

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2331 of 2003

with

CRIMINAL MISC. APPLICATIONS NO. 2332, 4878, 6810 AND  
6973 OF 2003

For Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

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KETAN KANTILAL SHETH

Versus

STATE OF GUJARAT

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Appearance:

In all matters.

MR ND NANAVATY, SR. ADVOCATE FOR  
NANAVATY ADVOCATES for the Applicant.  
MR PR ABICHANDANI, APP, for the Respondent.

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CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2003

C.A.V. ORDER

1. In these five bail applications, the applicant is  
the same and he has been arrested in connection with

various offences registered with various Police Stations, which can be stated thus :-

S.No.	Case No.	C.R.No. & Police Station.	Date of Arrest.
01	CR.MA 6973/03	M.CASE No.3/02 of Gandevi Police Stn.	06.09.2002
02	CR.MA 4878/03	119/02 of Valsad City Police Stn.	18.08.2002
03	CR.MA 6810/03	93/02 of Navsari Police Station.	13.09.2002
04	CR.MA 2332/03	274/02 of Umra Police Station.	27.09.2002
05	CR.MA 2331/03	274/02 of Varachha Police Station.	11.10.2002

2. The applicant has preferred these bail applications after filing of charge sheet, claiming bail. The facts of the case can be, briefly, stated as under:-

2.1 The applicant was a director of a company known as Home Trade Limited, which was functioning as share and stock broker and merchant, claiming to be member of the National Stock Exchange of India. In the various complaints lodged with various Police Stations, the common factor is that the complainants are co-operative banks. The allegations against the applicant and other accused persons are that, they defrauded and committed breach of trust of these banks by posing as authorised agent to trade in Government Securities and, thereby, procured huge funds running into hundreds of crores of rupees, whereas they were, in fact, not authorised to trade in Government Securities. It is also alleged that, in respect of the funds procured from co-operative banks, they have not been invested and fake receipts were given to the complainants purported to have been issued by Reserve Bank of India.

3. Learned Senior Advocate, Mr. Nanavaty, appearing for the applicant submitted that the charge against the applicant, at the most, can be of conspiracy. Against this, he submitted that the applicant had already resigned from the post of director prior to the date on

which the offences are alleged to have been committed. He submitted that, custodial interrogation of the applicant is over and during search also, no adverse material against the applicant has been found. The investigation is over and the charge sheet is filed. In the complaints lodged by Reserve Bank of India, the applicant is not indicated as an accused.

3.1 It was submitted that, even on ground of parity, the applicant may be granted bail, as the Vice-President and Authorised Signatory of Home Trade, Subodh Bhandari, has been granted bail, whose position in respect of the offence is worse than that of the applicant. It is also contended that the applicant has been granted bail in some cases in this state as well as other states. In support of this contention, a compilation is produced before this Court to indicate that in various cases, the applicant is admitted to bail. It is also submitted that the applicant is prepared to abide by any condition that may be imposed by this Court. His passport is seized and, therefore, he is not likely to flee from justice. His residence is in Mumbai, but he is prepared to offer a local surety. Mr. Nanavaty submitted that trial is likely to take quite some time and the applicant may not be denied his liberty by keeping him in judicial custody pending the trial for a long time. Certain decisions were cited by learned Senior Advocate in support of the submissions made.

4. Learned Additional Public Prosecutor, Mr. Abichandani, opposing this application, submitted that the applicant had attended the meetings with the co-operative banks, on behalf of Home Trade Limited. Mr. Abichandani submitted that the modus adopted was to be a director for some time, then to resign and then to continue to pose as director, attend such meetings and procure the funds under pretext of investment in Government Securities. Mr. Abichandani submitted that Home Trade was not authorised to deal in Government Securities, as can be seen from a communication received from Securities and Exchange Board of India (SEBI) dated August 26, 2002, addressed to the Manager, Surat Nagarik Sahakari Bank Limited, which says that Home Trade was not eligible to trade in Government Securities. Mr. Abichandani submitted that the present case is different from case of similar nature with solitary or isolated transaction. Here series of acts are committed involving crores of rupees of common depositors lying with co-operative banks. Mr. Abichandani submitted that it is not a case where a trader may have failed. It is a case where a criminal act is committed deliberately and

schemingly. Receipts of Reserve Bank of India were forged and fabricated to cover up the act and mislead the banks and dodge or delay any action.

4.1 Mr. Abichandani submitted that the case of the applicant cannot be equated with the case of Subodh Bhandari because he was only an employee of Home Trade, who was authorised to sign, whereas the applicant was a director and, even after resignation, he held out himself to be director and played a major role in convincing the banks to part with huge funds for purported investment in Government Securities through Home Trade, for which Home Trade was not eligible and even, thereafter, though funds were not invested with Reserve Bank of India, forged receipts were produced to cheat or mislead the banks. Mr. Abichandani submitted that, looking to the gravity of offence, the applicant's case for bail may not be favourably considered and the application may be rejected.

5. The contentions which are raised before this Court are examined from their respective angles and on basis of the material on record. It appears that, though the applicant had resigned as a director with effect from 15th May, 2001, he did participate in the meetings with the complainant-banks. It does not appear, at this stage, that it was made known to the banks that he had resigned as a director. His attending the meetings with the banks in connection with business of Home Trade without such information would lead to an inference that he represents the company as its Director and knowledge about his having severed his relationship with Home Trade cannot be inferred at this stage. Resignation part, etc. would be something between him and Home Trade, and with the Registrar of Companies and this aspect is reflected from various communications of the banks with Home Trade wherein special reference is made to the applicant by saying "for kind attention of Mr. Ketan Sheth".

6. It has also to be remembered that the applicant's involvement is not in a solitary incident, but in a series of transactions with co-operative banks and others involving crores of rupees. The modus adopted was to defraud several banks and financial institutions by approaching such institutions and convincing them to deal in Government Securities through Home Trade for purchase of Government Securities, for which Home Trade appears to have been not authorised, as can be seen from letter of SEBI dated August 26, 2002, addressed to Surat Nagarik Sahakari Bank Ltd. After receiving the money, the securities were not delivered in lieu of the payment and

( probably on the pressure from the banks rising) certain receipts were given to the banks purported to have been issued by Reserve Bank of India to create an impression that amount is deposited with Reserve Bank of India and that physical delivery of the securities is awaited. These receipts are also found to be forged, as can be seen from communications received from Reserve Bank of India.

6.1 Statements of various witnesses, namely, Nainesh, Arvind Chitaliya, Meher Keka Vaid, Bansilal Mohanlal Fudnawala, Mahendra Nathu Katargamwala, Suresh Purshottam, Jayanti Chottalal, etc. clearly implicate and indicate the involvement of the applicant.

6.2 If the applicant's resignation on 15.5.2001 was genuinely meant to sever his relations with Home Trade company, he had no business to attend special business meetings for business transactions of Home Trade with the complainant banks. Still, he has continued to pose to represent Home Trade in respect of the above transactions which have, ultimately, culminated into defraudment of banks, prima facie.

7. The contentions raised on behalf of the applicant that the applicant is in jail for a long time, that he had resigned with effect from 15.5.2001 and, therefore, cannot be said to be responsible for the illegal acts of the company cannot be favourably considered, prima facie.

8. It would also be worth a note that the applicant has been enlarged on bail in respect of one offence each of Adajan Nagarik Bank, Udhna Citizen Bank and Karamshad Bank, but that is by way of default bail and not on merits. So far as his release on bail in other states are concerned, facts and allegations against the applicant are not fully known and, therefore, this Court is not inclined to consider them as applicable to the facts of the present case for granting bail to the applicant on ground of parity in the background discussed above.

9. Mr. Nanavaty placed reliance on decision of this Court in Rajnikant N. Desai & Ors. v. Deputy Superintendent of Police & Ors., 1986 GLT 161, wherein it was observed that, merely because large amount is involved, it cannot be a good ground for rejection of anticipatory bail. There cannot be any dispute about the fact that volume of money involved is one of the factors that is required to be considered. But, in the instant case, as observed above, prima facie, there is material

to indicate a pre-planned offence involving the applicant and involving crores of rupees of co-operative banks and financial institutions, ultimately, affecting lakhs of depositors which, in the opinion of this Court, is of a serious nature and the decision cannot help the applicant.

9.1 Reliance was placed on decision of the Apex Court in Dr. Jagannath Mishra v. C.B.I., (1998) 9 SCC 611. That was a case where former Chief Minister was involved in fodder scam in Bihar and considering the facts and circumstances of the case, particularly, that charge sheet has been filed, the Apex Court was pleased to grant him bail. It was, therefore, urged that here also charge sheet is filed and, therefore, the applicant may be granted bail. The decision was rendered by the Apex Court in the facts and circumstances of the case. No ratio is laid in the case and, considering the gravity of offence in which the applicant is involved, the decision cannot help the applicant.

9.2 Reliance was also placed on decision in the case of Ram Choubey v. State of Bihar, AI 2202 SC 2338, where the applicant, who was involved in offence punishable under Section 13 of the Prevention of Corruption Act besides Section 467, 468 and 120-B of the Indian Penal Code, was released on bail on certain conditions on the ground that he has been in jail for a long period and that there is no necessity to keep him in jail as an under-trial prisoner for any more. The said decision was rendered purely on facts of that case and the applicant cannot rely on which as a ratio of law.

9.3 Mr. Nanavaty placed reliance on the decision in the case of Mehmood Mohammed Sayeed v. State of Maharashtra, (2002) 10 SCC 677, wherein the accused, who was charged with offences punishable under Section 463, 467, 461, 419 read with Section 120-B of I.P.C. was released on bail considering that he was in custody for about a year; that investigation is over and charge sheet has been laid; and that it was not known as to how long the trial would take in light of the condition of the trial Courts in the State of Maharashtra. Mr. Nanavaty relied on some observations made by a Sessions Court in a case where it is observed that trial may take time. In the opinion of this Court, this decision cannot help the applicant for the reason that no absolute proposition of law is laid down, further, that the decision was rendered in light of the facts of that case, particularly, the condition of trial Courts in the State of Maharashtra. The position may not apply to the facts of the present

case as, following establishment of Fast Track Courts, the process of trial has become faster. Some observation made by a Trial Court in some case cannot work as a parameter or indicator that the trial would be delayed. The seriousness of offence in which the applicant is involved and its effect on a large section of the society has also to be considered and, in the opinion of this Court, the decision cannot help the applicant.

9.4 Reliance was placed on the decision of the Apex Court in the case of Laloo Prasad alias Laloo Prasad Yadav v. State of Jharkhand, (2002) 9 SCC 372. There also, the application was considered favourably in view of the peculiar circumstances of the case and in view of the fact that in interconnected cases, the Supreme Court had earlier granted bail to the appellants. It was considered that various other persons accused in Bihar Fodder Scam, who had remained in jail for about six months, were already granted bail and, therefore, bail was granted to the appellant therein. The facts of the present case are in not in any manner similar to the case that was before the Apex Court. The bail was granted in peculiar facts and circumstances of the case. Therefore, this case also cannot help the applicant.

9.5 Reliance was placed on the decision in the case of Ashok Dhingra v. N.C.T. of Delhi, (2000) 9 SCC 533, where bail was granted to a person involved in cheating a Japanese national for a sum of about Rs.65 lakhs, considering that he was in custody for about five months. In the instant case, the applicant's involvement affects thousands of depositors of co-operative banks running into crores of rupees. The offence relates to forging of receipts on behalf of Reserve Bank of India and has a bearing on Government Securities, which can have a vital effect on national economy. It is not a case of cheating simpliciter. Further, in the case of Ashok Dhingra (supra) also, no proposition of law is laid down. Therefore, the decision cannot help the applicant.

10. In view of the above discussion, prima facie, involvement of the applicant in a case involving crores of rupees of innocent depositors of co-operative banks and financial institutions is indicated and, therefore, this Court is not inclined to exercise its judicial discretion in favour of the applicant and entertain this application. The grounds pressed into service are merely defences and the material against the applicant cannot be ignored. At this stage, the Court cannot go into the arena of scaling the material against the applicant in light of the defences raised. The applications,

therefore, must fail and stand rejected. Notice is  
discharged.

[ A. L. DAVE, J. ]

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