any one single circumstance cannot be treated as of universal validity or as necessarily justifying the grant or refusal of bail." The judgment of this Court in *Bhagirathsinh Judeja Vs. State of Gujarat*, was relied upon for the proposition that the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment. The material consideration is whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The judgment in *Gudikanti Narasimhulu and Others Vs. Public Prosecutor, High Court of Andhra Pradesh*, was cited for the observation that the crucial power to refuse bail was a great trust exercisable not casually but judicially, with lively concern for the cost to the individual and the community. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law. The judgment of this Court in *Kalpesh Dineshchandra Jariwala Vs. State of Gujarat*, was cited for its analysis of the concept of bail. And, the judgment of the Supreme Court in *State of Rajasthan, Jaipur Vs. Balchand alias Baliay*, was relied upon for the proposition that the basic rule was to grant bail except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences, or intimidating witnesses and the like. The gravity of the offence or the heinousness of the crime has also to be taken into account by the Court.

5. It appears from the material placed on record in the form of the report of investigation, affidavits and the summary of facts, that the bank on whose behalf the F.I.R. dated 23.10.2002 was filed was a co-operative bank governed by the Banking Regulations Act, 1949, the Guidelines of the Reserve Bank of India, the

provisions of the Co-operative Societies Act and the Bye-laws framed thereunder. Upon loss of liquidity and discovery of serious irregularities in the bank, the Board of Directors of the bank was superseded and an Administrator was appointed on 2.9.2002. The F.I.R. was lodged on the basis of the report of Special Audit according to which serious offences were disclosed. The salient facts of the case which stand out are that the company, namely, Abhishek Estate Pvt. Ltd. ("AEPL" for short) of which the petitioners were directors had two accounts with the bank viz. Current A/c No. 5924 and Over Draft A/c No. 11. The Current Account was opened in August, 2000 by the directors of the company who were introduced by the then Managing Director of the bank, who is the accused No. 3 in the F.I.R. Thereafter, by an undated application in the prescribed form, a loan of Rs. 25 crores was sought and without such application being duly processed, a loan of Rs. 30 crores was sanctioned for the applicants within 15 days of the application. Thereafter, the Overdraft account was opened without undergoing the necessary formalities and under the facility extended and availed, a sum of Rs. 7 crores was transferred from the Overdraft A/c No. 11 to the other accounts operated by the petitioners. Out of the loan amounts sanctioned by the bank in favour of AEPL, a sum of Rs. 6,16,51,000/- appeared to have been paid by a pay order dated 23.2.2001 to the Gujarat Industrial Development Corporation (GIDC) towards the cost of land which the petitioners' company intended to take on lease. And, a bank guarantee of Rs. 9.36 crores also appeared to have been issued by the bank in December, 2000 in favour of the GIDC. All these financial transactions appeared to be in furtherance of a project for which AEPL had requested for allotment of land admeasuring 6 lakh sq. mtrs. on 1.5.2000 and obtained possession on 2.5.2000, whereas the lease deed was signed on 15.2.2001. Permission to mortgage such leasehold land was conveyed by letter dated 14.7.2000. A few very important words to facilitate the grant of loan appeared to have been added to the typed text by hand in the said letter dated 14.7.2000 of GIDC. Thus, in short, financial facility totalling to more than 39 crores of rupees was availed by AEPL from the complainant bank and a further loan was also obtained by way of overdraft by March 2001. By March 2002, further loan of Rs. 11 crores was advanced by the bank to the company of the petitioners and total lending of around Rs. 55.36 crores was shown to have been secured by demand promissory notes and letters of lien. It was pointed out from the record that even as the large parcel of land on the outskirts of Surat was being developed and a number of flats under the project of the petitioners were coming up, loans were specially sanctioned by the complainant bank in the name of allottees of such flats and, according to a statement of a former employee of the bank, the amounts of such loans were sanctioned and disbursed in collusion with the petitioners. It was pointed out from the record that the petitioners were operating total 12 accounts with the complainant bank in which entries were made and shown in such a fashion that repayments could be shown against the loans and overdues in some accounts. It was also pointed out from the investigation papers that the funds availed by way of a loan against the project were diverted to other firms of the petitioners and huge sums of cash

were withdrawn by the petitioners.

6. It was argued on the basis of the aforesaid material that the directors of the bank and the petitioners had, in collusion with each other and in clear violation of the banking regulations and the guidelines of the Reserve Bank of India, of which a copy was placed on record, siphoned away the funds of the bank to such an extent that the Reserve Bank of India had to initiate action u/s 35(A) of the Banking Regulation Act, 1949 and ultimately the licence of the bank was cancelled on 22.6.2004 and the bank was taken into liquidation with the consequences of almost 80000 depositors falling prey to the avarice of the accused persons. It was submitted on behalf of the respondents that the petitioners have not only wielded their influence in the GIDC and the complainant bank, but they have influenced the witnesses even after lodging of the F.I.R. insofar as the officers of GIDC have not fully co-operated in the investigation and important aspects of shady deals with the GIDC may never come to light. According to the letter dated 27/28.11.2002 of the Commissioner of Police, Surat, the market value of the lease hold land allotted to AEPL was Rs. 675/- per sq. mtr. whereas the GIDC had given away the land to AEPL at the rate of Rs. 205.50 per sq. mtr. It was submitted that upon the bank being taken into liquidation, the depositors may get relief through the Deposit Insurance and Credit Guarantee Corporation, but the accused persons causing so much loss to so many people could not be released on bail. Serious apprehensions of interference with the course of justice in the civil and criminal cases pending against the petitioners were expressed on behalf of the respondents. The argument that the petitioner in Cri. Misc. Application No. 5302 of 2003 that he had resigned from the directorship of the company could not stand scrutiny in view of his signature in the undated application for loan.

6.1 The learned Public Prosecutor relied upon the judgment of the Supreme Court in Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others, and the following pertinent observation made therein:

"The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a *perona non grata* whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in State of Gujarat Vs. Mohanlal Jitmalji

Porwal and Another,

It is also held in the above decision that when a person misappropriates to his own use the property that does not belong to him, the misappropriation is dishonest even though there was an intention to restore it at some future point of time. Some times, it so happens that with a view to create confidence, the repayments are made so that for the future transactions the money can be dishonestly misappropriated.

The judgment of this Court in NOORMOHMED JAMALBHAI LATIWALA v. STATE OF GUJARAT [2004 (2) GLR 355] was cited for the observation as under:

"10. In the present case also, if not national interest, but in view of the rampant white collar crimes in the field of co-operative banking business of the State, it can hardly be denied that it has adversely affected the economic conditions of the public at large in general and the class of depositors in particular whose life saving (sic) money is either deposited or whose livelihood is dependent on the income of interest."

The judgments of the Supreme Court in RAM PRATAP YADAV v. MITRA SEN YADAV and MANSAB ALI v. IRSAN AND ANR. reported in AIR 2002 SCW 4851 and AIR 2002 SCW 5391 were relied upon to emphasize that quantum of punishment for the offences alleged against the accused was relevant and the discretion to grant or refuse bail cannot be exercised in a casual and cavalier fashion.

7. The complainant bank, to the custodian of which notice was issued at the initial stage at the instance of the learned Public Prosecutor for co-ordination of the attempts at smooth recovery, was represented by an advocate. The advocate so allowed to appear for the bank even submitted that the investigation of the offences was faulty and incomplete and urged the Court to order fresh and further investigation by a special team; as though the case of the prosecution was weak and somewhat vacuous as it stood and much more evidence was required to be unearthed.

8. It is clear from the above discussion of facts and contentions that a prima facie case of siphoning of huge amounts of money from the complainant bank in the garb of loans is established against the accused persons and such systematic commission of the alleged offences was impossible without conspiracy and common intention and concerted efforts of the persons involved. There is also no doubt about the petitioners having wielded so much influence before and after the commission of the alleged offences that not only huge funds were made available to him, but the Government agencies had, after allotment of a vast area of land for the so-called housing project for the lower-income-group workmen, agreed to the conditions of the monies being realised and recovered for the bank while the petitioners remained on temporary bail without any recoveries being effected. Even the subsequent understanding and arrangement arrived at the highest level for recovery and repayment of Rs. 50 crores as against the much larger dues has not worked. The unfortunate reality of no

recoveries at all having been effected by the bank despite apparent surrender by the petitioners of all rights over a multitude of buildings and developed lands has to be accepted with deep anguish and inevitable flashes of enlightenment. Even as the prosecution as well as the bank remained in charge of the officers of the State Government and the matter had been handled at the highest level of the Chief Secretary of the State, time and indulgence obtained by joint requests and granted by the Court have only resulted in delaying the decision of the bail applications. While the petitioners appeared to have been negotiating for a better deal for themselves, the hapless depositors of the bank must have been looking askance in the hope of some relief or, initially, even possible revival of the bank. Thus, the picture that emerges is that while the accused persons charged with serious offences having devastating consequences for a large number of people enjoyed their liberties, the victims of the offences hardly had even a forum to voice their grievances.

9. The seriousness of the offences alleged against the accused persons has to be weighed also on the scale of human misery and consequences for the economy, the co-operative movement, and the loss of faith of the people in the co-operative banks and the rule of law. The Courts cannot be seen to be too anxious to protect the liberties of the accused while being completely oblivious of the plight and consternation of the victims of the offences. As it is repeatedly held in several judgments, public interest and trust and faith of the community in the system are important considerations in deciding the matter of bail. Taking a lenient view for the accused to ensure their liberty could be seen as though their rights, even under eclipse, are respected, dexterously defended and jealously guarded as against the shock and suffering of thousands of people who might have lost the savings of their lifetime and whose rights and liberties to use their own money are simply trampled upon reflecting the gravity of the offences alleged. Besides that, the apprehensions expressed by the learned Public Prosecutor about tampering of evidence and interference with the course of justice by the resourceful petitioners appear to be genuine and well-founded. In these facts and circumstances, the applications of the petitioners are rejected by the operative order dated 29.9.2004.

Rule is discharged in each of the applications.