

14. POWER OF TRANSFEREE COURT

Grant of Bail—Power of transferee Court—Bail bond in transferee Court—Accused absent—Order by transferee Court canceling bail is justified.

The bail bond executed by the accused persons in the court of the Sub-divisional Magistrate shows that the accused persons bound themselves to attend the court of the Sub-divisional Magistrate or such other Magistrate, before whom the case might be pending. Therefore, the accused persons were bound to appear before the learned Munsif Magistrate on the date fixed for their attendance. As they did not appear before the Munsif Magistrate on the date fixed the learned Munsif Magistrate cancelled their bail bond and issued non-bailable warrant of arrest against them to enforce their appearance.

Court does not find any illegality in the order of the sub-divisional Magistrate, dated 25.5.1973 or in the order of the Munsif Magistrate, dated 23.6.1973. There is no merit in any of these two applications. Both the applications are therefore, dismissed.

- *Mahendra Prasad v. State of Bihar*, 1977 Cri LJ 1025 : 1977 BBCJ 323 (Patna).

15. PROCEDURE FOR FORFEITURE

Bond for appearance procedure for forfeiture.

There is difference between a bond taken for appearance of accused and a bond for the purpose of Section 106 *etc.* As regards the latter, some evidence is required to show that conditions under which or events on the happening of which the bond can be forfeited exist. In the case of a bond for appearance, the Court by its own observation is able to see whether the person concerned is present or absent. No independent proof is necessary for this and it is a meaningless formality to take evidence of an obvious fact. The surety is of course entitled to an opportunity to offer explanation for non-appearance and show that the default was not wanton or wilful and such as may be excused or condoned. In this case the surety was given this opportunity but he failed to furnish any reason for the absence. There is therefore no force in the objection alleged by the petitioner.

- *Gurupada v. Mysore Govt.*, 1952 Cri LJ 1532 : AIR 1951 Ajmer 101 : ILR (1952) Mysore 102 : AIR 1952 Mysore 102.

16. REVISION

Order refusing to release accused on bail under section 167(2)—Final order and not interplanetary order—Revision maintainable—Entitled to bail.

Section 167(2), Cr. PC gives an indefeasible right to the accused to be released on bail on certain conditions and if that indefeasible right of the accused is taken away by any order then it substantially affects the rights of the accused and it also decides right of the accused to be released on bail and, therefore, an order refusing to release the accused on bail under the provisions of Section 167(2), Cr. PC is a final order and not an interlocutory order as has been held by the learned Sessions Judge in the impugned order.

so and for respondents 1 and 2 appearing before the Taluka Police Station on Monday of each week for notifying their presence.

- ❑ *State of Kutch v. Aber Vasta Hadbu*, 1953 Cri LJ 1916 (Kutch).

22. GRANT OF BAIL—FACTORS TO BE CONSIDERED

The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among other circumstances, the factors such as : (a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; (b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (c) *prima facie* satisfaction of the court in support of the charge.

- ❑ *Dipak Shubhashchandra Mehta v. C. B. I.*, 2012 Cri LJ 1664.

23. GRIEVOUS INJURIES

Petitioner annoyed being objected for cutting of trees inflicted grievous injuries to his father and sister.

This Court would like to observe that in the interest of public at large that the son like petitioner is not expected of harming his parents by such type of mischievous activities. The father of the accused-petitioner stopped him about not to cut trees in the interest of all particularly our green environment and on this he annoyed with his father and inflicted grievous injuries to his father and sister which have been described by the doctor as dangerous to life. The accused petitioner forgotten about the day on which he will also become parent of his sons. Therefore, in these circumstances, court does not think it proper to enlarge the petitioner on bail under Section 439, Cr. PC. at this stage.

- ❑ *Babulal v. State of Rajasthan*, 2011 Cri LJ 1314 (Rajasthan).

24. INDULGENCE IN FURTHER CRIME

After release appearing to have indulged in further crimes—This would be ground for cancellation of bail.

Even though the respondent has been released under Section 167(2) Cr. PC, the bail once granted can be cancelled only on merits. In other words, cancellation of the bail could only be as per the provisions of Section 437(5) or 439(2), Cr. P.C. In *Aslam Bablal Desai's* case, AIR 1993 SC 1, wherein it has been held that the order passed under Section 162(2), Cr. P.C. on failure of the prosecution to lay the charge sheet in time would be an order under Section 437(1) or (2) or 439(1) Cr. P.C. Since Section

or detained, he may be released on bail, but shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Thus in the case of non-bailable offences, other than the one punishable with death or imprisonment for life, a discretion is conferred on the Court whether to enlarge or not to enlarge the accused on bail. When the Court is thus conferred a discretion and in the exercise of that discretion it considers necessary to impose certain conditions, can it be said that those conditions are illegal?

In the case of non-bailable offences, a Court may impose conditions other than the fixing of the bail for the attendance of the accused, and such a condition is not illegal.

- *In re Saradamma*, 1965 (2) Cri LJ 709 : AIR 1965 AP 444 : 1965 Mad LJ (Cri) 705 : (1965) 2 Andh W R 289.

Considerations for bail where the trial has not yet commenced.

The Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tempered with, the larger interests of the public or the State and similar other considerations.

- *State v. Jaspal Singh Gill*, AIR 1984 SC 1503 : 1984 Cri LJ 1211 : 1984 (3) SCC 555 : 1984 SCC (Cri) 444 : 1984 All Cri C 279 : 1984 Cri LR (SC) 285 : 1984 2 Rec Cri R 388.

Discretion of High Court—Not controlled by the limitations—Bail, allowed.

The learned Judges have emphasised that it is not any one single circumstance which necessarily concludes the discretion, but it is the cumulative effect of all the combined circumstances that must weigh with the Court and when referring to serious non-bailable offences the learned Judges have further emphasised that in cases where there is reasonable ground for believing that the accused had been guilty of an offence punishable with death or imprisonment for life, the grant of bail by Sessions Judge or the High Court should not be as a matter of general rule but in exceptional cases and particularly so when the Sessions Judge has refused to exercise his discretion in favour of the accused. But when observing so their Lordships have taken care to say that this is a rule of practice and caution only.

In the opinion of the Court the unfettered discretion which is vested in the High Court under section 498, Cr. P. Code in the matter of grant of bail is not in any manner, as a matter of law, affected or narrowed down merely because the Sessions Judge has refused to exercise a discretion in favour of the accused. The only effect of the refusal by the Sessions Judge to exercise a discretion in favour of the accused is that becomes one of the circumstances to be taken into consideration in the exercise of discretion by the High Court. The rejection of prayer for bail by the Sessions Judge does not affect

If the 90th day or 60th day from the date of production of the accused happened to be a holiday, the prosecution can file a charge-sheet on the next working day. In this case also the prosecution has got a right to file the charge-sheet on 29.7.1991 but only during the course of the working hours of the Court. Since the charge-sheet has been filed beyond the working hours of the Court *i.e.*, at 5.30 p.m. on the 91st day the learned Magistrate was not justified in treating the charge-sheet as having been filed on 29.7.1991 during the working hours of the Court and cancel the bail.

When an accused person is released on the ground that the charge-sheet has not been filed, the Court has no power to correct it under Section 362, Cr. P.C. on the ground that there was some defect in granting bail. There is no provision in the Code for cancellation of bail in the case of persons that were released under the proviso to sub-section (2) of Section 167, Cr. P.C.

- *Madaba Ramaiah v. State of Andhra Pradesh*, 1992 Cri LJ 676 (AP).

Submission of charge-sheet after prescribed period—Prayer for being considered after submission of charge-sheet—Question of granting bail under section 167(2) does not arise—Magistrate gets power to remand accused under section 309(2) of Cr PC.

With the submission of the charge-sheet an enquiry shall be deemed to have commenced, as such, there is no question of lack of power in the Magistrate to remand such an accused; he can remand in exercise of power under Section 309(2). Of course, if the prayer for bail is being considered after the expiry of the statutory period and before the submission of the charge-sheet there is no option with the Magistrate except to release the accused on bail if he furnishes bail bond.

As such, while considering the prayer for bail of the petition on or after 24.9.1987 the Magistrate had not to examine that prayer in the background of Section 167(2) proviso but in the light of Section 309(2) of the Code. With the filing of the charge-sheet an enquiry shall be deemed to have commenced, the Magistrate had power to remand such an accused and there was no question of enforcing on that day any right which had accrued to such an accused between 21.9.1987 and 24.9.1987. If such right cannot be enforced in an application for a writ of habeas corpus; right cannot be enforced before the Magistrate after the submission of the charge-sheet although submitted after the period fixed in proviso to Section 167(2).

- *Nawal Sahni v. State of Bihar*, 1989 Cri LJ 733 (Patna) : 1988 BBCJ 573 : 1988 BLJR 639 : 1988 (2) Cri LC 577 : 1988 East Cri C 586 : 1988 Pat LJR 565.

7. CHARGE-SHEET FILED ON LAST DAY

Charge-sheet filed on the last day of prescribed period—Accused cannot be allowed to blow hot and cold and take advantage of their own act.

The cognizance is required to be taken before the expiry of the period prescribed. The applicants prevented the Court from taking cognizance of the offence for want of C.A. report. They, as indicated, could have argued and sought appropriate orders before

the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court;

In absence of any material or evidence of reasonable ground to believe that the delinquent juvenile, if released on bail, is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail.

- *Prakash v. State of Rajasthan*, 2006 Cri LJ 1373 (Raj) : 2006 (1) Raj Cri Cases 337 : 2006 (1) Raj LW 538: 2006 (2) Rec Cri R 530.

21. RELEASE OF JUVENILE

Nothing else has been pointed out which would indicate that release of juvenile would result in a defeat of ends of justice—Accused not to be released on bail.

None of these are factors which have to be taken into account when a decision is required as to whether the release of the juvenile would defeat the ends of justice or not. Apart from this, nothing else has been pointed out which would indicate that the release of the petitioner would result in a defeat of the ends of justice. Accordingly, the impugned order is set aside and the petitioner is directed to be released on bail on the petitioner furnishing a personal bond in the sum of ₹ 10,000/- with one surety of the like amount to the satisfaction of the Juvenile Justice Board.

- *Manoj v. State*, 2006 Cri LJ 4759 (Delhi) : 2006 (4) Crimes 274 : 2007 (1) Cur Cri R 304 : 2006 (132) DLT 42 : 2007 (1) East Cri C 218 : 2006 (4) Rec Cri R 584.

22. SESSIONS COURT CANNOT EXERCISED POWER OF JUVENILE BOARD

Application for bail with plea of juvenile made directly before Sessions Court—Sessions Court cannot exercise power of Board—Directions issued by Govt. without concurrence of High Court do not confer such powers on Sessions Judge.

In the case of *Mohd. Amir v. State of U.P.*, (2002) 45 All Cri C 94 (Alld), it has been held that in the absence of the constitution of the Board, the applicants may move application for bail before the Magistrate having jurisdiction under Section 437, Cr.P.C. and in the case the same is rejected, they may move application under Section 439, Cr.P.C. before the Sessions Judge and also before the High Court. It is not disputed that Juvenile Board has not been constituted in any district specially in the district Fatehpur. Therefore, in the absence of any Board, the power of Magistrate under Cr.P.C. can be exercised and the applicant may move bail application before the Magistrate concerned under Section 437, Cr.P.C. taking plea of juvenile and in case it is rejected he may move bail application before Sessions Judge and this Court in which plea of juvenile may be raised.

- *Sant Das v. State of U.P.*, 2003 Cri LJ 3424 (Alld) : 2003 All LJ 1628 : 2002 (45) All Cri Cases 1157: 2002 (3) All Cri R 2753 : 2003 (1) AIC 92.