

above this appeal must necessarily fail. Accordingly I dismiss it.

ADDISON J.—I concur.

A. N. C.

1933

GULAB

V.

MST.

SARWAR JAN.

*Plaintiff's appeal accepted.
Cross-appeal dismissed.*

REVISIONAL CRIMINAL.

Before Bhide J.

THE CROWN—Petitioner

versus

KRISHAN GOPAL—Respondent.

1933

June 29.

Criminal Revision No. 459 of 1933.

*Criminal Procedure Code, Act V of 1898, Section 498:
Bail—Powers of Superior Courts to grant—after framing
serious charge against accused—Revision—whether competent.*

The Commissioners appointed under Punjab Act IV of 1930, who were trying 'the Punjab Conspiracy Case,' while framing charges against the respondent under Section 302/109, Indian Penal Code, etc. ordered his release on bail for Rs. 10,000, for reasons set out in their order. This petition for revision was filed by the Crown objecting to the bail order as illegal and without jurisdiction. The question was whether the order passed under Section 498, Criminal Procedure Code, was not legally justifiable.

Held, that under Section 498, Criminal Procedure Code, the High Court and the Court of Sessions have an unfettered discretion in the matter of granting bail, but the discretion must be exercised judicially and not arbitrarily, and that in the exercise of the powers under that Section, the limitations imposed by Section 497 on the power of other authorities to grant bail should ordinarily be taken into consideration, but where Commissioners, with powers of a Court of Sessions, had given their reasons for allowing bail to the respondent, against whom serious charges had been framed, and had apparently considered his case to be on the border line and the circumstances exceptional, and where

1933

THE CROWN
v.
KRISHAN
GOPAL.

the amount of security had been fixed at a very high figure, it could not be said that the Commissioners had acted without jurisdiction or that in the circumstances there was adequate ground for interference by the High Court in revision with the discretion exercised by the Commissioners.

K. N. Joglakar v. Emperor (1), followed.

Emperor v. Sourindra Mohan Chuckerbutty (2), referred to.

Petition for revision of the order of the Commission, trying "The Punjab Conspiracy Case," dated the 6th March, 1933, ordering release of the respondent on bail.

CARDEN-NOAD, Government Advocate, JAWALA PARSHAD and GOPAL LAL, Public Prosecutors, for Petitioner.

A. N. KAPUR and PRAN NATH MEHTA, for Respondent.

BHIDE J.

BHIDE J.—The Commissioners appointed under Punjab Act IV of 1930, who are trying what is known as the Punjab Conspiracy Case, while framing charges against the respondent Kishen Gopal under section 302/109, Indian Penal Code, section 307/109, Indian Penal Code, etc. ordered his release on bail for rupees ten thousand for reasons set forth in their order, dated 6th March, 1933. A petition for revision has been filed on behalf of the Crown and it has been urged by the learned Government Advocate that the order passed by the learned Commissioners was 'illegal and without jurisdiction.' In support of this contention the learned Government Advocate relied on the provisions of section 497, Criminal Procedure Code, according to which an accused person shall not be released on bail if there appear to be

(1) 1931 A. I. R. (All.) 504.

(2) (1910) I. L. R. 37 Cal. 412.

reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life. It was urged that as the learned Commissioners framed charges against the respondent, they evidently considered that there was 'ground for presuming' that he had committed the offences with which he was charged (*vide* section 254, Criminal Procedure Code) and hence the order granting bail was without jurisdiction and illegal. Attention having been drawn to the provisions of section 498, Criminal Procedure Code, the learned Government Advocate contended that, although the restrictions set forth in section 497, do not appear in section 498, it had been held that the grant of bail under the latter section also is governed by the restrictions in the preceding section.

1933

THE CROWN
v.KRISHAN
GOPAL.

BHIDE J.

It may be conceded at once that, in view of the fact that the learned Commissioners had framed charges against the respondent under sections 302/109, Indian Penal Code, etc. the order granting bail does not appear to be justifiable under section 497, Criminal Procedure Code; but the order does not purport to be passed under that section but was passed on an application under section 498, Criminal Procedure Code. The learned Commissioners have admittedly powers of a Court of Sessions, and the sole point which needs consideration is whether the order passed by them under section 498 is or is not legally justifiable. Most of the authorities cited by the learned Government Advocate relate to section 497, Criminal Procedure Code, and are of no assistance so far as this point is concerned. The only authority referred to by him which is relevant so far as section 498, Criminal Procedure Code, is concerned is

1933
 THE CROWN
 v.
 KRISHAN
 GOPAL.
 BHIDE J.

Emperor v. Sourindra Mohan Chuckerbutty (1), in which the learned Judges observed that though the powers of the High Court under section 498, Criminal Procedure Code, as regards granting bail were unfettered, they ought to 'take into consideration' the limitations on the power of other authorities to grant bail imposed by section 497, Criminal Procedure Code. But this observation cannot be taken to mean that the powers of the Court of Session and the High Court under section 498, Criminal Procedure Code, are not wider, or that they cannot grant bail on grounds other than those falling within the purview of section 497, Criminal Procedure Code. Any such interpretation would be, I think, clearly opposed to the plain language of the section itself.

The contention of the learned counsel for the respondent that section 498, Criminal Procedure Code, gives a much wider discretion to the Court of Session and the High Court than that given to subordinate Courts by section 497, Criminal Procedure Code, is, on the other hand, supported by ample authority. The question was recently considered at length by a Special Bench of three Judges of the Allahabad High Court in *K. N. Joglekar v. Emperor* (2), and it will be sufficient to quote the following observations of their Lordships on the point :

"Section 498, Criminal Procedure Code, gives an unfettered discretion to the High Court or the Court of Session to admit an accused person to bail. It is a mistake to imagine that section 498 is controlled by the limitations of section 497, except when there are not reasonable grounds for believing that the accused committed the offence, or there are

(1) (1910) I. L. R. 37 Cal. 412.

(2) 1931 A. I. R. (All.) 504.

reasonable grounds for believing that he is not guilty, in which cases it becomes a duty to release him. Magistrates can proceed under section 497 only and their discretion is regulated by the provisions of that section; but section 498 confers upon a Sessions Judge or the High Court wide powers to grant bail which are not handicapped by the restrictions in the preceding section. That discretion is unfettered but of course it cannot be exercised arbitrarily, but must be exercised judicially. There is no hard and fast rule and no inflexible principle governing such discretion. The only principle that is established is that there should be a judicial exercise of that discretion. It is not any one single circumstance which necessarily concludes the decision, but it is the cumulative effect of all the combined circumstances that must weigh with the Court. The considerations are too numerous to be classified or catalogued exhaustively."

The learned Judges then proceeded to mention various matters which may be properly taken into consideration in deciding the question of bail.

The learned Commissioners have given their reasons for allowing bail although serious charges had been framed against the respondent. The case of the respondent was apparently considered to be on the border line and hence in the exceptional circumstances bail was granted; but at the same time the amount of the security was fixed at a very high figure. I feel no doubt that the learned Commissioners had jurisdiction to grant bail under section 498, and in view of the reasons given by them in their order, I see no adequate ground for interference in revision with the discretion exercised by them in the matter.

1933

THE CROWN

v.

KRISHAN
GOPAL.

BHIDE J.

1933

THE CROWN
v.
KRISHAN
GOPAL.
—
BHIDE J.

The learned Government Advocate mentioned in the course of his arguments that the respondent was attempting to tamper with the prosecution witnesses. There is no affidavit before me in this connection and the matter would require enquiry. If there is any reliable evidence to show that the respondent is abusing his liberty it will be, of course, open to the learned Government Advocate to approach the learned Commissioners with an application for cancellation of the bail. With these remarks I dismiss the petition.

N. F. E.

Revision dismissed.

APPELLATE CIVIL.

Before Tek Chand J.

MUSSAMMAT JIWANI BAI AND OTHERS

(DECREE-HOLDERS) Appellants

versus

JALAL-UD-DIN (SURETY)

MUHAMMAD DIN (JUDGMENT-
DEBTOR)

} Respondents.

Civil Appeal No. 1840 of 1932.

Civil Procedure Code, Act V of 1908, Section 145: Surety — enforcement of liability against — Bond — attested by different Court.

In March, 1926, the Senior Subordinate Judge at Lyallpur had issued a *robkar* to the Subordinate Judge at Gojra to the effect that in cases where judgment-debtors were brought before that officer under arrest in execution of decrees pending in any other Court he could, on attesting the security-bond for due appearance of the judgment-debtor in the proper Court, release him. The judgment-debtor in this case lived in Gojra and was arrested in the afternoon, so that if he had been taken to Lyallpur to appear before the Senior Subordinate Judge he would have had to be kept in custody for the night. He was accordingly produced before the Subordinate Judge at Gojra with a surety and that officer attested

1933

June 29.