

1959

Present : Sansoni, J.

A. V. LEON SINGHO *et al.*, Petitioners, and THE ATTORNEY-GENERAL, Respondent

*S. C. 476—Application for bail under Section 31 of the Courts Ordinance in S. C. 59/ M. C. Colombo, 10190A*

*Bail—Application under section 31 of Courts Ordinance (Cap. 6).*

Where, in an application for bail under section 31 of the Courts Ordinance, it was shown by the Crown that the work of the Circuit was so heavy that it was not possible for the accused to be brought to trial at either of the two sessions which were held after the accused might properly have been tried—

*Held*, that the Crown failed to show good cause why the accused should not be admitted to bail.

**A**PPPLICATION for bail.

*Malcolm Perera*, for Petitioners.

*E. R. de Fonseka*, Crown Counsel, for Attorney-General.

*Cur. adv. vult.*

October 30, 1959. SANSONI, J.—

The eight accused in this case have petitioned this Court to admit them to bail on the ground that they have not been brought to trial in spite of having been committed to trial on 6th November 1958. The application is made under section 31 of the Courts Ordinance (Cap. 6). To quote the words of Nihill J. in *de Mel v. Attorney-General*<sup>1</sup>, in a case where

<sup>1</sup> (1940) 47 N. L. R. 136.

section 31 is applicable “the burden has shifted from the prisoners to the Crown . . . and it is now for the Crown to show good cause why bail should not be accorded to them”.

Although the commitment was on 6th November 1958, I was informed by Crown Counsel that the brief was received by the Attorney-General only on 9th December 1958, and it was returned to the Magistrate with instructions which were not complied with until 19th February 1959. The indictment was eventually signed on 15th March 1959 and served on the accused in March and April 1959.

The 1st Criminal Sessions of the Western Circuit began on 12th January 1959 and concluded on 19th March 1959, and I think it is fair to say that in the circumstances the accused could not reasonably have expected to be brought to trial at those sessions. The 2nd Criminal Sessions began on 20th March 1959 and ended on 8th July 1959, yet this case was not added to the calendar because there were already too many cases on it.

The 3rd Criminal Sessions began on 10th July 1959 and ended on 9th October 1959. This case was fixed for trial on 15th September 1959, but it was not reached. The 4th Criminal Sessions began on 10th October 1959 and are still pending. The trial of this case has been fixed for 17th November 1959.

The question I have to consider is whether the Crown has shown good cause. The only cause that has been offered is that the work of the Western Circuit is so heavy that it was not possible for the accused to be brought to trial at either of the two sessions which were held after they might properly have been tried. This is undoubtedly the cause of the delay, but I do not consider it to be a good cause for refusing bail. A stage must surely be reached when prisoners on remand could expect that they should be tried or released on bail. Relying again on the opinion of Nihill J. in the case cited, that “section 31 contains an important principle safeguarding the liberty of the subject who has a right to be brought to trial with reasonable despatch”, I think I should be ignoring this principle if I were to refuse the present application.

The legislature intended, when it enacted section 31, that prisoners should be brought to trial in the Supreme Court within a reasonable time after commitment. When there has been undue delay, as there has been in this case, the prisoners affected should not be denied the relief provided by the section. I would hold that the Crown has not shown good cause in this case, and that the eight petitioners should be admitted to bail.

I order that each accused may be admitted to bail in a sum of Rs. 10,000. Each bail bond will provide that the accused shall, between his release on bail and the termination of the trial, report himself on the Monday of every week at the nearest Police Station; and that the bond shall be subject to cancellation if the accused communicates with any witness for the prosecution.

*Application allowed.*