

1944

Present : Soertsz S.P.J.

THE KING *v.* CROOS.

APPLICATION FOR DISCHARGE OR FOR BAIL IN M. C.

COLOMBO, No. 27,483.

*Courts Ordinance (Cap. 6), s. 31—Application for discharge or bail—Scope of—
Proper forum—Onus on Crown.*

Where an application for discharge or, alternatively, for bail was made under section 31 of the Courts Ordinance and the application for discharge was opposed on the grounds (a) that it was not shown that the prisoners might properly have been tried at the second criminal sessions after their commitment, (b) that the prisoners were brought to trial at the second criminal sessions although no valid verdict was reached, the jury having disagreed, (c) that the application for discharge should have been made to the Judge presiding at the sessions—

Held, (1) that it was for the Crown to show that the prisoners could not properly be brought to trial, (2) that the prisoners had been brought to trial at the second criminal sessions, (3) that an application for discharge could not be entertained by a Judge sitting in appeal.

Held, further, that the application for bail should be allowed unless good cause was shown to the contrary, or unless the trial had been postponed at the prisoner's instance.

A PPLICATION for discharge or, alternatively, for bail.

Ananda Pereira, in support.

D. Janszé, C.C., for Attorney-General.

Cur. adv. vult.

December 7, 1944. SOERTSZ S.P.J.—

This is an application under section 31 of the Courts Ordinance asking that two prisoners, now on remand, awaiting their trial on a charge of murder be discharged from imprisonment for the offence for which they have been committed to trial, on the ground that they have not been brought to trial "at the second Criminal Sessions of the Supreme Court holden after the date of the commitment at which they might properly be tried" and on the ground that all the other conditions of section 31 have been satisfied; or in the alternative, it is asked that the prisoners be admitted to bail in pursuance of the first part of section 31.

Crown Counsel opposed the application for discharge on the grounds:—

- (a) that it has not been shown that the prisoners might properly have been tried at the second Criminal Sessions after their commitment.
- (b) that they were brought to trial at the second Criminal Sessions although no valid verdict was reached the jury having disagreed.
- (c) that the application for the discharge should have been made to the Judge presiding at the Sessions.

In regard to (a), in my opinion, it is for the Crown to show that the prisoners could not properly be brought to trial, but the failure to do that is immaterial in this instance, because in regard to (b), I find that the prisoners were brought to trial at the second Criminal Sessions, and also because, in regard to (c) I find it is not competent for me sitting here to entertain an application for discharge under section 31.

The first application is, therefore, refused.

In regard to the second application, that is to say, the application for bail, I must allow it unless good cause has been shown to the contrary, or unless the trial had been postponed at the prisoners' instance. No good cause has been shown to the contrary, nor is it contended that there was postponement at the prisoners' instance. I, therefore, direct that the prisoners be admitted to bail in a sum of Rs. 7,500 each, and I further

direct that the bond should provide *inter alia* that they shall, in the interval between their release on bail and the termination of their trial, report themselves on the Monday of every week at the nearest Police Station, and also that they undertake not to hold communication in any way with any witness for the Crown, and that they shall appear to stand their trial on the date now fixed for their trial.

Application for discharge refused.

Application for bail allowed.

