

CRIMINAL REVISION.

Before Mr. Justice Sharfuddin and Mr. Justice Coxe.

NARENDRA LAL KHAN

v.

EMPEROR.*

1908
Sept. 18.

Bail, grounds for granting or refusing—Remand to custody—Criminal Procedure Code (Act V of 1898) ss. 344, 497 and 498.

In exercising its discretion under section 498 of the Criminal Procedure Code the High Court should not confine its attention to the question whether the prisoner is likely to abscond or not. Other circumstances also may affect the question of granting bail to accused persons charged with crimes of a grave character.

If a person is accused before a Magistrate of a non-bailable offence then, unless he considers that there are no reasonable grounds for believing him to be guilty, the Magistrate must refuse bail, though he may be certain that the accused will stand his trial.

It is the right of an accused to demand that the charges against him should be tried without any unreasonable delay, and such delay will dispose the High Court to grant bail.

Where a police officer of superior rank deposed that he had evidence, which he believed, implicating the accused, and swore also to the truth of the first information, which alleged association of the accused in certain places and stated that the police had in their possession incriminating correspondence between the accused and a secret society in Calcutta, it was held that there was sufficient evidence for a remand under section 344 of the Code, but that there had been unreasonable delay as regards the prisoners, who had been in custody for about six weeks, though not in the case of those who were in jail for three weeks.

On the 8th July 1908 the house of one Peary Mohun Das of Midnapore was searched by the police and a bomb found. Santosh Chandra Das, the son of Peary Mohun, was arrested, in consequence, under the Explosive Substances Act (VI of 1908), and placed before the Joint Magistrate on the next day, and remanded to custody till the 23rd, on which date and after he was again remanded, without being brought before the Magistrate, to the 7th and 21st August. In the meanwhile he made a confession to the Magistrate on the 29th July. On the 31st

* Criminal Revision Miscellaneous No. 134 of 1908, against the order of J. Bryne, Offg. Sessions Judge of Midnapore, dated Sept. 12, 1908.

July a bomb was found in the record room of two persons, named Baroda Prosad Dutt and Saroda Prosad Dutt and another in a drain belonging to the premises, and these two with six others were thereupon arrested and taken before the Magistrate on the 1st August, and remanded to the 15th instant, on which date one of them, Surendra Nath Mukerjee, made a confession before a Deputy Magistrate implicating a large number of persons in Midnapore. This batch of accused was then remanded to the 31st instant.

On the 26th August Mazharul Huq, a Deputy Superintendent of Police at Midnapore, sent in a police report to the Joint Magistrate praying for search and arrest warrants, under sections 4, 5 and 6 of the Explosive Substances Act, against the Raja of Narajole and 19 others, residents of Midnapore. Upon receipt of this report the Magistrate, professing to act upon it and the two recorded confessions, issued the warrants. The houses of the Raja and of 17 others were searched on the 28th, and they were arrested and put up before the Magistrate on the next day and remanded till the 7th September. On the 31st August Santosh and Surendra retracted their confessions, alleging that they had been obtained by police ill-treatment. The deposition of Lal Mohun Guha, a local Inspector of Police, was taken on the same day. He proved the finding of the bombs, and stated that his inquiries showed that the accused, who were then in the dock, except three, were members of a conspiracy for the manufacture of bombs to kill Europeans.

On the 7th September all the accused were placed together before the Joint Magistrate. A first information report was filed by Mazharul Huq alleging that the accused were members of a secret society operating at various places in Midnapore and elsewhere, having as one of its objects the assassination by bombs of Mr. Weston, the District Magistrate of Midnapore. It was further stated in the report that the police had seized incriminating correspondence connecting the accused with a secret society in Calcutta. Santosh and Surendra repeated the retraction of their confessions on the 8th September. Lal Mohun Guha was examined on the same

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date, and stated that his inquiry had put him in possession of information, which he believed to be trustworthy, that the offences charged in the first information were committed by the accused. On the same day Mazharul Huq deposed to the same effect and also to the correctness of the first information. The accused applied for bail to the Magistrate, but it was refused the next day, as he found that there were reasonable grounds for believing that each accused was guilty of the offences charged. The case was then postponed to the 23rd instant.

The accused thereafter renewed their application for bail before the Sessions Judge contending that, as the confessions had been retracted, there was no evidence against them. The Judge declined to grant bail on the ground that two police officers had deposed that there was further evidence, the character of which the Magistrate was aware of, and that the period of custody of most of the accused was not unduly long having regard to the nature of a case of conspiracy. Against this order the accused moved the High Court.

Mr. P. L. Roy (Mr. Keays, Mr. Khodabux and Babu Joy Gopal Ghose with him) for the Raja of Narajole. The Raja is a wealthy man and has a large stake in the interest of order. He was arrested on the 28th and placed before the Magistrate the next day. There has been no evidence recorded to prove the guilt of the petitioner except the statements of two police officers that they have further evidence. This may be sufficient for a first, but not for an indefinite, remand. There can be no doubt that the Raja will appear and stand his trial. Under section 498 of the Code the Sessions Judge and the High Court have an unlimited discretion in the matter of granting bail. The main principle in considering the question of bail is whether the accused will stand his trial or abscond. Refers to *In re Barronet* (1), *Reg v. Scaife* (2), *In re John Mull* (3). The Raja is willing to stay in his own house at M.dnapore under a police guard.

(1) (1852) 1 El. & Bl. 1.

(2) (1841) 9 Dowl. 553.]

(3) (1906) 10 C. W. N. 1093.

Mr. Dutt (*Mr. Godfrey* and *Babu Peary Mohun Dass* with him) for Santosh and six others. As regards Santosh the case against him was complete on the 8th July, and he ought to have been brought before the Magistrate. There is no evidence against the others.

Mr. Chuckerbutty (*Mr. K. N. Chowdhry*, *Mr. A. N. Chowdhry* and *Babu Monmotho Nath Mookerjee*) for Upendra Nath Maiti and others. The principal matter a Court has to consider in such cases is the possibility of the accused absconding. These accused are gentlemen of position, and they would not absent themselves. There is no evidence against them.

Mr. K. N. Chowdhry (*Mr. A. N. Chowdhry* and *Babu Monmotho Nath Mookerjee* with him) for Khagendra Nath Banerjee. There is nothing against this accused in the evidence.

Mr. Mullick (*Mr. Dutt* and *Babu Peary Mohun Dass* with him) for Baroda Prosad Dutt and others adopted the same line of argument.

Mr. Baxter for the Crown. Santosh has been a considerable time in custody, but a bomb was found in his house and he has confessed. A case of conspiracy by being members of a secret society must take a long time to unravel. The question is whether there has been an unreasonable delay. The real remand was on the 9th September. Arrangements had to be made to have the cases tried together. The question is whether *prima facie* there is no reason to believe the accused guilty. Refers to the first information. The charge is not only with respect to the finding of the bombs, but also that there is a secret society in Midnapore, one of the objects of which is to kill Mr. Weston. The case of *In re Barronet* (1) is in my favour. *In re Johur Mull* (2) is distinguishable. The only question is not whether the accused will appear at the trial. The charges are very serious. The retracted confessions are admissible against the persons making them: *Queen-Empress v. Raman* (3), and, if corroborated strongly, also against the others: *Yasin v. King-Emperor* (4). The investigation was

(1) (1852) 1 El. & Bl. 1.

(2) (1906) 10 C. W. N. 1093.

(3) (1897) I. L. R. 21 Mad 83.

(4) (1901) I. L. R. 28 Calc. 689.

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not completed on the day of the last remand. The case will be ready by the 23rd September.

SHARFUDDIN AND COXE JJ. The petitioners in these cases are accused of offences under the new Explosives Act, 1908. The offences which they are alleged to have committed are non-bailable. They were arrested on warrants and after arrest were produced before the Magistrate, who committed them to jail pending trial. Applications for bail have been made to the Magistrate and the Sessions Judge and refused. They now apply to this Court for bail.

It has been strongly pressed upon us on their behalf that these persons are not likely to abscond, and certain English authorities have been cited which lay down the principles on which bail is granted in that country.

We are not prepared, however, to agree that the decisions of English Courts are necessarily a safe guide to us in interpreting sections of our own Code; and we observe that the cases cited refer to offences of much less gravity than those of which the present petitioners are accused. We doubt very much if English Judges would lend a ready ear to applications for bail on behalf of persons accused of offences of the gravity indicated in the papers before us. Nor are we prepared to admit that, in exercising our discretion under section 498 of the Criminal Procedure Code, we should confine our attention to the question whether the prisoner is or is not likely to abscond, as other circumstances may also affect the question of granting bail to persons accused of having committed crimes of a grave and serious nature. If a person is accused before a Magistrate of a non-bailable offence then, unless he considers that there are no reasonable grounds for believing him to be guilty, the Magistrate must refuse bail, no matter how certain he may be that the accused will appear to stand his trial. The Magistrate is probably in a better position than the Sessions Judge, and almost certainly in a better position than the High Court, to estimate the probability of the prisoners absconding.

It is illogical to suppose that the Legislature intended that the Sessions Judge and the High Court, in dealing with questions of bail, should be guided exclusively by a consideration, which the officer best qualified to estimate its value is debarred from referring to at all.

It is the right of an accused person to demand that the charge against him should be tried without any unreasonable delay, and such delay will certainly dispose this Court to grant bail. With respect to the bulk of the petitioners we are not prepared to say that the delay in proceeding against them has been unreasonable. They were arrested at the end of August, and it is now but little past the middle of September. We believe it is not at all unusual that a period of this extent should elapse between the arrest of persons accused of grave and serious crime and the commencement of the trial. In the case of offences under section 400 of the Indian Penal Code, which, so far as the difficulty of investigation goes, bear some analogy to the present case, which appears to be based to some extent on evidence of association, the period is usually far greater. Under section 167 of the Criminal Procedure Code a Magistrate, on the mere perusal of the entries in the police diaries relating to the case, to which of course the accused have no right of access, may from time to time authorise the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter he can, under section 344 of the Criminal Procedure Code, by a warrant remand an accused for any term not exceeding 15 days at a time, if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by such remand. The evidence in this case is, in our opinion, sufficient to raise such a suspicion. A Police officer of superior rank has been examined and swears that he has evidence which, as he believes, implicates the accused. He swears also to the truth of the first information which sets out that the accused in the present case associate together in certain specified places, and that there is in the possession

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of the police incriminating correspondence connecting them with a secret society in Calcutta. We think that there are good reasons for believing that such evidence exists against all the accused persons. This evidence may be good or bad, but we do not think that its production can be said, as against the majority of the accused, to have been unreasonably delayed. We are assured by learned counsel for the Crown that the case will be taken up in earnest on the 23rd instant without fail, and if it is not taken up, which we do not at all anticipate, it will be open to the accused to renew their applications. In these circumstances we decline to grant bail to the majority of the petitioners.

But as regards the accused Maddhu Sudhan Dutt, Sham Lall Shaha, Saroda Prosad Dutt, Baroda Prosad, Nikunja Behari Maiti, we think the evidence of their complicity has been unreasonably delayed. They were arrested at the end of July and have been six weeks in custody, and evidence against them might, in our opinion, have been produced in addition to what has been before us. We grant their applications and direct that they be released on bail to the satisfaction of the District Magistrate. Another man who has been confined for a long time is Santosh, but in his case, bail is out of the question.

As regards Raja Narendra Lal Khan it is stated in the affidavit on his behalf that he has been delicately nurtured, and the deprivation of his customary food is prejudicial to his health. He states that he is willing to submit to conditions. It is perhaps a greater hardship on a man of position, brought up in luxury and holding a high position in society, to be subjected to jail rules than it is to men who have to make their way in the world. In the absence, as yet, of convincing direct evidence, we are willing to yield to this petitioner's request. He may be released on bail to the satisfaction of the District Magistrate on condition of his being guarded at his own house and debarred from all communications with persons said, rightly or wrongly, to be his associates in crime.

Of course it must be understood that these orders do not affect the right of the Magistrate hereafter on sworn testimony given before him, which in his opinion establishes a *prima facie* case against any or all the persons now released, to commit him or them again to custody. The applications of all but the above mentioned six persons are refused.

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