1967 *Present :* **Samerawickrame, J.**

C. S. PERERA, Petitioner, *and* THE ATTORNEY-GENERAL, Respondent

S. C. 290/66 (Application under Section 31 of the Courts Ordinance)—M. C. Colombo, 36626

Bail—Courts Ordinance (Cap. 6), s. 31—" Criminal sessions at which the prisoner might properly be tried "—" Good cause ".

The relevant part of Section 31 of the Courts Ordinance reads as follows :—

" 31. If any prisoner committed for trial before the Supreme Court for any offence shall not be brought to trial at the first criminal sessions after the date of his commitment at which such prisoner might properly be tried . . . . the said Court or any Judge thereof shall admit him to bail, unless good cause be shown to the contrary . . . . "

Held, that it is not permissible to give as a ground for holding that a prisoner could not properly have been tried at a sessions the omission to take a step involved in bringing the prisoner to trial, namely, the preparation and service of the indictment. The words " criminal sessions at which the prisoner might properly be tried " refer to a sessions for the circuit within the limits of which the crime or offence with which the prisoner is charged was committed.

Mendis v. The Queen (66 N. L. R. 502) not followed.

APPLICATION for bail under section 31 of the Courts Ordinance (Cap. 6).

Colvin R. de Silva, with *Malcolm Perera, P. K. Liyanage, P. O. Wimalanaga* and *W. P. Goonetilleke*, for the petitioner.

V. S. A. Pullenayegum, Crown Counsel, with *L. D. Guruswamy*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 7, 1967. SAMERAWICKRAME, J.—

This is an application for bail made by the 1st accused in S. C. 290/66 M. C. Colombo 36626, under Section 31 of the Courts Ordinance. The application states that information was filed in the Municipal Magistrate's Court of Colombo on 23rd February, 1966, against the applicant and three others alleging that they had committed two offences of conspiracy to commit murder punishable under Section 113B of the Penal Code read with Sections 296 and 108 of the said Code. It further states that on 23rd June, 1966, the applicant and the other three accused were committed by the Magistrate to stand their trial in this Court. It further states that the applicant was not brought to trial at Criminal Sessions of the Western Circuit of this Court which commenced on 10th July, 1966, 10th October, 1966, and 10th January, 1967, as well as at the present sessions which commenced on 20th March, 1967.

Learned Counsel for the applicant further submitted that no indictment had yet been served on his client and that the evidence against him was that of an accomplice and that there was only slight corroborative evidence if the evidence in question was in fact corroboration at all.

Learned Crown Counsel resisted this application on a purely legal ground, namely, that an indictment not having been served on the applicant he could not properly have been tried at any of the Sessions referred to in his application. He was, therefore, not entitled to be released on bail under Section 31 of the Courts Ordinance. Learned Crown Counsel relied on the decision of Manicavagasar, J. in *W. P. Mendis v. The Queen* [1], where he held that the section required, *inter alia*, that at the time of the Sessions the case should be ripe for trial.

The effect of Section 31 of the Courts Ordinance is that a prisoner committed for trial before this Court who is not brought to trial at the first sessions at which he might properly be tried should be admitted to bail. It appears to me that according to our criminal procedure, the bringing to trial of a person committed by a Magistrate is a process which involves the taking of at least three steps. They are :—

(1) the drawing up of an indictment and its service on the accused at least fourteen days before the day specified for trial.
(2) the service of a notice on the accused specifying the date fixed for trial before this Court.
(3) the arraignment of the accused before this Court on the indictment served on him.

The relevant part of Section 31 of the Courts Ordinance reads :—

31. If any prisoner committed for trial before the Supreme Court for any offence shall not be brought to trial at the first criminal sessions after the date of his commitment at which such prisoner might properly be tried . . . . the said Court or any Judge thereof shall admit him to bail, unless good cause be shown to the contrary . . . .

[1] *(1964) 66 N. L. R. 502.*

In deciding whether a prisoner should be admitted to bail under this provision, a Court must consider two questions (1) has the prisoner not been brought to trial at a sessions held after he was committed by the Magistrate, (2) was that sessions one at which he could properly have been tried. In deciding the second question, it seems to me that one must consider whether he could properly have been tried had he been brought to trial at it. It is, therefore, in my view, not permissible to give as a ground for holding that a prisoner could not properly have been tried at a sessions the omission to take a step involved in bringing the prisoner to trial, namely, the preparation and service of the indictment.

I am, therefore, of the view that the words " Criminal Sessions at which the prisoner might properly be tried " refer to a sessions for the circuit within the limits of which the crime or offence with which the prisoner is charged was committed. In *Queen v. Jinadasa* [1], Gunasekara, J. said " The offences are alleged to have been committed within the judicial division of Galle, which is in the Southern Circuit. The accused could therefore ' properly be tried ' at a criminal session of this Court held for that circuit ". The view I have taken is also consonant with that taken by Nihill J. in *De Mel v. Attorney-General* [2]. With respect, I am unable to agree with the interpretation placed upon the Section by Manicavasagar, J.

It may well be that upon the view which I have taken there may not be sufficient time in particular cases between the commitment and the first criminal sessions to bring a prisoner to trial either because the framing of the indictment requires more time or because further evidence is required to be led in terms of Section 389 of the Criminal Procedure Code. If such circumstances exist, they would constitute " good cause " why the accused should not be admitted to bail in those cases.

Learned Crown Counsel mentioned that though the accused were committed on the 23rd June, 1966, the brief was received in the Attorney-General's Department only on the 7th November, 1966, and that on 21st April, 1967, instructions were issued on behalf of the Attorney-General to the Magistrate to record further evidence. There may be administrative difficulties or other causes to explain why the brief was sent from the Magistrate's Court to the Attorney-General's Department only over four months after the commitment. Again there may be circumstances that explain the delay of over five months before directions to record further evidence issued. I have not inquired into these matters and I therefore express no opinion on them. But even if delays are not attributable to remissness on the part of those concerned, they cannot operate to deprive a prisoner of his claim to be admitted to bail. Learned Crown Counsel mentioned the circumstances which led to no indictment being prepared for a period of one year after commitment. Quite rightly he did not rely on them as constituting " good cause " under the Section.

[1] *(1958) 60 N. L. R. 125.* [2] *(1940) 47 N. L. R. 136.*

I am satisfied upon a careful consideration of all matters relevant that the applicant who is the first accused in the case is entitled at this stage to be admitted to bail. I direct that he should be released on his entering into a recognizance in a sum of Rs. 10,000 with two sureties.

Application allowed.