

(2010) 10 GUJ CK 0013

In the Gujarat High Court

Case No : Misc. Criminal Application No. 11415 of 2010

Dipak Subhashchandra Mehta

APPELLANT

Vs

Central Bureau of Investigation-Banking and Security Fraud
and Another

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 467, 468

Citation : (2011) 52 GLR 324 : (2011) 8 RCR(Criminal) 2977

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : B.B. Naik and N.D. Nanavati and A.J. Yagnik, for the Appellant; Y.N. Ravani, for Respondent No. 1., Manisha Lavkumar Shah, Assistant Public Prosecutor for Respondent No. 2. and Pranav Desai, for Original Complainant, for the Respondent

Judgement

Rajesh H. Shukla, J.—The present application has been filed by the applicant-accused for grant of regular bail u/s 439 of the Code of Criminal Procedure after the charge-sheet is filed.

2. The applicant-accused is charged with having committed offences under Sections 406, 420, 467, 468, 471 and 120B of I.P.C. for which F.I.R. being B.S. and F.C./MUM. bearing No. 1(E)/2010, has been registered with B.I.-Mumbai.

3. Learned Sr. Counsel Mr. B.B. Naik as well as learned Sr. Counsel Mr. N.D. Nanavati appearing with learned Advocate Mr. A.J. Yagnik have made submissions at length and learned Counsel Mr. Y.N. Ravani appearing for C.B.I. and learned Counsel Mr. Pranav Desai appearing for the complainant-Bank have also been heard.

4. Learned Sr. Counsel Mr. Naik has referred to the nature of allegations with reference to the history of the litigation and the details about the advances made

from time to time by the Bank. Learned Sr. Counsel Mr. Naik submitted that the facilities were given by the Bank and the transactions are as back as in 1997 and up to 2006 there was no problem. He submitted that a consortium of Banks, where S.B.I, was the lead Bank, has found irregularities and in fact the proceedings were filed before the D.R.T. and even at that time no allegations for the alleged offences of fraud or cheating have been made.

5. Learned Sr. Counsel Mr. Naik submitted that it is a case of commercial transactions where there is a failure in repayment due to various circumstances, and therefore, filing of the complaint at this stage is only to cause harassment and pressure. Learned Sr. Counsel Mr. Naik submitted that the assets have been also seized under the Securitisation Act and referring to the F.I.R. which is lodged in 2010 he submitted that the present application for bail may be considered as now the charge-sheet has been filed, the documents are seized and the entire case is based on documentary evidence and the witnesses are only of the C.B.I. or the Bank officers, and therefore, there is no question of tampering with the evidence or witnesses.

6. Learned Sr. Counsel Mr. Naik has also referred to the provisions of Sections 467, 468, 471 and submitted that these are regarding forgery and submitted that these provisions would not be attracted. He emphasized the role of the applicant-accused and submitted that it is not even the case of the investigating agency-C.B.I. that the goods have not been exported after having taken necessary benefits under the scheme of export incentives of the Export Credit and Guarantee Corporation. He, therefore, submitted that the alleged offences under Sections 467, 468, 471 are not attracted and the present application may be allowed.

7. Learned Sr. Counsel Mr. Naik also submitted referring to various details that the advances have been granted in routine course on the basis of the procedure followed, and therefore, merely because there is a default in repayment the alleged offences would not be attracted. He also submitted that when the charge-sheet has been filed, the present application may be allowed.

8. Learned Counsel Mr. Ravani referred to the paper-book including the F.I.R. and other papers and pointedly referred to the manner in which well-designed systematic fraud has been committed by the accused. He submitted that having obtained the benefit under the scheme of the Central Government for export incentives and on that basis having obtained huge finances from various Banks, the Banks are duped to the tune of Rs. 500 crores. He, therefore, submitted that the submission that the provisions of Sections 467, 468, 481 are not attracted cannot be accepted in light of the material and evidence at this stage. He submitted that the charge-sheet itself reveals as to how the funds have been diverted or siphoned off from one firm or another in the name of the so-called business incentive policies for the export, and having taken such advantage, the same documents have been produced before two or three Banks for the purpose of advances. He, therefore, submitted that it is not only the Banks but the

Government schemes have also been exploited for siphoning off the money resulting in huge loss to the Banks to the extent of Rs. 500 crores.

9. Learned Counsel Mr. Ravani further submitted that the submission with regard to other proceedings under the D.R.T. and/or the civil suit would not be a relevant consideration as it cannot be said that the dispute is simply of a civil nature looking to the systematic design in which the Banks have been defrauded. He submitted that a consortium of 26 Banks have been formed with S.B.I. as the lead Bank and he referred to the details of the huge amount involved in the alleged fraud and submitted that the submission made by the learned Counsel for the applicant cannot be accepted at this stage.

10. For that purpose, he also referred to the affidavit-in-reply filed by the C.B.I. and pointedly emphasized that the accused persons have cheated about 23 Banks and the investigation has revealed that the fraud amount is more than Rs. 500 crores. He also referred to the manner in which the entire operations have been carried out. He, therefore, submitted that the present application may not be entertained. He submitted that it is not merely a failure of business commitment, but it is a well designed fraud of huge amount on various Banks resulting in duping the Banks and the public money. He, therefore, submitted that merely because some proceedings are taken under the D.R.T. Act or suit has been filed would not be relevant as for the same transaction more than one remedy, that is, civil and criminal, both options could be exercised and the recovery part is a civil consequence whereas the present complaint for the offences suggest about mens rea and the criminal liability for the offences. He, therefore, submitted that the present application may not be entertained.

11. Learned Counsel Mr. Pranav Desai referred to the affidavit filed on behalf of the original complainant, opponent No. 3, and supported the submissions made by learned Counsel Mr. Ravani for the C.B.I. He pointedly referred to the affidavit particularly Paras 7 and 8 and submitted that how in the name of different firms amounts have been diverted which has gone back to the accounts of the applicant herein. He further submitted that as stated in detail in the charge-sheet as well as in this affidavit, same documents have been produced before two or three Banks and he emphasized that false and forged export contract was produced and believing it to be genuine the complainant-Bank made advances to the tune of Rs. 9.7 crores and the accused persons utilized the credit for making payment to Marvel Impex. Out of the total amount of Rs. 9.7 crores an amount of Rs. 5.15 crores were paid to the firm during August, 2006 to September, 2006. The said firm had an account with Union Bank of India, Mumbai which was dealing in diamonds and bullion. Thus, funds have been utilised for different purposes, and thereby, fraudulently duped the Bank. He further submitted that similarly, as clarified in Para 9, L.Cs. were produced before one Bank and also the bills have been discounted in the name of M/s. Well Worth Overseas Ltd. which was having two accounts with Kalupur Commercial Bank and the account was operated only to siphon off the amount.

12. Therefore, learned Counsel Mr. Desai submitted that considering the magnitude of the amount involved and also the well-designed systematic fraud played on various Banks, as revealed in the investigation made by the C.B.I., the present application may not be entertained.

13. Learned Sr. Counsel Mr. Naik again referred to the facts to emphasise his submissions with regard to the fact that the ingredients for the alleged offences cannot be said to have been fulfilled, and therefore, the same would not be attracted. He also made a reference to the other proceedings in detail and further emphasized that as the investigation is over and the charge-sheet is filed and the case is based on documentary evidence, the present application may be allowed.

14. In rejoinder, learned Counsel Mr. Ravani submitted that the offence is also u/s 120B and looking to the manner in which the alleged offences are committed, the present application may not be entertained. He submitted that there are other complaints which have also been filed and the accused are habituated to committing such offences.

15. Learned Sr. Counsel Mr. Nanavati was also permitted to address the Court and has made submissions referring to the D.R.T. proceedings and he also submitted that a suit has also been filed against the Bank by the accused persons.

16. Learned Counsel Mr. Desai appearing for the complainant-Bank, in rejoinder, further emphasized that it is not a simple case of failure to fulfil the business commitment. The charge-sheet and the material and evidence clearly suggest about a well-designed fraud to siphon off huge amount of money from different Banks and mens rea or intention is prima facie made out and revealed from the investigation made by the C.B.I. For that he has again referred in detail as to the modus operandi and submitted that the present application may not be allowed. He strenuously submitted that merely because the charge-sheet is filed is not a ground to release the applicant as the accused are influential persons and could still influence the witnesses and in such big scam involving huge public money, the Courts have made observations expressing a word of caution for granting bail, and therefore, merely because it is triable by the Court of Magistrate would not be sufficient as some of the offences are punishable with imprisonment for life or 10 years, and therefore, the present application may not be entertained.

17. In view of rival submissions, it is required to be considered whether the present application can be entertained or not.

18. It is well accepted that the Court is not required to appreciate and discuss the evidence in detail at this stage for the purpose of deciding the bail application. However, the relevant aspects for deciding such applications for bail and the prima facie involvement of the accused are required to be considered. The relevant facts would be the nature/gravity of offence, the manner in which it is alleged to have been committed, the role attributed and also, though it could

be said to be a white-collar crime, the social impact and severity of the offence has to be judged with reference to the magnitude of the amount involved, the well-planned, systematic design by which the Banks have been defrauded for huge amounts, affecting financial institutions like the Banks which also will have a social impact. It is also required to be mentioned that in such cases of large-scale irregularity where fraud has been alleged for siphoning off huge amount in a systematic foul play, the Court has to be slow. The submissions made by learned Sr. Counsel Mr. Naik referring to the gravity of the offence that it is only under Sections 467, 468, 471 which is triable by the Court of Magistrate, cannot be accepted that. The fact that it is triable by the Court of Magistrate will not lessen the nature/gravity of the offences and the impact thereof in the society. Further, it will also have a reference to the role attributed which is reflected in detail in the F.I.R. with regard to the well-designed fraud of duping the Banks of a huge amount. This itself would be one of the considerations suggesting mens rea and prima facie case.

19. It is required to be mentioned that as stated there are other F.I.Rs./cases for similar offences filed against the present accused. That itself suggests about the magnitude of the alleged offences involving systematic ways and means by which the alleged fraud is perpetrated for siphoning off crores of rupees of the Bank affecting the public at large.

20. Therefore, the Hon''ble Apex Court has also made observations expressing a note of caution that with the change in the circumstances the Court, while granting bail, should be slow for even economic offences and big scams. The concern of the Hon''ble Apex Court has been with reference to the public interest.

21. A useful reference can be made to the observations made by this Court in a judgment in the case of Bholabhai Chaturbhai Patel Vs. State of Gujarat and Another, , where this Hon''ble Court has negated such contentions. Further, a reference can also be made to the observations made by the Hon''ble Apex Court in a judgment in the case of Himanshu Chandravadan Desai and Others Vs. State of Gujarat, , where a word of caution has been expressed, and it has been also reflected as to the change in the scenario even in such white-collar crimes. Therefore, while considering such bail application and the submissions referring to the gravity of the offence and the right of the accused u/s 21 of the Constitution of India and the liberty, the submissions cannot be readily accepted.

22. Further, it has been observed by the Hon''ble Apex Court in a judgment in the case of Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, , that such aspect of liberty under Article 21 of the Constitution cannot be over emphasized when the person has been in judicial custody as per the law established in this country, and therefore, cannot claim right to liberty on the same footing as any other citizen as it will be subject to the criminal justice system of the country.

23. Therefore, having regard to the nature of offences whereby huge amounts of

the Banks have been defrauded which has also got a social impact, the present application deserves to be rejected and accordingly stands rejected. Rule is discharged.