

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,
and Mr. Justice Wendt.

1908.
April 8.

THE KING *v.* LOKU NONA and two others.

P. C., Negombo, 8,151.

Appeal to the Privy Council from conviction—Granting of special leave to appeal—Admission to bail pending hearing of appeal—Powers of the Supreme Court to release on bail—Criminal Procedure Code, ss. 355 and 396.

The Supreme Court has no power to admit to bail, without special directions from the Privy Council, persons who have been convicted of an offence and are undergoing imprisonment and who have appealed to His Majesty in Council and have obtained special leave to appeal, pending the hearing and decision of such appeal.

APPPLICATION for bail pending the hearing and determination of an appeal to His Majesty in Council in the case reported in (1907) 11 N. L. R. 4. The order of the Privy Council granting special leave to appeal is reported in (1908) 11 N. L. R. 116.

The circumstances out of which the application arose are stated in the judgment of the Chief Justice.

H. A. Jayewardene, for the applicants.

Fernando, C.C., for the Crown.

Cur. adv. vult.

1908. April 8, 1908. HUTCHINSON C.J.—
April 8.

Application is made to us to admit to bail, pending the result of an appeal to His Majesty in Council, three persons who were convicted of murder in September, 1907, at the Criminal Sessions of the Supreme Court in Colombo, and who were sentenced to death, and whose sentence was afterwards commuted by the Governor to one of twenty years' imprisonment.

The application is supported by an affidavit sworn on the 5th instant by K. Migel Appuhamy, which states that application was made on behalf of the convicts to His Majesty in Council for special leave to appeal, and that the deponent's counsel in Ceylon has received intimation from counsel in England that His Majesty has been pleased to grant special leave to appeal; that he is credibly informed and believes that counsel in England applied to their Lordships of the Privy Council that the accused should be enlarged on bail pending the hearing of the appeal, and their Lordships directed that application be made for that purpose to this Court or to the Government of Ceylon.

The Registrar of this Court has received from the Registrar of the Privy Council a telegram in these words: "Judicial Committee have agreed to advise His Majesty to grant special leave to appeal. Mitigation of punishment pending appeal rests with local authorities."

We should of course obey any directions of their Lordships to us in the matter, but they have not given any; and in the absence of such directions we think that we have no power to release on bail in such a case. Section 355 of the Criminal Procedure Code only empowers the Judge who presided at the trial to admit to bail pending the decision on a case reserved by him. And section 396 which empowers this Court to admit to bail "in any case," only refers to persons accused and not to persons who have been convicted.

We will forward to the Governor the telegram which the Registrar has received from the Registrar of the Privy Council, so that His Excellency may consider whether he will mitigate the sentence pending the result of the appeal.

Application disallowed.
