(2004) 03 GUJ CK 0006

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No''s. 5326 to 5338, 6951 to 6963 and 7302 to 7314 of 2003

Noormohmed Jamalbhai Latiwala APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:
Penal Code, 1860 (IPC) — Section 114, 120(B), 406, 408, 409

Citation : (2004) 03 GUJ CK 0006

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : P.S. Chaudhary in Criminal Misc. application No. 5326 of 2003, for the Appellant; A.D. Oza, PP for Respondent No. 1 in Criminal Misc. Application No. 5326 of 2003, for the Respondent

Judgement

Jayant Patel, J.—Heard Mr. S.V. Raju, learned Counsel with Chaudhary in the group of Criminal Misc. Application No.5326/2003 to No.5338/2003; and Mr. Lakhani, learned Counsel appearing in the group of Criminal Misc. Application No.6951/2003 to No.6963/2003 as well as in the group of Criminal Misc. Application No.7302/2003 to No.7314/2003 on behalf of the concerned petitioners and Mr. A.D. Oza, learned PP for the State, who has appeared in all the matters. All learned Advocates are heard for final disposal of matters.

2. The petitioner of Criminal Misc. Applications No.6951/2003 to No.6963/2003 is the Chairman of Janata Commercial Co-op. Bank Limited (hereinafter referred to as "the Bank"), the petitioner of Criminal Misc. Application No.7302/2003 to No.7314/2003 is the Managing Director and the petitioner of Criminal Misc. Application No.5326/2003 to No.5338/2003 is the co-opted Director of the Bank. The Administrator of the Bank through the Manager filed 13 complaints, which ultimately came to be registered by the Police as different FIRs against the aforesaid petitioners and other Directors of the Bank as well as the concerned Loanees and guarantors of the loan transactions for the offences u/s 406, 408,

409, 420, 467, 468, 471, 120(B) etc. of IPC, alleging cheating, misappropriation of bank money, forgery of documents etc., in the matter of transactions of loans granted to various parties: (1) Maheswari Traders for Rs.30 lac, Suraj Traders for Rs.30 lac, Ambika Traders for Rs.30 lac (vide C.R. No.I-074/2002); (2) Bhavna Traders for Rs.30 lac, Kalpana Traders for Rs.30 lac, Aradhana Traders for Rs.30 lac (vide C.R. No.I-075/2002), (3) Sachin Marketing for Rs.30 lac, Saraswati Hardware for Rs.30 lac (vide C.R. No.I-80/2002), (4) Siddhi Traders for Rs.30 lac (C.R. No.I-81/2002), (5) Jay Ambe Sanitory for Rs.30 lac, Chandan Ceramics for Rs.30 lac (C.R. No.I-83/2002), (6) Godhavri Chemicals for Rs.30 lac, Jalaram Chemicals for Rs.16.5 lac (vide C.R. No.I-103/2002), (7) Jay Sales Corporation for Rs.30 lac (C.R. No.I-105/2002), (8) NavYug Corporation for Rs.30 lac (C.R. No.I-106/2002), (9) Vallabh Traders for Rs.30 lac, Sukun Enterprises for Rs.30 lac (vide C.R. No.I-82/2002), (10) Tirupati Plastic Manufacturing for Rs.30 lac (vide C.R. No.I-39/2003), (11) R. Natvarlal for Rs.21 lac, Akar Builtron for Rs.30 lac, Shatibhadra Cement for Rs.30 lac, Bijal Sales for Rs.30 lac, Vishant Marketing for Rs.30 lac, Ankit Plastic for Rs.30 lac (C.R. No.I-46/2003), (12) Tilak Hardware for Rs.30 lac, Millennium Export for Rs.40 lac, Richa Sales for Rs.30 lac, Nagraj Steel for Rs.30 lac (vide C.R. No.I-47/2003) and (13) Unitex Sales for Rs.30 lac, Kayak Enterprises for Rs.40 lac, J.R. Joshi for Rs.10 lac, Sonu Plus for Rs.40 lac (vide C.R. No.I-55/2003). The total amount involved in the alleged so-called loan transactions, as per the Bank is a scam, is of about Rs.9.5 crore.

3. At this stage, it may not be necessary for stating all the contents of the complaints/FIRs. However, the allegations in substance are (i) in certain cases, in loan transactions, the guarantors are nonexistent, though on paper such persons are shown as guarantors, (ii) in certain cases, there is no existence of the property, which is said to have been mortgaged with the Bank and (iii) in certain cases, the allegations are that there is no proper documents at the time when the loans were sanctioned. However, the common allegations in respect of all such loans are that (i) the office bearers of the bank have not at all considered the certain norms of banking business and the guidelines of R.B.I. to be followed for the purpose of giving the loans and it is also alleged that the petitioners and other office bearers of the Bank have made a conspiracy with the so-called loanees for cheating and for creating bogus documents and for creating bogus mortgages and as a result thereof there is a cheating with the bank money of about Rs.9.5 crore. In all these matters charge-sheets have been filed and as per the prosecution case, the offences are constituted.

4. It may not be necessary for the Court to weigh the evidence of the prosecution by microscopic examination and the reliability of the documents or otherwise.

5. While considering the matter as per the prosecution case and the defence of the petitioners, care is required to be taken to the extent that any observations made by this Court, may not prejudice the prosecution case or the defence in the

trial. At the same time, for the purpose of considering the matter on the aspects of prima facie case of the prosecution, some record is required to be considered. The perusal of the papers of the charge-sheet and investigations made by the Investigating Agency prima facie shows that in majority of the cases there is no compliance to the settled norms of varifing the details of the income of the persons who have applied for loan and the genuineness or the financial strength or solvency of the loanee and the guarantor. On the contrary it appears that in large number of cases starting from Ambika Traders onwards, the loan applications in the columns of income and/or properties are kept blank and they are only signed by the loanee and the signatures of the guarantors shown are in some of the cases who are not in existence at all as per the prosecution case. Below such blank application forms, the signature of Chairman and the Managing Director are shown with the order of sanctioning the loan of different amounts as referred to hereinabove. Even for the transactions of the mortgage, the property common in majority of the cases is "Dhawari Bungalows", on actual verifications by the Investigating Officer, it is found that the valuation shown is not only on higher side, but over the said property, Charotar Nagarik Co-op. Bank Ltd. is having charge and has also to recover the amount. The disbursement of loan ranging from Rs.1 lac to Rs.20 lac by instalment are paid in cash and not by cheque. It has also come on record as per the papers of the Investigation that in respect of the loan transactions of above referred Sr.1 to Sr.9, concerning of loan of about Rs.1 crore to Rs.5 crore, the loanees are in existence, but the guarantors are bogus and not in existence. So far as the loan transactions of above referred Sr.10, 11, and 12 are concerned, the amount is about more than Rs.3.25 crore and the loanees and the guarantors are in existence, but there is no proper documentation, nor genuine verification of the valuation of the property. Therefore, in respect to the transactions of loan from Sr.1 to Sr.9 referred to hereinabove, the gravity of the offence of fabrication of the documents etc., will be more in comparison to the loan transaction from Sr.10, 11, and 12.

6. Normally the link for constitution of the offences and for tracing the motives would be attributed to the beneficiary of the loanee, but in the present case as per the prosecution, through Accountant Satarbhai, a chain was organized for giving loan to certain persons and the parties to receive the loan had to pay certain percentage to the office-bearers of the Bank. Further, as per the prosecution case, the petitioners in capacity as the office-bearers of the Coop. Bank, were holding fiduciary capacity for taking care of bank money. As per the prosecution case, all the persons of the public who deposit money with the Bank, may be for earning interest, is an entrustment of the money to the bank for its utilization for lawful purpose. As such the Bank is not a living personality and, therefore, it works through its office-bearers and, therefore, it would be for the office-bearers of the bank to utilize the same as prudent persons in banking business. So far as the petitioners are concerned, the case of the prosecution is that the monies are utilized with extraneous consideration and there is ex-facie

utilization of money without following settled legal norms for giving loans in the filed of banking or without following settled lawful norms of banking activities. As per the defence of the petitioners, they have acted upon the report of the valuer and the report of its staff and upon the recommendation of the officers of the bank, the powers are exercised for sanctioning of the loan. Prima facie such defence looks to be attractive, but if there is a chain from the officer level upto the level of the sanctioning Authority, in the matter of sanctioning and disbursement of loans and if it comes on record that the same is with extraneous consideration, it cannot be said that there is no ingredients for constitution of the alleged offences whatsoever.

7. In this regard, the reference may be made to the decision of this Court in case of "Mohammed Ali Pirbhai Dodhia v. State of Gujarat", reported in 2003(3) GLR, 2267. In the said case, this Court, while considering the regular bail application of the Members of the Board of Directors of a Coop. Bank, at para 7 observed as under:

"7. It was also argued on behalf of the petitioners that the collapse of the complainant Bank was not brought about by loan transactions and irregular advances to accused Nos.13 to 16, but it was due to the loss of faith of the people in the Co-operative Banks in general on account of closure of one after another Co-operative Bank as also due to the general recession, earthquake and communal riots in Gujarat. It was sought to be canvassed that even as huge loans running into more than 30 crores were sanctioned on 31st March, 2001 to a single group of borrowers, the Bank was in a sound financial condition and the amounts of loans could be recovered from the borrowers'' properties which were of much higher value. It was submitted that it was on account of politically motivated persecution of the main borrower that the transactions were painted as scam. These arguments, however, could not cover or explain the gross irregularities in the matter of granting huge loans to several borrowers as alleged in the F.I.R."

This Court further at para 9 observed as under:

"9. It was apparent from bare reading of the F.I.R. that the Board of Directors and the officers of the Bank were in control of the funds of the Bank and it was, prima facie, disposed and dealt with in a way that no prudent Banker would do even in absence of clear guidelines of the Reserve Bank of India and other Banking regulations. The result has been a special audit, closure of the Bank''s operations and loss of crores of rupees for the Bank at least for the present. The F.I.R. lodged after audit of transactions of the complainant-Bank clearly alleges, with details of the modus operandi, deception, breach of trust and forgery in the matter of granting huge loans to accused Nos.13 to 16."

Further, in the same para, it was further observed as under:

"9. ...However, it can be observed that whether the Banker held the moneys of the depositors in fiduciary capacity or not, they owed a duty to the Bank itself to secure the advances and maintain liquidity for the survival of the Bank. The Board of Directors in general, had, prima facie, failed in that. It is also prima facie evident that without the concerned effort and co-operation of all the accused persons, systematic siphoning off money would not have been possible."

Thereafter at para 11, it was concluded as under:

"11. In the overall facts and circumstances, a prima facie case of involvement of the petitioners in the alleged offences including the offences punishable under Secs. 409 and 114 of the I.P.C. is made out as discussed in detail in the judgement of the Sessions Court and no reason is made out to differ from those findings recorded by that Court."

8. It is equally true that in the very decision on the ground of health and age factor, the Court did exercise the power for releasing certain Directors on bail but thereby the effect of the observations referred to hereinabove cannot be diluted as sought to be canvassed by the learned Counsel appearing for petitioners.

9. It would also be not out of place to refer to the recent decision of the Apex Court in case of " Ram Narain Poply, Pramod Kumar Manocha, Vinayak Narayan Deosthali and Harshad S. Mehta Vs. Central Bureau of Investigation and Others, which was a case for scam of nationalized banks'' money by Harshad Mehta and his group. In the said decision at para 363, the Apex Court observed as under:

"363. The term `entrustment'' is not necessarily a term of law. It may have different implications in different context. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all."

Further at paragraphs 381 and 382, the Apex Court has observed as under:

"381. The funds of public bodies were utilized as if they were private funds. There was no legitimacy in the transactions. Huge funds running into hundreds of crores of MUL, a Government company, were diverted and all the concerned accused persons A-1, A-3 and A-5 played dubious roles in these illegitimate transactions on the economic system of the country, and the magnitude of financial impact involved in the present appeal is only tip of the iceberg. There were several connected cases and interestingly some of the prosecution witnesses in the present case are stated to be accused in those cases. That itself explains the thread of self-perseverance running through their testimony. Therefore, the need to pierce the facadial smoke screen to unravel the truth to lift the veil so that the apparent, which is not real can be avoided. The proverbial red herrings are to be ignored, to find out the guilt of the accused.

382. The cause of the community deserves better treatment at the hands of the Court in the discharge of its judicial functions. The Community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the state are not brought to book; A murder may be committed in the heat of moment

upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage: done to the National Economy and National Interest, as was aptly stated in State of Gujarat v. Mohanlal Jitamalji Porwal and another. (AIR 1987 1321)."

The Apex Court has further observed at para 382 as under:

"383 Unfortunately in the last few years, the country has seen an alarming rise in white-collar crimes which has affected the fibre of the country''s economic structure. These cases are nothing but private gain at the cost of public, and lead to economic disaster."

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

11. Hence, I am not inclined to accept the contentions of the learned Counsel appearing for the petitioners that there is no prima facie case whatsoever against the petitioners for involvement of the alleged offences.(Since the Court time is over, further dictation of order is reserved for 15-4-2004.)

12. Before the Court proceeds for dictation of order, the learned Counsel appearing for the petitioners reported to the Court that in case of one of the Directors similarly situated, the Coordinate Bench of this Court (Coram: A.L. Dave, J.) has pronounced the decision on 25-3-2004 in Criminal Misc. Application No.7741/2003 to Criminal Misc. Application 7753/2003 in case of "Nur Ahemmad Abdulkadher Surti and Ors. v. State of Gujarat", and has released the petitioner therein on bail in respect to the same group of F.I.Rs and the learned Counsel appearing for the petitioners submitted that on the principles of parity, the petitioners herein also would be entitled to be released on bail. In the said decision of this Court (Coram: A.L. Dave, J.), at para 7 has observed as under:

"7. The applicants are in jail since 9th February, 2003, i.e. for almost 13 months. Charge-sheet is filed and the case rests mainly on documentary evidence, which is already collected. In the opinion of this Court, therefore, no useful purpose is going to be served by keeping the applicants in jail till the trial is concluded. At the most, what can be alleged against the applicants is laxity in verification. The applicants, therefore, deserve to be released on bail, but on stringent conditions."

13. In view of the reasons recorded by me hereinabove, I would have

independently examined the matter further but, with a view to maintain the principles of uniformity in judicial decision by law of precedents and keeping in view the principles of parity, the petitioners herein are justified in praying to be released on bail. However, so far as imposition of condition is concerned, looking to the status of the petitioners herein i.e petitioner of Criminal Misc. Application No.6951/2003 to No.6963/2003 is the Chairman of the Bank and petitioner of Criminal Misc. Application No.7302/2003 to No.7314/2003 is the Managing Director, it would be reasonable for this Court to make departure for imposing conditions of bail for the said petitioners. It has come on record that the Chairman and the Managing Director were holding majority of the responsibility for sanctioning of the loan and a certain percentage of commission was to be paid by the loanee(s) through Satarbhai, Accountant. As per the prosecution case, such percentage was varying from 2% to 5% of the loan amount. As observed earlier, the total scam of the loan is about Rs.9.5 crore and, therefore, as per the prosecution case, if the amount is considered, it would come to approximately Rs.45 lacs.

14. Hence, I find that even if the discretion is to be exercised for releasing the Chairman and the Managing Director of the Bank on bail, the condition should be imposed upon the Chairman of the Bank to deposit a sum of Rs.20 lac with the Sessions Court and the Managing Director of the Bank to deposit a sum of Rs.15 lac with the Sessions Court. So far as the petitioner of Criminal Misc. Applications No.5326/2003 to No.5338/2003, he is similarly situated as that of the petitioners of Criminal Misc. Applications No.7741/2003 to No.7753/2003, which have been disposed of by the order dated 25-3-2004 (Coram: A.L. Dave, J.) and, therefore, the same condition as imposed by this Court in the said case for executing a bond of Rs.50,000/= (Rupees fifty thousand only) each with one surety each of the like amount deserves to be imposed.

15. It is needless to clarify that any observations made by this Court are only for the purpose of considering the bail application at this stage and it would also be open to the learned Sessions Judge conducting the trial to take independent view on the basis of material which may be available at the time of conclusion of the trial and any observations made by this Court hereinabove shall not prejudice, in any manner, whatsoever the case of the prosecution as well as the defence at the time of trial.

16. In view of the aforesaid, petitions are allowed and the petitioner of Criminal Misc. Applications No.6951/2003 to 6963/2003 is ordered to be released on bail in connection with the Crime Register No.I-74, 75, 80, 81, 82, 83, 103, 105, and 106 of 2002 and CR No.I-39, 46, 47, and 55 of 2003 of Dholka Police Station on actual deposit of Rs.20,00,000/= (Rupees twenty lacs only) with the Sessions Court concerned with one surety of Rs.10,000/= to the satisfaction of the lower Court;

AND

17. the petitioner of Criminal Misc. Applications No.7302/2003 to No.7314/2003 is ordered to be released on bail in connection with the Crime Register No.I-74, 75, 80, 81, 82, 83, 103, 105, and 106 of 2002 and CR No.I-39, 46, 47, and 55 of 2003 of Dholka Police Station on actual deposit of Rs.15,00,000/= (Rupees fifteen lacs only) with the Sessions Court concerned with one surety of Rs.10,000/= to the satisfaction of the lower Court;

AND

18. the petitioner of Criminal Misc. Applications No.5326/2003 to No.5338/2003 is ordered to be released on bail in connection with the Crime Register No.I-74, 75, 80, 81, 82, 83, 103, 105, and 106 of 2002 and CR No.I-39, 46, 47, and 55 of 2003 of Dholka Police Station on his executing a bond of Rs.50,000/= (Rupees fifty thousand only) with one surety of the like amount to the satisfaction of the lower Court;

AND

19. subject to the conditions that they (all the petitioners) shall:

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

b. not act in a manner injurious to the interest of the prosecution;

c. maintain law and order;

d. mark their presence before concerned Police Station on 1st Sunday of every odd numbered English calendar month between 9.00 a.m. and 2.00 p.m.;

e. not leave the State of Gujarat without the prior permission of the Sessions Court concerned;

f. furnish the address of the residence at the time of execution of the bond and shall not change their residence without prior permission of this Court;

g. surrender their Passport, if any, to the lower Court within a week.

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

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

21. The learned Sessions Judge concerned shall deposit the aforesaid amount, deposited by the accused, in fixed deposit with any nationalized Bank, initially for a period of two years, which can be extended, if required.

22. Rule is made absolute to the aforesaid extent in the respective petitions accordingly.

23. Before parting with, it is required to take note of the investigation made by the State agency for such type of alleged white-collar crimes. The investigation for the white collar crimes must be conducted by highly trained Investigating

Officer, who are well conversant with the system and the field in which the crime has been committed. In the present case, it is the banking in cooperative field. Not only that, but for detection of while collar crimes, it is expected for the State to undertake the investigation through ultra modern machineries like lie detector test, narco test etc. Not only that, but normally in the matter of investigation of while collar crimes running into crores of rupees, it would be expected for the Investigating Officer to immediately intimate the concerned Airport Authorities, so that the accused may not fly away, outside the territory of the country. In the same manner, the I.O. conducting the investigation for white collar crimes running into crores of rupees has to take immediate steps for intimating the concerned bankers, so that the accused may not withdraw and convert the money in such a manner which makes the things irreversible, even if subsequently found that on the date of the complaint, the money realized out of the white collar crime should be made available to the victims of such crimes as an outcome of the trial.

24. Since the aforesaid actions appears to have not been taken in the investigations of the present case, which is also a white collar crime running into crores of rupees of the public and as a result thereof, the main persons, who are pioneer of the modus operandi are reported have left the country and are staying in the U.S.A. Even the monies of loans which are involved in white collar crimes are not traced. This Court is conscious of the facts that it is for the State to take necessary steps for proper investigations of such white collar crimes running into crores of rupees of the public, but at the same time, if the proper evidence is not produced to the Court by the Investigating Machinery of the State, the offenders may not have the deterrent effect for commission of the crimes and consequently it may have serious repercussions in the society at large. If, in the system of administration of justice, the real offenders are not booked and are not punished by the Court on account of non-availability of proper material or laxity of the Investigating Agency in procuring and producing necessary material before the Court to attract conviction, and as a consequence thereof, if the real offenders are acquitted or discharged, the same in my view, would shake the confidence of the citizen of the country in the rule of law in democracy and the law may lose its efficacy in curbing and abolishing such white collar crimes which in the words of the Apex Court "affects the fibre of the country''s economic structure", and if not whole of the country, but certainly of the State''s economic structure.

25. If offenders of white collar crimes get scot free, it will be for the State to take necessary steps in this regard and, therefore, the Chief Secretary of the State as well as the Secretary, Home Department of the State are directed to look into the matter and to report to this Court within a period of four months from the date of receipt of the order regarding the steps taken in this regard and the steps to be taken in this regard for proper investigations of "white-collar crimes" running into crores of rupees of the public. Office to send the copy of the order to the Chief Secretary as well as to the Secretary, Home Department of the State for necessary compliance. The learned PP shall also communicate this order to the

Chief Secretary of the State as well as the Secretary, Home Department of the State for further actions.

