

**CRIMINAL REVISION.**

*Before C. C. Ghose and Cuning JJ.*

AHMED ALI SARDAR

*v.*

EMPEROR.\*

1923

May 22.

*Bail—Power of Sessions Judge to grant bail to a person called upon to furnish security pending the disposal of a reference—Criminal Procedure Code (Act V of 1898), ss. 123 (2), 498.*

The provisions of s. 498 of the Criminal Procedure Code are particularly wide, and the Sessions Judge has power thereunder to admit to bail, a person whose case has been referred under s. 123 (2), pending the hearing of the reference.

*Semle*: The Sessions Judge has, under s. 123(2) of the Code, power to revise the order under s. 118, and he may grant bail, just as, in the analogous case of an appeal, the Appellate Court can release the accused on bail.

THE petitioners were ordered by Mr. J. C. Dutt, Subdivisional Officer of Comilla, on the 23rd April 1923, to execute a bond in the sum of Rs. 500, with sureties, to be of good behaviour for two years, and the proceedings were submitted, under s. 123 (2) of the Code, to the Sessions Judge of Tipperah. On the 24th the Judge recorded an order releasing the petitioners on bail. On the next day, however, after hearing the Public Prosecutor, he cancelled the order, holding that he had no jurisdiction to make it. The petitioners thereupon moved the High Court, and obtained the present Rule.

*Moulvi Mahomed Nurul Huq Chowdhry*, for the petitioners. The Judge has power to grant bail under

\*Criminal Miscellaneous No. 60 of 1923, against the order of H. C. Stark, Sessions Judge of Tipperah, dated April 25, 1923.

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the wide terms of s. 498 of the Code. If the petitioners had been convicted of an offence the Judge could have released them on bail. In this case the Judge has power to revise the order under s. 118, and he can, therefore, grant bail.

*The Deputy Legal Remembrancer (Mr. Orr)*, for the Crown. It seems reasonable to allow bail but I should like, at the same time, to place before the Court the view taken by the Sessions Judge. Reads the order of the 25th April.

GHOSE AND CUMING JJ. The present Rule was issued calling upon the District Magistrate of Tipperah to show cause why, pending the hearing of a Reference by the Sessions Judge of Tipperah under section 123, clause (2), of the Code of Criminal Procedure, bail should not be granted to the petitioners to the satisfaction of the District Magistrate.

It appears that certain proceedings were taken against the petitioners under section 110 of the Code, and an order against the petitioners was made under section 118. As the petitioners were unable to furnish the securities demanded, the proceedings were then laid before the Sessions Judge of Tipperah for orders under section 123. The petitioners urge that, pending the hearing of the Reference under section 123, sub-section (2), they should be admitted to bail. The Sessions Judge was of opinion that, having regard to the provisions of section 123, sub-section (2), he had no power to admit the petitioners to bail.

Now, the provisions of section 498 of the Criminal Procedure Code regarding admission to bail are particularly wide, and it is pointed out in the section itself that a Court of Sessions may *in any case* direct any person to be admitted to bail. There are no words in section 123, sub-section (2) controlling the

very wide provisions of section 498. If a person has been convicted and has appealed, he can apply for bail to the Sessions Judge. In the present case, as an order has been made under section 118 against the petitioners, such an order is liable, in the circumstances stated, to be revised by the Sessions Judge under the provisions of section 123, sub-section (2). In other words, the Sessions Judge may or may not confirm the order passed by the Magistrate under section 118, and it stands to reason that, if in the case of a person who is convicted and who has preferred an appeal, bail is allowable, bail can similarly be allowed in the case of a person against whom an order has been made under section 118 and which order is liable to be revised by a Sessions Judge under the provisions of section 123, sub-section (2). At any rate, in our opinion, there is no reason why any restriction should be placed upon the wide provisions of section 498. In this view of the matter we think the Sessions Judge had power to admit the petitioners to bail and we, accordingly, send the matter back to the learned Sessions Judge in order that he may deal with the matter of the application for bail in the light of the remarks made above.

E. H. M.

*Rule absolute.*

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