

(1923) 05 CAL CK 0003

Calcutta High Court

Case No: Mis. Criminal Rev. No. 60 of 1923

Ahmed Ali Sardar and others

APPELLANT

Vs

King Emperor

RESPONDENT

Date of Decision: May 22, 1923

Final Decision: Allowed

Judgement

1. The present Rule was (sic) upon the District Magistrate Tipperah to show cause why (sic) the bearing of a Reference the Sessions Judge of Tipperah u/s 123, clause 2, of the Code of Criminal Procedure, bail should not be granted to the petitioners the satisfaction of the District Magistrate.

2. It appears that certain proceedings were taken against the petitioners u/s 110 of the Code and an order against the petitioners was made u/s 118. The petitioners were unable to furnish the securities demanded. The proceedings were then laid before the Sessions Judge of Tipperah for orders u/s 123. The petitioners urge that pending the hearing of the reference u/s 123. Sub-section (2), they should be admitted to bail. The Sessions Judge was of opinion that having regard to the provisions of section 123, sub-section (2), (sic) admission to (sic) wide and it is pointed out in the section itself that a Court of Sessions may in any case direct any person to be admitted to bail. There are (sic) words in section 123, sub-section (sic) controlling the very wide provision of section 498. If a person has been convicted and has appealed, he (sic) apply for bail to the Sessions Judge In the present case as an order has been made u/s 118 against the petitioners such an order is liable in the circumstances stated to be revised by the Sessions Judge under the provisions of section 123, sub-section (2). In other words, the Sessions Judge may or may not confirm the order passed by the Magistrate u/s 118 and it stands to reason that if in the case of a person who is convicted and who has preferred an appeal, bail is allowable, bail can similarly be allowed in the case of a person against whom an order has been made under S. 118 and which order is liable to be revised by a Sessions Judge under the provisions of a. 123, sub-section (2). At any rate, in our

opinion, there is no reason why any restriction should be placed upon the wide provisions of S. 498. In this view of the matter we think the Sessions Judge had power to admit the petitioners to bail and we, accordingly, send the matter back to the learned Sessions Judge in order that he may deal with the matter of the application for bail in the light of the remarks made above.