CRIMINAL REVISION.

Before Mr. Justice Mitra and Mr. Justice Coxe.

1908
October 1.

JAMINI MULLICK
v.
EMPEROR.*

Bail, grounds for grant or refusal of—Remand to custody—Reasonable evidence of prisoner's guilt—Criminal Procedure Code (Act V of 1898) ss. 344, 497 and 498.

Held per Mitra J. (Coxe J. *dissente*,) that the main question for consideration in determining matters of bail is whether there are reasonable grounds for believing the accused guilty of the offences charged. Other considerations must also arise in deciding this question, and one of these, which has always guided English and Indian Courts, is whether there are any grounds for supposing that the accused would abscond.

Under section 497 of the Criminal Procedure Code an accused should ordinarily be released on substantial bail until reasonable grounds are made out for presuming his guilt. *In re Johur Mull* (1), followed.

If after a remand incriminating evidence is not adduced, and if the prosecution has already had sufficient time to adduce such evidence, the Court will reasonably conclude that such evidence is not forthcoming at the time. It should then under section 497, sub-section (2), release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. *Manikam Mudali* v. *Queen* (2), followed.

Whether there are reasonable grounds or not must be decided judicially, that is to say, there should be some tangible evidence on the record on which, if unrebutted, the Court can conclude that the accused might be convicted. The statement by a witness that he has seen a certain act of an incriminating character done by the accused might be sufficient. But if there be no evidence whatsoever, or evidence of a very flimsy character on the face of it, the inference will be, after a reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing the accused to be guilty. The prosecution must, however, have a fair opportunity of adducing evidence of a really incriminating nature. At all events, the first information report should indicate with sufficient exactness, the character of the evidence likely to be forthcoming.

The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The gravity of the offence and some evidence of its perpetration by the accused will, however, justify detention.

* Criminal Revision Miscellaneous Nos. 140, 141, and 142 of 1908, against the order of C. H. Reid, Joint Magistrate of Midnapore, dated the 26th September 1908.

(1) (1906) 10 C. W. N. 1093. (2) (1882) I. L. R. 6 Mad. 63.

1908

JAMINI MULLICK v. EMPEROR.

THE facts of this case down to the order of the High Court (SHARFUDDIN and COXE JJ.), dated 18th September, made in the case of *Narendra Lal Khan* v. *Emperor* (1), are fully stated in the report of that decision. The case when it went back to the Magistrate was taken up by him on the 23rd, 24th and 26th September. He examined the Joint Magistrate, who proved the issue of search warrants and the voluntariness of the confessions of Santosh Chandra Das and Surendra Nath Mukerjee. The Deputy Magistrate, who recorded the confession of the latter, was also called to prove that it was made voluntarily. The Jail Superintendent was then examined to establish that neither Santosh nor Surendra had made any complaints of ill-treatment by the police. The last witness was a kanungoe, who made the plans of the houses of Santosh and Baroda Prosad Dutt. The reports of the Chemical Examiner were also put in as evidence.

Applications for bail were made to the Magistrate but, except in the case of two, they were refused, and the case was remanded till the 19th October. The accused then moved the High Court for bail.

Mr. Dutt (*Mr. Morrison, Mr. Mullick, Babu Monmotho Nath Mookerjee* and *Babu Peary Lal Ghose*) for the petitioners, except Abinash Chandra Mitter. The whole matter turns upon the question, whether there is any ground for believing that the accused are guilty. If there is none, they are entitled to bail: *In re Johur Mull* (2). There are only the retracted confessions, but no further evidence. Refers to *Manikam Mudali* v. *Queen* (3). The prosecution has even failed to file a list of witnesses under sealed cover.

Mr. Morrison for Abinash Chandra. Upon the question of bail there must be a judicial belief in the guilt of an accused. Some *prima facie* case must be made out. The only evidence is the report and an expression of opinion by two police officers. The prosecution is even now unable to produce incriminating evidence.

(1) *ante* p. 166 (2) (1906) 10 C. W. N. 1093.
(3) (1882) I. L. R. 6 Mad. 63.

1908

JAMINI MULLICK v. EMPEROR.

MITRA J.

Babu Hemendro Nath Mitter for the Crown. In the previous stage of the case (1) the High Court decided that there was sufficient evidence for a remand, and the only point is whether the case has been taken up in earnest. The prosecution intended to put in a list of witnesses at the next hearing. The only question here is whether there were reasonable grounds for the belief in the guilt of the accused. The Magistrate had before him the police report, the first information and the deposition of the police officers that there was evidence, which they believed to be credible, against the accused, apart from the retracted confessions.

MITRA J. There are four sets of petitioners before us. The first petition has been presented on behalf of Jamini Mullick and five others, the second on behalf of Akhil Chandra Sarkar and nine others, the third on behalf of Santosh Chandra Dass and Surendra Nath Mukerjee and the fourth on behalf of Abinash Chandra Mitter. The applications purport to be under section 497, read with section 498, of the Criminal Procedure Code.

A preliminary inquiry is now going on in the Court of the Joint Magistrate at Midnapore. The proceedings against most of the petitioners commenced practically on the 28th August 1908, but Santosh and Surendra had been arrested in July. All the petitioners have since then been in custody. Santosh and Surendra had been in custody from July. The offences with which they have been charged are non-bailable and undoubtedly of a very serious nature.

On the 7th September, the case came on before the Joint Magistrate, and there was a remand. The preliminary enquiry was commenced on the 23rd September, and witnesses were examined on that day and on the 24th and 26th September. The evidence that these witnesses gave was mostly such as would go only against Santosh and Surendra.

(1) *Ante* p. 166.

Very little evidence was adduced against the others during these days. On the 26th the enquiry was adjourned to the 19th October, and on the same day, the 26th, applications were made on behalf of the petitioners to be released on bail. The trying Magistrate, however, was of opinion that there were reasonable grounds for holding that the petitioners were guilty of the offences charged, and he, therefore, did not exercise the powers conferred on him by section 497 of the Criminal Procedure Code.

The petitioners have come up before us, and under section 498 of the Code we have concurrent jurisdiction with that of a trying Magistrate and not merely revisional jurisdiction.

The main question we have to consider in connection with these petitions is—are there reasonable grounds for believing that the petitioners are guilty of the offences of which they have been accused? Other considerations must also arise in deciding the question of releasing the accused on bail, and one of these, which has always guided Courts of Justice, both in England and India, is whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an inquiry or trial. It is not necessary for me to state here at length the grounds on which bail ought to be granted or refused under section 497 of the Criminal Procedure Code. In one of the reported cases in India, *In re Johur Mull* (1), I expressed an opinion as to the matters, which a Court should consider, in deciding the question of granting or refusing bail. I was of opinion (and my learned brother Ormond J. agreed with me) that an accused might ordinarily be released on substantial bail, until reasonable grounds were made out for presuming his guilt. The words of sub-section (1) of section 497 would lead to his conclusion. To quote some of the words of the section "he (the accused) shall not be so released, if there appear reasonable grounds for believing that he has been guilty of the offence, of which he is accused." Sub-section (2) of section 497 has

(1) (1906) 10 C. W. N. 1093.

1908

JAMINI MULLICK v. EMPEROR.

MITRA J.

made the rule of law quite clear. It lays down that the accused *shall* be released on bail, if there are no reasonable grounds for believing that he has committed such offence but that there are sufficient grounds for further enquiry into his guilt.

If after a remand evidence of an incriminating character is not adduced and if the prosecution had already sufficient time to adduce such evidence, the Court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then, under sub-section(2), release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. This was the view taken by the Madras Court in *Manikam Mudali* v. *Queen* (1), and I agree with it.

The question of fact, therefore, is—are there reasonable grounds for believing that the petitioners are guilty of the offences of which they have been accused? Whether there are reasonable grounds or not is a question which must be decided judicially, that is to say, there should be some tangible evidence on which the Court might come to the conclusion that, if unrebutted, the accused might be convicted. The statement by a witness in the witness box that he has seen a certain act done, an act of an incriminating character, might be sufficient. As to whether the witness can be fully relied on or not is a question for subsequent consideration. But if there be no evidence whatsoever or evidence of a very flimsy character on the face of it, the inference would naturally be, after a reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing that an accused is guilty. The prosecution must, however, have a fair opportunity of adducing evidence of a really incriminating character. At all events, the first information report should indicate with sufficient exactness the nature of the evidence that is likely to be forthcoming. Ordinarily six weeks ought to be sufficient to start a case for the prosecution. If in any case in a preliminary enquiry more than six

(1) (1882) I. L. R. 6 Mad. 63.

weeks has been taken without an earnest attempt being made to adduce direct or strong circumstantial evidence, my experience is that there is either no evidence of a tangible character, or if evidence is afterwards adduced, the chances are that that evidence is of an unreliable character. But that cannot be said with respect to every case. Cases of conspiracy stand upon a different footing. It takes a considerable time to collect evidence after information has been received by a police officer or a Magistrate. Ordinarily, however, if after an arrest, six weeks' time has elapsed or a shorter period according to the circumstances of a case, and no evidence of an incriminating character be produced against an accused, he Court should hold that there were, at that stage of the case, no reasonable grounds for further detaining the accused in custody, and the accused should be released on bail as provided for in sub-section (2) of section 497.

I need hardly add that if, during the course of the enquiry, subsequent to the order for release on bail, it be found that there is evidence against the accused, the Court can always exercise the power conferred on it by sub-section (3) of section 497 of the Criminal Procedure Code. This is what we said in *In re Johur Mull* (1) :—" if it appears subsequently on the production of further evidence that a case has been made out against the petitioners or any of them, it will be competent for the Magistrate to declare the bail bonds cancelled and to direct the accused to surrender." The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The seriousness of an alleged offence, and some evidence of its perpetration by the accused would, however, justify detention.

I am of opinion that, so far as the preliminary enquiry in the present case has been gone into, no reasonable grounds have been made out against most of the accused. Some of them are gentlemen of position, and, if security of a substantila

(1) (1906) 10 C. W. N. 1093.

1908

JAMINI MULLICK v. EMPEROR.

MITRA J.

character is taken from them, there would be no apprehension that they would abscond and attempt to evade justice.

In the first application three of the petitioners are pleaders of the Midnapore Court, the others are zemindars, and they all appear to be respectable people. Against some of them there is absolutely no evidence. Against the others there are statements in the retracted confessions of Santosh and Surendra. The evidence already on the record cannot be considered to afford reasonable grounds for believing that they are guilty of the offences with which they have been charged. The trying Magistrate thinks that there are such reasonable grounds. He has not, however, indicated what these grounds are. The first information report does not give any substantial grounds besides the confessions of the two accused, Santosh and Surendra, which have since been retracted. No names of witnesses are given in the report, and even on the 26th September the prosecution was not evidently in a position to give to the Magistrate, even in a sealed cover, the names of at least some of the witnesses whom it was intended to examine. Neither has any evidence been given against these petitioners since they were arrested.

I am, therefore, of opinion that Upendra Nath Maiti, Nalini Kanta Sen Gupta, Gopal Chandra Banerji, Khagendra Nath Banerji, Manmatha Nath Kar and Jamini Mullick should be released on bail with two sureties each, the amounts of the bail-bonds being substantial, and they must be ascertained by the trying Magistrate, and, if he be absent from the station, by the District Magistrate or by such other Subordinate Magistrate as he may appoint for the purpose.

My observations with reference to the first set of petitioners apply to the second set, namely, Akhil Chandra Sircar, Kailash Chandra Das Mahapatra, Paran Chandra Chabri, Jotindra Nath Das, Deb Das Karan, Goshta Behary Chandra, Rash Behary Bose, Gobinda Chandra Mukerjee, Asu Tosh Das, and Jog Jeeban Ghose. Against some of these there is absolutely no evidence; against the others the evidence is of a most

unsubstantial character. It seems that some of these persons are not men of very good position. I am not, however, prepared to make a distinction between persons of very good position and those not of such position, if they can satisfy the Magistrate as to substantial bail with two sureties each.

As regards the third set of petitioners, Santosh Chandra Dass and Surendra Nath Mukerji, there is evidence against them as they made confessions incriminating themselves. They might have retracted their confessions; but the confessions are evidence against themselves. I cannot say there is reasonable ground for believing that they are not guilty. It might be that subsequent evidence would go to prove that they are really guilty. No case has been made out by them for release on bail, and their petition is, therefore, rejected.

The fourth petition is by Abinash Chandra Mitter. The affidavit shows that he is a gentleman of position, and, so far as evidence has been recorded, there is very little against him. I am of opinion that he also should be released on bail with two sureties, the amount of the bail also being of a substantial character.

As there has been a difference of opinion between my learned brother and myself, under section 36 of the Letters Patent of 1865, the opinion of the Senior Judge should prevail. The order of the Court, therefore, is that contained in my judgment.

COXE J. In this case I have the misfortune to be unable to agree with my learned brother.

When these applications came up about a fortnight ago the Bench of this Court, of which I was a member, held that there was sufficient justification for detaining the accused in custody, provided that the case was taken up in earnest on the 23rd September. To that decision I adhere, and it does not seem to me that we ought now to review that order or to consider again whether there is sufficient justification for detaining the accused.

1908

JAMINI MULLICK v. EMPEROR.

COXE J.

All that seems to me to be now open to discussion is whether the case has or has not been taken up in earnest. A special difficulty has arisen in this case for which the prosecution is not responsible, namely, that the Magistrate's Court is necessarily closed for the annual vacation. This occurrence does not seem to me, however, to give the accused any right to bail, which otherwise they would not have had.

Turning then to the question whether the case was taken up in earnest, I find no complaint in the petition that the Magistrate took less than the available time in dealing with the case. Four witnesses were examined, and the evidence was directed to a point certainly not of a formal nature but of very considerable importance to some of the accused, namely, whether the confessions made by them were voluntary or not. These accused persons are among the present applicants, but certainly they can have no cause for complaint that the case has not been duly proceeded with as against them.

It is pleaded strenuously on behalf of the others that this evidence is of no value against those others. This may be so, but I do not think that a case can be divided up in that way or that other accused persons are entitled to bail, while evidence against some of them is being taken. The case must be proceeded with in some order: and if evidence has been given against some of the accused, it cannot reasonably be said that the case has not been taken up in earnest against the others. I think the case was taken up in earnest, and that these applications should be refused.

In conclusion I would refer to one point, namely, that the remand being until the 19th October is for a period in excess of that allowed by law. On this the Magistrate points out: "The date to which the case is adjourned is the seventh open day after the Puja vacation. The first few open days are always a busy time, and as I shall myself be in Midnapore during the vacation, I expect to be absent for a few days after its close. No objection has been taken to the date fixed, in fact one counsel for the defence suggested it as a suitable date."

1908

JAMINI MULLICK v. EMPEROR.

COXE J.

Having regard to this remark, I do not think that we should interfere in this matter because the remand is not strictly in accordance with the provisions of section 344.

I would, therefore, refuse these applications.

E. H. M.