

BOMBAY HIGH COURT

Naranji Premji

Vs

Emperor

(Fawcett and Mirza, JJ.)

01.02.1928

JUDGMENT

Fawcett, J.

1. The first point taken by Mr. Jinnah in this application for bail is that in Sub-section (1) of Section 497 of the Criminal Procedure Code, the words "if there appear reasonable grounds for believing that he has been guilty of an offence punishable with, death or transportation for life" only cover offences punishable with death or in the alternative with transportation for life, such as cases of murder and of waging war under Sections 302 and 121 of the Indian Penal Code, and that they do not include offences merely punishable with transportation for life. Although no authority has been referred to in the argument before us, there is, in fact, a ruling that does support Mr. Jinnah's contention, viz *Mohammad Eusoof v. Emperor*¹ But that has been overruled by a Full Bench of the same Court in *Emperor v. Nga San Htwa*² In my opinion this is a construction which cannot be adopted. If one refers to the definition of "warrant case" in Section 4(1)(w) of the Criminal Procedure Code, it will be seen that it is defined as a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months. The Legislature obviously does not there mean an offence which is punishable with those kinds of different punishments in the alternative, and they do not put the word "with" before "transportation" or before "imprisonment". Therefore, I do not attach any importance to the argument that, in Sub-section (1) of Section 497 the word "with" does not appear before "transportation for life", and, therefore, the reference is merely to an offence which is punishable with death or in the alternative with transportation for life.

2. In regard to the application on its merits, in exercising our discretion under Section 498 we should, of course, have proper regard to what is laid down in Sub-Section 1 of Section 497 that bail shall not be granted in a case where there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with death or transportation for life. In the present case, the accused is being kept in custody on account of an accusation against him of

having attempted to commit murder under Section 307 of the Indian Penal Code, and, therefore, the case is one where the offence charged against the accused is punishable with transportation for life. The Chief Presidency Magistrate has given reasons for his view that there are reasonable grounds for believing that the accused in this case is guilty of an offence punishable with transportation for life; and after considering all that Mr. Jinnah has urged, we think, having regard in particular to the nature of this alleged crime, that we should not exercise our discretion to admit the applicant to bail. In our opinion, very great weight must be attached to the fact that, according to the allegations before the Magistrate, the complainant was under Police protection and had hardly left it in a taxi, when he was surrounded by several persons and struck with knives and sticks. This is a crime of a very determined nature; and any of his assailants might, if released on bail, renew the attack and try and kill this man so that his evidence may not be available against them. In my opinion, this is not a case where we can properly allow the accused to be released on bail as the Chief Presidency Magistrate is satisfied that there are reasonable grounds for thinking that he is seriously implicated in the charge that he was one of the assailants of the complainant. We, therefore, refuse the application.

Mirza, J.

3. I agree.

Cases Referred.

193 Ind. Cas. 65 : 3 R. 538 : A.I.R. 1926 Rang. 51 : 27 Cr. L.J. 401

2104 Ind. Cas. 101 : 5 R. 276 : A.I.R. 1927 Rang. 205 : 28 Cr. L.J. 773