

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION NO. 3712 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3713 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3714 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3715 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3716 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3717 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3718 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3719 of 2018**

**With**

**R/CRIMINAL MISC.APPLICATION NO. 3720 of 2018**

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SHREE VIKAS CO.OP. BANK LTD, (LIQ.) THROUGH SUNIL LAXMANRAO  
POWLE

*Versus*

STATE OF GUJARAT & 2 other(s)

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Appearance:

MR DINESH B PATEL(3495) for the Applicant(s) No. 1

MR HB CHAMPAVAT(6149) for the Applicant(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

MR. HARDIK SONI, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

**Date : 06/05/2022  
COMMON ORAL ORDER**

[1] The present group of matters arising out of almost similar incidents and occurrence of similar offences, learned advocates appearing on both the sides requested the Court to take up conjointly. Hence, Court considering the request, took up the hearing. Particulars about each of the application and complaint numbers etc. provided hereunder for the sake of convenience:-

<b>Application No.</b>	<b>FIR No.</b>	<b>Offences</b>	<b>Date of order under challenge</b>
CR.MA/3712/2018	I-.R.No.23/2003	409, 420, 467, 468, 471, 114, 34 and 120(B)	21.09.2017
CR.MA/3713/2018	I-.R.No.24/2003	"	"
CR.MA/3714/2018	I-.R.No.25/2003	"	"
CR.MA/3715/2018	I-.R.No.26/2003	"	"
CR.MA/3716/2018	I-.R.No.27/2003	"	"
CR.MA/3717/2018	I-.R.No.28/2003	"	"
CR.MA/3718/2018	I-.R.No.29/2003	"	"
CR.MA/3719/2018	I-.R.No.30/2003	"	"
CR.MA/3720/2018	I-.R.No.31/2003	"	"

[2] Since the identical grievance is voiced out by the original complainant Shree Vikas Co. Op. Bank Limited (LIQ), the Court has taken up all applications together by treating Criminal Misc. Application No. 3712 of 2018 as a lead matter.

[3] It is the say of the present applicant that there are almost 20 FIRs came to be lodged against the accused persons, which are numbered as I-C.R.No.23/2003 to I-C.R.No.43/2003 with DCB Police Station, District: Surat for the offences punishable under Sections 409, 420, 467, 468, 471, 114, 34 and 120(B) of the Indian Penal Code. The main accused person, namely, Dilipbhai Ishwarbhai Chudawala, who was the Vice Chairman of the applicant - bank at a relevant point of time is centering around all FIRs and had got sanctioned different loans in the name of his relatives without proper security and though relatives accused persons did not repay the amount of loan with interest to the applicant - bank, which has resulted into filing of the complaint as stated above.

[3.1] It is asserted in the application that out of total 15 accused persons, 4 accused persons have expired, which are narrated in paragraph 4 of the application. It is the say of the applicant that pursuant to the aforesaid criminal cases which have been lodged, the respective accused persons have filed an application for seeking anticipatory bail before the learned District and Sessions Judge, Surat which were registered as Criminal Misc.

Application No.937/2003 to Criminal Misc. Application No.948/2003, Criminal Misc. Application No.950/2003 to Criminal Misc. Application No.959/2003. The said applications came to be disposed of by common order dated 05.12.2003 and respective all accused persons were enlarged on anticipatory bail by imposing appropriate terms and conditions.

[3.2] It has further been mentioned in the application that subsequently original accused persons, who were enlarged on anticipatory bail, filed a regular bail application as well before the District and Sessions Judge, Surat being Criminal Misc. Criminal Application No. 2004 of 2003 which application also came to be allowed by imposing suitable conditions *vide* order dated 21/23.02.2004.

[3.3] It is the case of the applicant that those accused persons were under an obligation to abide by the undertaking, filed during the proceedings of anticipatory bail and were also supposed to file a fresh undertaking and original accused person, namely, Dilipbhai Ishwarbhai Chudawala was under an obligation to deposit an amount of Rs. 1 Lac per month in view of undertaking filed during the proceedings of anticipatory bail

and also the other accused persons were to deposit an amount of Rs. 25,000/- per month during the course of anticipatory bail. It was observed by the court below at a relevant point of time that in case of breach of undertaking, the bail deserved to be cancelled. The original accused persons i.e. Dilipbhai Ishwarbhai Chudawala deposited regularly an amount of Rs.1 Lac per month till June, 2013 in view of the condition but then the persons stopped making any payment to the bank and as such the applicant bank was constrained to file an application for cancellation of bail being Criminal Misc. Application No. 808 of 2015 which the learned District and Sessions Judge, Surat was pleased to reject the same by common order dated 21.09.2017 and it is this common order, dated 21.09.2017, is made the subject matter of present applications.

[4] When the applications are taken up for hearing, Mr. H. B. Champavat, learned counsel appearing for the applicant has submitted that the anticipatory bail ought to have been canceled by the court below in view of the fact that some of the respondent accused have not observed the conditions of grant of anticipatory bail and as such the court ought not to have disposed of the application for cancellation of bail by brief



order. However, without much resistance, Mr. Champavat, learned advocate has candidly submitted that almost in similar circumstance, with respect to this very offence, the Co-ordinate Bench of this Court while examining the case of other accused persons in group of matters headed by Criminal Misc. Application No.3721 of 2018 has dismissed all the applications *vide* order dated 02.05.2022 and as such without any much resistance has straightway left it to the discretion of the Court that in view of the fact that the Co-ordinate Bench has dismissed the applications in exactly similar situation, the present applications may be disposed of. In addition to it, Mr. Champavat, learned advocate has submitted that the order passed by the court below is of 21.09.2017 and as such the said order which was passed for seeking cancellation of anticipatory bail quite before some time may not be disturbed at this juncture and has left it to the discretion of the court by tendering a copy of order dated 02.05.2022 passed by the Co-ordinate Bench of this Court in Criminal Misc. Application No.3721 of 2018. No other submissions have been made.

[5] In response to this, Mr. Manan Shah, learned advocate appearing on behalf of respondents accused, who stated to have

received specific instructions to represent the respondents accused, has also submitted that the Co-ordinate Bench has exactly in a similar situation, dismissed the applications filed by applicant - bank in respect of the offences *vide* order dated 02.05.2022 and as such present applications also may be disposed of on the similar line.

[6] Mr. Hardik Soni, learned APP appearing on behalf of State has submitted that the impugned order is dated 21.09.2017 and looking to the reasons which are assigned in paragraph 8 of the judgment, the discretion at this stage does not deserve to be exercised, more particularly, when exactly on a similar circumstance with respect to this very offences, the Co-ordinate Bench has dismissed the applications of the applicant - bank *vide* order dated 02.05.2022 and as such has requested to dispose of the present applications on the similar line on which the Co-ordinate Bench has passed an order.

[7] Having heard the learned advocates appearing for the parties and having gone through the aforesaid brief submissions parctically on concurrence made by learned advocate Mr. H. B. Champavat, it appears that undisputedly the Co-ordinate Bench

in a group of matters headed by Criminal Misc. Application No. 3721 of 2018 has dismissed the applications *vide* order dated 02.05.2022, considering the circumstances which are prevailing on record and this fact having not been disputed, Court see no reason to interfere with in the impugned order at this stage of the proceedings.

[8] It is further reflected from the record and the reasons which are assigned by the Court below while passing the impugned order dated 21.09.2017 that while exercising discretion at a relevant point of time, the proper attention has been made to the circumstances which were reflecting and has assigned cogent reasons as well and as such the said order does not deserve to be interfered with. Further, there is no specific case made out by the applicant - bank about misuse of liberty or no specific instance of violation of conditions have been succinctly made in an application or pointed out to the Court. Hence, in that view of the matter, when no submissions on that count have been made by learned advocates, court see no reason to entertain the present applications. While coming to this conclusion, the Court has also taken note of the observations which have been made by the Co-ordinate Bench of



this Court dated 02.05.2022 and as such in peculiar background of aforesaid fact, the court is not inclined to interfere with an order of grant of anticipatory bail.

[9] Further apart from that even independent of it the law on the issue of cancellation of bail is well propounded by catena of decisions few of same relevant quoted hereunder:

“(i) In the case of **Myakala Dharmarajam & Ors., v. State of Telangana & Anr.**, reported in **(2020) 2 SCC 743**, Hon’ble Apex Court in paragraph 8 held as under:

*“8. In Raghubir Singh v. State of Bihar<sup>2</sup> this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”*

(ii) In the case of **X. v State of Telangana & Anr.**, reported in **(2018) 16 SCC 511**, Hon’ble Apex Court in paragraphs 14, 15 and 18 held as under:

*“14. In a consistent line of precedent this Court has*

*emphasised the distinction between the rejection of bail in a non-bailable case at the initial stage and the cancellation of bail after it has been granted. In adverting to the distinction, a Bench of two learned Judges of this Court in Dolatram v State of Haryana observed that:*

*"4. Rejection of a bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of the bail, already granted, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion of attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.*

*15. These principles have been reiterated by another two Judge Bench decision in Central Bureau of Investigation, Hyderabad v Subramani Gopalakrishnan<sup>5</sup> and more recently in Dataram Singh v State of Uttar Pradesh:*

*"23. It is also relevant to note that there is difference between yardsticks for cancellation of bail and appeal against the order granting bail. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail already granted. Generally speaking, the grounds for cancellation of bail are, interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concessions granted to the accused in any manner. These are all only few illustrative materials. The satisfaction of the Court on the basis of the materials placed on record of the possibility of the accused absconding is another reason justifying the cancellation of bail. In other words, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.*

*18. For the above reasons, we hold that the order of the High Court allowing the application for bail cannot be faulted. Moreover, no supervening circumstance has been*

*made out to warrant the cancellation of the bail. There is no cogent material to indicate that the accused has been guilty of conduct which would warrant his being deprived of his liberty."*

(iii) In the case of **Manoj Kumar Khokhar v State of Rajasthan & Anr.**, reported in **(2022) 3 SCC 501**, Hon'ble Apex Court in paragraphs 29 and 38 held as under:

*"29. Recently in Bhoopendra Singh vs. State of Rajasthan & Anr. (Criminal Appeal No. 1279 of 2021), this Court made observations with respect to the exercise of appellate power to determine whether bail has been granted for valid reasons as distinguished from an application for cancellation of bail. i.e. this Court distinguished between setting aside a perverse order granting bail vis-a-vis cancellation of bail on the ground that the accused has misconducted himself or because of some new facts requiring such cancellation. Quoting Mahipal vs. Rajesh Kumar – (2020) 2 SCC 118, this Court observed as under:*

*"16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted."*

*38. Thus, while elaborate reasons may not be assigned for grant of bail or an extensive discussion of the merits of the case may not be undertaken by the court considering a bail application, an order de hors reasoning or bereft of the relevant reasons cannot result in grant of bail. In such a case the prosecution or the informant has a right to assail the order before a higher forum. As noted in Gurcharan Singh vs. State (Delhi Admn.) – 1978 CriLJ 129, when bail has been granted to an accused, the State may, if new circumstances have arisen following the grant of such bail, approach the High Court seeking cancellation of bail under section 439 (2) of the CrPC. However, if no new circumstances have cropped up since the grant of bail, the State may prefer an appeal against the order granting bail, on the*

*ground that the same is perverse or illegal or has been arrived at by ignoring material aspects which establish a prima-facie case against the accused."*

[10] Further, it has been brought to the notice of this Court that in respect of two main accused, qua one of the accused, namely, Kalpesh Jariwala, the first information report itself is quashed and set aside on the basis of his having repaid the entire amount for which the offence was registered and that fact has been clearly mentioned in paragraph 6 of the decision dated 02.05.2022 passed by the Co-ordinate Bench of this Court in Criminal Misc. Application No.3721 of 2018. This fact having not been disputed by either side, the Court see no reason to interfere with an order dated 21.09.2017 which has been questioned in the present proceedings. Accordingly, when there is no case is made out by the applicant nor urged before the court about violation of any of the conditions nor any misused of liberty, in view of aforementioned subsequent event as well, the present applications does not deserve to be entertained. Accordingly, the same are dismissed. Notice is discharged.

**(ASHUTOSH J. SHASTRI, J.)**

DHARMENDRA KUMAR