

(2003) 01 GUJ CK 0054

In the Gujarat High Court

Case No : Misc. Cri. A. No's. 7678, 8301, 8302, 8303, 8304 and 8305 of 2002 and 323 and 324 of 2003

Kalpesh Dineshchandra Jariwala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 409

Citation : (2003) CriLJ 2401 : (2003) 23 GLH 269 : (2003) 1 GLR 706

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : N.D. Nanavati, Tushar Mehta and Sunit S. Shah, for the Appellant; A.D. Oza, Public Prosecutor and N.D. Gohil, Assistant Public Prosecutor, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Senior Advocate Mr. N.D. Nanavati for Mr. Tushar Mehta, learned Advocate on behalf of the petitioner and learned Public Prosecutor Mr. A.D. Oza with learned A.P.P. Mr. N.D. Gohil appearing on behalf of the respondent-State. The Investigating Officer Mr. Ajay Gakhar is also personally present before this Court as well as present General Manager of Shree Vikas Co-op. Bank Limited Mr. A.N. Thakkar has also remained personally present before this Court.

2. Rule. Learned Public Prosecutor Mr. A.D. Oza waives service of Rule on behalf of the respondent-State in all these nine matters.

3. At the outset, this Court would like to refer and quote certain following relevant observations of the Apex Court concerning the issue involved in this group of this petition as under :

"8. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of liberty, justice, public safety and burden on the public treasury, all of which insists that a developed

jurisprudence of bail is integral to a socially sensitized judicial process. As Chamber Judge in the summit Court, I have to deal with this uncanalised case-flow, ad hoc response to the docket being the flickering candle light. So, it is desirable that the subject disposed of on basic principle, not improvised brevity draped as discretion. Personal liberty, deprived whom bail is value of our constitutional system recognised under Article 21 that curial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble, decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of "procedure established by law". The last four words of Article 21 are the life of that human right.

17. The significance and sweep of Article 21 make the deprivation of liberty ephemeral or enduring, a matter of grave concern and permissible only when the law authorizing it is reasonable, even handed and geared to the goals of community good and State-necessity spelt out in Article 19. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose, but for the bifocal interests of justice to the individual involved and society affected."

[Extracted from the case of Babu Singh and Others Vs. State of U.P.,

The meaning of bail given in various judicial dictionaries and since these matters pertain the bail, meaning of bail given in Judicial Dictionaries defined are referred as under :-

"Bail : meaning. Websters 7th New Judicial Dictionary defines "bail" as follows :

Bail is a security given for the due appearance of a prisoner in order to obtain his release from imprisonment; a temporary release of a prisoner upon security; one who provides bail." Wharton's Law Lexicon defines "bail" to mean :

"To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a date at a certain place, which security is called bail because the person arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from prison to which if they have, if they fear his escape, etc., the legal power to deliver him."

In Stroud's Judicial Dictionary, 5th Edn., the word "bail" is defined as follows :

"Bail is when a man is taken or arrested for felony, suspicion of felony, indicated of felony or any such case, so that he is restrained of his liberty."

And, being by lawailable offereth surety to those which have authority to baile him, which sureties are bound for him to the Kings use in a certain summe of money, or body for body, that he shall appeare before the Justices of Goale-delivery at the next sessions, etc.

In both Concise Oxford Dictionary and Chambers 20th Century Dictionary, the meaning of the word "bail" is a sum of money paid by or for a person who is accused of wrong-doing, as security that he will appear at his trial, until which time he is allowed to be free. Etymologically the word "bail" is said to derive from an old French verb "bailor" which means "to give" or to "deliver". Another view is the word is derived from the Latin term "Bajulare" which means, "to bear a burden".

"The intent of the arrest being only to compel an appearance in Court at the return of the writ, that purpose is equally answered, whether the sheriff detains his person or takes sufficient security for his appearance called "bail" ...".

In Venkataramaiya's Law Lexicon, 2nd Edn., Vol. I at pages 260-61 bail is defined thus :

"To set at liberty a person arrested or imprisoned, or security being taken for his appearance on a day and at a place certain ... because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from the prison".

According to Supreme Court in the concept of bail a technique is evolved for effecting a synthesis of the two basic concepts of human value, namely, the right of an accused to enjoy his personal freedom and the public interest on which a person's release is conditioned on the surety to produce the accused person in Court to stand the trial."

4. In light of above observations as well as definition of bail given in various judicial dictionaries, I have heard this group of matters at length and both sides argued at length citing number of decisions on the issue involved in these petitions.

5. By way of this group of petitions, the petitioner-Kalpeshbhai D. Jariwala has challenged the order passed by the Additional Sessions Judge, Surat dated 25th September, 2002 in various Misc. Criminal Application No. 1109 of 2002 along with other allied matters viz. Cr.M.A. Nos. 1110 to 1113 of 2002 and 1118 of 2002, 1129 of 2002, 1134 of 2002, 1334 of 2002, 1679 of 2002, 1680 to 1682 of 2002 rejecting the bail applications preferred by the petitioner, and therefore, by preferring these applications filed before this Court, the petitioner prays for bail. According to the petitioner, the complaint was filed on 12th June, 2002 by Shri Bharatbhai Bhogibhai Patel, Chairman of Shree Vikas Co-op. Bank Limited, resident of Surat with Detection of Crime Branch Police Station, (D.C.B. Police Station). The said Shri Bharatbhai Bhogibhai Patel in his complaint claimed that the petitioner who was a Chairman of Shree Vikas Co-op. Bank Ltd., Vice-Chairman Shri Dilipbhai Chudawala in collusion with one another, keeping other Directors in dark entered resolution No. 3 purported to have been passed in the meeting of Board of Directors held on 8-9-2000 in the Minutes Book for granting loans aggregating to Rs. 8.30 crores to 36 different firms/concerns of their

relatives. It is further claimed in the complaint that resolution confirming the resolutions passed in the earlier meeting dated 8-9-2000, was passed in a meeting held on 23-10-2000 keeping other Directors in dark. It is further alleged in the complaint that various amounts were transferred to different accounts of their relatives, etc. pursuant to the aforesaid resolution dated 8-9-2000. It is claimed in the complaint that out of loans granted to different 36 accounts one loan for Rs. 10 lacs was granted to the petitioner against the equitable mortgage of the property of the petitioner. It is further claimed in the said complaint that Rs. 9,64,254/- inclusive of interest was due as on 31-12-2001. In the complaint, various lapses have also been alleged against the petitioner and the Vice-Chairman Shri Dilipbhai Chudawala. Thus, in all twelve criminal complaints have been filed in respect of 12 accounts out of 15 accounts for an aggregate sum of Rs. 2.70 crores as per the particulars given in Para 3 of the petition memo. Thus, in all said twelve criminal complaints, the petitioner has been made accused along with Vice-Chairman Shri Dilipbhai Chudawala and Managing Director Shri Rashmikanth Zaveri. It is submitted that in all the cases allegations are more or less the same.

5.1 Pursuant to the said complaints, the petitioner was arrested on 20-6-2002 and the petitioner was sent to judicial custody on date 21-6-2002 and since then the petitioner is in judicial custody. According to the petitioner, police has carried out search, prepared panchnama and recorded the statements of witnesses during from 12th June, 2002 to 23rd June, 2002. It is further submitted that the petitioner moved a regular bail application being Misc. Criminal Application No. 1113 of 2002 before the Sessions Judge, Surat on 28th June, 2002 and also moved bail applications in other criminal cases, but the Sessions Court, Surat vide order dated 25th September, 2002 rejected all the bail applications, which has given rise for filing of these bail applications before this Court challenging the order passed by the Sessions Court while rejecting the bail.

5.2 The petitioner has also further submitted that Shree Vikas Co-op. Bank Limited had filed Arbitration Case No. 380 of 2002 before the Board of Nominees at Surat against the petitioner. Simultaneously, said Bank also filed 15 other suits against the various concerns and firms of the petitioner and his relatives. According to the petitioner, after filing of the bail applications, there were negotiations between said Bank - Shree Vikas Co-op. Bank Limited and the petitioners and the partners/proprietors of various firms/concerns to whom the loans were granted and finally, consent terms were arrived at and the same were filed before the Board of Nominees. Thus, said consent terms were filed in Arbitration Case No. 380 of 2002. According to the said consent terms, the petitioner and other borrowers agreed for appointment of Receiver to take possession of 12 properties and accordingly one Shri Pradeep Jariwala, Advocate was appointed as the Receiver with power to take possession and hand over the same to said Shree Vikas Co-op. Bank Limited. Thus, possession of said 12 properties valued at Rs. 2.28 crores as per the assessment of the Bank, has been handed over to the said Shree Vikas Co-op. Bank Limited and possession of the

said properties has been received by the Bank through the Receiver and writing to that effect has also been executed by the petitioner and given to the Bank by the petitioner. It is also case of the petitioner that thereafter, the Bank has also given in writing that if the petitioner is released on bail, the Bank has no objection. That said letter is dated 16th September, 2002 written by the Chairman of the complainant Bank, which is on record.

5.3 It is also submitted that the charge-sheet has been filed in D.C.B. Case C.R. No. 35 of 2002. It is also pointed out that the petitioner filed two detailed undertakings before the Sessions Court, Surat for payment to the said Shree Vikas Co-op. Bank Limited and both these undertakings are also produced on record before this Court. According to the petitioner, the complainant-Bank has filed various arbitration cases against various firms apart from the aforesaid cases, against the Vice-Chairman and various firms/concerns of the Vice-Chairman's relatives" and concerns and relatives of the Vice-Chairman Shri Dilipbhai Chudawala for the loans granted to them to the tune of Rs. 5.5 crores under the very Resolution No. 3 dated 8-9-2000 in respect of which complaint has been filed against the petitioner. According to the petitioner, said cases are still pending. However, it is case of the petitioner that no criminal complaint has been filed against Shri Dilipbhai Chudawala and firms and concerns of his relatives meaning thereby that Shree Vikas Co-op. Bank Limited has intentionally chosen not to take that very Resolution No. 3 dated 8-9-2000 as a forged resolution in loans granted to the firms/concerns of Vice-Chairman Shri Dilipbhai Chudawala.

5.4 It is, therefore, submitted on behalf of the petitioner that the petitioner all throughout the course of investigation co-operated and on the contrary willingly invited consent awards and handed over possession of 12 valuable properties sufficient to recover principal amount whereas the cases filed against the Vice-Chairman Shri Dilipbhai Chudawala and concerns/firms of his relatives are still pending. The petitioner has made it clear that as such he is not concerned with total loan amount of Rs. 8.30 crores, but the petitioner is only concerned with loan amount of Rs. 2.70 crores. The complaint is filed against the petitioner for Rs. 2.70 crores and not for Rs. 8.30 crores. Therefore, the petitioner has pointed out that the Sessions Court has completely appreciated on wrong-footing. The petitioner also pointed out that the Sessions Court failed to appreciate the fact that loan of Rs. 5.5 crores were given to the relatives of the Vice-Chairman for which said Shree Vikas Co-operative Bank Limited does not regard it as abuse of power and position. It is also pointed out that the Vice-Chairman has been granted and released on bail by that very Court which has rejected bail to the petitioner although amount of Rs. 5.5 crores has been granted to the relatives of the Vice-Chairman Shri Dilipbhai Chudawala under the very Resolution No. 3 dated 8-9-2000.

6. The petitioner has also pointed out that now the charge-sheet is already filed against the petitioner and there is no scope of creating any hurdle in the way of

investigation and the petitioner has all through out the course of investigation, has cooperated with the Investigating agency and there is no scope of tampering with any evidence or any such witnesses. It is also submitted that the Sessions Court has failed to appreciate the fact that securing loans of the Bank and handing over possession of 12 valuable properties speaks of bona fide of the petitioner. It is also submitted that the petitioner is only bread-winner in the family and pioneer of the said Shree Vikas Co-operative Bank Limited right from inception, and therefore, cannot have any intention to ruin his own institution. It is also submitted that if the petitioner is not enlarged on bail, his family will suffer not only socially but also financially. It is also submitted that the petitioner is a permanent resident of Surat, and therefore, not likely to jump the bail if released on bail and the petitioner ready and willing to comply and abide by any terms and conditions which may be imposed by this Court in the interest of justice.

6.1 The petitioner has also produced certain relevant documents along with petition. The petitioner has produced copies of the F.I.Rs. and the earlier bail applications along with the orders passed by the Sessions Court, Surat, so also the copy of the order passed by the Board of Nominees, consent terms and the letter issued by the complainant Bank - Shree Vikas Co-op. Bank Limited and the copies of said two undertakings and resolution dated 8th September, 2000 as well as statement of accounts and the copy of the Reserve Bank of India report which are on record.

7. Today, on behalf of the respondent-State, the Police Sub-inspector Shri Ajay V. Gakhar of D.C.B. Police Station, Surat has filed affidavit who is investigating the offences registered vide C.R. Nos. 26, 29 and 30 of 2002 and a copy thereof has been served on the petitioner and the said affidavit is taken on record. According to the averments made in the said affidavit, details of the loan transaction has been given by the deponent. It is also averred in the affidavit that over and above Rs. 2.70 crores, Rs. 1.50 crores were withdrawn by way of overdraft in addition to the sanctioned loan and on 30th December, 2001 the outstanding due amount from the nearer relatives of the Chairman and the Chairman comes to Rs. 4,99,52,075/-. In the said affidavit, one fact of spending the amount by the petitioner approximately Rs. 70 lakhs for construction of Jain temple for religious ceremony followed thereafter, as stated. It also transpires that one Shri Rashmikant Zaveri who was Managing Director at the relevant point of time, is also absconding and at present as per his opinion, he has taken shelter in United States of America. According to the deponent, serious offence u/s 409 I.P.C., has been committed by the petitioner for which punishment of life imprisonment can be awarded. According to the respondent, very serious offence affecting the economy of the Nation and the valuable money of persons like widow, disabled, retired and senior citizens and the persons belong to the weaker class of the society who deposited the amount with the complainant Bank lost their money and confidence, and therefore, the request before this Court not to exercise the discretionary powers and not to enlarge the petitioner on bail. Except this, there

is no other averments made by the deponent of the affidavit filed on behalf of the respondent-State.

8. In this group of petitions, certain facts are not much in dispute between the parties. The Resolution No. 3 was passed on 8th September, 2000 in respect of 36 transactions involving total amount of Rs. 8.30 crores. These 36 transactions involve the present petitioner as Chairman and said Shri Dilipbhai Chudawala as Vice-Chairman of the complainant-Bank, The complaint filed by the Chairman of Shree Vikas Co-operative Bank is relating to the entire 36 transactions wherein total amount of Rs. 8.30 crores are involved. Before this Court, certain documents have been produced by the present General Manager Shri K.N. Thakkar. On perusal of the one of the statements, it transpires that twelve transactions have been pointed out involving the present petitioner and the dues of said twelve transactions comes to Rs. 5,83,14,469-93 ps. According to the Bank, the other dues of amount of Rs. 1,90,93,201-36 ps and the total dues against the petitioner comes to Rs. 7,74,07,672-29 ps. In all, ten properties of the petitioner are presently with the Bank and list of said ten properties have been given by the Bank in the said statement. According to the Bank, assessment of said ten properties comes to Rs. 2.11 crores. The total recovery received by the Bank from the petitioner is Rs. 26,27,149-20 ps. for the period from 12th June, 2002 upto 31st December, 2002. Thereafter, Rs. 4.00 lacs also received by the Bank during January, 2003 most probably on 20/21st January, 2003. Thus, in all, the Bank has received more than Rs. 30 lacs from the petitioner for the period from 12th June, 2002 to 20th January, 2003. The statement in respect of the petitioner which has been referred above, is given to this Court by the present General Manager seems under his own signature, and therefore, the same is relied by this Court.

9. Similarly, in respect of the Ex. Vice-Chairman Shri Dilipbhai Chudawala, group accounts details supplied by present General Manager Shri Thakkar which transpires that said Shri Chudawala shown to have involved in 22 transactions involving total amount of Rs. 5.50 crores and all these transactions are said to have involved by said Shri Chudawala in relation to his relatives and family members. It is submitted that the Bank having possession of total properties of Shri Dilipbhai Chudawala which are eleven in numbers and the total amount comes to Rs. 5,27,86,000/-. Shri K.N. Thakkar, General Manager has made clear statement before this Court that the complainant-Bank is having possession over the properties of the petitioner and the properties of said Shri Chudawala but out of the said properties, none of the properties is sold by the Bank till date and no amount has been recovered from any of the property either belongs to the petitioner or said Shri Dilipbhai Chudawala. Therefore, it reveals that the Bank having properties of worth Rs. 5,27,86,000/- and Rs. 2.11 crores even though, these properties still remained with the Bank without any further process of sale and no amount has been recovered till date by the Bank. It has come on record that consent award has been passed against said Shri Dilipbhai Chudawala by the Board of Nominees on 27th September, 2002 in respect of entire amount due

against him relating to all 22 transactions. Similarly, consent award has been passed against the petitioner by the Board of Nominees on various dates on 16th August, 2002 and 19th August, 2002 respectively whereby the amount involved in all twelve transactions has been taken care and the said amount has been ordered to be recovered by the Board of Nominees by way of decree against the present petitioner. Therefore, in respect of the petitioner, principal amount for which criminal complaint has been filed, is secured by way of taking possession of the said ten properties, Shri K.N. Thakkar, General Manager has also made a statement before this Court that from 12th June, 2002 till the date, Shri Dilip Chudawala has paid only a sum of Rs. 2.00 lacs in cash to the Bank, whereas the present petitioner has paid more than Rs. 30 lacs in cash to Shree Vikas Co-op. Bank Limited. It is pertinent to note one fact that it is not in dispute as per the record that on 8th September, 2000, when Resolution No. 3 was passed granting said 36 transactions, at that time, defence was taken by said Shri Dilipbhai Chudawala that he was not present in the said meeting, but this defence of absent on the day of meeting claiming non-involvement cannot be endorsed inasmuch as, as per the record said Shri Dilipbhai Chudawala was very much present in the meeting on date 23-10-2000, during which, the minutes of the meeting held on 8th September, 2000 came to be confirmed.

10. Today, the Investigating Officer Shri Gakhar who is personally present before this Court. It may be appreciated that during the course of argument, this Court has raised certain queries to Shri Gakhar, Investigating Officer in presence of the learned A.P.P. Mr. Gohil that whether the complaint filed by the Chairman of the Bank is in respect of all 36 transactions involving total amount of Rs. 8.30 crores or not. The Investigating Officer has replied the query in affirmative. It is stated by the Investigating Officer that the complaint is filed in respect of all 36 transactions and the amount in all involved is Rs. 8.30 crores. However, he stated that the investigation is only carried out in respect of twelve transactions relating to the petitioner, but no investigation has been carried out in respect of other transactions relating to said Shri Dilipbhai Chudawala. It is also clear from the record that no criminal complaint separately filed by the complainant-Bank against said Shri Dilipbhai Chudawala, whereas rest of the twelve transactions relating to the petitioner. However, it is stated by Mr. K.N. Thakkar, present General Manager that the complainant-Bank requires opinion from the Chartered Accountant firm and that is how they sought for an opinion of the Chartered Accountant which is awaited till date, and therefore, no separate complaint is filed against said Shri Dilipbhai Chudawala,

11. The facts and certain other aspects relating to the offence and crime in question are discussed above since they are relevant to the case on hands and now back to the issue involved in this group petitions and the relief part whether in light of above facts and circumstances of the case and the submissions made by both the sides, whether the petitioner deserves to be enlarged on bail or not.

12. In support of the case of the petitioner, learned Senior Advocate Mr. N.D.

Nanavati has made the following submissions orally, and thereafter, also tendered summary of the submissions which are referred as under :-

12.1 The petitioner in all the above-referred group of petitions is arrayed as accused involved substantially the same charge. The petitioner, his family members and his group has borrowed in all a total sum of Rs. 2,70,00,000/- under various loan transactions after resolutions passed by the Board of Directors of Shree Vikas Co-operative Bank Ltd., somewhere in the year 2000. The petitioner was arrested on 17th June, 2002 and is languishing in jail since the said date in spite of the following facts.

12.2 The petitioner and his relatives/group has obtained loan/financial facilities from the Bank which by itself is not an offence.

12.3 The petitioner's bona fides are clear from the fact that when the Bank filed arbitration suits with respect to all the transactions which are the subject-matter of the present group of F.I.Rs. before the Board of Nominees at Surat, the petitioner, who was in jail at that time, through his wife, admitted the claim of the Bank. The Bank which is the complainant in all the F.I.Rs. along with the petitioner signed a compromise purshis whereby the petitioner admitted the entire suit amount with interest and accordingly the learned Board of Nomiees, Surat passed award u/s 96 of the Gujarat Co-operative Societies Act based upon the consent terms filed by the petitioner and the complainant-Bank.

12.4 The petitioner not only agreed and filed consent terms along with the complainant-Bank, but also has remarkably shown his bona fides by handing over actual physical possession of properties worth Rs. 2.28 crores by delivering keys/possession of the properties to the Bank as back as in the month of September, 2002. The Bank has issued a certificate to that effect being certificate dated 18th September, 2002 acknowledging having received the keys and possession. The following properties are handed over the Bank :

1.

Shraddha Bungalow [Key in Bank]

40 lacs

2.

Sachin Factory [with machinery] [Key in possession with Bank]

20 lacs

3.

Centre Point [Key in Bank]

18 lacs

4.

Paradise Apartment [Key in Bank]

05 lacs

5.

Parshwanath Bungalow [Key in Bank]

10 lacs

6.

Vania Sheri [Key in Bank]

35 lacs

7.

Saroli [Key in Bank]

05 lacs

8.

Shop No. 29 [Key in Bank]

10 lacs

9.

Shop Nos. 17, 18, 19 [in shifting process]

25 lacs

10.

Sutaria Town [Sold payment received]

07 lacs

11.

Prapati Apartment [Key with D.C.B.]

08 lacs

12.

Prernatirth Bungalow [Key with D.C.B.]

45 lacs

The valuation of the said properties are as per the Bank's valuer though the market value of the said property is much more and as stated hereunder, all the properties would fetch more price than the valuation. A certificate to the said effect is issued by the Bank which is produced at Page 51 of Misc. Criminal Application No. 7606 of 2002.

12.5 The petitioner has not only agreed and compromised the suits and handed over the properties, but has also started making payment. The wife of the Petitioner has filed a separate affidavit pointing out the payments made so far. In the said affidavit, it is also pointed out that the property situated at Shraddha Bungalow, which is valued at Rs. 40 lacs by the Bank's valuer is being sold at Rs. 50/- lacs and the petitioner's wife being the Power of Attorney holder has already given written consent for such sale to one Shri Jayantibhai Shah.

12.6 After the awards passed by the learned Board of Nominees when the petitioner filed an application for bail before the learned Sessions Judge, Surat, the petitioner filed an undertaking [Page 52 of Cri.M.A. No. 7606 of 2002] to repay the entire amount of the Bank.

12.7 In view of the above bona fide conduct of the petitioner the Bank filed a purshis before the learned Sessions Judge, Surat, giving clear, categorical and unambiguous no objection if the petitioner is released on bail [Page 65 at Para 7].

12.8 The resultant position is that the Bank which is the complainant is satisfied that it would realize its dues and has substantially secured its dues. The Bank which is the complainant has agreed in writing that the Bank has no objection if the petitioner is released on bail.

12.9 It is submitted that the relevant fact which the Hon''ble Court normally considers while considering the application for regular bail can be particularly classified as under :

- (a) Prima facie case
- (b) possibility of the accused tampering with the evidence;
- (c) possibility of the accused repeating the same offence;
- (d) possibility of the accused absconding from the jurisdiction of the trial Court; and
- (e) public interest.

12.9.1 So far as prima facie case is concerned, it is clear that availing of financial assistance by itself is not an offence and as per the charge-sheet papers the loan transactions have taken place after due resolution being passed by the Board of Directors. The subject-matter of the complaint is essentially a money transaction and the complainant-Bank itself has agreed for grant of bail to the petitioner.

12.9.2 So far as the question of tampering with the evidence is concerned, the said question is not in existence in the present case inasmuch as the allegations pertained to the loan transactions which are the subject-matter of record which is already in the custody of the Investigating Officer and the charge-sheet is filed.

12.9.3 So far as the question of possibility of the accused repeating the same offence is concerned, there cannot be any such question since the petitioner has long back resigned from the Chairmanship and Directorship of the Bank and at

present the Bank is being run and administered by a Government appointed Administrator.

12.9.4 The petitioner is a respectable citizen staying at Surat since last many years. His family members and business associates are also respectable and responsible citizens and the petitioner having a well-settled happy family can never abscond from the jurisdiction of the trial Court and will be available at trial. However, to take care of any such apprehension, the petitioner can be directed to surrender his passport and can be directed to report to the Investigating Officer periodically as may be decided by this Hon"ble Court.

12.9.5 So far as public interest is concerned, the conduct of the petitioner is very relevant in the peculiar facts of this case. Immediately on the Bank filing arbitration suits before the Board of Nominees in the month of April, 2002 the petitioner agreed and accepted the claim and consent terms were filed. Accordingly, the competent Court has passed awards in favour of the Bank. The petitioner has not only shown his willingness to repay not only his borrowings, but also of his relatives and group and has handed over all properties available with him which would take care of the principal amount. The petitioner has already undertaken to repay the entire amount with interest subject to the petitioner's right to get the rate of interest reduced and if the petitioner is released, he will be able to generate funds and try to ensure that his financial liability towards interest is also fulfilled as fast as possible. Keeping the petitioner in jail under the above circumstances would neither help the prosecution nor would help the recovery of amount by the financial institution. It is only if the petitioner is released with appropriate conditions that the public interest can be safeguarded. The petitioner on his being released can also use his resources to ensure that the properties already surrendered can fetch maximum price possible which would be not only in the interest of the petitioner, but would also be in the interest of the Bank. The petitioner undertakes to pay Rs. 1 lac per month to the Bank towards the dues which are the subject-matter of the group of F.I.Rs.

12.10 The petitioner can be considered for grant of bail on the following conditions :

(1) The petitioner shall surrender his passport with either the Investigating Officer or the trial Court within a period of one week from the date of his release.

(2) The petitioner would report to the Investigating Officer periodically as may be prescribed/stipulated by this Hon"ble Court.

(3) The petitioner would deposit a sum of Rs. 1 lac every month between 1st and 7th of each month.

(4) The petitioner would fully co-operate in the Bank realising its dues from the properties surrendered by the petitioner.

12.11 In view of the above facts, it requires to be appreciated that though the present proceedings are not in the nature of execution proceedings and it is

essential for the Bank to realize its amount, substantial part of the Bank's grievance is taken care of and it would be in the interest of no one to keep the petitioner languishing in jail pending the trial. If the petitioner is found guilty, he will have to undergo the imprisonment subject to his statutory appellate rights, but keeping him behind the bars will serve no purpose, more particularly when the petitioner is languishing in jail from 17th June, 2002. It is, therefore, respectfully prayed that this Court may be pleased to release the petitioner on bail.

12.13 Out of all accused in the said group of F.I.Rs., all other accused persons are granted bail except the petitioner and two other persons. The cases of two other accused are coming up before this Court hereafter. The petitioner craves leave to refer to the orders passed by this Court in case of other co-accused releasing them on bail.

13. Learned Senior Advocate Mr. N.D. Nanavati appearing on behalf of the petitioner has in support of his submissions relied upon the following decisions which are referred as under :-

(i) Reliance is placed on the decision in case of Sandeep Jain Vs. National Capital Territory of Delhi Rep. by Secretary, Home Deptt., . The facts of the case reflects that the appellant arrested pursuant to the F.I.R. lodged by the respondent alleging offences under Sections 420 and 406 I.P.C. Bail granted on condition of payment of Rs. 2 lakhs. As a part of the compliance with the conditions, appellant executing a bond in a sum of Rs. 50,000 with two solvent sureties and one of the sureties issuing cheques for Rs. 2 lakhs to the complainant. Cheques having been dishonored, bail cancelled and consequently, the appellant languishing in jail for more than 10 months, wherein the Apex Court has observed that keeping the appellant in prison endlessly for default of the surety in case where bail would normally be granted was improper.

(ii) The second decision relied upon in case of Chandraswami and another Vs. Central Bureau of Investigation, wherein the Apex Court has observed that bail in case of non-bailable offence, paramount consideration should always be whether enlargement on bail would jeopardize the prosecution case or not. The Apex Court observed that there was no reasonable basis for High Court's apprehension regarding -, tampering or influencing by accused, and therefore, the Apex Court granted bail in favour of the accused appellant.

(iii) The third decision relied on in case of Dr. Jagannath Mishra Vs. C.B.I., , wherein the Apex Court while dealing with fodder scam in Bihar - petitioner a former Chief Minister, the Apex Court has observed that where charge-sheet already submitted and no investigation pending against him, bail granted to Dr. Jagannath Mishra subject to certain conditions.

(iv) The next decision relied upon in case of Sunil K. Sinha Vs. State of Bihar through S.P. CBI, . The following observations made in Para 2 relied upon which read as under :-

"2. In view of the long incarceration of the appellant since 25-5-1996 and the trial likely to consume some time, we think that a case for grant of bail has been made out in favour of the appellant. Accordingly, we allow this appeal, set aside the impugned orders of the High Court and direct release of the appellant on bail in the sum of Rs. 1 lakh with two sureties of the like amount to the satisfaction of the Special Judge, Animal Husbandry, Patna. The bail-bond would be accepted on the condition that if the appellant is a passport holder, he shall surrender the passport to the Special Judge, Animal Husbandry, Patna."

(v) Next decision in case of State of Rajasthan, Jaipur Vs. Balchand alias Baliay, , wherein the following observations are emphasised by the petitioner.

"The basic rule is to grant bail, not jail, 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 involved and the heinousness of the crime should also be taken into account by the Court. Any possibility of absconding or evasion or other abuse can be taken care of by a direction that the petitioner should report himself before the police station once every fortnight."

(vi) Another decision relied in case of Keshab Narayan Banerjee and Another Vs. The State of Bihar, . The observations made by the Apex Court in Para 3 are reproduced here :

"2. Heard Counsel for the parties. The condition imposed by the High Court for enlarging Keshab Narayan Banerjee, appellant No. 1 on bail, namely, that he should furnish security for rupees one lakh in cash or in fixed deposit of any Nationalised Bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be excessively onerous. In the circumstances of this case, it virtually amounts to denial of bail itself. It is, therefore, ordered that appellant No. 1 shall be enlarged on bail on his furnishing a bail-bond of Rs. 25,000/- with two sureties each for the like amount to the satisfaction of the learned Special Judge. The learned Special Judge need not insist that the appellants should produce sureties who are residing in Bihar only the order of the High Court shall stand modified accordingly."

[vii] One another decision in case of Ashok Dhingra Vs. N.C.T. of Delhi, is relied upon, of which, certain observations relied, are quoted as under :-

"2. After hearing learned Counsel for the appellant, Mr. Altaf Ahmed, learned Additional Solicitor-General appearing for the respondent and Mr. M.S. Ganesh, learned senior Counsel for the complainant, we passed the following order :

The offence now alleged against the appellant is under Sections. 120B, 420, 468, 471 and 506 of I.P.C. He is alleged to have cheated a Japanese national of a whopping sum exceeding Rs. 65 lakhs. These are of course prima facie circumstances not entitling him to be released on bail. But on the other side we noticed that he was in custody from 5-7-1999 to 10-12-1999, and therefore, to

continue to detain him during the pre-trial stage may not be in the interest of justice. Therefore, we permit him to continue on bail as per the interim order passed by us on 10-12-1999, if he would abide by the following conditions :

1. He shall report at the office of Crime Branch, Quatab Institutional Area, New Delhi on all alternate days between 4 p.m. and 6 p.m.
2. He will not leave the limits of the State of Delhi without permission from the trial Court.
3. He shall surrender his passport within one week to the trial Court.
4. He shall not in any manner either intimidate or influence the witnesses or tamper with the evidence.

3. If he is willing to abide by the above conditions, he should file an affidavit to that effect before the trial Court within two weeks from today.

4. If the respondent-State finds for any valid reason that the appellant is misusing his bail we permit the respondent to move for cancellation of the bail as provided u/s 439(2) of the Criminal Procedure Code. If the trial is to get delayed on account of the delay in apprehending the co-accused, it is open to the trial Court to split up the case as against this appellant and proceed therewith, so that, it can be disposed of as expeditiously as possible. If the trial is delayed on account of dilatory tactics adopted by the appellant, that itself can be treated as a ground for cancellation of bail. With these observations, this appeal is disposed of."

(viii) The last decision relied on by the petitioner's Counsel in case of Anil Mahajan Vs. Commissioner of Customs and Another, . Observations made by the Delhi High Court in Para 15 are emphasised which reads as under :

"15. In the light of the principles stated above, I have considered the facts and circumstances of this case, and I have come to the conclusion that the petitioner is entitled to bail. The petitioner is accused of offences under Sections. 132 and 135(I)(b) of the Customs Act, 1962. On conviction, the maximum sentence that can be imposed on the petitioner is imprisonment for a term which may extend to seven years and fine. The petitioner was arrested on 4th August, 1999 and he has been in judicial custody since then. The investigation in the case has been completed and criminal complaint has been filed in the Court. The goods in respect of which the offence was committed had been seized, by the respondents, and hence, no further recovery is to be effected. The main witnesses in the case are official witnesses and I do not find sufficient reasons to have a reasonable apprehension that the petitioner will tamper with prosecution evidence if he is released on bail. Nothing has been brought to my notice to have a reasonable apprehension that the petitioner will flee from justice if he is released on bail. From the materials placed on record, it is clear that the petitioner is an established businessman with roots in the society. I am not inclined to refused bail to the petitioner on the ground that he is accused of a

serious economic offence. Having regard to the entire facts and circumstances of the case, I do not find any justification for detaining the petitioner in prison any longer."

14. Learned Senior Advocate Mr. Nanavati after citing the above-referred authorities in support of his submissions, further submits that the petitioner is prepared to file similar undertakings filed before the Sessions Court, Surat, before this Court. Learned Senior Advocate Mr. Nanavati for the petitioner submits that the petitioner is prepared to file an undertaking stating that he will abide by the decree passed by the Board of Nominees against the present petitioner and the petitioner will also undertake liability as a whole in respect of said twelve transactions involving total sum of Rs. 2.70 crores. Upon instructions, he also submitted that the petitioner is going to pay on or before 28th February, 2003 an amount of Rs. 10.00 lakhs to the complainant-Bank to be recovered pursuant to other orders passed by this Court. He also pointed out that on or before 30th April, 2003, he will pay Rs. 5.00 lakhs to the complainant-Bank and for that, the petitioner is prepared to file undertaking before this Court. Thereafter also, learned Senior Advocate Mr. Nanavati further submitted that after such payment by 30th April, 2003, there onwards on each month from May, 2003 the petitioner will pay Rs. 1 lakh to the complainant-Bank and after his enlargement on bail, he will make try his best and put his sincere efforts to increase such amount of Rs. 1.00 lakh towards instalment. However, learned Senior Advocate Mr. Nanavati has made it clear that these are all statements made by him on behalf of the petitioner without prejudice to the right of defence in respect of the pending cases against the petitioner. He also submits that the petitioner will voluntarily make such statement to show his bonafide in connection with the offence in question.

Lastly, learned Senior Advocate Mr. Nanavati submits that in identical and similar type of cases of General Co-op. Bank and Madhavpura Co-op. Bank Limited, where fraud and scam is alleged against certain persons involved in the Bank transactions while obtaining loans or any other transaction with the Bank, the accused have been enlarged on bail by the trial Court and in bail application preferred for cancellation of bail, bail so granted is protected while imposing certain conditions to deposit respective amount before the concerned Bank and orders passed in such matters, are placed on record by learned Advocate Mr. Nanavati and a copy thereof also served on the respondent-State.

15. Learned P. P. Mr. A.D. Oza appearing on behalf of the respondent State has submitted that today Investigating Officer has filed affidavit which reflects that serious offence alleged to have been committed by the petitioner u/s 409 and said offence can be said to be serious offence affecting the Society at a large and punishment is life imprisonment and therefore, the petitioner cannot be enlarged on bail. Learned P. P. Mr. Oza vehemently submitted that the petitioner has committed serious offence under Sections. 409 and 467 and other relevant Sections of I.P.C. Learned P. P. Mr. Oza submitted that the allegations against the

petitioner that he forged the documents and fraud which adversely affect the funds of the depositors of the Bank which includes funds of weaker sections of the society, widow, poor persons and retired persons. However, learned P. P. Mr. Oza also submitted that if the present petitioner is enlarged on bail and freed in the society, it will adversely affect the society. He also submitted that u/s 409 I.P.C., such offence attracts severe punishment of life imprisonment and therefore, such person should not be released on bail, because ultimately, such type of offences committed by the office-bearer of the Bank which ultimately ruin the economy of the society as a whole, and therefore, such person cannot be released on bail. He also submitted that money which has been obtained from the Bank by way of loan has been diverted to other sources and purpose of loan is not actually met with by the present petitioner. Learned P. P. Mr. Oza has also relied upon statement supplied by Mr. Bharatbhai Bhogibhai Patel who was working as Chairman on the relevant time on dated 11th June, 2002. I have perused the said statement of Shri Bharatbhai Bhogibhai Patel wherefrom it transpires that complaint is filed by same person against the present petitioner stating some of the facts in statement dated 11th June, 2002. Learned P. P. Mr. Oza has referred written submissions submitted by learned Senior Advocate Mr. Nanavati and pointed out Item No. 3 of Para 7 on page 9. However, learned P. P. Mr. Oza has resisted voluntary offer made by the petitioner that he would deposit a sum of Rs. 1.00 lakh every month between 1st to 7th day. Learned P.P. Mr. Oza has submitted that if this Court is inclined to grant bail considering the very condition, according to him, in the eventuality, such condition for grant of bail, the lower Court will get influenced by such condition and looking to the facts of this case, an amount of Rs. 1.00 lakh every month entails liability for repayment for 40 years to come, and therefore, such condition should not be accepted, otherwise, wrong precedent will be impressed upon the trial Court and subordinate Courts. I have considered submissions of learned P. P. Mr. Oza. At this juncture, it may be appreciated that this is not civil forum dealing with civil suit, nor this Court is dealing with civil matters or it is not the jurisdiction of this Court. But presently since this Court is seized with the bail jurisdiction, this Court is considering the terms and conditions in the event of grant of bail and what is important for consideration of this Court at this stage, is to test (sic.) the bona fide of the petitioner. It may also be appreciated that this Court discussed above the bona fide of the petitioner, and therefore, merely the petitioner has voluntarily offered and undertakes to pay an amount of Rs. 1.00 lakh every month from May, 2003 onwards, it does not mean that this Court has granted him instalments for repayment of the entire dues of the Bank. It may be observed that the jurisdiction of this Court is to consider bail application and not to consider the civil and other consequential liabilities of the petitioner, but for such liabilities, proceedings under the relevant law before other appropriate forum still open to the complainant Bank and other creditors. Therefore, in my above view of the matter, request made by learned P. P. Mr. Oza does not worth acceptance.

16. However, learned P.P. Mr. Oza and learned A.P.P. Mr. Gohil have relied upon the following decisions of the Apex Court :

The first decision relied in case of Ram Pratap Yadav Vs. Mitra Sen Yadav and Another, , wherein, the Apex Court has observed that quantum of punishment for offences in which applicant is seeking bail, are all relevant factors to which the Court should consciously advert while taking a decision in the matter of enlargement on bail.

The second decision relied by the respondent-State in case of Mansab Ali v. Irsan and Anr., reported in AIR 2002 SCW 5391 wherein the Apex Court has held that bail - grant of jurisdiction of Court is discretionary, it is to be exercised with great care and caution by balancing right of liberty of an individual and interest of society in general and reasons are to be indicated by Court.

17. Learned P.P. Mr. A.D. Oza for respondent-State also submits that case of Madhupura Co-op. Bank and General Co-operative Bank are on different footing because in that case, outsider are involved and no officers of the Bank or any office-bearer of the Management is involved, and therefore, principles applied in the case, cannot be made applicable to the facts of this case.

18. Mr. K.N. Thakkar, General Manager has fairly admitted that the Bank is at present working, but he pointed out the difficulty of statutory liquidity ratio which requires to be maintained by the Bank but now they are not able to maintain such ratio because of the fact that the depositors are taking back the amount from the Bank and no recovery is available to the Bank. Therefore, he apprehends that Reserve Bank of India may take appropriate action against such eventuality. Except that, no other submissions made by the Bank Manager presently in charge.

19. I have considered submissions made by learned Senior Advocate Mr. Nanavati as well as learned P. P. Mr. Oza. This Court has also heard Mr. K.N. Thakkar, General Manager of the complainant Bank, so also, the Investigating Officer Mr. Gakhar. This Court has perused the relevant orders passed by the Sessions Court, Surat in respect of the present petitioner and in respect of said Shri Dilipbhai Chudawala. This Court has also considered various decisions referred to and relied upon by the learned Advocates for the parties. It is observed that I am in full agreement with the ratio and principles propounded by the Apex Court in various decisions referred to above. This Court is very much aware of the settled law that this Court cannot examine the merits and demerits of the matter at this stage. This Court also cannot appreciate the material on record and also cannot appreciate the defence of the other side. This Court is bound by all these limitations while dealing with the bail applications. However, at this juncture, this Court would like to refer to one recent decision of the Apex Court in case of Ram Govind Upadhyay Vs. Sudarshan Singh and Others, wherein the Apex Court has considered earlier two decisions viz, (i) Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and Another, and (ii) Prahlad Singh Bhati Vs. N.C.T. Delhi

and Another, . The relevant observations made by the Apex Court in the aforesaid decision in Paras 3 & 4 are referred as under :-

"3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reasons cannot be sustained. Needles to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though, however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being :

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt, but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

20. At this stage, this Court would like to refer certain observations of the Apex Court on the aspect of "Personal Liberty" made in case of Babu Singh and Others Vs. State of U.P., which reads as under :

"24. Yet, another factor which heavily tilts the scales of justice in favour of release pendente lite is the thought best expressed, by Justice Bhagwati, speaking for the Court in Kashmira Singh Vs. The State of Punjab, at page 2148.

"The appellant, contends in this application that pending the hearing of the appeal he should be released on bail. Now, the practice in this Court as also in

many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence u/s 302 of the Indian Penal Code. The question is whether this practice should be departed from and if so in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying, postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice, can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person : "We have admitted your appeal because we think you have a prima facie case, but unfortunately, we have no time to hear your appeal for quite a few years, and therefore, until we hear your appeal, you must remain in jail, even though you may be innocent?" What confidence would such administration of justice, inspire in the mind of the public? It may quite conceivably happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contribution while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence."

21. In view of above principles propounded and enunciated by the Apex Court in the cases referred above, now back to the facts of the case on hands. No doubt, the offence has been disclosed against the present petitioner u/s 409 I.P.C., punishable for life imprisonment. It has come on record that charge-sheet has already been submitted against the present petitioner and the petitioner is in judicial custody in jail since 20th June, 2002. The complaint came to be filed on 12th June, 2002. For the period from 12th June, 2002 to 21st January, 2003, undisputedly the petitioner has deposited Rs. 30.00 lakhs before the Bank. Over

and above, by consent order before the Board of Nominees, the petitioner has handed over ten properties valued at Rs. 2.11 crores as mentioned in the statement, as produced by the General Manager before this Court. Thus, in all, by now the Bank has secured the recovery of an amount of Rs. 2.41 crores. It may also be appreciated that the petitioner has voluntarily made offer before this Court that the petitioner is going to pay Rs. 10.00 lakhs on or before 28th February, 2003 which covers the amount involved in other orders passed by this Court. It is also voluntary offer made by the petitioner that the petitioner will pay another Rs. 5.00 lakhs before 30th April, 2003, and thereafter, from May, 2003 onwards the petitioner undertakes to pay an amount of Rs. 1.00 lakh to the Bank every month between 1st to 7th. Moreover, the petitioner undertakes to make his sincere efforts to raise said monthly fund in the event of his enlargement on bail. It may also be appreciated that the petitioner is prepared to file same and similar type of undertakings which were filed before the Sessions Court, Surat on date 24th September, 2002. In light of above facts, and considering the affidavit filed by the Investigating Officer, there seems no any reasonable apprehension on the part of the Investigating Officer pointed out that the present petitioner, if enlarged on bail, will tamper with the evidence or influence the witness in any manner. It is noted that the Investigating Officer concerned has not expressed nor made any averments expressing any kind of apprehension to that effect in his affidavit. Therefore, it is clear that no adverse probabilities drawn or inferred against the petitioner in the event of his enlargement on bail against for tampering with evidence or influencing the witnesses by the petitioner. Looking to the facts and circumstances of this Court, it can be safely presumed that the entire case and the trial will remain based upon the record of the Bank and most of the witnesses and co-accused in the present proceedings are the employees and officers of the Bank. Except the Chairman who has filed complaint against the petitioner and other 32 witnesses who may be common in respect of each complaint. In the affidavit filed by the Investigating Officer, no apprehension has been pointed out or resistance that if the petitioner will be enlarged on bail, he will run away from justice or jump the bail. There is no apprehension pointed out on the aspect that the petitioner will threaten the complainant. It may be noted that against the present petitioner, no doubt, offence u/s 409 I.P.C. is charged, but in fact, in comparison to the criminal offences, these are all economic offences against the society. Therefore, such cases are required to be considered in different manner rather than cases of the criminal offence. The Investigating Officer who has filed affidavit has not brought to the notice of this Court any reasonable apprehension that the petitioner will flee from justice if at all released on bail. From the material placed on record, it is clear that the petitioner is established businessman with the roots in the society. Therefore, considering the entire matter as a whole, it is clear that economical offences alleged against the petitioner, which in fact, adversely affect the society. But simultaneously the facts require consideration that present petitioner has already been removed from the post of Directorship and he has given his resignation from the post of Chairman. Therefore, it can be safely presumed that there is no question of repetition of the

very crime by the petitioner and no such apprehension or allegations made by the Investigating Officer in his affidavit. However, learned P. P. Mr. Oza having some reasonable apprehension that the petitioner can indulge into some similar activities against the interest of the society which ultimately adversely affect the society at large. It is also contended that there may be some struggle between the society and the persons like petitioner in future. But as such, there is no basis pointed out by learned P. P. Mr. Oza. However, considering the fact that the petitioner is established businessman having roots in the society and at the relevant time, founder member of the Bank right from inception of the Bank since 1997. It is also pointed out that the petitioner has run the Bank for the period from 1997 to 2001. Therefore, considering the facts and circumstances of the case and submissions of the learned Advocates for the parties as well as considering the settled principles of law and the ratio laid down by the Apex Court in number of decisions, and taking into account the fact that the petitioner is in judicial custody since 20th June, 2002 and one more fact that no purpose has been pointed out by the Investigating Officer in his affidavit to keep the petitioner behind the bars, and as such, no reasons pointed out nor any purpose or whisper is made out in the affidavit filed by the Investigating Officer suggesting presence of the petitioner behind the bars, in my opinion, the petitioner deserves to be enlarged on bail on some strict conditions.

22. This Court has also perused the order passed by the trial Court. The trial Court seems to have committed error while rejecting the bail application. The trial Court in its order, observed that serious offence alleged to have committed by the petitioner, but the trial Court has not considered other relevant factors which ought to have been examined as per the settled principles of law as observed by the Apex Court from time and again. On the contrary, it is shocking that the trial Court has proceeded on absolutely wrong footing and the trial Court has not perused and read the F.I.Rs. as it is, nor seems to have digested the contents of the F.I.Rs. in its spirit. The trial Court has misunderstood the charge and misconstrued that entire offence alleged to have been committed by the petitioner only. But, the F.I.R. filed by the complainant Shri Bharatbhai Bhogibhai Patel, Chairman of the Bank is very much clear. The complaint is against entire 36 transactions which includes 22 transactions undertaken by the Vice-Chairman Shri Dilipbhai Chudawala along with twelve transactions undertaken by the present petitioner involving total amount of Rs. 8.30 crores, of which, transaction of Rs. 5.50 crores undertaken by said Shri Dilipbhai Chudawala. Even though the trial Court has misunderstood the F.I.R. as if the entire amount of Rs. 8.30 crores has been misappropriated by the present petitioner. But the trial Court has not even applied its mind to the facts of the case and understood as if the Chairman - present petitioner has committed the fraud on the Bank while giving total amount of Rs. 8.30 crores to his relatives and family members. This fact itself suffice to consider that the order passed by the Sessions Court, Surat is perverse, baseless and contrary to the record. It is also necessary to note that the trial Court has considered that Chairman of the Bank who has given written

purshis on 16th September, 2002 that if the present petitioner is enlarged on bail, the Bank has no objection. This very document which was produced before the Sessions Court, Surat is also produced before this Court, but the Sessions Court, Surat has treated this document as irrelevant one. The complaint came to be filed by the Chairman against the present petitioner and he [the Chairman] himself has given purshis before the Sessions Court that Bank has no objection if the present petitioner is released on bail. At that stage also, the trial Court seems to have committed error. Another aspect which requires to be highlighted that an undertaking given by the accused including the petitioner and on the other hand, settlement which has been arrived at between the petitioner and Bank which was tendered before the trial Court, was also ignored by the Sessions Court, Surat. The trial Court has also not appreciated the facts that after submitting the charge-sheet against the present petitioner when investigation is over and the fact that the petitioner is languishing in jail for more than eight months since 20th June, 2002, even though the prosecution is not able to justify the presence of the petitioner in jail. As such, no reason, nor any apprehension has been pointed out by the prosecution before the Sessions Court or before this Court that presence of the petitioner is necessary in the jail and he may not be enlarged on bail. It is also observed that the complainant Bank itself has made certain submissions in favour of the petitioner through Advocate Shri Panwala engaged on behalf of the Bank recommended by the Board of Directors and said Advocate before the trial Court who was instructed and briefed by the present General Manager Shri K.N. Thakkar. It has come on record that said Advocate Shri Panwala appeared for complainant-Bank before the trial Court, has in writing submitted that looking to the bona fide of the petitioner and larger interest of the public amount/fund and source of repayment, the complainant-Bank has no objection if the petitioner is enlarged on bail from judicial custody. Thus, it becomes clear that the Bank has filed purshis with no objection if the petitioner is released on bail. But, surprisingly before this Court, the complainant-Bank is not consistent with its stand which was earlier taken before the Sessions Court, Surat. The entire order of the Sessions Court, Surat based upon the fact that the petitioner has committed fraud of Rs. 8.30 crores and all that 36 transactions undertaken by the petitioner committing the fraud on the complainant-Bank. It is also crystal clear that the F.I.R. came to be lodged by the complainant - Shri Bharatbhai Bhogibhai Patel against the present petitioner in respect of twelve transactions only involving amount of Rs. 2.70 crores, and as such, there is no other allegations made against the present petitioner for siphoning of the rest of the amount. Therefore, according to my opinion, the order passed by the Sessions Court, Surat is erroneous, perverse and arbitrary and considering the entire record, it amounts to non-application of mind, and therefore, the impugned order requires to be quashed and set aside by interference of this Court.

23. This Court has considered personal liberty of the petitioner as well as the interest of the society at large. According to the F.I.R. and as admitted by the

General Manager Shri K.N. Thakkar before this Court, that in all twelve transactions are relating to the petitioner, his relatives and family members, of which, the total amount comes to Rs. 2.70 crores. When the petitioner has handed over ten properties as listed in the statement worth Rs. 2.11 crores and Rs. 30.00 lakhs has been paid in cash by the petitioner during the period from 12th June, 2002 to 20th January, 2003, totalling to Rs. 2.41 crores. Therefore, principal amount of the Bank due from the petitioner has been secured by the Bank as per the settlement and consent award passed by the Board of Nominees Court. This fact satisfy the interest of the public at large because this much amount which has been secured by the Bank which ultimately helpful to the Bank for repayment to the depositors and to maintain statutory liquidity of the business. This being a clear balance between the personal liberty and interest of the public at large. In absence of any kind of apprehension by the prosecution or Investigating Officer, there is no reason to detain the petitioner in jail for further time. An undertaking which will be filed by the petitioner will also take care of the interest of the society at large. Repayment by the petitioner as undertaken, will also take care of the interest of the society at large. When prosecution failed to voice any apprehension against the petitioner, then merely charge of economic offence and heinous crime disclosed against the petitioner, wherein imprisonment of life has been provided, are not enough to detain the petitioner in jail for further more time. But for such eventuality, the Court has to consider the other relevant factors which are absent in the facts of the present case. This Court has taken due care to safeguard the interest of the public at large and more so, necessary payments by the petitioner and further undertaking as well as entrustment of total properties worth Rs. 2.11 Crores approximately will also certainly maintain the interest of the complainant Bank. The prosecution and the Bank are not able to point out any other property of the petitioner or trace out any other properties of the petitioner except the properties handed over by the petitioner to the Bank. Therefore, virtually the petitioner has handed over his entire assets to the Bank without any objection and he has straightaway arrived at the settlement in the Court of Board of Nominees and agreed for sole liability in respect of 12 transactions and the amount of interest by filing detailed undertaking before the Court. Therefore, in such circumstances, it is also the duty of the Court to see the bona fide of the petitioner and protect the personal liberty of the petitioner herein while keeping in mind the interest of the public at large. Therefore, according to my opinion, looking to the special facts and circumstances of the case, it is fit case to release the present petitioner on regular bail. It is also necessary to note one more important aspect that the Sessions Court in his observations while granting regular bail in favour of the Vice-Chairman Shri Dilipbhai Chudawala in Para 14 that in Surat Court, thousands of cases are pending and the same are not likely to be finally decided by the Court in the near future, and therefore, trial in respect of these cases will take some more time and if the bail is not granted to said Shri Chudawala one of the accused in the offence J then, it amounts to imposing of pre-trial punishment to said Shri Chudawala. Similarly, same observations made by the Sessions

Court, will equally applicable to the case of the present petitioner and if trial will take pretty long time because of the backlog with Surat Court, then, if the bail is not granted to the petitioner, in such eventuality also, it amounts to imposition of pre-trial punishment on the present petitioner also. Therefore, this is also one of the paramount considerations and factor for grant of bail in favour of the present petitioner.

24. This Court has also considered the fact that there is no past antecedence pointed out by the prosecution against the petitioner of committing such kind of offence in crime. Nothing has been pointed out by the Prosecution before this Court against the present petitioner. This Court has also carefully considered the aspect of settlement with the Bank by the petitioner and entrustment of properties against dues of the complainant by the petitioner and one more fact that the Bank is in possession of said properties valued of Rs. 2.11 crores as per the Bank's assessment securing its dues against complainant. One another aspect which transpires the bona fide of the petitioner for repayment of the dues that during the period from 12th June, 2002 upto 21st January, 2003, the petitioner has paid Rs. 30.00 lakhs and the Bank has received such amount. The steps undertaken by the petitioner transpires bona fide intention on the part of the petitioner. It may also be noted that the documents involved in the offence are still in possession and custody of the Bank and it is not the case of the prosecution or the complainant-Bank that the petitioner has ever tried to tamper the evidence, influence the witness in any manner directly or indirectly. Not only that, no such apprehension is expressed nor any material produced on record by the Investigating Officer. It is to be reiterated that charge-sheet has been submitted against the petitioner and the petitioner is in judicial custody since 20th June, 2002 till the date. Most of the witnesses are common in all the cases and there is no apprehension that if the petitioner is enlarged on bail, the petitioner will flee from justice or jump the bail, and therefore, considering the facts and circumstances in totality and considering the fact that on record it is satisfactorily established that the petitioner is businessman having roots in the society, this Court is not inclined to refuse the bail to the petitioner on the ground that he is accused of a serious economic offence.

25. For the reasons recorded in the judgment and considering the submissions made on behalf of the parties and having regard to the circumstances and facts of the case, all these nine petitions are allowed and the very petitioner involved in this group of petitions is ordered to be released on bail in connection with Crime Register Nos. I-26/2002, I-27/2002, I-28/2002, I-29/2002, I-30/2002, I-32/2002, I-33/2002, I-34/2002 and I-35/2002 of D.C.B. Police Station, Surat on his executing a bond [Consolidated for Nine offences] of Rs. 1,00,000/- [Rupees One Lakh only] with two sureties of like amount to the satisfaction of the lower Court and subject to the conditions that he shall,

(a) not take undue advantage of his liberty or abuse his liberty;

(b) not to 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) mark his presence before D.C.B. Police Station, Surat on every Sunday between 9-00 a.m. to 2-00 p.m. for initial three months from the date of enlargement on bail; and thereafter, mark his presence before the aforesaid police station on every 1st and 15th day of each English Calendar Month regularly till further order;

(f) furnish the address of his 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;

(g) surrender his passport, if any, to the lower Court within a week;

(h) not enter into the local/revenue limits of area where said Shree Vikas Co-op. Bank Limited is situate without prior permission of this Court, but for attending the Court related proceedings in connection with this case he will be free to enter the limits for a period to the extent necessary and will leave the limits thereafter soon the case is adjourned;

Over and above usual conditions of bail, the petitioner shall abide the following conditions;

(i) On the basis of voluntary statement made by learned Senior Advocate Mr. N.D. Nanavati, it is directed to the petitioner to file same and similar two undertakings before this Court which was filed by the petitioner before the Sessions Court at Surat on date 24-9-2002, within a week from the date on enlarging on bail.

(j) On the basis of voluntary statement made by learned Senior Advocate Mr. N.D. Nanavati, it is further directed to the petitioner to pay an amount of Rs. 10,00,000/- [Rupees Ten Lakhs only] to Shree Vikas Co-op. Bank Limited, Surat on or before 28th February, 2003 and shall further pay Rs. 5,00,000/- (Rupees Five Lakhs only) on or before 30th April, 2003.

(k) On the basis of the voluntary statement made by learned Senior Advocate Mr. N.D. Nanavati upon instructions, it is directed to the petitioner to go on paying Rs. 1,00,000/- (Rupees One Lakh only) every month from May, 2003 onwards before Shree Vikas Co-op. Bank Limited, Surat and shall deposit such amount upto 10th day of each month before the said Bank, as per undertakings before this Court to be filed by the petitioner as per condition [i] above, without prejudice to his right of defence and any other right/s which are available under the law.

(l) the petitioner shall also file an undertaking within a week from the date of enlarging on bail stating that the petitioner will put his sincere efforts to increase

the repayment as per condition [k] above.

(m) In the event of non-compliance of the undertakings that may be filed by the petitioner as per condition [i] above and breach of any of the directions issued by this Court, the bail granted by this Court in favour of the petitioner will stand cancelled automatically and/or liberty to the respondent to move this Court seeking cancellation of bail granted in favour of the petitioner.

3. If breach of any of the above conditions is committed, the Sessions Judge at Surat will be free to issue warrant or take appropriate action in the matter.

4. Bail before the lower Court having jurisdiction to try the case.

5. Rule, in all nine petitions, is made absolute.

Direct service is permitted.