

P L D 1971 Supreme Court 174

Present : Sajjad Ahmad and Wahiduddin Ahmad, JJ

NISAR AHMAD-Petitioner

versus

THE STATE-Respondent

Petition for Special Leave to Appeal No. 233 of 1970, decided on 18th November 1970.

(On appeal from the judgment and order of the Lahore High Court at Lahore, dated the 15th of September 1970, in Criminal Miscellaneous No. 6315 of 1970).

(a) Criminal Procedure Code (V of IS98), S. 497-Bail in non bailable offence-Tendency of applications being moved to superior Courts for bail and anticipatory bail as a matter of routine Deprecated-Grant or refusal of bail in non-bailable cases-matter of discretion with primary Courts—Ascertaining whether prima facie reasonable grounds exist or not or believing-accused guilty –Courts do not have to probe into merits of the case-Commitment of accused to Sessions Courts for offence **under S. 302/34, P. P. C. Contention that S. 34 was not attracted in case to make accused constructively liable for offence of murder-Held: Point involved, appraisal of entire prosecution evidence which could not safely be undertaken by High Court hearing bail application-Penal Code (XLV of 1860), S. 302.**

Of late, a growing tendency is witnessed of applications for bail and anticipatory bail being brought in the High Courts and the Supreme Court almost as a matter of routine. As repeatedly laid down by the Supreme Court, grant or refusal of bail in non-bailable cases is a matter of discretion with the primary Court, which is inquiring into or trying the case. This discretion has to be exercised in a judicial manner, with due regard to the circumstances of each case, without any propensity to unnecessarily jeopardise the liberties of the people who are accused of criminal offences. For offences punishable with death or transportation, this discretion is subject to the limitation that bail is not to be allowed to an accused person, if it is shown that there are reasonable grounds to believe that he has committed such an offence. In order to ascertain whether reasonable grounds exist or do not exist, the Courts do not have to probe into the merits of the case. They have only to look at the material placed before them by the prosecution, to see whether some tangible evidence is available against the accused, which, if left, unrebutted may lead to the inference of guilt. Reasonable grounds are not to be confused with mere allegations or suspicions, nor with tested and proved evidence, with the law requires for a person's conviction for an offence.

Where a bail application was moved before the High Court by an accused who was committed for trial under section 302/34, P. P. C. and it was contended that in the facts of the case he was not constructively liable for the offence of murder, it was held that the High Court was right in refusing bail and pointing out that "it is not possible to determine this point one way or the other without a full appraisal of the evidence that has been led or may be led, and the Courts should not be invited to do that, as it would lead to pre-judging the material issues in the case, while deciding the bail application. Such an attempt before the higher Courts, in particular, is wholly undesirable, as any expression of opinion by them on the merits of any point of substance in the case is bound to prejudice its ultimate decision".

Muhammad Shafiq v. The State 1970 S C M R 143 ; *Mahboob Shah v. Emperor* A I R 1945 P C 118 and *Sardar Ali v. The State* P L D 1956 F C 421 ref.

(b) Criminal Procedure Code (V of 1898), S. 497 Lead with Ss. 210 & 220-Grant of bail to accused after his commitment for trial of non-bailable offence-Accused could pray for his bail even after his Commitment if he could show, that his commitment was not based on reasonable grounds.

Under section 220 of the Criminal Procedure Code, the commitment of an accused person, during or until the trial, is subject to the provisions of bail contained in the Code, which means that where, even at the time of commitment, it appears that any of the provisions of section 497 are attracted to allow bail to the accused, he need not be committed in custody to

stand his trial. One patent instance, for example, would be where an accused may be found to be entitled to the benefit of proviso to subsection (1) of section 497 on the ground of tenderness of age, womanhood, sickness or infirmity. Another would be where in terms of subsection (2) of section 497, the Inquiry Magistrate finds that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but commits him nonetheless for trial, because there are sufficient grounds for further inquiry into his case. Pending such a further inquiry into *his* guilt, the accused shall be released on bail. It is, open to an accused person to pray for *his* bail even after his commitment, by showing that his commitment has not been made to rest on any reasonable grounds, and that the Committing Magistrate, instead of applying his mind to the case to reach a conclusion that a *prima facie* case **has been made out**, has merely transmitted the allegations of the prosecution, with no tangible evidence to support them, for trial by the Sessions Court. In such an event, apart from applying for his bail, the accused can ask for the quashment of such a commitment. In a situation like this, in order to justify the continued detention of the accused in prison, it would be for the higher Courts to see whether the commitment order does disclose that satisfaction of mind on the part of the Committing Magistrate, which is necessary for committing an accused person for trial on the basis that a *prima facie* case for an offence punishable with death or transportation has been made out against him.

Muhammad Shafrq v. The State 1970 S C M R 143 considered.

Raja Said Akbar Khan, Senior Advocate Supreme Court instructed by Rana Maqbool Ahmad Kadri, Advocate-on-Record for Petitioner.

Nemo for the State. Date of hearing: 18th November 1970.