

1940

Present : Nihill J.

DE MEL *et al.*, Petitioners, and THE ATTORNEY-GENERAL,
Respondent.

Application for bail in M. C. Kalutara, 307.

Bail—Courts Ordinance (Cap. 6), s. 31—Scope of—Burden on Crown.

Where application for bail was made under section 31 of the Courts Ordinance by accused persons who were indicted on a charge of murder and had not been brought to trial at the first criminal sessions after the date of their commitment—

Held, that the amendments made to the Criminal Procedure Code by Ordinance No. 13 of 1938 did not widen the effect of section 31 of the Courts Ordinance.

Held, further, that the burden was on the Crown to show good cause why bail should not be accorded.

THIS was an application for bail.

H. Sri Nissanka (with him *U. A. Jayasundere* and *Alles*), for the petitioners.

G. E. Chitty, C.C., for Attorney-General.

Cur. adv. vult.

August 13, 1940. NIHILL J.—

This is an application for bail on behalf of the three accused in *M. C., Kalutara, No. 307* who have been indicted by the Attorney-General on a charge of murder. Their trial is pending. The grounds of the present application are that the accused having been committed to the Supreme Court for trial by the Magistrate, on February 23, 1940, they might properly have been brought to trial at the next ensuing criminal Sessions of the Western Circuit which were opened at Colombo, on March 20, 1940, and which were closed on July 5, 1940, that not having been so brought to trial it is now the duty of the Court to admit them to bail pursuant to section 31 of the Courts Ordinance (Cap. 6) unless good cause be shown to the contrary.

Mr. Chitty in opposing the application on behalf of the Crown has pointed out that the effect of the amendments made to the Criminal Procedure Code by Ordinance No. 13 of 1938 would be to widen considerably the effect of section 31 (which has not been amended) unless the words "at which such prisoner might properly be tried" are taken to mean that time does not begin to run in a prisoner's favour until he has been served with a copy of the indictment and two weeks have elapsed thereafter. It is of course true that under the old procedure of commitment the date of commitment would have been after the Magistrate had received his instructions from the Attorney-General, that is to say after the Attorney-General had perused the record and made up his mind to file an indictment.

Now, under the new procedure, some time must necessarily elapse after the Magistrate's commitment before the case can be ready to go before a jury. The Attorney-General may or may not file an indictment or he may send the case back to the Magistrate for further evidence as happened in this case.

I do not however consider that I should be justified in accepting Mr. Chitty's contention. Section 31 contains an important principle safeguarding the liberty of the subject who has a right to be brought to trial with reasonable despatch. It may be that the section is now more favourable to a prisoner in its application than formerly but if that was not the intention of the Legislature the section could have been amended. Neither do I consider that the section in its application to the new procedure can be said to place a serious impediment in the path of the Crown. A period of three weeks is provided between the date of commitment and the first day of the Sessions. True if further evidence is required this may be too short a period in which to get it and to prepare and serve the indictment but cases can and are added to the calendar after a Sessions has begun.

In the present case the indictment was served on the prisoners on May 8, and the case was therefore ready for trial on any date after May 23. It was in fact added to the calendar but was not reached before the Sessions was closed on July 5.

The Crown possesses a further safeguard in that this Court will not admit to bail if good cause be shown to the contrary. In murder cases it is only in the exceptional case that bail will be granted in the first instance. In the present case an application for bail on behalf of the prisoners was refused by my brother Wijeyewardene on March 20. The situation has now however changed.

If section 31 is applicable in the prisoners' favour as I hold it is then the burden has shifted from the prisoners to the Crown, whereas in March last it was for the prisoners to show why the Court should exercise a discretion exceptionally in their favour, it is now for the Crown to show good cause why bail should not be accorded to them. Mr. Chitty has attempted to do so. He has filed an affidavit from the Assistant Superintendent of Police of the District from which these prisoners came in which it is stated that the first accused being a man of substance and influence in the neighbourhood it is probable that if released he will be in a position to tamper with the evidence.

I do not think this is enough. It is not submitted by the Crown that there is a danger that the accused will abscond. The only ground urged is the possibility that the witnesses for the prosecution may be interfered with. There is no evidence before me that that is a likely possibility in this case other than the Police opinion which from the affidavit would appear to be based solely on the fact that the first accused is not a man of straw.

If there was evidence that the relatives of the accused were already suspect the position would be very different but in the absence of any such indication I cannot assume because the first accused may have some means that he will use them improperly. Furthermore there is nothing on the record to suggest that any such efforts would meet with easy success. All the principal witnesses for the prosecution belong to a different community to the accused and they are either relations or close connection of the deceased. Under the circumstances I am unable to find that the Crown has shown good cause against the admission of the prisoners to bail and by the terms of section 31 it is therefore my duty to grant bail.

I fix bail for each accused in the sum of Rs. 10,000 with two sureties each, with a condition attached that each accused should report himself to the officer in charge of the Paiyagala Police Station every other day.

P. S.

After hearing Mr. Chitty for the Attorney-General and Mr. Jayasundere for the accused, I further order that the bail bonds shall be subject to cancellation and the accused shall again be remanded to custody if it is proved before this Court that the accused have communicated with any witnesses for the prosecution named in the indictment.

Application allowed.