

Kripa Shankar Vs. Emperor

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Court : Allahabad

Decided On : May-21-1947

Reported in : AIR1948All26

Appellant : Kripa Shankar

Respondent : Emperor

Judgement :

ORDER

Malik, J.

1. This is an application for bail under Secion 498, Criminal P.C.
2. The cse is pending in the Court of the learned Sessions Judge of Allahabad and the accused has been committed to that Court to stand his trial under Section 326 read with Section 114, Penal Code The learned Sessions Judge before whom tire application was made passed an order that in view of the observations made by this Court in Emperor v. Deonath Cri. Misc. Case No. 1298 of 1946, he could not grant bail to the accused.
3. It has been argued by learned Counsel for the applicant that the observations made in Emperor v. Deonath Cri. Misc. Case No. 1298 of 1946 are opposed to the decision of the Pull Bench in K.N. Joglekar v. Emperor : AIR1931 All504 . This Pull Bench decision was not cited before the learned single Judge who decided

Emperor v. Deonath Cri. Misc. Case No. 1298 of 1946. The learned Single Judge has held that:

Section 498, Criminal P.C. does not by any means govern or limit the provisions of Section 497 which must apply to a case of bail being granted to a person charged with a non-bailable offence.

Relying on Sub-section (3) of Section 497 of the Code, the learned single Judge has held that the learned Sessions Judge was bound to give 'reasons for his view that the opposite parties, who were charged with an offence under Section 302, Penal Code, should be released on bail.'

4. In K.N. Joglekar v. Emperor : AIR1931 All504 this Court has pointed out that:

Section 498, Criminal P.C. gives is unfettered discretion to the High Court or the Court of Session to admit an accused person to bail. It is a mistake to imagine that Section 498 is controlled by the limitations of Section 497, except when there are not reasonable grounds for believing that the accused committed the offence, or there are reasonable grounds for believing that ho is not guilty, in which cases it becomes a duty to release him. Magistrates can proceed under Section 497 only and their discretion is regulated by the provisions of that section; but Section 498 confers upon a Sessions Judge or the High Court wide powers to grant bail which are not handicapped by the restrictions in the preceding section. That discretion is unfettered but of course it cannot be exercised arbitrarily but must be exercised judicially. There is no hard and fast rule and no inflexible principle governing such discretion. The only principle that is established is that there should be a judicial exercise of that discretion. It is not any one single circumstance which necessarily concludes the decision, but it is the cumulative effect of all the combined circumstances that must weigh with the Court. The considerations are too numerous to be classified or catalogued exhaustively.

That decision being the decision of a Full Bench is binding on this Court and must be followed in preference to the view of the learned single Judge.

5. I, therefore, propose to direct that the papers may be sent back to the learned Sessions Judge to consider the application on the merits, and I order accordingly. The affidavits filed in this Court may also be sent to the learned Sessions Judge.

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