

## CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 654-657 OF 2010  
 [ ARISING OUT OF S.L.P.(CRL.) NOS. 370-373 OF 2005 ]

KETAN VINAYCHANDRA PAREKH

...APPELLANT

VERSUS

STATE OF GUJARAT &amp; OTHERS

...RESPONDENTS

## O R D E R

1. Leave granted.

2. Challenge in these appeals is to the order of the High Court whereby the High Court dismissed the revision/petition filed under Sections 439 and 482 Cr.P.C. respectively wherein the appellant had challenged the order passed by the Revisional Court. The Revisional Court had affirmed the order passed by the learned Additional Chief Judicial Magistrate and Special Judge, CBI cancelling the bail granted to the appellant.

3. Predominantly, there were two conditions imposed by the learned Chief Judicial Magistrate while granting bail to the appellant on 24.8.2001 which are as under:

- I) The accused has to deposit the amount of Rs. 16,41,69,000.00 in Mandvi Branch of M.M.C.B. accounts against his dues as it is the amount of small depositors up to Rs. 5,000/- within three to six months from the date of order.
- II) Remaining amount of small depositors up to Rs. 1 lakh, amounting to approximately Rs. 380/- crores be deposited by the accused within three years in

his account from the date of order. The accused has to produce the receipt of the depositing amount be produced before this court within 7 days of the specified time of deposits and not to withdraw the same amount."

There were other conditions which are not relevant.

4. The aforesaid conditions were not complied with by the appellant and hence, the learned Additional Chief Judicial Magistrate and Special Judge, CBI vide order dated 3.12.2004

cancelled the bail of the appellant for non-compliance of the order dated 24.8.2001 and that is why the whole war began.

5. The appellant challenged the order of cancellation of bail before the learned Special Judge, Court (Special) for CBI cases, Narangpura, Ahmedabad by filing criminal revision applications which were dismissed vide order dated 17.12.2004.

6. Aggrieved by the order of the Revisional Court, the appellant filed revision/petition under Section 482 Cr.P.C. before the High Court which were also dismissed vide order dated 12.1.2005. Hence, the present appeals by way of special leave.

7. We have heard learned counsel appearing for the parties.

8. In our view, this Court gave a long rope to the appellant. Various orders passed by this Court show that this Court extended the time for making the payment and refixed

the schedule of making payment as fixed by the learned Chief Judicial Magistrate. Ultimately, the things have come to the head that the appellant has deposited all the amounts as directed by the learned Chief Judicial Magistrate. Now the question is that if the appellant has enjoyed the interim orders passed by this Court from time to time and has also enjoyed the extensions from time to time for making the payment and has, though belatedly, deposited the amounts, would this Court be justified in dismissing the appeals and order his re-arrest?

9. In our opinion, in the peculiar circumstances of this case, it may not be possible, though such a course would certainly have been possible taking the strict view of the matter. The amounts have, admittedly, been paid and the fact remains that the orders of the learned Chief Judicial Magistrate directing the appellant to pay Rs. 380 crores + 16,41,69,000/- within three years from the date of his order was accepted by the prosecution agency and the prosecution

agency did not lift its little finger against that order.

Therefore, it will not be open to the prosecution agency to

raise some additional claim against the appellant.

10. Mr. Parag P. Tripathi, learned Additional Solicitor General appearing for the Central Bureau of Investigation

very fairly accepts that all the amounts as directed by the

learned Chief Judicial Magistrate and further re-scheduled by

this Court have now been paid by the appellant. He further

seeks a liberty to go to the learned Chief Judicial Magistrate

again for modification of conditions of bail on fresh grounds

in case such grounds are available to the prosecution agency

in law.

11. Mr. Huzefa Ahmadi, learned counsel appearing for the

complainant-Bank of India claiming his locus standi on the

basis of his character as a complainant in the whole affair

submits that it was the Bank which was defrauded by the

appellant for an amount of 800 crores. Mr. Ahmadi also

earnestly pointed out that though the learned Chief Judicial

Magistrate had granted three years' time for making the

payment of Rs. 380 + Rs. 16,41,69,000, the appellant has taken

almost eight years to pay that amount.

Mr. Ahmadi, therefore,

claims that this Court should order the appellant to make a

payment of at least the interest along with some other

additional amount for conditions of the bail.

12. Now, one thing is clear that the order of the learned

Chief Judicial Magistrate has become final. It was not

objected to either by the prosecution agency and/or by the

complainant-Bank. It will not be feasible for this Court now

to change the conditions for grant of bail, particularly, when

those conditions have been complied with by the appellant,

though belatedly. Therefore, we would only leave it open to

the prosecuting agency and/or the complainant, as the case

may be, to apply for the modification of conditions for continuation of bail to the appellant before the court of Learned Chief Judicial Magistrate. However, it will not be now possible to order the cancellation of the bail granted to the appellant in view of the fact that the appellant has now complied with the conditions by making all payments. In view of compliance of those conditions, now it may not be possible for this Court to look at the matter from any other angle. We, therefore, set-aside the impugned order passed by the High Court and hold that the appellant shall continue to be on bail, however, with liberty which we have granted to the prosecuting agency and/or the complainant-Bank, as the case may be. It is needless to mention here that all the defences as well as the contentions will be open to both the parties as well as to the appellant in case such applications are made.

13. With these observations, the appeals stand disposed of.

[ V.S. SIRPURKAR ]

.....J.

.....J.  
[DR. MUKUNDAKAM SHARMA ]

NEW DELHI  
MARCH 29, 2010.  
ITEM NO. 38

COURT NO. 8

SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).370-373/2005

(From the judgement and order dated 12/01/2005 in CRLMA No. 11852/2004 & CRLMA No. 11853/2004 & CRLMA No. 12195/2004 & CRLMA No. 12196/2004 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

KETAN VINAYCHANDRA PAREKH

Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. And modification/clarification of order dated 21.2.2007 and permission to travel abroad and stay and clarification and office report)

Date: 29/03/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR  
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA

For Petitioner(s) Ms. Kamini Jaiswal, Adv.  
Mr. Sandeep S. Parekh, Adv.

For Respondent(s) Mr. Parag Tripathi, ASG  
Mr. T.V. Ratnam, Adv.  
Mr. Raj Kumar Tanwar, Adv.  
Mr. A.K. Sharma, Adv.  
MR. B. Krishna Prasad, Adv.

Ms. Hemantika Wahi, Adv.  
Mr. Somnath Padhan, Adv.

Mr. Huzefa Ahmadi, Adv.  
Mr. E.C. Agrawala, Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Rishi Agarwala, Adv.  
Mr. Gaurav Goel, Adv.

Mr. Lakshmi Raman Singh, Adv.  
Mr. Kuldeep S. Parihar, Adv.  
Mr. H.S. Parihar, Adv.

: 2 :

Mr. Sanjeev K. Kapoor, Adv. for  
M/s. Khaitan & Co.

Mrs. Manik Karanjawala, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeals are disposed of in terms of signed order.

In view of the aforesaid order, application for  
modification/clarification has become infructuous and is,  
accordingly, dismissed.

(Pardeep Kumar)  
Court Master

(Shashi Bala Vij)  
Court Master

[ SIGNED ORDER IS PLACED ON THE FILE ]