1961

September 14.

THE STATE

v.

CAPTAIN JAGJIT SINGH

(K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Bail—Offence bailable under one section and non-bailable under another—Procedure—Indian Official Secrets Act, 1923 (XIX of 1923), ss. 3, 5.

The respondent who was a former Captain of the Indian Army and was employed in the delegation in India of a French Company was prosecuted along with two others for conspiracy and passing on Official Secrets to a foreign agency under ss.3 and 5 of the Official Secrets Act. His application for bail was rejected by the Sessions Judge but the High Court allowed bail on the ground *inter alia* that his case might fall only under s.5 which was bailable and not s. 3 which was not bailable. It did not express any opinion whether the case fell under s. 5 or s. 3 in view of the commitment proceedings which were going on at the time. On appeal by the State.

Held, that the High Court should have proceeded to deal with the application for bail on the assumption that the offence was under s. 3 and therefore not bailable. It should have then taken into account the various considerations such as, nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, tampering with witnesses larger interests of the public and the State and similar other considerations which arise when bail is asked for in a non-bailable offence.

The fact that the applicant for bail might not abscond was not by itself a sufficient ground for granting bail.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 118 of 1961.

Appeal by special leave from the judgment and order dated May 10, 1961, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Misc. No. 255-D of 1961.

C. K. Daphtary, Solicitor-General of India, Bepin Behari Lal, T. M. Sen and *R. H. Dhebar*, for the appellant.

N. C. Chatterjee, Mehar Singh Chaddah, A. K. Nag and *I. S. Sawhney*, for the respondent.

1961

The State
v.
Captain Jagjit Singh

Wanchoo J.

1961. September, 14. The Judgment of the Court was delivered by :

WANCHOO, J.—The respondent Jagjit Singh along with two others was prosecuted for conspiracy and also under ss. 3 and 5 of the Indian Official Secrets Act, No. XIX of 1923, (hereinafter called the Act). The respondent is a former captain of the Indian Army and was at the time of his arrest in December, 1960, employed in the delegation in India of a French company. The other two persons were employed in the Ministry of Defence and the Army Headquarters, New Delhi. The case against the three persons was that they in conspiracy had passed on official secrets to a foreign agency.

The respondent applied for bail to the Sessions Judge; but his application was rejected by the Additional Sessions Judge, Delhi. Thereupon the respondent applied under s. 498 of the Code of Criminal Procedure to the High Court, and the main contention urged before the High Court was that on the facts disclosed the case against the respondent could only be under s. 5 of the Act, which is bailable and not under s. 3 which is not bailable. The High Court was of the view that it was hardly possible at that stage to go into the question whether s. 3 or s. 5 applied ; but that there was substance in the suggestion on behalf of the respondent that the matter was arguable. Consequently the High Court took the view that as the other two persons prosecuted along with the respondent had been released on bail, the respondent should also be so released, particularly as it appeared that the trial was likely to take a considerable time and the respondent was not likely to abscond. The High Court, therefore, allowed bail to the respondent. Thereupon the State made an application for special leave which was granted. The bail granted to the respondent was cancelled by an interim order by this Court, and the matter has now come up before us for final disposal.

There is in our opinion a basic error in the order of the High Court. Whenever an application for bail is made to a court, the first question that

1961

The State
v.
Captain Jagjit Singh

Wanchoo J.

it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under s. 496 of the Code of Criminal Procedure without more ado ; but if the offence is not bailable, further considerations will arise and the court will decide the question of grant of bail in the light of those further considerations. The error in the order of the High Court is that it did not consider whether the offence for which the respondent was being prosecuted was a bailable one or otherwise. Even if the High Court thought that it would not be proper at that stage, where commitment proceedings were to take place, to express an opinion on the question whether the offence in this case fell under s. 5 which is bailable or under s. 3 which is not bailable, it should have proceeded to deal with the application on the assumption that the offence was under s. 3 and therefore not bailable. The High Court, however, did not deal with the application for bail on this footing, for in the order it is said that the question whether the offence fell under s. 3 or s. 5 was arguable. It follows from this observation that the High Court thought it possible that the offence might fall under s. 5. This, in our opinion, was the basic error into which the High Court fell in dealing with the application for bail before it, and it should have considered the matter even if it did not consider it proper at that stage to decide the question whether the offence was under s.3 or s.5, on the assumption that the case fell under s. 3 of the Act. It should then have taken into account the various considerations, such as, 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 tampered with, the larger interests of the public or the State, and similar other considerations, which arise when a court is asked for bail in a non-bailable offence. It is true that under s. 498 of the Code of Criminal

Procedure, the powers of the High Court in the matter of granting bail are very wide; even so where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence. This the High Court does not seem to have done, for it proceeded as if the offence for which the respondent was being prosecuted might be a bailable one.

The only reasons which the High Court gave for granting bail in this case were that the other two persons had been granted bail, that there was no likelihood of the respondent absconding, he being well connected, and that the trial was likely to take considerable time. These are however not the only considerations which should have weighed with the High Court if it had considered the matter as relating to a non-bailable offence under s. 3 of the Act.

The first question therefore that we have to decide in considering whether the High Court's order should be set aside is whether this is a case which falls *prima facie* under s. 3 of the Act. It is, however, unnecessary now in view of what has transpired since the High Court's order to decide that question. It appears that the respondent has been committed to the Court of Session along with the other two persons under s. 120-B of the Indian Penal Code and under ss. 3 and 5 of the Act read with s. 120-B. *Prima facie* therefore, a case has been found against the respondent under s. 3, which is a non-bailable offence. It is in this background that we have now to consider whether the order of the High Court should be set aside. Among other considerations, which a court has to take into account in deciding whether bail should be granted in a non-bailable offence, is the nature of the offence; and if the offence is of a kind in which bail should not be granted considering its seriousness, the court should refuse bail even though it has very wide powers under s. 498 of the Code

1961

The State
v.
Captain Jagjit Singh

Wanchoo J.

of Criminal Procedure. Now s. 3 of the Act erects an offence which is prejudicial to the safety or interests of the State and relates to obtaining, collecting, recording or publishing or communicating to any other person any secret official code or pass-word or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy. Obviously, the offence is of a very serious kind affecting the safety or the interests of the State. Further where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment, or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, it is punishable with fourteen years' imprisonment. The case against the respondent is in relation to the military affairs of the Government, and *prima facie* therefore, the respondent if convicted would be liable upto fourteen years' imprisonment. In these circumstances considering the nature of the offence, it seems to us that this is not a case where discretion, which undoubtedly vests in the court, under s. 498 of the Code of Criminal Procedure, should have been exercised in favour of the respondent. We advisedly say no more as the case has still to be tried.

It is true that two of the persons who were prosecuted along with the respondent were released on bail prior to the commitment order; but the case of the respondent is obviously distinguishable from their case inasmuch as the prosecution case is that it is the respondent who is in touch with the foreign agency and not the other two persons prosecuted along with him. The fact that the respondent may not abscond is not by itself sufficient to induce the court to grant him bail in a case of this nature. Further, as the respondent has been committed for trial to the Court of Session,

1961

The State
v.
Captain Jagjit Singh

Wanchoo J.

it is not likely now that the trial will take a long time. In the circumstances we are of opinion that the order of the High Court granting bail to the respondent is erroneous and should be set aside. We therefore allow the appeal and set aside the order of the High Court granting bail to the respondent. As he has already been arrested under the interim order passed by this Court, no further order in this connection is necessary. We, however, direct that the Sessions Judge will take steps to see that as far as possible the trial of the respondent starts within two months of the date of this order.

Appeal allowed.

1961

September 15.

ABHIRAJ KUER

v.

DEBENDRA SINGH

(K. N. WANCHOO, K .C. DAS GUPTA and J. C. SHAH, JJ.)

Hindu Law—Banaras School of Mitakshara law—Adoption of wife's sister's daughter's son—Validity.

The appellant as reversioner sued for a declaration that the adoption of respondent 1 by respondent 2 to her deceased husband was invalid in law and respondent 1 acquired no right to the properties left by the husband of respondent 2. The parties were governed by the Banaras School of Mitaksha a Hindu law and respondent 1 was the sister's daughter's son of respondent 2. The question was whether a wife's sister's daughter's son could be validly adopted to a person governed by the Banaras School of Mitakshara Hindu Law. The High Court answered it in the affirmative and dismissed the suit. Reliance was placed on behalf of the appellant in this Court on Nanda Pandit's Dattak Mimansa which specifically excluded a wife's sister's daughter's son for the purpose of adoption on the ground of incongruous relationship (Viruddha Sambandha) as also on the text of Ashvalayana interdicting marriage with a sapinda, sagotra and viruddha sambandha girl such as a wife's sister's daughter on which the author of Dattak Mimansa had relied. It was contended that when a positive statement in the text was followed by a negative one, the latter