

# ALLAHABAD HIGH COURT

Emperor

Vs

Mirza Mohammad Ibrahim

(Kendall, J.)

07.06.1932

## JUDGMENT

### **Kendall, J.**

1. This is an application on behalf of the Crown for the cancellation of an order passed by me on December the 7th, 1931, granting bail to one Mirza Mohammad Ibrahim. The arguments on the application have given rise to the legal question of whether when the High Court has passed an order under Section 498, Criminal Procedure Code, granting bail, that order for bail may be cancelled without the accused person having done anything since the order to violate any condition on which bail was granted.

2. When an application for bail on behalf of Mirza Mohammad Ibrahim was made before me the position was that Mirza Mohammad Ibrahim was being prosecuted for offences under Sections 302 and 307, Indian Penal Code. The actual enquiry had not started, but both the enquiring Magistrate and me Sessions Judge had refused to release him on bail. I directed his release as appears from the order of 7th December, 1931, on grounds that might have been the basis of an order under Section 497, Sub-section (2) of the Criminal Procedure Code, but there can be no doubt that the order was actually passed under Section 498. The discretion of this Court to release accused persons on bail under Section 498, Criminal Procedure Code, is not fettered in any way, but an order under that section must of course be passed for judicial reasons and not arbitrarily. The reasons given in my order amount to this that the case against Mirza Mohammad Ibrahim was one instituted on complaint, that the evidence according to the affidavit against the accused was scanty and that the application had not been opposed by the Crown. It is not possible to say definitely that these were the only reasons, but in so far as any reasons are expressed they amount to this that there were no 'reasonable grounds for believing that the accused had committed a non-bailable offence' as expressed in Sub-section 2 of Section 497.

3. The Government Advocate has pointed out that the affidavit now filed on behalf of the Crown proves that the Magistrate's enquiry has been completed, that the accused including Mirza

Mohammad Ibrahim have been committed for trial and that the Magistrate has expressed the opinion that a strong prima facie case has been made out against the accused. The position is therefore, radically different from that which existed when the bail order was passed. Mr. P.L. Banerji in opposing the application has pointed out that the bail Order was passed under Section 498, Criminal Procedure Code which contains no provision empowering the High Court to cancel a bail order passed under this section. The only section of the Code of Criminal Procedure by which the High Court is empowered to cancel such an order is, it is argued, s 561-A, viz: Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

4. Now it is quite clear that there is no question here of giving effect to any order under this Code, and there is no evidence to show that Mirza, Mohammad Ibrahim has done anything that could be interpreted as an abuse of the process of the court, e.g. by breaking any condition on which he was allowed to be released on bail. It is not suggested that he has been trying to abscond or to tamper with witnesses, nor indeed was any condition expressed in the order directing his release. It is true that the court has inherent power to pass such orders as may be necessary to secure the ends of justice, but it is argued that it has not been shown in the present case that any such order is necessary.

5. I have to consider that if the case had come before me now for the first time, and if it had been brought to my notice that Mirza Mohammad Ibrahim had been committed to Sessions under Sections 302 and 307, Indian Penal Code, after an enquiry by the Magistrate involving the recording of evidence, and the application had been opposed as it has now been opposed on behalf of the Crown, it would not have been proper to pass an order releasing the accused on bail for the reason that there are not good grounds for believing that the accused has committed a non-bailable offence. Mr. Banerji has however argued that though Mohammad Ibrahim may have been lucky to be released, he has as a matter of fact been released and he cannot legally be consigned to Jail merely on the ground that he has now been committed for trial.

6. I agree with Mr. Banerji to this extent, that neither the Magistrate nor the Sessions Judge was empowered to cancel the bail and to consign the accused to Jail in the face of my order of 7th December, 1931. They could not read into that order a direction which was not expressed there, to the effect that if at any time they were satisfied that there were reasonable grounds for believing that the accused had committed the offence they should be at liberty to cancel the bail. It has been suggested by the Government Advocate that such a direction was implied in the order, but with this I cannot agree, because as a matter of fact both the Magistrate and the Judge appear to have been sufficiently satisfied about the case against Mohammad Ibrahim when application was made to them for his release on bail. My order of December the 17th as it appears from the order itself, was passed on the ground that I did not agree with the Magistrate and that there were reasonable grounds for believing that the accused had committed the offence.

7. The circumstances are now different, because neither of the two elements now exist which induced me to release Mohammad Ibrahim. It cannot be said that there are not reasonable grounds for believing that the accused has committed the offence, and the prosecuting authorities are pressing to have the bail cancelled. There can be no doubt that if Mohammad Ibrahim were now applying for bail his application would have to be dismissed. A Sessions Judge or a Magistrate who has released an accused person under sub Section (2) of Section 497 of the Code of Criminal Procedure, is empowered by Sub-section (5) to cause that person to be arrested and committed to custody, and would no doubt do so in the circumstances of the present case. The High Court is not specifically empowered by Section 498 to cancel bail granted by itself; but it can hardly be argued that it will be exercising the wide powers with which it is endowed by Section 561. A Magistrate, if it follows the procedure that would be observed by a Sessions Judge or Magistrate, and directs the arrest of a person who has been released on bail under its orders, for the reason that there do now appear to be reasonable grounds for believing that he has committed a nonbailable offence. I, therefore, order that Mirza Mohammad Ibrahim be arrested and committed to custody.

