

1944

*Present: de Kretser J.*NALLIAH *v.* THE ATTORNEY-GENERAL.*In re Application for Bail in M. C. Jaffna, No. 3,674.**Bail—Indictment for murder—Application for bail—Prisoner not brought to trial owing to postponements on application by Counsel for defence—Courts Ordinance, s. 31.*

The accused, who was indicted for murder with another, could not be brought to trial at the first Criminal Sessions after the date of his commitment owing to postponements allowed on three occasions on the applications of one or other of the accused's Counsel.

*Held*, (on an application for bail under section 31 of the Courts Ordinance), that the accused was not entitled to bail.

**T**HIS was an application for bail.

*S. Nadesan* in support.

*T. S. Fernando, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

November 6, 1944, DE KRETSEK J.—

The applicant is charged with the offence of murder and a prisoner in such circumstances is not ordinarily admitted to bail.

The first sessions at which the prisoner might have been tried opened in July, 1944, and this case was set down for trial on July 18. On that date the trial had to be postponed as another trial which began earlier was still proceeding. The case was, therefore, postponed for September 4. That date did not suit Counsel for the applicant who, at some unspecified date, intimated this fact to Crown Counsel, who thereupon, obliged Counsel for the defence by fixing it for September 21. It is not disclosed why September 4, a date fixed on July 18, was found to be inconvenient for Counsel for the defence. It is well known that Crown Counsel go to extraordinary lengths in obliging brother Counsel, sometimes to lengths to which they should not go. The case was postponed on September 4 to September 21, and that did not suit Counsel for the applicant again. It was then postponed for October 9 on which date counsel for the second accused sent a medical certificate stating that he was unable to appear. The result was that the sessions closed on October 14 and this case had to stand over for the next sessions.

The present application is made under section 31 of the Courts Ordinance which requires that the prisoner shall be brought to trial at the first criminal sessions after the date of his commitment at which such prisoner might properly be tried. It is not suggested that the prisoners might not properly have been tried on the various dates given. Crown Counsel argues that "properly be tried" means "be tried provided no other work is interfering." It is not necessary to decide this point, but I would not give the words "properly be tried" such a narrow significance. However, the section goes on to say that the prisoner should be admitted to bail, unless good cause is shown to the contrary, or unless the trial shall have been postponed on the application of the prisoner. The

circumstances which I have detailed furnish sufficient good cause to the contrary, and the alternative also applies as the trial was postponed on three occasions on the application of one or other of the prisoners' Counsel, who obviously were making those applications in the interests of the prisoners.

Applicant's Counsel stresses the singular, "such prisoner", but in view of the Interpretation Ordinance it must be taken to mean "such prisoners", and since the trial could not proceed with each accused independently, any application made on behalf of one prisoner led necessarily to a postponement of the whole trial. I think the alternative also, therefore, applies. The application is therefore, refused.

*Application refused.*

