

**Manohar Vs. Jagdish and ors.**

**Manohar Vs. Jagdish and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/752345](http://sooperkanoon.com/752345)

**Court :** Rajasthan

**Decided On :** Sep-19-1950

**Reported in :** AIR1951Raj36

**Judge :** Sharma, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 498

**Appeal No. :** Criminal Revn. No. 165 of 2005

**Appellant :** Manohar

**Respondent :** Jagdish and ors.

**Advocate for Def. :** Ramesh Chandra Sharma, Adv.

**Advocate for Pet/Ap. :** C.L. Agarwal, Adv.

**Disposition :** Revision dismissed

**Judgement :**

ORDER

**Sharma, J.**

1. This is an application by one Manohar complainant in a case under Sections 302, 148, 149, 325, Penal Code pending in the Court of the Sub Divisional Magistrate, Dig in Bharatpur District, to revise the order of the learned Sessions

Judge, Bharatpur, admitting the opposite party (hereinafter to be referred to as accused) to bail under Section 498, Criminal P. C.

2. I have heard the learned counsel for the complainant and also the counsel for the accused. The Government Advocate did not take any part in the proceedings in spite of notice.

3. The main contention on behalf of the complainant is that one of the offences, i.e. one under Section 302, Penal Code was non-bailable and punishable with death or transportation for life. The learned Sessions Judge was therefore, not justified in admitting the accused to bail.

4. On behalf of the accused it was argued that although one of the offences was under Section 302, Penal Code which was non-bailable, yet the evidence and the circumstances in the case pointed to the conclusion that the case under Section 302 would not succeed in the end. It was also argued that the case has been hanging on in the Court of the Sub-Divisional Magistrate for a very long time and has not yet passed the stage of commitment. It would, therefore, take a very long time before the trial is over. There was no danger of the accused absconding, nor was it the case of the prosecution that the accused would tamper with the prosecution evidence, if released on bail. Seven of the ten accused were admitted to bail by the Police itself. Under these circumstances, the learned Sessions Judge, who had unfettered powers of bail under Section 498, Criminal P. C. exercised his discretion rightly in favour of the accused. This discretion should not be lightly interfered with.

5. On a consideration of the arguments of the learned counsel for both the parties, I find that, although the powers of bail should be very sparingly exercised in a case punishable with death or transportation for life, bail may be granted even in such a case under appropriate circumstances by the Sessions Court or the High Court. Of course, a Magistrate is bound by the provisions of Section 497, Criminal P. C. and cannot grant bail in cases which are not covered by the proviso to Sub-section (1). The Sessions Court and the High Court, although not bound under Section 498, Criminal P. C. by the provisions of Section 497, yet they would not be justified normally to brush aside the said provisions. They have, however,

unfettered powers and in special cases bail may be granted even when an accused is charged with an offence punishable with death or transportation for life. In a case decided by me yesterday, Ramjiwan v. State, Cr. Misc. No. 107 of 1950, I granted bail in a case under Section 394, Penal Code which is punishable with transportation for life in the circumstances of that case. In the present case, the learned Sessions Judge, after careful consideration, has held that because seven of the accused were let off on bail by the police itself, the case is likely to take a long time for its disposal, there was no danger of the accused absconding, and no allegation has been made of their tampering with the prosecution evidence, they were entitled to bail under the special circumstances. It may be that one or the other of these grounds may not by itself be sufficient for granting bail to the accused, who are being prosecuted for a non bailable offence punishable with death or transportation for life. But on consideration of the accumulative effects of all the circumstances it cannot be said that the learned Sessions Judge exercised his discretion in an arbitrary or capricious manner. Under Section 498, Criminal P. C., the learned Sessions Judge has unfettered discretion which he has exercised in a judicial manner. The Government has not thought fit to move for the cancellation of bail.

6. Under the circumstances, I do not find any reason to interfere with the order of the learned Sessions Judge, specially in a revision by a private party. The application for revision be dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**