

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. ~~04-5110-JMH~~
03-80146-CR-MARLA SELTZER

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KAUTILYA SHARMA,

Defendant.

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PRETRIAL DETENTION ORDER

The Court, pursuant to 18 U.S.C. §3142, commonly known as the Bail Reform Act of 1984, hereby ORDERS that the Defendant, KAUTILYA SHARMA, be detained pursuant to the provisions of Sections (e) and (f). The Court specifically finds that no conditions or combinations of conditions will reasonably assure the appearance of the Defendant as required.

In the instant case, the Defendant is charged by way of criminal complaint with Conspiracy to Commit Wire Fraud and Securities Fraud, in violation of 15 U.S.C. §§ 78j(b), 78ff(a); 18 U.S.C. §§ 2, 371, 1343; 17 C.F.R. § 240.10b-5. According to the Government, the Defendant faces a potential guidelines sentence of a minimum of twelve (12) years imprisonment. Pursuant to the Government's

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request for pretrial detention, a hearing was held on May 13 and 17, 2004, wherein the Government was represented by AUSA Emalyn Weber, and the Defendant was represented by David Garvin, Esq. In its proffer, the Government indicated that it was seeking detention on the basis of risk of flight. The Court makes the following findings of fact with respect to the order for detention:

A.) The Weight of the Evidence against the Defendant and the Nature and Circumstances of the Offense Charged pursuant to § 3142(g)(1), (2)

The weight of the evidence against the Defendant is substantial. According to the Government's proffer, the instant case arises out of an indictment obtained against an individual named Charles Kerns on October 31, 2003, in the matter of United States v. Charles Kerns, Sr., a/k/a "Joe Kerns," 03-80146-CR-MARRA/SELTZER. In that case, Charles Kerns (hereinafter referred to as "Kerns") is alleged to have entered into fraudulent stock loans and other financial agreements with various individuals between February 2000 and October 31, 2003. The Defendant is alleged to have been involved with such transactions in the following manner.

The instant criminal complaint shows that the Defendant is alleged to have participated in seven (7) securities fraud transactions between June 2, 2000 and November 29, 2002, as well as eight (8) wire fraud communications between

September 18, 2000 and April 2, 2003. The Defendant owns and controls Geek Securities, Inc. (hereinafter referred to as “Geek”), a brokerage business located in Boca Raton, Florida. Geek or its predecessors have been registered with the SEC since 1984. Kerns and the Defendant conspired to entice people to enter stock loan deals wherein the borrowers would borrow money against their stocks and pledge their stock as collateral by transferring the stock to accounts controlled by the Defendant and Kerns. As part of the transactions, Kerns and the Defendant promised they would hold the stock and not sell it. However, in each case, the Defendant subsequently sold the stock without the borrower’s knowledge, and failed to fund the loans. During the course of the criminal enterprise, Kerns referred several people to the Defendant, who in turn provided a favorable reference for Kerns by stating that he had worked with Kerns on similar deals in the past, and that he had never experienced any problems with Kerns. Two of these positive references were made by the Defendant on or about July of 2002, and again on April 2, 2003, well after the criminal investigation had commenced in this matter. The Government contends that the Defendant knew such statements were false, and that he knew that Kerns had been accused in prior transactions of failing to fund the loans and selling the stock without permission. After the people agreed to the loan, the stock was transferred to accounts controlled by

Kerns, who in turn transferred the stock to accounts controlled by the Defendant at Geek. The Defendant then personally directed the sale of the stocks back into the market. On many occasions, the loans were only partially funded, or not funded at all. As a result of some of the lawsuits filed against the Defendant and Kerns, the Defendant repurchased some of the stock and returned it to borrowers. However, as a result of market forces, many shares that were returned were worth substantially less than when they were pledged.

The Government argued that detention is appropriate in the instant case because the Defendant continued to refer business to Kerns and vouch for Kerns after the Defendant learned of the instant criminal investigation. The Government noted that the case involves approximately \$7.6 million in stock loans, and that over \$5 million in proceeds went to the Defendant, his family or his business entities. The Government also proffered that the Defendant has bank accounts and businesses located offshore, in the Bahamas and India, and that much of the proceeds from the stock loan transactions was transferred to these offshore accounts and businesses, including to an uncle in India. Moreover, the Government noted that the Defendant has stated in the past that if he ever got into trouble, all he had to do was hit the doors of the New Delhi airport, where he could easily obtain a fraudulent death certificate and disappear. The Defendant

has also stated that he can always get the money he needs for his companies, that he has extensive familial and political ties to India, and that his wife's family is worth over \$150 million. The Defendant had planned to travel to India to set up more companies during the weekend of May 15, 2004; however, he was taken into custody before he had the opportunity to leave. The Defendant is reportedly closing his businesses, including Geek Securities, and his employees are either leaving or not getting paid. The Defendant is also alleged to be four (4) months behind in his mortgage payments, and his children have been sent to live with relatives.¹

In response, defense counsel argued that the Defendant does not pose a risk of flight for several reasons. First, counsel noted that the Defendant is a legal citizen of the United States since 1985, and that when he became a United States citizen, he renounced his citizenship to India. Counsel also noted that the Defendant's entire family, as well as the family of his wife, are legal citizens of the United States and reside within the United States. Counsel emphasized that the Defendant is a licensed professional, that his family is comprised of other licensed professionals, and that he has no prior criminal history. According to defense

¹ The Government also contended that the Defendant presents a flight risk because he failed to appear at a scheduled deposition with the SEC. However, the Government has since filed a document styled "Government's Correction of Proffer" withdrawing such argument.

counsel, with the exception of a single vacation to the Virgin Islands, the Defendant has not traveled outside of the United States for two (2) to three (3) years, and has no passports other than his United States passport, which has been seized.

The Defendant also argued that much of the Government's proffer and criminal complaint is based only on what Kerns may have stated to third parties, and based on few hard facts. The Defendant contended that Kerns was just one of many clients doing business with Geek Securities, and that Geek is a legitimate securities company conducting legitimate transactions. The Defendant argued that he only became aware of problems with Kern after September of 2001, and that such knowledge does not make him a co-conspirator. In short, the Defendant argued he is a victim of Kerns' business practices.

In rebuttal, the Government disagreed with the Defendant's assertion that he only learned of problems with Kerns in September of 2001. The Government proffered that in April of 2003, the Defendant wrote a letter to an individual wherein the Defendant stated that he had done business with Kerns since 1999, and knew of no problems with Kerns. Moreover, the Government emphasized that after he learned of Kern's activities, the Defendant negotiated five (5) more stock loans. According to the Government, the Defendant stated to FBI agents that he

continued to arrange such stock loans because he wanted to get back money that Kerns owed him.

As to his statement to the FBI agents, the Defendant countered that although he did know of Kerns' activities in September of 2001, he never knew the true depth of them. The Defendant also denies that he vouched for Kerns in April of 2003, as alleged by the Government. Finally, the Defendant presented the testimony of his mother-in-law in support of his position that his wife's family is not worth \$150 million as argued by the Government. According to his mother-in-law, although her family had once been wealthy as a result of ownership of steel mills, the family had to sell the mills back to the bank after the business sustained large losses. The family's only business now is office supply equipment, and is just getting back on its feet.

B.) The History and Characteristics of the Defendant Pursuant to § 3142(g)(3)

The Defendant was born in 1964 in New Delhi, India. He owns a United States passport, and has reportedly last traveled to the Virgin Islands on April 15, 2004 for a vacation. For the last two (2) years, he has resided at 7363 Sedona Way in Delray Beach with his wife, their three children, and his parents. For five (5) years prior to that, he lived in Pittsburgh, Pennsylvania. The Defendant's parents

reside in his home in Delray Beach for half of the year, and reside with the Defendant's sister in Ohio for the other half. The Defendant also has another sister living in Ohio. The Defendant suffers from no mental health or substance abuse problems.

The Defendant has the following assets: (1) a checking account with a \$5,000.00 balance; (2) a savings account with a \$10,000 balance; (3) stock in a newly formed company of which he is Chairman and CEO, First Chesapeake Financial Corporation, in the amount of \$500,000.00; (4) stock in Geek worth approximately \$175,000.00; (5) \$1.4 million in equity in his home; (6) stock in All American Service worth approximately \$4 million. The Defendant has no prior criminal history.

C.) Whether there are Conditions of Release that will Reasonably Assure the Appearance of the Defendant as Required Pursuant to § 3142(g)

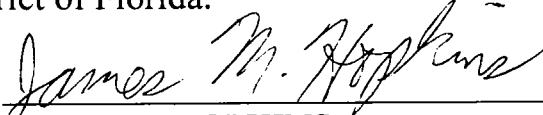
This Court finds that there are no conditions of release which will reasonably assure the appearance of KAUTILYA SHARMA as required. Such finding is based on the following factors: (1) the weight of the evidence is substantial; (2) the Defendant faces a lengthy potential sentence, thereby providing him with a great incentive to flee; (3) the Defendant has familial and business ties to India; (4) the Defendant has access to vast amounts of money, much of which

has been transferred to several offshore accounts and companies based in the Bahamas and India; (5) the Defendant is reportedly closing his business Geek Securities; (6) the Defendant stated that if he ever got into any trouble, all he had to do was get on a plane to New Delhi, India, where he could easily secure a fraudulent death certificate through his political connections and disappear. In light of the foregoing, the Court finds by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of KAUTILYA SHARMA as required at future proceedings. Accordingly, this Court **ORDERS** that KAUTILYA SHARMA be detained on a risk of flight basis.

IT IS HEREBY ORDERED that KAUTILYA SHARMA be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The Court also directs that KAUTILYA SHARMA be afforded reasonable opportunity for private consultation with counsel, and that, on order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility in which the Defendant is confined deliver the Defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DONE and ORDERED in Chambers this 24 day of May, 2004, at West

Palm Beach in the Southern District of Florida.



JAMES M. HOPKINS
UNITED STATES MAGISTRATE JUDGE

Copies to:
AUSA Emalyn Weber
David Garvin, Esq.
U.S. Marshal
U.S. Pretrial Services