

Sundar Ram Vs. Emperor

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Court : Kolkata

Decided On : Feb-21-1933

Reported in : AIR1933Cal752a

Appellant : Sundar Ram

Respondent : Emperor

Judgement :

1. In this case the petitioner has obtained a rule calling upon the Chief Presidency Magistrate to show cause why he should not be admitted to bail during the pendency of the case mentioned in the petition. I was not a party to the issue of the rule, but my learned brother who was such a party states that the rule was issued for the purpose of giving the Crown and the accused an opportunity of discussing whether on the merits it was desirable that the accused should be enlarged on bail or kept in custody. I state this because at various times during the course of the argument questions have been raised as to the propriety of the orders made by the learned Presidency Magistrate from time to time under Section 344, Sub-section (1), Criminal P.C., postponing the commencement of the inquiry. It appears to me that we must deal with this case on the assumption that the orders for postponement were proper orders. The petition nowhere alleges that the Magistrate was wrong in so far as he postponed the commencement of the case, and the words of the rule indicate that the sole question before us is whether on the assumption that the Magistrate was justified in postponing the commencement of the case, he was also right in remanding the accused to custody or whether he

ought to have enlarged him on bail. Now Section 344, Sub-section (1) makes the existence of a reasonable cause a condition precedent to an order by a Magistrate postponing the commencement of an inquiry or trial. As far as the language of the sub-section goes, it appears that in a case where the Magistrate properly directs a postponement he has unfettered discretion to remand the accused to custody. Though this follows from the language of the section, I will assume that the language of the explanation to the section shows that there must be a reasonable cause not only for the order of postponement but for the order of remand. Various cases have been cited before us as to what constitutes a reasonable cause. The majority of those cases are concerned with the language of the explanation, but I desire to emphasize that the explanation only describes one type of reasonable cause and there may be cases in which there is a reasonable cause for a remand where the circumstances are not those set out in the explanation. For instance, it would be ridiculous to say that there was no reasonable cause for a remand to custody where there was a strong *prima facie* case against the accused, but it was impossible to proceed with the inquiry owing to the unavoidable absence of a witness, although there was reasonable cause for a remand where the case against the accused was merely a case of suspicion, but it was anticipated that if a remand was given it would be possible to obtain further evidence. I therefore conceive that the proper way to deal with this application is to consider whether there was reasonable cause for a remand to custody quite apart from the language of the explanation. A letter has been addressed to us by the learned Magistrate in which he states that the applicant was arrested on suspicion on 15th January 1933. He was arrested in connexion with a search of premises No. 11 Sibtolla Lane in which was found cogent evidence of the existence of a widespread conspiracy against the Government. The name of the applicant was found in two places in a cipher list of names among the papers seized in the house. His name was found in conjunction with the name of a man who is described as a dangerous revolutionary at present detained under the Bengal Criminal Law Amendment Act. It is not denied by the applicant that he has been for many years an intimate friend of this detainee.

2. These circumstances *prima facie* show that the accused was connected with the conspiracy the existence of which is shown by the documents, fire arms and

other incriminating articles found at the search. It therefore appears to me that the Magistrate properly exercised his discretion in remanding the applicant to custody. It may be, in certain cases where there is no fear of the accused absconding or of his indulging in undesirable activities, he would be liberated on bail even though there is a strong prima facie case against him. Certainly this case is not one where such a course can be contemplated. In these circumstances, we think that the learned Magistrate was right to refuse bail and to remand the applicant to custody. We therefore discharge this rule.

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