(2004) 02 GUJ CK 0032

In the Gujarat High Court

Case No : Criminal Misc.Application No 2859, 10615 and 10616 of 2003

Dashrathbhai Bholidas Patel APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Banking Regulation Act, 1949 — Section 46
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120

Citation : (2005) 2 BC 406 : (2004) CriLJ 4369 : (2004) 3 GLR 1921

Hon'ble Judges : R.P. Dholakia, J

Bench : Single Bench

Advocate : S.B. Vakil, for Yogesh S. Lakhani and R.K. Mishra, for the Appellant; A.D. Oza, Public Prosecutor for Opponent No.1 and Rajeshwar J. Dave, for Opponent No. 1, K.G. Vakharia, FOR Tushar Mehta, for Opponent No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.P. Dholakia, J.—Rule. Mr.A.D.Oza, learned Public Prosecutor with r.R.J.Dave, learned counsel for the complainant and r.K.G.Vakharia, learned Senior Counsel for Mr.Tushar ehta, waive service of notice of rule on behalf of the espondent Nos.1 and 2 respectively.

2. These three applications have been filed under ec.439 of the Code of Criminal Procedure as they are in udicial custody in connection with Crime Register o.I-452 of 2002 registered with Naranpura Police Station or the alleged commission of offences punishable under Secs. 167, 406, 420, 467, 468 and 471 read with 120-B of he Indian Penal Code and Sec. 46 of the banking egulation Act.

3. As all these applications arise out of a common rime register number of Naranpura Police Station, all hese applications are heard together and are being ecided by this common order.

4. The case in short is that a complaint was filed y the complainant on 30-8-2002 alleging that the Board f Directors and other office bearers of Visnagar Nagrik o-Operative Bank Limited committed financial rregularities in collusion with the applicants and their llied companies to the tune of Rs.46.00 crores resulting nto huge financial loss to the bank by committing breach f directions given by the Reserve Bank of India and rovisions of Banking Regulation Act and transactions ere done by the bank as well as the applicants. Said omplaint was registered as Naranpura Police Station rime Register No.I-452 of 2002 and police started nvestigation.

5. As far as applicant of Cri.Misc.Appln.No.2859 of 2003 is concerned, he has been taken into judicial ustody on 16-3-2003. He has preferred ri.Misc.Appln.No.614 of 2003 in the Court of learned ity and Sessions Judge wherein after giving opportunity o the parties concerned, learned Addl. Sessions Judge, ourt No.9, Ahmedabad City, rejected the same on merits n 9-4-2003.

6. As far as applicants of Cri.Misc.Appln.No.10615 nd 10616 of 2003 are concerned, they have been taken nto judicial custody on 3-12-2003. They have preferred ri.Misc.Appln.Nos.3208 and 3209 of 2003 respectively in he Court of learned City and Sessions Judge wherein fter giving opportunity to the parties concerned, earned Addl. Sessions Judge, Ahmedabad City, rejected he same on merits vide common order dated 18-12-2003.

7. Thereafter, present applications have been filed y the applicants. During the pendency and final isposal of these applications, applicant of ri.Misc.Appln.No.2859 of 2003 has prayed for temporary ail wherein this Court vide order dated 8-5-2003 granted emporary bail for a period of three months on condition o deposit an amount of Rs.3.00 crores. Said order was assed with the consent of Mr.A.D.Oza, learned Public rosecutor for the State, Mr.R.J.Dave, learned counsel or original complainant bank and Mr.B.B.Naik, learned ounsel appearing for the Depositors Association. owever, these applications could not be disposed of till ate though matters have been moved in various Courts as er the roster. Had the learned counsels for the espective parties been keen in proceeding with the atters, same could have been disposed of earlier. ltimately, as per the present roster, again these atters have come up before this Court.

8. Heard learned Senior Counsel, Mr.S.B.Vakil for r.Y.S.Lakhani for the applicants, Mr.A.D.Oza, learned ublic Prosecutor with Mr.R.J.Dave, learned Standing ounsel for the original complainant bank for the pponent No.1 and learned Senior Counsel, Mr.K.G.Vakharia or Mr.Tushar Mehta for the respondent No.2-Ahmedabad istrict Co-Operative Bank Ltd. in all these matters.

9. It is mainly submitted on behalf of the pplicants that they are Income Tax payers who are ngaged in the business of land development, construction nd investment and managing number of companies popularly nown as Pioneer Group of Companies. The said group of ompanies have availed financial assistance from the omplainant bank by executing necessary security ocuments

as required by the bank of the properties escribed in these applications and furnishing reports of government approved valuers. Since the properties ffered were not meeting with the requirements of the ank, further securities were also offered. Inspite of evere financial crisis, the said group of companies have ontinued to repay the instalments as narrated in these pplications. When the complainant bank was declared as eak Bank by the Reserve Bank of India on 4-2-2002, ransfer of mortgage rights were signed by the applicants nd their family members as confirming party and executed etween the bank and the Ahmedabad District Co-Operative ank Ltd. and thereby the bank could obtain cash credit o the extent of Rs.75.00 crores from the Ahmedabad istrict Co.Op.Bank Ltd. as against the loan of Rs.37.50 rores advanced against the Pioneer Group of Companies. nspite of this, since the complainant bank suffered cash runch, it asked the Pioneer Group of Companies to iquidate the dues under the financial assistance granted y it and a one time settlement was arrived at between he parties after due deliberations. The complainant has lso filed different summary suits in the Board of ominees Court for recovery of outstanding dues. It is urther submitted that, as per the understanding, the pplicants'' group of companies has to pay only Rs.26.50 rores and now only Rs.13.20 crores remain outstanding to e paid by the applicants. As against that, there are umber of immovable properties mortgaged with the bank by he applicants which, according to the learned senior ounsel, amounting to more than 2 and 1/2 to 3 times the mount of outstanding dues.

10. Further, it is submitted that the applicant of ri.Misc.Appln.No.2859 of 2003 has already deposited s.3.00 crores directly with the complainant bank in ompliance of the directions contained in the order dated 8-5-2003 at the time of releasing the applicant on emporary bail. According to learned senior counsel, as er the say of the prosecution, total advances made to he applicants are totalling to Rs.37.50 crores. When he complainant approached the Board of Nominees Court, he applicants were directed to pay Rs.16.20 crores which as been confirmed by the State Co-Operative Tribunal. s per the argument advanced by the learned counsel for he applicants, out of which, during the pendency of hese applications, applicants have paid substantial mount and are ready and willing to pay the remaining mount. In these circumstances, it is submitted that the pplicants may be released on bail for the purpose of ulfilling the undertaking filed in this Court. For hat, according to him, even complainant bank is also greeing as the ultimate intention of the bank is to see hat all its dues are recovered. It is submitted that he approach of the bank at the time of deciding the atter before court below was different while at present he complainant bank is also eager in getting its money ack and, therefore, the bank has also no objection in eleasing the applicants on bail. It is further ubmitted that in this matter, practically many of the ccused including the real culprits have been released ither by this Court or by the court below and, herefore, applicants may also be released on bail reating on par with them. Further, the investigation is ver and charge-sheet is submitted since long and the ase is based only on documentary evidence and, herefore,

tampering with the evidence or winning over he witnesses may not arise at all still however, Court an also keep in mind the safety of the complainant bank y imposing certain stringent conditions so as to see hat evidences are not tampered with or witnesses are won ver. It is a general complaint and still investigation ua certain other accused is going on and hence, trial ill take its own course and therefore, it is requested hat applicants may not be kept behind bars as an ndertrial prisoners. It is submitted that the pplicants are genuine borrowers who have entered into enuine loan transactions with the bank and have tried to epay the loan but due to change in circumstances it ould not be repaid and, therefore, they may not be ompared with other borrowers who have obtained loans in ollusion with the Board of directors and office bearers f the bank by submitting forged documents. Moreover, it s submitted that they are neither Directors nor office earers of the bank and hence, they may also not be reated on par with Chairman, Managing Director, etc. of he bank but be treated as simple borrowers. It is also ubmitted that in such type of cases, many of the accused ersons are being released on bail by this Court as well s the court below based on the assurance or undertaking iven by them to the Court or the bank as to the epayment schedule and hence also, it is prayed that they ay be released on bail.

11. Learned Public Prosecutor, Mr.A.D.Oza, has mainly bjected granting of these applications contending that pplicants and their allied companies have obtained loans o the tune of Rs.37.50 crores from the complainant bank nd they are the major borrowers and because of their egligence in repaying the loan, the bank has gone into iquidation. Investigation is as yet not over qua other ccused and hence, if the applicants are released on ail, they will certainly interfere in the investigation eing influential persons of the society. Moreover, the onsent terms arrived at between the parties to repay the utstanding amount during the pendency of trial subject o its final outcome are not sufficient. It is, herefore, requested that these applications be rejected.

12. The argument advanced by the learned counsel ppearing for the original complainant bank, Mr.R.J.Dave, s that pursuant to the consent terms purshis, Ahmedabad istrict Co-Operative Bank is already having decree to he tune of Rs.21.00 crores and odd in its favour passed gainst the complainant bank wherein complainant bank has emortgaged properties of the applicants and now consent erms have been arrived at. In these circumstances, his ank has no objection if the applicants are released on ail with certain terms and conditions keeping in mind he larger interest.

13. Whereas learned Senior Counsel, Mr.K.G.Vakharia or Mr.Tushar Mehta, appearing on behalf of the espondent No.2-Ahmdabad District Co-Operative Bank Ltd., as mainly argued that the respondent No.2 being the ecured creditor has no objection if the applicants are eleased on bail but the amount deposited by the pplicant pursuant to the order dated 8-5-2003 passed hile granting temporary bail to the applicant of ri.Misc.Appln.No.2859 of 2003 may be ordered to be given

o the respondent No.2. He has shown me the relevant aragraph No.5 of the said order which is as under:

"The complainant Bank is hereby directed not to part with the amount which may be deposited by the petitioner in any manner and deposit the same in a separate account, till further orders of this Court."

He has also shown me term (3) of the consent terms educed in writing by way of undertaking filed in Special ivil Application No.332 of 2004 by the applicants. Term (3) reads as under:

"(3) The petitioners agree and undertake to order of this Hon''ble Court directing the Visnagar Bank to transfer Rs.3 crores to Ahmedabad District Co-operative Bank which is at present lying with Visnagar bank which is paid by the petitioner No.2 as per the order passed in Criminal Miscellaneous Application No.2859 of 2003."

It is his contention that since the respondent No.2 is he secured creditor and as agreed vide term (3) above, he respondent No.2 is entitled to get the aforereferred mount and hence, necessary order may be passed to that ffect.

14. Before proceeding with the matter, it is required o be kept in mind that in a petition being Special Civil pplication No.332 of 2004 preferred on behalf of the ebtors during the pendency of these applications, the pplicant of Cri.Misc.Appln.No.10615 of 2003 and others ave filed an undertaking pursuant to the consent terms rrived at between the parties. The undertaking reads hus:

"The petitioners with the consent of the loanees, file this undertaking before this Honourable Court and beg to undertake to this Hon''ble Court as under:-

(1) The petitioners agree that the ADC Bank is entitled to encash the security and adjust the payment made by us towards the amount due from Visnagar Nagrik Sahakari Bank and on this payment, our security stands released.

(2)The petitioners agree and undertake to pay to the Ahmedabad District Co-operative Bank Ltd. a total sum of Rs.16.20 crores towards the discharge of the securities of lands at Godhavi and Thaltej given by Visnagar Co.Op.Bank Ltd. against their borrowing from Ahmedabad District Co-operative Bank.

(3)The petitioners agree and undertake to order of this Hon''ble Court directing the Visnagar Bank to transfer Rs.3 crores to Ahmedabad District Co-operative Bank which is at present lying with Visnagar bank which is paid by the petitioner No.2 as per the order passed in Criminal Miscellaneous Application No.2859 of 2003.

(4) That the entire land situated at Village Thaltej admeasuring 70000 sq.yds. mortgaged to Visnagar bank and assigned to Ahmedabad District Co-operative Bank by Visnagar Bank shall be allowed to be paid by owner/petitioners thereof. Both the Banks shall issue No Objection Certificate in favour of petitioners for the purpose of appropriate documentation. The petitioner agree to make the

payment of balance amount i.e. to say Rs.13.20 crores as under:-

(a)The amount of Rs.5 crores shall be paid by petitioners to ADC Bank before 31st March, 2004 as under:-

i)Payment of Rs.1 crore 10/2/2004

ii)Payment of Rs.1 crore 28/2/2004

iii)Payment of Rs.1 crore 10/3/2004

iv)Payment of Rs.1 crore 20/3/2004

v) Payment of Rs.1 crore 30/3/2004

The petitioners shall issue the post dated cheques for the amount referred above totalling Rs.5.00 crores in the name of The Ahmedabad District Co-operative bank with an undertaking to this Hon''ble Court that the same will be honoured on their respective due dates. The post-dated cheques will be issued within 10 days from today. The credit of the same shall be given by the Visnagar Bank in the loan account of 13 loanees after the ADC Banks gives credit advice to Visnagar Bank.

(C) That the petitioners further agree and undertake to this Hon''ble Court that they shall pay the remaining amount of Rs.8.20 crores to the Ahmedabad District Co-op. Bank subject to both banks issuing No Objection Certificate in respect of sale of agricultural land at Godhavi Taluka Sanand and entire land of Bodakdev which is mortgaged to the Banks. The said amount of Rs.8.20 crores shall be aid within a period of 12 months from 1st April, 2004 to 31st March, 2005 in monthly instalments of Rs.65 lacs for 11 months and last instalment of Rs.115 lacs. The petitioners will give the post dated cheques as aforesaid in the name of Ahmedabad District Co-operative Bank totalling to Rs.8.20 crores drawn in the name of Ahmedabad District Co-operative Bank within 10 days from today with an undertaking that the same shall be honoured on their respective due dates. however, the credit for the same shall be given by Visnagar bank in the loan account of 13 loanees.

(D) The petitioners file this undertaking as an understanding given by the respondent Banks that the Ahmedabad District Co-operative Bank and Visnagar Bank, on payment of Rs.16.20 crores as above shall release their charge on mortgaged property of land situated at Village Thaltej admeasuring 70000 sq.yds. mortgaged to Visnagar Bank and assigned to ADC Bank by Visnagar Bank, on payment of entire amount of Rs.16.20 crores as agreed upon by the petitioners in this undertaking shall release and leave their charge over the entire agriculture land which is mortgaged to the Bank at Godhavi, Sanand Taluka and the entire land situated at Bodakdev forthwith immediately and unconditionally.

2. This undertaking given to the Court is without prejudice to their rights and contentions against Visnagar Bank and also without prejudice to the pending Civil and Criminal proceedings before the board of Nominees Court and Civil Court

against and/or filed by Visnagar Bank and other legal proceedings pending before the appropriate court in respect to the dispute in question. No dispute, however, persists or survives between the petitioners, the loanees and the ADC Bank on compliance with all the terms of this undertaking.

3. This is final settlement so far as the dispute between the petitioners and ADC Bank is concerned. The petitioners and the loanees agree and undertake to withdraw all proceedings including the suit for damages against the Ahmedabad District Co-operative Bank and not to file any further proceedings.

The present undertaking is filed on behalf of all the petitioners and 13 loanees of Visnagar Bank and the signatory is the person who is duly authorised to file this undertaking on their behalf and he undertakes to file the undertakings of other petitioners and loanees within 15 days from today in this Hon''ble Court."

15. In view of the aforesaid undertaking filed in the atter, this Court (Coram: K.M.Mehta,J.) vide order ated 20-1-2004 disposed of the said Special Civil pplication. Vide para 3 of the order, the Court has irected the petitioner to act as per the undertaking iven to the Court.

16. It is also required to be kept in mind that even he applicants were ready and willing to repay the amount n question while passing the order dated 9-4-2003 by the earned Addl. City Sessions Judge, Ahmedabad, in ri.Misc.Appln.No.614 of 2003 and hence, the learned udge on page 18 of its order has observed as under:

"It is though ensured that even if the land does not fetch the amount undertaken the same shall be paid in 18 months, as the Godhavi land given towards securities and the part of it being demanded back by the applicant is as submitted to the Court is barren and saleability appears to be a difficult proposition as the same is situated at a distance and that precisely was the reason when land at Thaltej was given towards security instead.

Keeping the applicant under the custody may not serve the useful purpose as the Court case would take a long time to proceed and trial may also be protracted with voluminous evidence but, the complainant bank in the instant case has on one hand though welcome any payment that may be received to increase its liquidity, it has also resisted the bail application, not to mention absence of no objection endorsement to the grant of bail to the applicant. Not that the Court needs to depend its decision on the will of the complainant party but, in the face of resistance of the complainant, that aspect needs to be taken into account."

17. It is also required to be borne in mind that as er the consent terms, the applicant of ri.Misc.Appln.No.10615 of 2003 and others have paid the mount of Rs.3.00 crores within the stipulated period of hree months. It may be stated that charge-sheet has een filed since long qua applicant of ri.Misc.Appln.No.2859 of 2003 whereas supplementary harge-sheets have been filed qua other applicants.

18. For the purpose of deciding these matters, ollowing points are kept in mind by this Court. It is evealed from the record and proceedings and the rguments

advanced by the learned counsel for the espective parties that applicants, who are managing the ffairs of Pioneer Group of Companies, have obtained oans totalling Rs.37.50 crores for the period ranging etween August, 1998 and March, 2000 and part of the oans has been repaid by them. However, facts remain hat Board of Directors of the bank were dissolved on 13-8-2002 when he bank has become weak. By the time when omplaint was filed by the complainant on 30-8-2002, the forereferred amount remained unpaid by the Pioneer Group f Companies. Hence, bank has filed civil suit being avad Suit in the Board of Nominees Court wherefrom they ave obtained various protective orders for recovering ts dues if decree would be passed in their favour in uture. At the time of permitting the applicants to efend in the suit, condition of depositing Rs.16.20 rores was imposed and which has been confirmed by the tate Co-Operative Tribunal.

19. It is prima-facie established that in all s.13.30 crores have been paid by the applicants as is eflected in the order passed by this Court in Special ivil Application No.332 of 2004 pursuant to an ndertaking filed by the applicant of ri.Misc.Appln.No.2859 of 2003 and others in that matter. s per the say of the applicants, amount outstanding is o the tune of Rs.26.50 crores while as per the say of he bank, it is more than Rs.37.50 crores. Even various ecurities are also pledged with the bank by the pplicants. Investigation qua present applicants is over ince long and respective charge sheet and supplementary harge sheets have been filed qua the applicants. owever, investigation qua some other accused is as yet ot completed and, therefore, there is rare possibility f finally disposing of criminal case in the near future. ost of the evidences are documentary in nature and same re with the investigating agency forming part of harge-sheet and hence, possibility of tampering with the vidence and trying to winning over the witnesses may not rise. However, if some conditions such as restraining hem from entering into the premises of the bank etc. re imposed, ends of justice would be met. It is to be oted that applicants are in judicial custody since long nd if they are not released on bail, it will be a retrial conviction and as per the settled law, it cannot e done. Moreover, various civil proceedings are going n between the parties and various orders securing the uture decrees have been obtained by the complainant ank.

20. It may be stated here that due to explosion of arious scams in the Co-operative Banks in the State of ujarat, many of the co-operative banks have gone into iquidation as a consequence of which, poor depositors ave suffered a lot. It is seen that the apex body and ffice bearers of the bank had not taken any reasonable are while advancing loans and hence, when the banks have one into liquidation, can the genuine borrowers be ompelled to pay all their dues at a stretch as a ondition precedent for releasing them on bail and each nd every alleged scam is required to be weighed by the ourt independently after examining the nature of ransaction, period of loan taken, repayment schedule, tc. and decided independently keeping in mind all the spects?

21. Having regard to the above, it prima-facie ppears that in the present case, various loans have been btained by the applicants for their allied group of ompanies and part repayment has been made by them and hen the bank became weak, it was found that Rs.37.50 rores were outstanding from the applicants'' group of ompanies for which, civil as well as criminal roceedings are initiated and various orders are obtained y the bank for the purpose of protecting its interest. ver and above, even during the pendency of the criminal roceedings, Rs.13.30 crores have been repaid by the pplicants to the complainant bank and they have agreed o repay further amount of Rs.13.20 crores to the bank nd it appears that as yet civil disputes have not inally come to a close. It is to be noted that pplicants are not on the Board of Directors or are ffice bearers of the bank but appear to be borrowers and ence, their case cannot be equated with them and has to e treated differently.

22. Hence, this Court cannot prima-facie agree with he argument advanced by the learned Public Prosecutor hat applicants cannot be released on bail till the whole oans are repaid by them. I may say that person cannot e shotgunned at a gunpoint by saying that unless the ull amount taken as advances is repaid, he may not be eleased on bail. While passing the order, Court should eep various other aspects of the matter also in mind and annot allow the matters to be decided at the desire or ercy of Public Prosecutor. However, Court should decide he matters depending upon the facts and circumstances of each case. It is required to be noted that other accused ncluding Directors and other borrowers have been eleased on bail by this Court as well as the trial Court nd, therefore, the present applicants are entitled to be eleased on bail even on the ground of parity.

23. As far as the request by the learned Senior ounsel for the respondent No.2 for ordering the amount eposited by he applicant pursuant to the order dated 8-5-2003 passed at the time of granting temporary bail to he applicant of Cri.Misc.Appln.No.2859 of 2003 to be aid to the respondent No.2 is concerned, this Court ould not be able to order for the same more particularly n these matters filed for bail under Sec.439 of the Code f Criminal Procedure even if they are legally entitled eing secured creditors. Since these are the amounts aid by the applicants towards their outstanding dues and re lying in a separate account, the concerned bank is at iberty to deal with the same as per its rules and egulations.

24. Considering the submissions made on behalf of the arties, and having regard to the circumstances and facts f the case, these applications are allowed and the pplicants are ordered to be released on bail in onnection with Crime Register No.I-452 of 2002 egistered with Naranpura Police Station for the offences lleged against them in these applications on each of hem executing a bond of Rs.50,000/-(Rupees Fifty housand only) each with one surety each of the like mount to the satisfaction of the lower Court and subject o the conditions that shall,)

a)not take undue advantage of liberty or abuse their liberty;

b) not try to tamper or pressurize the prosecution witnesses or complainant in any manner;

c) maintain law and order and should co-operate the investigating officers;

d) not act in a manner injurious to the interest of the prosecution;

e) furnish the present and permanent address of their residence to the I.O. and also to the Court at the time of execution of the bond and shall not change the residence without prior permission of this Court;

f) not enter into the premises of the bank without prior permission of the bank or the court except for repayment of the loan as per the consent terms;

g) mark their presence before the concerned Police Station once in a month more particularly between 1st and 10th of the month between 10.00 a.m. and 2.00 p.m. for twelve months;

h) not leave the limit of State of Gujarat without prior permission of the Court;

i) surrender their passport, if any, within a week to the lower Court; and

j) file an undertaking to the effect that they shall abide by the consent terms filed by the applicant and others in Special Civil Application No.332 of 2004. In case of committing any breach of consent terms, otherside is at liberty to pray for cancellation of bail.

25. If breach of any of the above conditions is ommitted, the Sessions Judge concerned will be free to ssue warrant or take appropriate action in the matter.

26. Bail before the lower Court having jurisdiction ry the case.

27. Rule is made absolute. Direct service is ermitted.

28. The observations by this Court being prima-facie nes made for the purpose of deciding these matters shall ot prejudice the parties in trial.

29. Office is directed to place a copy in each atter.

