BOMBAY HIGH COURT

Madhukar Purshottam Mondkar

Vs.

Talab Haji Hussain

Criminal Appln. No. 60 of 1958 with Criminal Revn. No. 61 of 1958

(M.C. Chagla, C.J. and Datar, J.)

14.01.1958

JUDGMENT

M.C. Chagla, C.J.

1. The two petitions presented by the Superintendent, Central Excise, Preventive and Customs. Bombay raise questions of considerable importance. The first respondent along with others was charged under Section 120B of the Indian Penal Code and Section 167 (81) of the Sea Customs Act. He was released on bail of Rs. 75,000 with one surety of like amount on 9-12-1957. On 4-1-1958 an application was made by the complainant, who is the petitioner before us, for cancellation of that bail and the learned Chief Presidency Magistrate who was trying the case held that he had no jurisdiction to cancel the bail. Against that order these two petitions have been preferred. The first is an application to the High Court to exercise its own power and cancel the bail. The other is an application in revision against the order of the Chief Presidency Magistrate holding that he has no jurisdiction to cancel the bail. Now, before we go into the merits and decide whether this is a fit case for cancellation of bail, we must carefully examine whether we have jurisdiction to pass the order, and at has been strenuously urged by Mr. Somjee on behalf of the first respondent that the High Court has no power under the circumstances of this case and has no jurisdiction having regard to the nature of the offence with which the accused is charged, to cancel the bail already granted by the Chief Presidency Magistrate. The first important fact to bear in mind and which has really led to the whole debate before us is that the offence under Section 167(81) of the Sea Customs Act is a bailable offence. The Criminal Procedure Code does not lay down any principle which distinguishes bailable offences from non-bailable offences, except that in the Second Schedule to the Code certain offences are described as bailable, and certain offences are described as non-bailable, and when we turn to offences not covered by the Indian Penal Code, it is provided that any offence against other laws, if punishable with imprisonment for one year and upwards but less than three years, has been made bailable, and the offence with which the accused is charged is punishable under the Sea Customs Act with imprisonment of less than three years. But we take it that in creating these two classes of offences, the Legislature must have had in mind the gravity of the offence. Grave offences are ordinarily placed in the category of non-bailable offences and offences which are less serious or less dangerous to the public are put in the category of bailable offences. But it may happen-and it

has happened in this case-that even a bailable offence may assume serious importance. It may depend upon the nature of the offence, it may depend upon the circumstances in which the offence was committed. It may depend upon the amount involved, and although ordinarily the offence may not be serious, when all these factors are taken into consideration, as we just said, a bailable offence may assume the same serious proportion as a non-bailable offence.

2. Now, turning to the provisions in the Code with regard to bail, Section 496 deals with bail in the ease of bailable offences and undoubtedly that section confers upon the accused a right to be released on bail, and as the language used is the language of mandate the Court has no option but to enlarge an accused person on bail if he is accused of a bailable offence. The only condition laid down is that he has got to execute the necessary bond provided under the Code. In sharp contrast with the language of Section 496 is the language used by the Legislature in Section 497. There discretion is conferred upon the Court whether to release or not to release an accused person accused or suspected of the commission of a non-bailable offence. The expression used there is not "shall" but "may" and there is a prohibition in that section against the release of an accused person on bail if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Sub-section (5) of that section confers upon the High Court or Court of Session and in the case of a person released by itself, any other Court to cause any person who has been released under this section to be arrested and to commit him to custody. It is again significant that there is no similar provision in Section 496. Therefore, the argument that has been advanced, and undoubtedly the argument has considerable force, is that the Legislature not only made a distinction between the right of an accused person in a bailable offence to obtain bail as against an accused person charged with a non-bailable offence, but even with regard to his being re-arrested and committed to custody a vital distinction is made between the case of a person accused of a bailable offence and a person accused of a non-bailable offence. In the former case not only has he a right to be released on bail, but he cannot be re-arrested. In the latter case he has no right to be released on bail and even if he is released on bail he is liable to be re-arrested and committed to custody. It is further pointed out that under Section 498, which confers power upon the High Court and the Court of Session to release a person on bail, Sub-Section (2) has been recently enacted by the amendment of the Criminal Procedure Code and that subsection confers the power upon the High Court or the Court of Session to arrest and commit to custody any person who has been admitted to bail, and it is pointed out that even when the Code was recently amended and when a seeming lacuna in Section 498 was made good by conferring the necessary power upon the High Court and the Court of Session, the Legislature did not make any similar provision under Section 496. It is also pointed out that the Privy Council in *Jairam Das v. Emperor*[1], has laid down that the provisions with regard to bail are contained in Chapter XXXIX and that Chapter is a complete and exhaustive statement of the powers of the High Court in India to grant bail, and it is therefore urged that it is not competent to the High Court to exercise any power with regard to bail which is not to be found within the four corners of Chapter XXXIX of the Criminal Procedure Code. On the other hand, counsel for the complainant has relied on the inherent power of the High Court under Section 561A and while conceding that there is no specific provision in the Code itself for the arrest of an accused person who has been released on bail, in a case where he has been accused of a bailable offence, the High Court is not helpless when

[1]47 Bom LR 634 : (AIR 1945 PC 94)

confronted with a serious situation and that in a proper case the High Court could always requisition to its aid the inherent power conferred upon it by Section 561A. It is true and it is well

settled that when you have a specific provision in a law of enjoining upon a Court to do something or not to do something, then the Court cannot go contrary to the mandate of the Legislature by reiving upon its inherent power. But it is equally well settled that no Legislature and no law can contemplate every situation and every eventuality and the best drafted of laws might have some lacuna. It is to meet with those unforeseen cases and situations and to make good the lacuna if they exist that a Code of law reserves to a Court inherent powers.

3. Now, let us consider what the situation would be if we were to accept Mr. Somjee's argument. The result would be most extraordinary. It is not disputed that if an accused person who is charged with a non-bailable offence witnesses or to impede the course of justice or make a fair trial difficult if not impossible, the High Court or the Court of Session even could under Sub-Section (5) of Section 497 cancel the bail and cause him to be arrested and committed to custody. But it is seriously argued that a person accused of a bailable offence has complete liberty to do what he likes. He can threaten prosecution witnesses, he can suborn them, he can interfere with the course of justice, he can make it impossible for honest witnesses to come forward, and the Court must look on completely helpless without being in a position to do anything. Before one accepts such a proposition, one must hesitate a good deal and there must be something in the law so clear and so categoric that the Court is compelled to say that however serious the situation, however serious the offence, however gross the conduct of the person released on bail, the Court must continue him on bail and has no power to re-arrest him and commit him to custody. Undoubtedly, the right to be released on bail is a very important right of the citizen. It is an extremely important safeguard which the Code of Criminal Procedure confers upon the subject, and this Court would be most reluctant in any way to impair that right or that safeguard. The Legislature has clearly indicated that in the case of bailable offences that right must be conceded to the accused person and he is entitled as a matter of right to be released on bail. It is therefore obvious that the High Court or any Court does not possess the ordinary normal power to cancel bail in a case of a bailable offence as it has in the case of a non-bailable offence. No limitation is placed upon the power of the High Court under Sub-Section (5) of Section 497. Of course it must examine the case carefully and it must come to the conclusion that it is a proper case for the cancellation of the bail. But when we come to a bailable offence, the Court must start with the position that the law does not permit it to cancel the bail of an accused person charged with a bailable offence, that the law requires that such an accused person should be at large and should not be confined to custody while he is awaiting his trial. But if the Court is satisfied that in a particular case the activity of the accused is such as to make a fair and proper trial impossible, that the accused is in a position to interfere and tamper with prosecution witnesses, that he is in a position to threaten the witnesses in a manner which would prevent them from coming forward and giving truthful evidence, then is it suggested that the Court has no inherent jurisdiction to prevent such a situation continuing? It seems to us that this is exactly the situation which Section 561-A was intended to deal with. Having provided in Section 496 that a person accused of a bailable offence shall be released on bail, the Legislature has not provided for nor has it contemplated a situation which we have just described. That is an obvious lacuna in the Code of Criminal Procedure. Even so, if there had been any express provision in the Code prohibiting the Court from arresting any person who has been released on bail under Section 496, then however reluctantly the Court would have to carry out the mandate of the Legislature. But although Mr. Somjee is right that there is no provision corresponding to Sub-Section (5) of Section 497 or Sub-Section (2) of Section 498, the important fact to remember is that, nor is there any provision in the Code which prohibits the High Court from re-arresting a person who has been released on

bail in a case where he is charged with a bailable offence.

4. Therefore, we are of the opinion that the inherent powers of the High Court under Section 561A are not in any way affected by the provisions of Section 496. We wish to make it clear that these powers of the High Court are extremely restricted and circumscribed powers. They are not be availed of as arising from ordinary jurisdiction conferred upon the High Court. It is only in extraordinary and exceptional cases where the High Court is fully satisfied that the Court which is trying an accused person charged with a bailable offence will not be in a position to function as a Court, in the sense that it cannot get the proper evidence before it and it cannot come to a proper conclusion whether the offence has been committed, that it would exercise the inherent jurisdiction conferred upon it by Section 561A.

5. Such authorities as have been cited at the Bar support the view that we are taking. In any case, there is no authority to which our attention has been drawn which has clearly or categorically laid down that the High Court has no jurisdiction under Section 561A to re-arrest a person charged with a bailable offence who has been released on bail. Turning to these authorities, and first turning to our own High Court, we have a judgment of Sir John Beaumont, Chief Justice, who was sitting with Mr. Justice Sen, reported in *Emperor v. Bautmal Kanumal*[2], It is true that that was a case of a non-bailable offence, but the significant feature of that case is that one Magistrate had released the accused on bail and a different Magistrate cancelled the bail and ordered the accused to be taken into custody, and the Sessions Judge took the view that the Magistrate had no power under Section 497(5) to cancel the bail order. The reference made by the Sessions Judge came before the learned Chief Justice and Mr. Justice Sen and the learned Chief Justice held that even a Magistrate's Court had inherent power to cancel a bail bond although it was not authorized to do so under Section 497(5) of the Criminal Procedure Code, and what is pertinent is the observation of the learned Chief Justice at p. 1234 (of Bom LR) : (at p. 40 of AIR).

> "In my opinion every Judge or Magistrate trying a criminal case has inherent power to see that the trial is properly conducted and that the ends of justice are not defeated, and if facts are brought to its attention, which suggest that unless the person who is being tried is placed under arrest the ends of justice will be defeated, the Court has inherent power to direct his arrest."

It is true that this observation was made in respect of a non-bailable offence, but this observation was made in respect of a Court which had no jurisdiction under Section 497(5) to re-arrest the accused and yet the learned Chief Justice said that every criminal Court had the power to do what justice demanded and to see that the ends of justice were not defeated. Now surely, if the learned Chief Justice could say this of the humblest

[2]41 Bom LR 1232 : (AIR 1940 Bom 40)

Magistrate and in that case the Magistrate was an Honorary First Class Magistrate - it would be too much to assume or suggest that the highest Court in the State does not possess those powers. What difference does it make in principle whether the inherent powers are being exercised in respect of a non-bailable offence or in respect of a bailable offence? The point and significance of that decision is that a Court which possesses inherent powers must fearlessly exercise them if it is satisfied that ends of justice would be defeated if those powers are not exercised.

6. There is next a decision of the Calcutta High Court reported in *Rameswar Khiroriwalla v. Emperor*[3], That is also a rather significant case. The accused was being tried by the High Court under its Ordinary Criminal Jurisdiction in the Sessions Court in respect of an offence which was a bailable offence. He was. enlarged on bail and an application was made to Mr. Justice Buckland who presided over the Sessions to cancel the bail on the ground that the accused was alleged to have been tampering with two of the witnesses for the prosecution, and Mr. Justice Buckland cancelled the bail and committed the accused to custody. A fresh application for bail was made to that learned Judge and that application was refused. Thereupon the accused applied to the High Court under Section 491 of the Criminal Procedure Code and the application came on for hearing before the learned Chief Justice Rankin and Mr. Justice C. C. Ghose. What was urged before the Court was that the order of Mr. Justice Buckland was illegal and without jurisdiction, he having cancelled a bail bond in respect of a bailable offence when there was no power to do so under the Criminal Procedure Code. It is true, as has been pointed out by Mr. Somjee, that the decision turned on this that one Judge of the High Court having made an order, it was not competent and even not proper for a Division Bench to investigate into that order so long as that order stood and had not been set aside or varied. But again, the point of this decision is that the power exercised by Mr. Justice Buckland, which could only have been under the inherent jurisdiction and under no other power, was not in any way commented upon by the learned Chief Justice and Mr. Justice Ghose. If the High Court possessed no such power, as Mr. Somjee suggests, one would have expected the learned Chief Justice in his judgment at least to indicate that although the Division Bench was not interfering with the judgment of Mr. Justice Buckland, for future guidance such power should not be exercised by Judges of the High Court. This point becomes more significant when one sees the argument of counsel no less than Mr. Langford James who strenuously argued before the Bench that Mr. Justice Buckland acted illegally in cancelling the bail in view of Sections 496 and 497.

7. But there are two judgments of the Allahabad High Court which leave no doubt that at least that High Court has taken the view that in matters of bail the High Court has inherent jurisdiction under Section 561A of the Criminal Procedure Code. The first case which was referred to at the Bar is *Bachchu Lal v. State*[4], It is again true that this was a case of a non-bailable offence, but the Division Bench of the Allahabad High Court held that the Sessions Judge who had cancelled the bail bond had no jurisdiction to do so under Clause (5) of Section 497. We are not concerned for the moment in considering whether that view of the Allahabad High Court with respect, is correct or not. But having held that such an order could not be made by the Sessions Court, the High Court proceeded under Section 561A to cancel the bail bond and directing that the accused should be kept in

[3] ILR 56 Cal 32 : (AIR 1928 Cal 367)

[4] AIR 1951 All 836

custody. Therefore, there is a direct authority for the proposition that where statutory provision is lacking in the Criminal Procedure Code conferring power upon the High Court to cancel bail, the High Court can in proper cases cancel bail under Section 561A. To the same effect is a decision of the Full Bench of that High Court in *Seoti v. Rex*[5], where Mr. Justice Sankar Saran, Mr. Justice Harish Chandra and Mr. Justice Wanchoo came to the conclusion that the High Court had no power in cases where it had granted bail under Section 498 to cancel that bail and it can only cancel bail under Section 561A of the Criminal Procedure Code. It is interesting to note that it was perhaps because of this judgment that when the Criminal Procedure Code was amended Sub-Section (2) was enacted in Section 498 of the Criminal Procedure Code.

8. With regard to the criticism that the Privy Council in the case referred to has clearly expressed its opinion that the powers of the High Court with regard to bail are confined to Chapter XXXIX and that the High Court has no other powers, the answer is that in this case we are not dealing with the power of the High Court to grant bail. We are dealing with a case where bail has been granted and, if one might so put it, where bail has been abused or misused, and the question arises whether the High Court must admit the abuse or misuse to go on or it has the power to put it down. That question never came for consideration before the Privy Council. The question whether criminal Courts other than the High Court possess inherent powers is a question which in our opinion it is unnecessary to decide in this case. We have already drawn attention to the weighty observation of the learned Chief Justice Sir John Beaumont and it is unnecessary in our opinion to consider whether with respect, this observation is justified in view of the clear language used in Section 561A and when one compares the language of Section 561A, Criminal Procedure Code with the language of Section 151 of the Civil Procedure Code. We therefore do not propose to decide whether the Magistrate was right or in error in coming to the conclusion that he had no inherent jurisdiction and he could not cancel the bail granted to the accused. In this case we will proceed on the assumption that he had no jurisdiction. But whether he had jurisdiction or not, the High Court has jurisdiction under Section 561 A, and as there is an application made by the complainant to the High Court to exercise its own inherent jurisdiction under Section 561A, in our opinion it is competent for us to consider on the merits whether that jurisdiction should be exercised and whether on the facts and under the circumstances of this case bail bond of the accused should be cancelled and he should be committed to custody. We will, therefore, now proceed to deal with the merits of the matter.

9. The facts briefly are that the first respondent was arrested on 30-6-1957. This was in connection with the offence which took place in Bombay. As we have already pointed out, the charge was of smuggling gold and the amount involved was a very large one. He was released on bail of Rs. 40,000. On 5-8-1957 he was re-arrested in connection with the offence which took place in Jamnagar and he was released on a bail of Rs. 1,50,000. He surrendered to his bail on 8-8-1957. The complaint with regard to the offence in Bombay was filed on 28-9-1957 and on 9-12-1957 the accused was released on a bail of Rs. 75,000 with regard to the offence in Bombay, and he also furnished bail of Rs. 1.50,000 with regard to the offence in Jamnagar. Therefore from 8-8-1957 to 9-12-1957 the accused was in custody.

[5] AIR 1948 All 366

10. Now, the two most important witnesses that the prosecution had was one Kisan and the other Bhikalal. The trial started on 2-1-1958 and Kisan was the first witness to be called. He gave evidence on that day and his evidence was to continue on 3-1-1958. On the 2nd January his evidence was stopped at a very crucial point in the course of his narration and the reason for his evidence being stopped was that the Court had to rise as it was time to do so. On the 3rd January Kisan came to the Court and said that he could not give evidence as he was ill. The Special Prosecutor, in order not to waste the time of the Court, called the second witness Bhikalal and Bhikalal went back upon the statement he had made to the Customs authorities and said in the witness-box that he did not know anything about the incidents he was called upon to depose to. On 4-1-1958 the Special Prosecutor made an application for cancellation of the bail which resulted in the order which is challenged in this Court. The learned Chief Presidency Magistrate who was trying the case held on 9-1-1958 that he had no jurisdiction to cancel the bail.

11. Now, there are certain incidents which have been referred to in the affidavits made before the Chief Presidency Magistrate which, in our opinion, leave do doubt in our minds that a serious attempt was made to tamper with the evidence which the prosecution wanted to call and to prevent particularly these two important witnesses from telling the truth in Court. First turning to what happened on 2-1-1958, Mr. Khandalawala, the Special Prosecutor, had a conference fixed at his house at 9 O'clock on the 2nd of January and at this conference Kisan was to attend. Although Mr. Khandalawala was ready for the conference and was waiting for Kisan to turn up, in fact he did not turn up, and we have the affidavit of Mr. B. P. Desai that he went to Windsor Hotel at 8-30 where both Kisan and Bhikalal were staying as he wanted to take Kisan from the hotel to the house of Mr. Khandalawala. Mr. Desai, who is the Deputy Superintendent, Preventive Intelligence, Customs Division, Jamnagar, had already informed Kisan that he would contact him at the hotel at 8-30 and take him to the house of Mr. Khandalawala. Although Mr. Desai waited there from 3-30 onwards, there was no sign or trace of Kisan and Kisan only turned up at 2-30 a.m. accompanied by Bhikalal, and when Mr. Desai questioned Kisan as to why he had not kept the appointment, Bhikalal answered and said that they had gone out and accidentally met the first respondent who had detained them and talked to them for a long time but that they had avoided falling in with his suggestion not to incriminate him.

12. Then we have the second incident which also occurred on the 2nd of January, and this is deposed to by Mr. Phene, Inspector of Central Excise Preventive (Customs), Bombay. He says that at the conclusion of the case on the 2nd of January, while Bhikalal was going down the main staircase of the Esplanade Police Court, respondent No. 1 contacted him and began speaking to him. Mr. Phene had already gone down and was at the foot of the staircase, but he noticed respondent No. 1 talking to Bhikalal and they kept on talking till they reached the ground floor, and when respondent No. 1 saw Mr. Phene and also realised that he was observing them talking, he broke off conversation with Bhikalal.

13. The third incident which is a very significant one is what happened on 3-1-1958. Mr. Kulkarni, Inspector of Central Excise Preventive (Customs), Bombay, has made an affidavit and stated that he was asked at about 3 p.m. by his Superintendent to keep a constant watch on Windsor Hotel, and he found that at 4-15 p.m. two passengers came in a taxi and went in the Windsor Hotel and the taxi was kept waiting. After a few minutes Bhikalal came out of the hotel with the two persons who had come in the taxi and they all drove away in that taxi. He noted down the number of the taxi and ultimately they got hold of the driver of the taxi and the driver took the Customs authorities to the place where Bhikalal had gone, and it turned out to be the house in 15 Dontad Cross Lane. The allegation of the complainant is that this is the residence of the first respondent. In his affidavit the first respondent had denied that 15 Dontad Cross Lane is his address, but in making this denial on oath he completely forgot and overlooked the fact that in the bail bond executed by him he has given as his address 15 Dontad Cross Lane. Therefore, if the affidavit of the Customs authorities is to be believed, there can be no doubt that on the 3rd January two people came to Windsor Hotel to take Bhikalal to the residence of the first respondent and Bhikalal was in fact taken there.

14. Then we have this important fact that Bhikalal on two occasions has complained of intimidation and threats by the first respondent and has sought protection of the police. We have first a letter written by him on 15-7-1957 to the Collector of Baroda stating that there was constant danger and risk to his life and of every member of his family, that the first respondent's

men were always shadowing them, and the reason for this was that the first respondent was doing gold smuggling business for which he had given his statement to help the Government and for that reason there was constant risk and danger to life of his family hanging over their heads, and he therefore sought police protection and police protection was given. Then we have an application made by him to the Chief Presidency Magistrate on the 8th of January that on the 3rd of January when he was being examined before the learned Magistrate he was laboring under the grave apprehension of danger to the safety of his own person as well a the members of his family owing to the dire threats administered to him by the first respondent and the men acting under him. He emphasized the fact with all seriousness that the evidence given by him before the Customs Officer or rather the statement made by him was true and he proposed to adhere to every word of it provided the lurking ominous danger to his life and the lives of the members of his family was rendered ineffective by providing sufficient police protection to them all, and he asked the learned Magistrate to pass such orders for providing him and his family members with due protection, and the learned Chief Presidency Magistrate rightly made the order that the prosecution should be permitted to approach the Commissioner of Police for granting protection to the witness if required.

15. Now, the answer given by the first respondent to these allegations, apart from denying them, is that he was ill and confined to the Bombay Hospital from 21-12-1957 and at all relevant limes he was under treatment and was an indoor patient, and he has annexed to his affidavit a medical certificate significantly dated 2-1-1958 and also another certificate dated 8-1-1958. Now, it is not disputed that notwithstanding these certificates the first respondent was present in Court throughout the 2nd of January and the 3rd of January. No application at any time was made by his counsel to the learned Magistrate for adjourning the case. Therefore, whatever the nature of his illness and we need not go into it, it is clear that it was not of a serious character. It did not prevent him from leaving the hospital and attending Court, nor did it necessitate any application being filed by his counsel for adjournment. Therefore, we are not very much impressed by this so-called evidence of alibi.

16. Mr. Somjee has applied to us that he should be permitted to cross-examine the deponents of various affidavits filed before the learned Chief Presidency Magistrate and also to permit him to lead evidence on behalf of his client. Now, this seems to be a most unusual and extraordinary application. In all these years of the existence of this High Court, we have never known of an application for the granting of bail or cancellation of bail or any application in regard to bail ever having been disposed of otherwise than on affidavits. Under Section 497 the High Court has cancelled bail when allegations have been made similar to those being made here and the cancellation has always been on a consideration of affidavits filed in Court. In making this application what is overlooked is that this is not a trial. We are not seeking for proof of facts in order to convict the accused. We are being asked to make a discretionary order and we have to be satisfied that the materials placed before us are such as to lead us to the conclusion that there is a strong prima facie case that if he accused were to be allowed to be at large he would tamper with the prosecution witnesses and impede the course of justice. We are not suggesting that the High Court has no power to take evidence if it was so inclined. But that would be a very violent departure from settled practice and we see no reason whatever in this case why such a departure should be permitted. We have affidavits here of responsible officers of the Customs Department and no reason is suggested why their sworn statements should not be believed, and if we believe their 'statements no doubt is left in our minds that the apprehension felt by the prosecution with

regard to the possible activities of the accused is fully justified. We appreciate the point that we are exercising an extraordinary jurisdiction, that we are resorting to our inherent power, and depriving the accused of his right to bail conferred by Section 496 of the Criminal Procedure Code. But in our opinion, more important than the right of the accused to bail is the necessity for a fair and propertrial taking place in respect of these serious offences which the prosecution lays at the door of the first respondent. If witnesses go into the witness-box, suddenly fall ill the next day, if they go back upon the statements they have made to the Customs authorities, if they seek police protection, if they are found going to the residence of the accused while the case is actually going on, all these circumstances and facts are sufficient to lead us to the conclusion that this is a case where it would not be safe to permit the first respondent to be at large.

17. The Government Pleader who appeared for the State of Bombay supports the application.

18. We will, therefore, cancel the bail bond executed by the first respondent and order him to be arrested forthwith and committed to custody.

19. Mr. Somjee says that his client in the condition in which he is, does not wish to be removed from the hospital, but is prepared to submit to all the jail rules and jail discipline in the hospital itself. We will therefore direct that the accused should be kept in custody in the room in the hospital which he is at present occupying. There will be a police guard for all the 24 hours. The accused will conform to all jail rules and jail discipline. Mr. Somjee agrees that the accused will be examined by the Presidency Surgeon or the Police Surgeon and the Jail doctor in the presence of the doctors of the accused. The examination will be after previous appointment.

20. No order on criminal revision application No.61 of 1958.

21. Liberty to the first respondent to leave the Bombay Hospital and to get admission in some other hospital in Bombay. If he does so, he will remain in any other hospital on the terms and conditions stated inour order passed yesterday.
22. Liberty to the State of Bombay to apply.
Bail cancelled.