

CASE NO.:
Appeal (crl.) 1526 of 2005

PETITIONER:
Himanshu Chandravadan Desai & Ors.

RESPONDENT:
State of Gujarat

DATE OF JUDGMENT: 16/11/2005

BENCH:
S. B. Sinha & R. V. Raveendran

JUDGMENT:
J U D G M E N T
[Arising out of SLP (Crl.) No.1818 of 2004]

RAVEENDRAN J.,

Leave granted. The appellants have challenged the order dated 15.12.2003 passed by the High Court of Gujarat at Ahmedabad, rejecting their application for bail filed under Section 439 of the Code of Criminal Procedure.

2. First appellant was one of the Directors of M/s Charotar Nagarik Sahakari Bank Limited [for short 'the Bank']. He became a shareholder of the bank on 18.10.99 and was appointed as a Director on the same day. It is alleged that one Chiman Sathi, Managing Director of the said bank, first appellant and other Directors of the bank siphoned off the funds of the bank by bogus loans and fictitious letters of credit in the name of their friends, relatives, associates and name-lender companies either without any security or with wholly inadequate security.

3. The wives of appellant Nos. 1 and 2 along with appellant No.3 are the Directors of M/s Bhavika Creations which is one of the beneficiaries of the illegal and collusive loans/credit facilities given by the Bank. It is alleged that appellant nos. 2 & 3 actively assisted and supported appellant no. 1 in several fraudulent transactions in the name of Bhavika Creations, Jayraj Multimedia, Hindustan Earthmovers Pvt. Ltd., Rahul Industries, Innovative Hydraulics (P) Ltd., Satya Sulphur (P) Ltd., Raheja Textile Industries, Bhanu Sulphur Industries Ltd., Trigon Jinco Co. etc. The State alleges that the following fraudulent transactions involving appellant nos. 1, 2 & 3 and Chiman Sathi, which aggregate to more than Rs.50 crores, took place in the year 2000-01 :-

S.
No.
Transaction
Amount
Name of Beneficiary

1.
4 letter of credit

10.95
crores
Appellants Nos. 1 to 3

and Chiman Sathi

2.

Term loan to Jayraj Multimedia,
Vadodara
(12.6.2000)

6.47

crores

Appellant No. 1

3.

Term loan to Hindustan
Earthmovers Pvt. Ltd.
(27.6.2000)

3 crores

Appellant No. 1

4.

Letter of credit in the name of
Trigon Jinco Co. in Baroda Peoples
Cooperative Bank Limited.
(6.11.2000)

4.956

crores

Appellants Nos. 1 to 3

5.

Discounted letter of credit in the
name of Rahul Industries.
(8.11.2000)

4.67

crores

Appellants Nos. 1 to 3

6.

Loan given to Bhavika Creations
(9.11.2000)

0.50

crores

Appellant No. 1 and
others

7.

Discounted Letter of Credit of
Innovative Hydraulics Pvt. Ltd.,
Waghodia
(14.11.2000)

4.98

crores

Appellants Nos. 1 to 3

8.

Discounted Letter of Credit
(12.12.2000)

2.67

crores

Appellants Nos. 1 to 3

9.

Letter of credit in discounted by
Himanshu Desai and his associates
in the name of bogus company,
Satya Sulphur Pvt. Ltd.,
(27.12.2000)

3.128
crores
Appellants Nos. 1 to 3
10.
Bogus letter of credit discounted
by Himanshu Desai in the name of
bogus company, Raheja Textile
Industry
(27.12.2000)

2.486
crores
Appellants Nos. 1 to 3
11.
In the name of Bhanu Sulpher
Industries Pvt. Ltd.
(27.12.2000)

2.486
crores
Appellants Nos. 1 to 3
12.
Bogus Letter of Credit in NRI
account of Shri Subhash Mehta
7 crores
Appellants Nos. 1 to 3
and Chiman Sathi

13.
Vehicle loan to Himanshu Desai

1.4 lakhs
Appellant No. 1

14.
Vehicle loan to Bhavika Creations.
4 lakhs
Appellants Nos. 1 to 3

It is also alleged that Chiman Sathi (Managing Director) and other Directors were involved in other fraudulent transactions relating to the Bank, which are not relevant for the purpose of this Appeal.

4. In regard to the said bank scam, the bank lodged a complaint with the Police Station, Anand Town vide Criminal No.6 of 2002 for offences punishable under sections 409, 468 and 114 of Indian Penal Code. It is stated that the Appellants voluntarily surrendered on 24.10.2002 and are in custody even since then. On completion of investigation, a charge-sheet was filed on 22.1.2003 under sections 409, 465, 466, 467, 468, 470, 471, 406, 420 and 120-B of IPC against the Directors of the Bank.

5. It is alleged that Appellants filed Criminal Misc. Appeal Nos. 747/2000, 6/2003 and 479/2003 seeking regular bail which were rejected by the Sessions Judge, Anand on 5.4.2003, 16.5.2003 and 21.11.2003 respectively. The Appellants filed Criminal Misc. Appeal Nos. 6523/2003 and 6520/2003 before the High Court of Gujarat which were withdrawn. After rejection of Criminal Misc. Appeal No. 479/2003 by the Sessions Judge, the appellants moved a regular bail application (Criminal Misc. Application No. 10003 of 2003) in the High Court of Gujarat. The High Court after referring to the clandestine and fraudulent nature of the transactions rejected the application. The said order is challenged in this appeal, urging the following contentions :-

a) The Chairman, Vice-Chairman and other Directors of the Bank who were also allegedly involved in the said offence have been released on regular bail. [Reliance is placed on order of this Court dated 14.7.2003 in Criminal Appeal No. 802 of 2003 granting bail to one Rajendra Kumar Dhanraj Banthia, a share broker who according to appellants was the real beneficiary and took the siphoned money from the bank]

b) Even though the charge-sheet has been filed as long back as on 22.1.2003, charges have not been framed. The investigation is completed. The prosecution has cited as many as 150 witness. The trial is likely to be protracted and therefore, appellants should be released on bail. It is contended that failure to do so would amount to detention by way of punishment.

c) Even if a prima facie case is established, where presence of the accused would readily be available for trial and there was no likelihood of the accused tampering with the evidence in view of completion of the investigation, the accused should not be detained, particularly when the accused has been long incarcerated and the trial is likely to consume long time \026 vide Bhagirath Singh vs. State of Gujarat [1984 (1) SCC 284].

6. The cases of appellants cannot be compared with the others who have been released on bail. The cases of Appellants are more serious than the case of other Directors (except the case of Chiman Sathi). Further, the State has pointed out that one or two Directors of the Bank were released on the ground of old age and medical problems; and other Directors were released on bail after they repaid their entire dues. It is also submitted that in regard to three sons of Chiman Sathi (the then Managing Director of the Bank), the High Court cancelled the bail for not honouring the undertaking and repaying the dues. The case of Rajendra Banthia (share-broker) is different and he apparently was not directly involved in defrauding the Bank.

7. A Constitution Bench of this Court in Bihar Legal Support Society v. Chief Justice of India & Anr. [1986 (4) SCC 767] has held that this Court should not ordinarily, save in exceptional cases, interfere with orders granting or refusing bail by the High Court because the High Court should normally be the final arbiter in such matters. The crime in which the petitioners are involved is very serious involving a conspiracy to cheat and defraud public institutions in a systematic manner and the punishment is likely to be severe in the event of conviction. The High Court has recorded a finding that the material shows that the petitioners are prima facie involved in the offence. Large portion of the amount advanced to Bhavika Creations (about Rs. 7.5 crores) has allegedly been diverted by appellant No.1 for acquiring shares in Nedungadi Bank Ltd. As a result of the scam, the Bank is under liquidation from 31.7.2003. On account of the fraudulent activities of the then Managing Director and Appellant No.1 (the then Director) and Appellants Nos. 2 and 3, nearly Rs.23 crores is due from Bhavika Creations alone. Having regard to huge amounts involved in the systematic fraud, there is a danger of the appellants absconding, if released on bail, or attempting to tamper with the evidence by pressurizing witnesses. In the circumstances, we do not find any reason to interfere with the order refusing bail as grant of the relief sought may result in thwarting the course of justice. The appeal is, therefore,

dismissed.

JUDIS