

CASE NO.:
Special Leave Petition (crl.) 5321 of 2004

PETITIONER:
C.R. Patil

RESPONDENT:
State of Gujarat and Ors.

DATE OF JUDGMENT: 22/07/2005

BENCH:
CJI R.C. Lahoti, C.K. Thakker & P.K. Balasubramanyan

JUDGMENT:
JUDGMENT
O R D E R
Criminal Miscellaneous Petition No. 4681 of 2005
(For clarification of Court's Order dated 07.03.2005)

IN

Special Leave Petition (Criminal) No. 5321 of 2004
WITH

Special Leave Petition (Criminal) No. 5492 of 2004

Chotubhai Eknath Patil

\005. Petitioner

Versus

State of Gujarat

\005. Respondents

This petition is filed for clarification of the order passed by this Court on March 7, 2005 by which the petitioners were released on temporary bail. A prayer is made to enlarge the petitioners on bail till further orders and/or pending hearing of Special Leave Petitions filed by them.

It is the case of the petitioners that First Information Report dated October 23, 2002 was lodged with DCB Police Station, Surat against several accused including the petitioners herein. It was alleged that certain offences had been committed by the accused and huge amount had been misappropriated. Criminal Miscellaneous Application Nos. 3331 and 5302, both of 2003 were disposed of by the High Court of Gujarat by an order dated October 6, 2004 rejecting the prayer for grant of bail. Against the said order, the petitioners have approached this Court by filing Special Leave Petitions (Criminal) Nos. 5321 and 5492 of 2004. Notice was issued by this Court and by an order dated March 7, 2005, temporary bail was granted. The said order reads as under:\027

"Adjourned by six weeks.

After hearing the learned counsel for the parties, it is directed that the petitioner shall be released on temporary bail on furnishing a personal bond in an amount of Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties of the like amount to the satisfaction of the Sessions Court, Surat, on the same terms and conditions as are contained in the operative part of the order dated 25.07.2003 passed by the High Court in Crl. Misc. Application Nos.3331/2003 and 5302/2003."

It is stated by the petitioners that they were enlarged on temporary bail in pursuance of the order passed by this Court. It was further stated that the Special Leave Petitions were to come up for hearing on October 7, 2005, but at the request of the respondents, the hearing was pre-poned to August 5, 2005. Since the order of this Court was to release the petitioners on temporary bail and that period was to be over, they have filed the present petition on April 18, 2005. On May 13, 2005, this Hon'ble Court issued notice. The learned counsel for the State waived service of notice and sought time for having instructions which was granted by the Court. No interim order, however, was passed in favour of the petitioners. Hence, the petitioners surrendered on April 21, 2005 and at present, they are in jail.

We have heard Shri KTS Tulsi, Senior counsel for the petitioners and Ms. Vibha Datta Makhija for the respondents.

The learned counsel for the petitioners submitted that the petitioners are willing to pay the amount and sincere and honest attempts/efforts have been made by them. It is also stated that in Criminal Miscellaneous Application Nos. 3331 of 2003 and 5302 of 2003, the petitioners were enlarged on temporary bail at one stage on certain conditions by the High Court. Those applications were, however, finally rejected. The counsel submitted that the petitioners started negotiations with the respondents and submitted proposal for payment of the amount. It was also submitted that the petitioners were ready to re-pay the loan of Rs.50.40 crores as mentioned in the proposal. Moreover, Special Leave Petitions would come up for hearing in near future. They are in jail since long and no useful purpose would be served by keeping them behind the bar, particularly when they have shown their bona fide and have expressed their willingness to pay the amount to the respondents. If they will be enlarged on bail, no prejudice will be caused to the respondents inasmuch as even in past when they were on bail, they had complied with terms and conditions imposed on them. Moreover, they will be able to make necessary arrangements for payment of the amount which according to the respondents is due and payable. It was, therefore, submitted that an appropriate order may be passed releasing the petitioners on bail till further orders and/or till pending Special Leave Petitions.

The learned counsel for the respondents, on the other hand, submitted that the amount due and payable has gone up to Rs. 97 crores. So far as the proposal made by the petitioners to pay Rs.50.40 crores is concerned, the same was considered by the officers of the respondent and it was rejected on various grounds mentioned in the letter communicated to the petitioners. In the affidavit-in-reply filed by D.P. Joshi, Joint Registrar (Audit), Co-operative Societies of Gujarat State, it was stated that the High-level Committee constituted by the Government of Gujarat considered the proposal but did not accept it. Since substantial amount remains unpaid and the petitioners have taken undue advantage of their position, the High Court rightly rejected the bail applications, and no case is made out at this stage for grant of bail.

Having heard the learned counsel for the parties, we are of the view that it would be in the interest of justice to grant prayer of the petitioners. As stated in the petition itself, the order passed by the High Court is subject matter of challenge and Special Leave Petitions are pending before this Court. It has also come on record that earlier prayer for temporary bail was granted by this Court pursuant to which the petitioners were enlarged on bail, no doubt for a temporary period. It is not even the allegation of the respondents that the

petitioners have violated terms and/or conditions of the said order passed by this Court. When the petitioners have shown their willingness to pay the amount and the Special Leave Petitions are pending, this Court will consider all aspects when the matters will be taken up for hearing. But in view of the fact that an order was passed by this Court temporarily releasing them on bail is over and Special Leave Petitions await hearing and as stated by learned counsel for the petitioners, the petitioners intend to enter into meaningful negotiations with the respondents and to do all the necessary acts for payment of loan amount, it would be in the interest of justice to enlarge them on bail so as to enable them to make arrangements for such payment.

For the foregoing reasons, the application deserves to be allowed and is accordingly allowed. The petitioners are ordered to be enlarged on bail till further orders on their each furnishing a personal bond in an amount of Rs. 1,00,000/- (Rupees one lakh only) with two solvent sureties of the like amount to the satisfaction of the Sessions Court, Surat, on the same terms and conditions on which they were released on bail by this Court on March 7, 2005.

As is clear, we are allowing bail to the two petitioners persuaded by very peculiar facts and circumstances of this case, and guided mainly by the consideration that their retention in jail would be adverse to the interest of the several investors/depositors of the bank while the latter are likely to be benefited by the release of the petitioners on temporary bail, it is hoped that the petitioners shall make a genuine effort making use of their liberty to clear the debts. If the petitioners are found to have failed in discharging this obligation or misusing their liberty in any way, the order of bail shall be liable to be recalled.

The Criminal Miscellaneous Petition is disposed of accordingly.