

(1954) 12 CAL CK 0013

Calcutta High Court

Case No: Criminal Revision Case No. 712 of 1954

Government of West Bengal

APPELLANT

Vs

Abdul Hakim

RESPONDENT

Date of Decision: Dec. 2, 1954**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 107, 107(4), 108, 109, 110

Citation: (1956) 2 ILR (Cal) 92**Hon'ble Judges:** Sen, J; Renupada Mukherjee, J**Bench:** Division Bench**Advocate:** N.K. Sen, for the Appellant;

Judgement

Sen, J.

This revisions application is directed against an order of Sri M.M. Bhattacharjee, Sessions Judge, Midnapore granting bail to the opposite party Abdul Hakim who was directed by the Magistrate, First Class, Tamluk, u/s 117(5) of the Code of Criminal Procedure to execute an interim bond to be of good behaviour and who failed to furnish that bond and was, therefore, detained in custody.

2. The learned Deputy Legal Remembrancer appearing for the Petitioner, has contended that the Sessions Judge has no power u/s 498, Code of Criminal Procedure, to grant bail in such a case. The learned Sessions Judge took the view that the powers conferred by Section 498, Code of Criminal Procedure, was wide enough to enable him to grant bail in such a case and in this connection he referred to the ruling Ahmed Ali Sardar v. King Emperor (1923) 37 C.L.J. 592. In that case, however, the question before the Court was whether the Sessions Judge had power pending the hearing of a Reference u/s 117(2), Code of Criminal Procedure, to grant bail to a person against whom an order has been made u/s 118, Code of Criminal Procedure. In the present case we are concerned with quite a different question. Further the basis of the decision in Ahmed Ali Sardar v. King Emperor (supra), was

that Section 498, Code of Criminal Procedure, gave wide powers to the Court of Sessions to direct any person to be admitted to bail and, therefore, a person who had been convicted could also apply for bail to the Sessions Judge under that section. But it has since been decided by the Privy Council in the case of AIR 1945 94 (Privy Council) that the words "any person" as used in Section 498, Code of Criminal Procedure, must mean an under trial person and does not include a convicted person. Therefore, it cannot be said that the ruling relied upon by the learned Sessions Judge remains good law. The Privy Council in the aforesaid case held further that Sections 496 and 497, Code of Criminal Procedure, are the sections in Chapter XXXIX, Code of Criminal Procedure, which provide for the granting of bail to accused persons before trial and the other sections deal with matters ancillary or subsidiary to those provisions. Following that decision, this Court has held in the Miscellaneous Case No. 184 of 1954 that the provisions of Section 498, Code of Criminal Procedure, are controlled by Sections 496 and 497, Code of Criminal Procedure. In the case of a person who has been proceeded against under Sections 107 to 110, Code of Criminal Procedure, the case comes u/s 496, Code of Criminal Procedure, which deals with the granting of bail to a person other than a person accused of a non-payable offence. The provisions of Section 498, Code of Criminal Procedure, in this case must be controlled by the provisions of Section 496, Code of Criminal Procedure. Section 496, Code of Criminal Procedure, contains a proviso that nothing in this section shall be deemed to affect the provisions of Section 107, Sub-section (4), or Section 117, Sub-section (3). It must be held, therefore, that in a case u/s 117(5) where the trying Magistrate has directed a person to execute a bond under that Sub-section and has remanded the accused to custody, in default of execution of such a bond, the Sessions Judge has no power to grant bail. The only remedy that the accused person could seek would be to file a provisional application u/s 439 of the Code of Criminal Procedure before the High Court. In our opinion, therefore, the learned Sessions Judge wrongly granted bail in the present case and the order cannot be sustained.

3. This Rule is, therefore, made absolute and the order granting bail by the learned Sessions Judge is set aside.

Renupada Mukherjee, J.

4. I agree.