

1975 Present : Samerawickrame, J., Wimalaratne, J., and Sharvananda, J.

BENEDICT FERNANDO, 2nd Accused—Applicant and THE DIRECTOR OF PUBLIC PROSECUTIONS, Respondent

S. C. Appln. No. 140/75

*Bail—Power of the Supreme Court to act in revision of an order by the High Court—Appropriate Court to grant bail in the first instance.*

Counsel appearing for an accused who had made an application for bail to the High Court stated that he was not pressing the application and the High Court Judge did not address his mind to it and made order dismissing it.

*Held* : The order made was the only order which in the circumstances the High Court Judge could have made. In such a case it is not open to the Supreme Court to act in revision and grant bail as it is one where the power to grant bail is vested in the High Court in the first instance.

*Lucien Jayatilleke*, for the Petitioner.

*D. P. Kumarasinghe*, S. C. for Attorney-General.

March 21, 1975. SAMERAWICKRAME, J.—

There were applications for bail made before the learned High Court Judge on behalf of both the 1st and 2nd accused. Counsel who appeared in support of both applications for bail stated to the High Court Judge that he was not pressing the application on behalf of the 2nd accused who is the petitioner in the application before us. The learned High Court Judge thereafter considered the application of the 1st accused and granted him bail. He has not addressed his mind to the application of the 2nd accused petitioner because counsel on his behalf was not pressing the application.

Learned State Counsel quite correctly points out to us that it is not open to us to act in revision and grant bail as the power to grant bail is vested in the High Court in the first instance. It would appear that the application for bail should be supported in the High Court as the 2nd accused is desirous of obtaining bail. We think the most convenient course is to set aside the order of the learned High Court Judge dismissing the application of the 2nd accused-petitioner and send this matter back in

order that the application may be dealt with by the learned High Court Judge on its merits. The order in fact made by the learned High Court Judge was, in the circumstances, the only order that he could have made as he had no alternative but to dismiss the application when it was not pressed. We therefore formally set aside that order and send the matter back in order that the learned High Court Judge may consider the application for bail.

WIMALARATNE, J.—I agree.

SHARVANANDA, J.—I agree.

*Sent back.*