

1961

Present : T. S. Fernando, J.

P. KANNUSAMY, Petitioner, and THE MINISTER OF
DEFENCE AND EXTERNAL AFFAIRS, Respondent

S. C. 167 of 1961—Application for Bail

Bail—Power of Supreme Court to grant bail—Requirement that it should be conferred by statute—Detention under a removal order—Incapacity of Supreme Court to admit the detained person to bail—Immigrants and Emigrants Act, No. 20 of 1948 (as amended by Act No. 16 of 1955), ss. 28 (1A), 28 (4)—Citizenship Act, No. 18 of 1948 (as amended by Act No. 13 of 1955), s. 11A—Criminal Procedure Code, s. 390.

The Supreme Court has no common law power to admit persons to bail.

When a person against whom a removal order has been made in terms of section 28 of the Immigrants and Emigrants Act is arrested and detained under section 28 (1A), the Supreme Court has no power, in the absence of any statutory provision, to admit him to bail pending the hearing of an application made by him for registration as a citizen of Ceylon under the Citizenship Act.

APPPLICATION for bail by a person detained under section 28 (1A) of the Immigrants and Emigrants Act.

S. Sharvananda, with *M. S. M. Nazeem* and *K. Thevarajah*, for the petitioner.

E. R. de Fonseka, Crown Counsel, as *amicus curiae*, on notice from the Court.

Cur. adv. vult.

June 8, 1961. T. S. FERNANDO, J.—

At the conclusion of the hearing of argument in this matter I made order refusing the application for bail, but, in view of the fact that I was informed that this application was the first of its kind to be made to this Court, I stated that I would set down in writing my reasons for the order I made. Accordingly, I set down below the reasons :—

A statement in the application made by the petitioner to this Court recites that a removal order in terms of Section 28 of the Immigrants and Emigrants Act, No. 20 of 1948, as amended by Section 15 of the Immigrants and Emigrants (Amendment) Act, No. 16 of 1955, has been made in respect of the petitioner by the Minister. Sub-section (4) of Section 28 enacts that the removal order shall be final and shall not be contested in any court.

It would appear that the petitioner had made an application for registration as a citizen of Ceylon in terms of Section 11A of the Citizenship Act, No. 18 of 1948, as amended by the Citizenship (Amendment) Act, No. 13 of 1955. He has been informed that his application has been refused. The validity of the refusal of his application is being disputed by him in proceedings he has instituted in this Court on 4th March 1961 (S. C. Application No. 104 of 1961) for the issue by this Court of a mandate in the nature of a writ of mandamus on the Minister requiring the latter to grant the petitioner's application for registration. This Court, after hearing counsel on behalf of the petitioner, has directed that notice do issue on the Minister to show cause why the prayer contained in Application No. 104 of 1961 should not be granted. The application to this Court is now awaiting argument and subsequent disposal.

The petitioner states that, pursuant to the removal order, he has been arrested and is being detained within the premises of the Slave Island police station. Power to arrest and detain a person in respect of whom a removal order has been made is conferred by Section 28 (1A) of the Immigrants and Emigrants Act. I am informed by counsel that this Court, when ordering notice to issue on the Minister in Application No. 104 of 1961, has directed that the petitioner be not removed from Ceylon pending the disposal of the application made to the Supreme Court.

The application now before me is designed to obtain the release from the police station on bail of the petitioner pending the determination of his mandamus application. It is urged that it is just and equitable that he should be so released. Before this Court can order the petitioner to be released on bail the Court has to be satisfied that it has power to make such an order. The petitioner's counsel has referred me to the powers conferred on this Court by the Criminal Procedure Code to grant bail, but felt compelled to admit that the exercise of the powers so conferred are limited to criminal proceedings. I am obliged to Crown Counsel who appeared in this matter as *amicus curiae* for bringing to

my notice the ruling of De Sampayo J. in the case of *Ganapathpillai*¹ that this Court has no common law power to admit persons to bail. That learned judge there has refused to interpret the expression "in any case" occurring in Section 396 of the Criminal Procedure Code as extending to a case other than the cases referred to in the two previous sections of that Code. Petitioner's counsel conceded that he can point to no statutory power of this Court to grant bail.

I must presume that the removal order made is *prima facie* valid. The question whether it is liable to be quashed is still awaiting determination. The arrest and detention of the petitioner also being acts authorised by law, I must perforce be reluctant to make any order which might lead to a frustrating of the acts of the executive which have hitherto been shown to be *prima facie* lawful.

Application refused.

¹ (1920) 21 N. L. R. at 491.
