

**(2003) 11 GUJ CK 0034**  
**In the Gujarat High Court**

**Case No :** Criminal Miscellaneous Application No. 5464 of 2003

Dilubha @ Dilaversinh

APPELLANT

Vs

The State of Gujarat

RESPONDENT

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**Date of Decision :** 25-11-2003

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 439  
Penal Code, 1860 (IPC) — Section 34, 379, 409, 411, 413

**Citation :** (2003) 11 GUJ CK 0034

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

**Bench :** Single Bench

**Advocate :** Yogesh S. Lakhani, for the Appellant; Arun D. Oza, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

D.H. Waghela, J.—This application for regular bail u/s 439 of the Code of Criminal Procedure Code is filed after rejection, by an elaborate

judgment of the learned Additional Sessions Judge, Gandhidham, of an application for similar relief. The petitioner is arrested on 5.2.2003 in

connection with the offences reported by the F.I.R. dated 3.1.2003 registered as C.R. No.1 of 2003 wherein offences punishable under sections

409 and 379 of the Indian Penal Code were alleged against one Labh Shankar Rajgor insofar as 6000 galvanized sheets entrusted for the

earthquake relief were stolen. The Deputy Mamlatdar (Earthquake), Bhachau, Kutch had reported to the Police Sub Inspector that 16,539

galvanized sheets were entrusted to a co-operative society, out of which, 6000 sheets of approximate value of Rs.18,00,000/- were stolen and

hence the offence was required to be registered. A report about loss of these relief material was made by the Secretary of the co-operative society

itself which was entrusted with the work of storing and distributing the material. By now, the chargesheet is filed and investigation, as far as the petitioner is concerned, appears to have been completed with the remarkable fact that the person accused in the F.I.R. itself is stated in the chargesheet to be absconding and, as against him, the investigation is stated to be still going on.

2. Against the above backdrop of broad facts, the bail application was pressed mainly on the grounds that the chargesheet alleges against the petitioner and other co-accused persons offences punishable under sections 379, 411, 413 and 34 of the Indian Penal Code out of which only the offence of theft punishable u/s 379 could be properly alleged against the petitioner. It was on that basis argued that the offence was punishable with imprisonment for a maximum term of three years, it was triable by Judicial Magistrate, First Class and that in view of incarceration of the petitioner for more than nine months, he ought to be immediately released on bail. It was also contended that the stolen property was not recovered from the petitioner, that prima facie case was not made out against him and that the main accused person named in the F.I.R. was not even being arrested for full and proper investigation.

3. It was also submitted that the other accused persons were already released on bail and the petitioner was entitled to be released even on the ground of parity.

4. There is no dispute about the fact that a huge quantity of relief material, weighing in tons, has been stolen and that could be done only in a systematic manner by the persons who could ensure its distribution in such manner that the stolen property could not even be fully recovered. It also appears that the material was stored opposite or near the house of the petitioner and it was removed from there. It is revealed during the course of investigation and from the statements of eye witnesses, namely, Jayendrabhai Maganbhai, Raiji Bachhu, Babulal Bhanaji and the absconding accused Labhshankar Velji that the galvanized sheets were removed by tractor No.GJ-12-H-8293 of the petitioner and at his instance with the help of other co-accused. Some of the galvanized sheets have been recovered from the persons to whom they were supplied by or through the petitioner. Thus, in short, a prima face case of systematic theft on a

massive scale of relief material meant for the people bereaved by earthquake, criminal misappropriation and dealing in stolen property by a group of persons led by the petitioner is made out. It is also brought to the notice of this Court by an affidavit of the Police Inspector of Aadhoi Police Station that the petitioner was earlier also involved in similar type of offence registered as C.R.No.I-24 of 2001 with the same police station in 2001 and the petitioner is chargesheeted as the sole accused person in that case for the offences punishable under sections 409 and 114 of the Indian Penal Code. It is also deposed that another offence registered with the same police station as C.R. No.I-90 of 2002 is awaiting further investigation while the investigation is stayed by order dated 13.9.2002 of this Court in Criminal Misc. Application No.625 of 2002 wherein the petitioner figures as being at the relevant time the secretary of the co-operative society to which relief material was entrusted. It also appears from the statement of witnesses that the petitioner is an influential person who could intimidate or influence the witnesses. In these facts and circumstances, it is not proper to exercise the discretion of this Court in favour of the petitioner.

5. The learned counsel for the petitioner relied upon several judgments of various High Courts and the Supreme Court in support of his submissions. The judgment of the Andhra Pradesh High Court in T.V. Sarma Vs. Smt. Turgakamala Devi and Others, was relied upon to submit that, if the investigation into the offences alleged against a group of persons was continuing, as deposed for the prosecution in this case, the chargesheet filed against the petitioner was only a preliminary chargesheet and, in such circumstances, the petitioner was entitled to default bail under the provisions of section 167 of the Code. That submission was sought to be further buttressed by the judgment of the Kerala High Court in P.V. Vijayaraghavan and Others Vs. C.B.I. and Another, and the judgment of the Delhi High Court in HARICHAND v. THE STATE [1977 Cri.L.J. 263] which is not the full text of the judgment. The learned Public Prosecutor countered this submission with the contention that the investigation was complete as far as the petitioner was concerned and the right of the prosecution to continue further investigation still subsisted by virtue of the provisions of sub-section (8) of section 173 of the Cr.P.C.

6. Learned counsel Mr.Lakhani also relied upon the orders and judgments of the Supreme Court in Gurcharan Singh v. State [AIR 1978 SC 179],

Sunil K. Sinha Vs. State of Bihar through S.P. CBI, , Dr. Jagannath Mishra Vs. C.B.I., , 2002 (1) PLJR 63 (SC) , and Mehmood Mohammed

Sayeed Vs. State of Maharashtra, , to submit that, in view of the nature of offences alleged against the petitioner, the period for which the

petitioner was in jail and the likelihood of trial taking a long time, the petitioner was required to be released on bail. However, in view of the

aforesaid facts and circumstances, it is neither in the interest of justice nor in the interest of investigation or prosecution that the petitioner should be

released on bail at this stage. It is high time that cases of misappropriation and siphoning of the material meant for poor people in distress are

viewed seriously and prosecuted properly so as to instill fear and respect for the rule of law. The application is, therefore, rejected. Notice is

discharged.