

1958

*Present : Gunasekara, J.*THE QUEEN *v.* JINADASA and another

APPLICATION FOR BAIL

S. C. 1st Southern Sessions 1958) 22—M. C. Galle, 24,000

Bail—Committal for trial before Supreme Court—Accused not brought to trial at the first criminal sessions thereafter—Right of accused to be admitted to bail—Courts Ordinance (Cap. 6), s. 31.

After the certified copy of the Magistrate's record in a non-summary inquiry was received, the Attorney-General's Department took four months to decide to order a supplemental inquiry of a formal nature. The indictment too was not signed until six weeks had elapsed after the case was received back from the Magistrate. In consequence of the unreasonable delay in the preparation of the indictment the accused could not be brought to trial at the first criminal sessions after the date of his commitment.

Held, that the accused was entitled to be admitted to bail in terms of section 31 of the Courts Ordinance.

APPLICATION for bail under Section 31 of the Courts Ordinance.

D. Wijeratne, for the 1st accused.

S. D. Jayasundera (assigned) for the 2nd accused.

Ananda de Silva, Crown Counsel, for the Attorney-General.

Cur adv. vult.

August 11, 1958. GUNASEKARA, J.—

This is an application for bail made on behalf of two prisoners awaiting trial on charges of conspiracy to voluntarily cause a woman with child to miscarry and of murder of the woman. They were arrested on the 13th November 1956 and were committed on the 17th June 1957 for trial before this court. The application for bail was filed on the 6th August 1958 and the accused had been in custody for nearly a year and 9 months when it was heard last Friday.

The offences are alleged to have been committed within the judicial division of Galle, which is in the Southern Circuit. The accused could therefore "properly be tried" at a criminal session of this court held for that circuit. The first new sessions for the Southern Circuit held after the 17th June 1957 began on the 16th September 1957 and closed on the 23rd April 1958. As more than 20 days had elapsed between the date of the commitment of the accused and the first day of the new sessions they were entitled, under section 31 of the Courts Ordinance, to be admitted to bail at the close of the sessions unless good cause was shown to the contrary or unless the trial had been postponed on their application.

The certified copy of the magistrate's record was received by the Attorney-General on the 8th July 1957. Four months later it was returned to the magistrate with instructions to hold a supplemental inquiry. The instructions, which were dated the 8th November 1957, were complied with, and the further inquiry was concluded on the 16th December 1957. The copy of the record was sent back to the Attorney-General under cover of a memorandum dated the 1st February 1958 and was received by the Attorney-General on the 13th February. The indictment was signed by crown counsel 6 weeks later, on the 28th March 1958, which was a Friday. The fiscal served it on the accused without any delay, on the following Wednesday, the 2nd April, but it was not practicable to arrange for a trial by the 23rd April.

It does not appear that there was any good reason why the indictment could not have been prepared early enough to make it possible for the accused to be brought to trial at the last sessions. I have read the copy of the magistrate's court record and the relevant extracts from the police information book and it seems to me to be extraordinary that the Attorney-General's Department needed 4 months to decide to order a supplemental inquiry. That inquiry was directed mainly to the recording of some formal evidence that was considered to be necessary to render

admissible certain evidence that was already on record and to the recording of evidence of an alleged admission by the 1st accused to a police officer to the effect that he had known the deceased for four years and she used to buy provisions at his boutique on credit as well as for cash. Clearly, a decision had already been taken to present an indictment, and all that remained to be done in the Attorney-General's Department when the copy of the record was returned by the magistrate was that the indictment should be drawn up and signed and sent to this court and copies of it sent to the fiscal for service on the accused. Yet the indictment was not signed until 6 weeks had elapsed after the case was received back from the magistrate.

The learned crown counsel, quite properly, did not oppose the application for bail. I allowed the application, directing that each accused should enter into a recognizance in the sum of Rs. 7,500 with two sureties.

Application allowed.

