

**Darsu Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/467384](http://sooperkanoon.com/467384)

**Court :** Allahabad

**Decided On :** Apr-30-1934

**Reported in :** AIR1934All845; 152Ind.Cas.785

**Appellant :** Darsu

**Respondent :** Emperor

**Judgement :**

**Bennet, J.**

1. This is an application in revision on behalf of one Darsu who was ordered on 17th January 1933, to furnish security for a period of one year under Section 109, Criminal P.C. The security was not forthcoming and the Magistrate passed the following order:

The security is not forthcoming. The accused shall suffer rigorous imprisonment for one year unless the order is complied with earlier.

2. The accused filed an appeal and he was released on bail pending that appeal on some date which the Learned Counsel is not able to discover. The appeal took a long time in the Sessions Court and was dismissed on 7th December 1933. The accused was then taken into custody on some date not known and there was an order by this Court on 26th February 1934, for his release on bail, but it is stated that the bail was not forthcoming. The claim of Learned Counsel is that more than

one year has elapsed from the date of the order of the Magistrate, 17th January 1933, and that such an order must be taken under Section 120(2), Criminal P.C., as prescribing that the period of imprisonment shall commence on the date of the order unless the Magistrate, for sufficient reason, fixes a later date. The Magistrate did not fix a later date and therefore the argument is that the date must have commenced on 17th January 1933, and that the accused should not be detained under that order later than 16th January 1934. The claim of Learned Counsel is that there is no provision specified by any section in the Code that a person ordered to furnish security of this nature should have the period for which he was on bail excluded from the period for which he is to be detained in jail. Learned Counsel pointed out that the appeal to the Sessions Court came under Section 406, Criminal P.C., and that Section 426, allowing an appellate Court to release on bail pending the hearing of the appeal, only referred to convicted persons, and therefore the provision in Sub-section (3) for the exclusion of the period during which he was released on bail will not apply to the case of an appellant who appealed from an order requiring him to give security. Learned Counsel further argues that the order for release pending appeal in the present case would come under Section 423(1)(d). I do not consider that that section can apply because the section deals with the order to be passed after the appeal has been heard, and we are now considering the re. lease on bail pending the decision of the appeal.

3. It appears to me that either Section 426, Criminal P.C., may be applied by analogy although a person imprisoned under Section 120, Criminal P.C., is not strictly speaking a convicted person; or if this section be not applied then the section under which the Sessions Court may release on bail is Section 498. That section states that the Court of Session may in any case, whether there be an appeal on conviction or not, direct that any person be admitted on bail. There was an appeal before the Sessions Court which according to Learned Counsel was not an appeal on conviction. Therefore under Section 498 the Sessions Court has power to release on bail. Personally I consider that the provision in Section 426 does govern the present case. But whether it governs it or not the general principles of criminal law in my opinion require that the period during which the applicant was released on bail must be excluded from the period of one year for which he was required to undergo imprisonment failing the giving of security. If the

principle described by Learned Counsel were adopted the result would be that in every case in which a person ordered to be imprisoned under Section 120 made an appeal then the period during which he was released 'on bail would always reduce the period for which he was to be imprisoned. I do not consider that such a result could have been intended by the Code, otherwise there would be a special provision in the Code for such an unusual result.

4. No other point was argued. Accordingly I dismiss this application in revision. The applicant will surrender to his bail and undergo the unexpired portion of his sentence.

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