FULL BENCH

CRIMINAL MISCELLANEOUS

Before S. S. Sandhawalia, Man Mohan Singh Gujral and D. S. Tewatia, JJ.

STATE OF PUNJAB,—*Appellant.*

Versus.

BACHITTAR SINGH, AND OTHERS,—*Respondents.*

Criminal Miscellaneous No. 1081 of 1971

in

Criminal Appeal No. 588 of 1971

September 13, 1971.

Code of Criminal Procedure (V of 1898)—Sections 417 and 427—Accused-persons tried and acquitted on a capital charge—State filing appeal under section 417 challenging the acquittal—High Court admitting the appeal—Accused-persons—Whether eligible to be released on bail during the pendency of the appeal.

Held, (per majority, Sandhawalia and Tewatia, JJ., Gujral, J. Contra.) that even on a cursory perusal of the langauge of section 427, Code of Criminal Procedure, it is apparent that there exists no statutory bar whatsoever for the release on bail of persons against whose acquittal, appeals have been preferred. The Statute draws no distinction whatsoever between appeals on capital charges and the others. In fact the section makes express provision for and obviously envisages the grant of bail pending the disposal of such appeal. Even the issuance of a warrant in the beginning is entirely discretionary and the appellate Court even at the initial stage of the admission of the appeal may well stay its hand and remain content with directing a notice, summonses or bailable warrants without requiring the arrest or apprehension of the respondent accussed-persons. Where the State files an appeal under section 417, Code of Criminal Procedure, against the acquittal of accussed-persons and the appeal is admitted by the High Court, the judgment of acquittal does not become *non est* by the mere fact of an admission of appeal against it. The existence and the operation of such a judgment cannot be lost sight of. The continued and effective interposition of such a judgment consequently leads to a material and distinct alteration in the status of such accused persons who have been acquitted by virtue thereof. Hence accused-respondents in State appeals against their acquittal on capital charges are normally eligible to be released on bail during the pendency of such appeals unless for grave and exceptional reasons the Court directs their detention in custody.

(Paras 9, 10 and 17)

Held, (per Gujral, J. Contra.) that the accused-respondents in State appeal against their acquittal of capital charges are not normally eligible to be released on bail during the pendency of such appeal. In cases other than those punishable with death or imprisonment for life bail may generally be allowed. However, in cases where the trial was on capital charges the correct rule would be to approach the question of bail with a fair degree of liberality regard being had to the various considerations relevant to the grant of bail in non-bailable cases and the degree of the likelihood of the appeal succeeding. This is a fair and reasonable construction of section 427 of the Criminal Procedure Code, keeping in view the initial presumption of innocence which has been reinforced by the acquittal of the accused and the intention of the legislature to view the matter of bail liberally. To say that even in cases of capital charges bail is to be refused only for grave and special reasons would result in placing restriction on the discretion which rests with the Court while deciding whether the accused is to be detained in custody or directed to be released, which restriction is neither warranted by the language of section 427 nor by any other consideration relevant to the issue. (Para 37).

Case Cr. M. 1081/71 *is referred by a Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, and Hon'ble Mr. Justice D. S. Tewatia, on 2nd August,* 1971, *to a larger Bench for decision. The case Criminal Misc. No.* 1081/71 *is decided by a Full Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia, Hon'ble Mr. Justice M. S. Gujral, and Hon,ble Mr. Justice D. S. Tewatia, on 13th September,* 1971.

Application under section 426 *of the Criminal Procedure Code praying that the applicant-respondents be released on bail during the pendency of the above noted appeal against the order of Shri O. P. Aggarwal, Additinoal Sessions Judge, Barnala on 15th February,* 1971 *acquitting the respondents.*

M. S. SANDHU, DEPUTY ADVOCATE-GENERAL PUNJAB AND A. N. MITTAL ADVOCATE, for the complainant.

J. N. KAUSHAL, AND ASHOK BHAN, ADVOCATE, for the applicant respondent.

ORDER OF THE FULL BENCH.

SANDHAWALIA, J.—The primary question that calls for determination in this case is the true principle that should govern the grant of bail to accused persons who stand acquitted after trial upon a capital charge but whose acquittal has been challenged by way of appeal by the State under section 417, Criminal Procedure Code, and such appeals have been admitted in this Court.

(2) The matter first came up before my learned brother Tewatia, J., and myself and the view we were then inclined to take

was at variance with that expressed in two Division Benches of this Court which in turn had followed the decision in *The State* v. *Badapalli Adi and two others*, (1). Hence the necessity for the constitution of this Full Bench.

(3) The facts are not in dispute. The six petitioners were brought to trial on charges of murder and other subsidiary offences before the Additional Sessions Judge, Barnala, and stand acquitted on all those charges by his judgment, dated the 15th of February, 1971. Dissatisfied with the acquittal the State preferred an appeal in this Court which stands admitted by the order of the Division Bench of June 11, 1971, and non-bailable warrants against the petitioners were directed to issue. Having surrendered to custody in pursuance of the above process the petitioners have approached this Court for the grant of bail during the pendency of the above-said State appeal.

(4) The crucial issue before us has been the challenge to the *ratio decidendi* of the judgment of the Division Bench of the Orissa High Court in *Badapalli Adi's case* (1). In identical circumstances an express argument was raised before the Division Bench in that case that the presumption of innocence of the petitioner therein had been fortified by the order of acquittal and therefore there was no further justification for his retention in custody and that he was entitled to his liberty during the pendency of the acquittal appeal. Repelling such a contention the Bench observed as follows :—

> "* * * We have, therefore, to uphold the contention raised on behalf of the State that the order of acquittal passed in favour of the petitioner does not alter his status as an accused against whom a capital charge is made. It is neither the practice nor is it desirable that in such cases the accused should be at large whilst his fate is being discussed in the Court. We have, therefore, no hesitation in reaffirming our order directing the accused to be remanded to custody and would reject this petition."

The view above-said was first followed by a Division Bench of this Court consisting of S. B. Capoor and Jindra Lal JJ., in *Zora Singh* v. *The State* (2), and as is apparent from the judgment the issue was

(1) I.L.R. 1955 Cuttack 589.

(2) Cr. Misc. 222 of 1967 decided on 23rd March, 1967.

hardly agitated and the learned Judges of the Division Bench merely followed the Cuttack view. Subsequently in *Punjab State* v. *Nand Singh* (3), a similar issue came up before a Bench to which I was a party and the matter was not canvassed before us in view of the earlier Division Bench decisions in *Badapalli Adi* (1) and *Zora Singh's cases* (2), which were again followed.

(5) Reiterating his earlier contention before the Division Bench Mr. J. N. Kaushal forcefully argues that the judgment of acquittal has strengthened the initial presumption of innocence in favour of his clients and they are at least entitled to their liberty during the pendency of the appeal. A frontal assault has been made on the reasoning in *Badapalli Adi's case* (1), and it has been argued that the view expressed therein is not sound on principle and in any case is no longer tenable in face of the subsequent pronouncements of the Supreme Court. I find considerable weight in this contention.

(6) Throughout the web of Criminal Jurisprudence, runs the golden thread that every accused person is presumed to be innocent until he has been proved guilty beyond reasonable doubt, Added on to this cardinal rule when a Court of competent jurisdiction after a full dress trial holds an accused person to be not guilty of the charge levelled against him, it appears to me inevitable that this presumption must stand further strengthened. I would not wish to elaborate this on principle because it appears to me that the issue now appears to be settled in view of the Supreme Court decisions subsequent to the Cuttack Division Bench. In *Balbir Singh* v. *State of Punjab*, (4), it has been observed as follows :—

> "* * *. It is now well-settled that though the High Court has full power to review the evidence upon which an order of acquittal is founded, it is equally well-settled that the presumption of innocence of the accused person is further reinforced by his acquittal by the trial Court and the views of the trial Judge as to the credibility of the witnesses must be given proper weight and consideration;* * *."

The above-said observations were quoted and reaffirmed by Subha Rao, J., when speaking for the Court in *Sanwant Singh and*

(3) Cr. Misc. 872 of 1971 decided on 8th June, 1971.
(4) A.I.R. 1957 S.C. 216.

others v. *State of Rajasthan*, (5). In *M. G. Agarwal* v. *State of Maharashtra*, (6), whilst adverting to the powers of the High Court in an appeal against an acquittal, it has been observed in equally categorical terms as follows :—

> "* * *. In dealing with such appeals, the High Court naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case."

I deem it unnecessary to multiply authorities and it suffices to state that the authoritative view above-said has been consistently adhered to in a string of decisions thereafter. I would, therefore, hold that the view expressed by the Cuttack Bench that an order of acquittal does not in any way affect the presumption of innocence in favour of the accused is no longer tenable.

(7) Mr. M. S. Sandhu on behalf of the respondent state has strenuously argued before us that when the High Court admits an appeal against acquittal the proceedings are revived as it were in the trial and consequently the accused are relegated to their original status of persons against whom a capital charge had been levelled. I regret my inability to accede to such a contention. It is true that the Bench admitting the appeal against acquittal would do so on finding either an infirmity or a flaw in the reasoning of the judgment of the trial Court. But it would be going to inordinate lengths to hold that from the moment the appeal is admitted the judgment of acquittal is wiped off the record and the accused persons are deprived forthwith from taking any benefit from the findings in their favour therein. On the contrary the settled view appears to be that the judgment under appeal stands till it is reversed (if so at all) by a superior Court. The slowness of an appellate Court to reverse the finding of acquittal is axiomatic. In *Ramabhupala Reddy and others* v. *The State of Andhra Pradesh*, (7), Hedge, J.,

(5) A.I.R. 1961 S.C. 715.
(6) A.I.R. 1963 S.C. 200.
(7) A.I.R. 1971 S.C. 460.

speaking for the Court added the stringent tests to the powers of the appellate Court in appeals against acquittal :—

> "To these tests we may add, as laid down by this Court in several decisions that the appellate Court should also bear in mind the fact that the trial Court had the benefit of seeing the witnesses in the witness box and the presumption of innocence is not weakened by the order of acquittal. If two reasonable conclusions can be reached on the basis of the evidence on record, the appellate Court should not disturb the findings of the trial Court."

(8) Far from being wiped off from the record I notice it as a fact that in a large majority of cases the judgments of acquittal and the findings therein usually find affirmance at the hands of the Sperior Court. From statistics made available to us I find that in actual practice in this Court for the years 1968, 1969 and 1970 less than 20 per cent of the appeals against acquittal on capital charges have ultimately succeeded. Of these many succeed partially, that is, against only some of a number of accused persons in one given appeal. That the findings of the trial Court in its judgment of acquittal do not pass into oblivion by the mere admission of an appeal against such an acquittal in the High Court is apparent from the repeatedly affirmed view that these findings of the trial Court not only deserve to be noticed but their reasoning has to be repelled before reversing an acquittal. It is adequate to refer to the latest authority on the point in *Ramabhupala Reddy's case* (7) in which Hedge, J., whilst summing up the law of acquittal has laid down as follows :—

> " 'strong reasons' are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified."

(9) Again if by way of analogy one may deviate into the realm of civil law, then their Lordships of the Supreme Court have

authoritatively laid down the effect of the filing of an appeal on the judgment of first instance. Approving the view expressed by Sir Lawrence Jenkins in *Juscurn Boid* v. *Pirthichand Lal Choudhury,* (8), their Lordships of the Supreme Court have made the following observations in *State of U.P.* v. *Mohammad Nooh,* (9). which appear to me to be of universal application even though made in the context of a civil judgment :—

> "There is nothing in the Indian Law to warrant the suggestion that the decree or order of the Court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective."

In view of the above-noted authoritative pronouncements, I am of the opinion that the judgment of acquittal does not become *non est* by the mere fact of an admission of appeal against it in the High Court. The existence and the operation of such a judgment cannot be lost sight of. The continued and effective interposition of such a judgment consequently leads to a material and distinct alteration in the status of such accused persons who have been acquitted by virtue thereof.

(10) Inevitably one must now advert to the relevant provisions of the Statute which bear directly on the point. Secion 427 of the the Code of Criminal Procedure is in the following terms:—

> "When an appeal is presented under section 411-A, sub-section (2), or section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail."

It is apparent even on a cursory perusal of the language abovesaid that there exists no statutory bar whatsoever for the release on bail of persons against whose acquittal appeals have been preferred.

(8) A.I.R. 1918 P.C. 151
(9) A.I.R. 1958 S.C. 86.

The Statute draws no distinction whatsoever between appeals on capital charges and the others. In fact that section makes express provision for and obviously envisages the grant of bail pending the disposal of such appeal. Even the issuance of a warrant in the beginning is entirely discretionary and the appellate Court even at the initial stage of the admission of the appeal may well stay its hand and remain content with directing a notice, summones or bailable warrants without requiring the arrest or apprehension of the respondent accused-persons. In this context we must notice Mr. Sandhu, learned counsel for the State had himself emphasised that at this stage the only statutory provision relevant is section 427 abovesaid and the provisions of sections 497 and 498, Criminal Procedure, Code, would be excluded by necessary implication. The intention of the legislature is high-lighted and brought into bold relief when compared with the similar provision empowering the grant of bail to persons appealing against conviction. Section 426(1) and (2) Criminal Procedure Code, is in the following terms :—

> "426(1). Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.
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> (2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto."

Comparing the two provisions, it is obvious that whilst section 426, Criminal Procedure Code, envisages the recording of the reasons for the suspension of the sentence and the grant of bail, no such restriction or qualification has been imposed by law under section 427, Criminal Procedure Code. A wholly unfettered power is thus given under section 427, Criminal Procedure Code, to release the accused-persons on bail if at all their custody has been originally directed. Again in section 427 bail may not only be granted by the High Court itself, but it may direct that the accused person may be brought before any subordinate Court and the power to admit such person to bail may be relegated to the subordinate Courts. Hence

far from suggesting any statutory bar, the relevant provisions of section 427, Criminal Procedure Code, exhibit an intention of the legislature, conforming with the judicial dictum that the grant of bail is the rule and its refusal is an exception.

(11) The learned Judges of the Cuttack Bench in *Badapalli Adi's case* (1), appear to be referring to a practice (apart from the desirability) of refusal to grant bail to the accused in appeals against acquittal on capital charges. However, it deserves notice that in this Court there has been no long-standing practice to decline bail to accused persons in the State appeals against acquittal. In fact, if at all, there has been a consistent practice, it has been the grant rather than the refusal of bail in such circumstances. That the Supreme Court also does not adhere to any such practice of declining bail in such cases is evident from a reference to Hukam *Singh Milap Singh* v. *State of Ajmer*, (10). Therein one Hukam Singh was acquitted on a charge under section 302/34, Indian Penal Code, and an appeal against that acquittal had been admitted by the Supreme Court. However, their Lordships had directed that the accused person pending the disposal of the appeal be brought before an appropriate subordinate Court either to be detained or admitted to bail to the satisfaction of such a Court.

(12) Before us the liberality of this Court in the matter of grant of bail has been rightly emphasised in the present context. It has been forcefully argued that even in appeals directed against a sentence of life imprisonment where the trial Court has recorded a verdict of guilty on a capital charge, this Court has frequently granted bail to such convicted persons in appropriate cases pending the decision of their appeals. Since that is a fact, it appears to be an obvious hardship to decline to consider the cases of those accused persons who in fact after trial have been held to be not guilty of any of the charges levelled against them.

(13) The law is jealous of the right of personal liberty of the citizen. This is not to be curtailed except, according to the procedure established by law and Judicial detention must subserve to some purpose. It has been rightly argued before us that the refusal of bail is never for the purpose of punishment. It is so done only to enure to the paramount objective of criminal procedure, namely, to ensure a fair trial-fair both to the accused person

(10) A.I.R. 1954 Ajmer 52.

and to the prosecution. In appeals against acquittal, the trial of the accused-respondents has in fact concluded long before, and there is no possibility of any witnesses being tampered with, nor is there room for the accused persons to interfere in any manner with the conduct of the appeal in the High Court. All that remains necessary is that the accused-respondents shall be available to come and receive sentence if ultimately the State appeal succeeds and acquittal is reversed. There remains ample power in the Court to ensure compliance with its judgement. In *Talap Haji Husssain* v. *Madhukar Purshottam Mondkar and another,* (11) their Lordships referred to the consensus of judicial opinion that in all non-bailable cases, the bail-bond of the accused could be cancelled and they be arrested and committed to custody at any time under the provisions of section 561-A of the Code of Criminal Procedure. In the abovesaid case their Lordships proceeded much further to hold that the High Courts have inherent powers to cancel bail granted to accused persons even in a bailable offence in an appropriate case. In the present case, we are primarily considering the matter in the context of capital charges and I visualise no difficulty in ensuring compliance with the ultimate order of the Court when it may be pronounced.

(14) I believe, that in the issues of the present nature, the attitude of the Court cannot remain static. In the peculiar context of the number of pending State appeals in the High Court of Orissa, the observations made in *Badapalli Adi's case* (1), may well have had some validity 16 years ago, However, during this period, a rising tide of arrears has clogged the working of most of the High Courts within the country. In this Court (apart from special order cases) Criminal Appeals in life sentence cases come up in normal routine for hearing after nearly three years from the date of filing. The same period, if not more, is taken up for the final hearing of the State appeals against acquittal on capital charges. In practical effect, it usually means that from the date of the crime (from approximately which time the accused person would be in custody) it would take nearly four years, if not more, before the appeal against acquittal would be finally decided. A rule declining bail to the accused respondents in State appeals in capital cases would, therefore, normally involve their detention during the whole

(11) A.I.R. 1958 S.C. 376.

of this long period even though their acquittal may finally be upheld. I am unable to see any adequate justification for such avoidable hardship.

(15) That paradoxical results would ensure if the rule of detention in custody till the decision of the acquittal appeals were to be adhered to, appears to be manifest. Mr. M. S. Sandhu on behalf of the respondent-State concedes that the detention of the accused-respondents for well-nigh a period of four years in these circumstances would be only in the capacity of undertrial prisoners as no order of conviction stands recorded. This period, therefore, cannot be counted towards serving of their sentences if even ultimately the acquittal were to be reversed. On capital charges, the law usually envisages only two sentences, namely, either of death or of life imprisonment. The resultant effect, therefore, is that if the appeal against acquittal fails and the respondents are ultimately held to be innocent, neverthless they would have suffered imprisonment for this long period for no fault of theirs. On the other hand, if the State appeal succeeds, then the accused-respondents would suffer a further period of life imprisonment added to the earlier period of four years as undertrial prisoners-a bitter fruit indeed from an order of acquittal in their favour. I am, therefore, of the view that the Court must lean towards an interpretation which would avoid results so evidently anomalous.

(16) We are alive to the observation that it is undesirable that accused persons should remain at large while their fate is being discussed in Court. This, however, is not an insurmountable difficulty nor can this fact alone warrant the incarceration of persons acquitted of all charges for a period ranging from three to four years, till their appeals come up for final hearing. It has been rightly pointed out that the fate of the accused persons hinges not on the date of the admission of the appeal but only when the merits thereof are ultimately canvassed at the final hearing which may now be years after the abovesaid date. I have already made reference to the ample power which vests in the High Court to compel attendance of accused persons to appear and receive judgment at any time. This power can be modulated to the facts and circumstances which call for its exercise in a particular case. On deeper consideration, I am of the view that any inflexible rule requiring surrender to custody in all cases before pronouncement

of judgement may indeed not really be necessary. The issue is better left to the discretion of the Bench finally hearing the appeal.

(17) With the greatest deference to the learned Judges of the Bench in *Badapalli Adi's case* (1), I am unable to subscribe to the view expressed by them and which now runs counter to the authoritative pronouncements of the Supreme Court referred to above. Both *Zora Singh* (2), and *Nand Singh's* (3) *cases* which have merely followed the Cuttack view, therefore, suffer from the same infirmity and hence it must be held that they do not lay down the correct law. On the contrary for the detailed reasons recorded above, I would hold that the true rule should be that the accused-respondents in State appeals against their acquittal on capital charges are normally eligible to be released on bail during the pendency of such appeals unless for grave and exceptional reasons the Court directs their detention in custody.

(18) I have examined the finding of the trial Court in favour of the present petitioners and its reasons for their acquittal. Though the judgment suffers from a surfeit of long widedness and confusion—running nearly into seventy typed pages in a plain case of murder over a canal water dispute—nevertheless the learned counsel for the respondent State has been unable to point to anything which within the rule enunciated above should prevent the enlargement of the petitioners on bail. We accordingly direct that the six petitioners be released during the pendency of the State appeal against acquittal on their furnishing adequate security to the satisfaction of the Chief Judicial Magistrate at Sangrur.

D. C. TAWATIA, J.—(19) I agree with the judgment of my brother Sandhawalia, J.

GUJRAL, J.—(20) The following question mainly arises for a decision by the Full Bench :—

> "What should be the principle to govern the grant of bail to an accused person acquitted of a capital charge but against whose acquittal an appeal has been preferred by the State and admitted by the High Court."

The above question came up for consideration by this Court in the following circumstances. Bachittar Singh and five others were tried

for various offences under sections 302, 302/149, 307/149 etc. and by order dated 15th February, 1971 of the Additional Sessions Judge, Barnala, all the accused were acquitted of the charge framed against them. The State filed an appeal against the order of acquittal which was admitted by a Division Bench of this Court on 11th June, 1971. The admitting Bench also directed that non-bailable warrants be issued against the respondents. The six accused after surrendering to custody moved the present application for grant of bail during the pendency of the State appeal.

(2) When the matter came up before the Division Bench, placing reliance in support of its argument on *The State* v. *Badapalli Adi and two others,* (1). It was urged on behalf of the State that the respondents were not entitled to bail. Support for this argument was also sought from two earlier decisions of this Court in *Zora Singh* v. *The State* (2) and *Punjab State* v. *Nand Singh* (3). The Division Bench hearing the bail application formed the view that the following observations in *Badapalli Adi's* (1) case did lay down the correct rule which should govern the grant of bail to the accused persons against whom The State had filed an appeal after they had been acquitted of the capital charge—

> "We have therefore, to uphold the contention raised on behalf of the State that the order of acquittal passed in favour of the petitioner does not alter his status as an accused against whom a capital charge is made. It is neither the practice nor is it desirable that in such cases the accused should be at large while his fate is being discussed in the Court. We have, therefore, no hesitation in reaffirming our order directing the accused to be remanded to custody and would reject this petition."

In this context reference was made to the observations of the Supreme Court in *Balbir Singh* v. *State of Punjab* (4) which are to the effect that the presumption of innocence of an accused person is further reinforced by his acquittal by the trial Court. The Division Bench also noticed the decisions of the Supreme Court in *Sanwat Singh and others* v. *State of Rajasthan,* (5) *M. C. Agarwal* v. *State of Maharashtra* (6) *and Ramabhupala Reddy and others* v. *The State of Andhra Pradesh* (7), which contain guidelines for considering the evidence against a person who has been acquitted by the trial Court

and whose acquittal is challenged in the Court of appeal. Having regard to the tests laid down by the Supreme Court in various decisons which the appellate Court has to bear in mind while hearing an appeal against an order of acquittal and in particular the observations that the initial presumption of innocence had been fortified by an order of acquittal, the Bench formed the view that "the judgment of acquittal does not become *non est* by the mere fact of admission of an appeal against it in the High Court and and the continued existence of such a judgment leads to a material and distinct alteration in the status of such an accused person."

(22) As the view taken above was at variance with that expressed in two earlier decisions of this Court, the matter was placed before a Full Bench.

(23) In *Badapalli Adi's* (1) case, it was contended that the accused having been found innocent by a competent Court there was no justification for remanding him to custody as the presumption of innocence had been fortified by the order of acquittal. It was further canvassed before that Bench that there was no possibility of the witnesses being tampered with or the accused interferring with conduct of the trial and the accused, was, therefore, entitled to be released on bail. While repelling these arguments the following observations were made in that case :—

> "In another case reported in *Queen-Empress* v. *Gobardhan* (12) Sir John Edge, Chief Justice, laid down that in a capital case in which Government was appealing under Section 417, Criminal Procedure Code (now 427, Criminal Procedure Code) it was, speaking generally and without laying down any inflexible rule, undesirable that the prisoner's fate should be discussed while he remains at large. In such cases, the Government should apply for the arrest of the accused under Section 427 of the Code. We are now satisfied that that is a true principle on which Section 427 is founded. When the State appeals against an acquittal, the proceedings are revived and the accused is put on trial. In this connexion, it may be relevant to recall the dictum of the Privy Council in *Sheo Swarup and others* v. *The King Emperor* (13) that there is no difference between an appeal

(12) I.L.R. IX All. 528.
(13) 61 I.A. 398.

against an order of conviction and an appeal against an acquittal. The Court is entitled to go into questions of fact as if it were a trial and come to its own conclusion."

Broadly speaking, three mains reasons had weighed with the Bench deciding *Badapalli Adi's* (1) case, namely, that when the State appeals against an acquittal the proceedings are revived and the accused is put on trial, that there was no difference between an appeal against an order of conviction and an appeal against an acquittal and in both these cases the Court is entitled to go into questions of fact as if it were a trial and, lastly, that it was undesirable that the prisoner's fate should be discussed while he remains at large.

(24) For the first reason reference was made to a Full Bench decision of Allahabad High Court in I.L.R. II(1879) Allahabad 340, wherein Oldfield, J. observed that the admission of an appeal revived the proceedings against an acquitted person. From this observation, however, it is not a necessary influence that the accused is relegated to the same position in which he was placed before the trial began. Though in a way there is room for contending that the admission of an appeal revives the proceedings as the evidence against the accused has to be assessed again in the light of the changed circumstances, but to further add that an accused person was put on trial on the admission of a State appeal against his acquittal when the trial had long concluded and had resulted in the acquittal of the accused person, would be losing sight of the realities of the situation and the authoritative pronouncements of the Supreme Court, in the cases to which reference has already been made, highlighting the principles which have to guide the appellate Court in reappraising the evidence. Amongst other considerations, as has been consistently emphasised by the Supreme Court, the appellate Court, while hearing an appeal against an acquittal, has to keep in view that the presumption of innocence against an accused person is reinforced by his acquittal and that if two conclusions are possible of the evidence on the record the findings arrived at by the trial Court should not be normally disturbed. When the trial Court is assessing the evidence led before it for judging the guilt or innocence of an accused person its approach to the evidence is not hedged in by any such considerations. Therefore, to hold that on an appeal against acquittal being filed the trial is revived would tantamount to disregarding the change, as reflected in

(14) I.L.R. II (1879) All. 340.

the various decisions of the Supreme Court, that the law has undergone in recent years. It is consequently not possible to put the clock back and to consider the question of bail as if the accused were to be tried on a capital charge. For this view some support is available from the observations of the Judicial Commissioner in the *State of Kutch* vs *Aher Vasta Hadhu and others,* (15), wherein while considering whether the accused who has been acquitted and against whose acquittal an appeal has been filed by the State should be allowed bail, the following observations were made :—

> "As regards merits, it is plain that the respondents who were acquitted are in a better position than what they were before judgment. It is not alleged that they are likely to abscond and they are persons with property. Hence, the mere fact that the appeal is admitted against them will not be sufficient for rejection of their application for bail."

(25) The third reason in *Badapalli Adi's* case (1) is based on the observations in *Queen-Empress* v. *Gobardhan,* (12). In that case, however, it was not considered an inflexible rule that the person should not be at large when the case against him was being argued. It was only felt desirable to have this consideration in view while deciding whether the accused should be kept in custody during the hearing of the appeal. While not trying to minimise the value to be attached to this consideration, I may add that there is an equally important aspect which cannot be lost sight of while dealing with the question of bail. Law has always regarded it of paramount importance that the liberty of a person is not taken away for a period longer than it is absolutely necessary. When ways and means can easily be found to secure the presence of the accused either at the time when his appeal is being heard or if and when he is to be called upon to undergo the sentence which may be imposed on him, it would be hardly considered just to deprive a person of his liberty for a long period merely to secure his presence towards the end of the period. Whatever may have been the position when *Gobardhan's case* (12), or for that matter *Badapalli Adi's* (1); case was decided, it is difficult at present to lose sight of the fact that an appeal against acquittal may not come up for hearing before the High Court for three years and if ultimately the appeal is dismissed, which is the result in majority of cases, the accused would have been deprived of his liberty for

(15) A.I.R. 1953 Kutch 50.

such a long period without any cause. No doubt, during this period the accused is not undergoing the sentence and is only being detained as an undertrial prisoner but all the same he is lodged in jail. In this context it is not of much importance whether while in jail he is treated as a prisoner or as an undertrial.

(26) For the reasons stated above, with all respect for the learned Judges, who decided *Badapalli Adi's* case (1), I am unable to persuade myself that the view expressed in that case and followed in *Zora Singh's* case (2) and *Nand Singh's* case (3) (supra) represents the correct position so far as the principles governing the grant of bail to an accused person, who has been acquitted, and against whose acquittal an appeal has been preferred, are concerned. It is, however, not the end of the problem. We have still to formulate the principles which would govern the grant of bail in such a situation. For this, reference has necessarily to be made to section 427 of the Criminal Procedure Code. It runs as under—

> "427. When an appeal is presented under section 411-A, sub-section (2), or section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail."

A bare perusal of the above provision would bring out that an accused person, who was tried and acquitted by the trial Court has still been referred to as "the accused" in this provision; the significance being that he is answerable for a charge which in some cases may be for a capital offence. The second notable feature of this provision is that it gives an unfettered discretion to the High Court or the subordinate Court before which the accused is brought under the direction of the High Court, to order the release on bail of such a person and no distinction has been drawn in this respect between cases where the accused was tried on a capital charge and where the trial was for any lesser offence.

(27) It is well settled that when a Court is called upon to exercise its discretion it has to be exercised judicially and not arbitratorily or capriciously. The discretion as to the grant of bail is no exception to this settled rule. What then are the principles governing the exercise of this discretion? To borrow the words of Tek

Chand, J. in *Rao Harnarain Singh Sheoji Singh and others* v. *The State* (16), the simple answer would be that "there cannot be inflexible rules governing a subject which rests principally with the Court's discretion". It may, however, be possible to deduce some visible guidelines from the language of section 437 of the Criminal Procedure Code and the scheme of the Code in so far as the subject of grant of bail is concerned.

(28) The question of bail arises at various stages of inquiry and trial against an accused person and different provisions exist in the Code to meet different situations. If a person accused of a bailable offence is arrested or detained without warrant and is prepared to give a bail, section 496 of the Code directs that he shall be released on bail. The Court is, however, not powerless to cancel the bail even in bailable cases in exceptional circumstances where it is found that the trial cannot proceed for the reason that the accused is misusing the privilege of bail. Leaving such a situation apart, in cases where an accused is charged with bailable offences bail can be claimed as of right. This right rests on the principle that an accused person is presumed in law to be innocent till he is proved guilty and as a presumably innocent person he is entitled to freedom to enable him to defend his case properly provided he offers proper security.

(29) Where a person is accused of a non-bailable offence the provisions of section 497 of the Criminal Procedure Code are attracted and the Court has the discretion to release him on bail. There is, however, a limitation placed on the power of the Court in cases where there appears reasonable ground for believing that the accused is guilty of an offence punishable with death or imprisonment for life. In such a case bail is not to be granted unless the accused is below sixteen years of age or is a woman or is a sick or an infirm person. The restriction on the power of the Court in section 497 of the Criminal Procedure Code in respect of cases punishable with death or imprisonment for life is not applicable to the High Court or the Court of Session inasmuch as section 498 of the Criminal Procedure Code gives unfettered power in this respect. The limitations and considerations guiding the Court in granting bail under section 497 are absent in section 498 of the Code. In spite of this, it is well settled now that the exercise of the discretion under section 498 has to be judicial.

(16) A.I.R. 1958 Pb. 123.

(30) Having regard to the language of section 427 of the Criminal Procedure Code, it would appear that broadly speaking the High Court has the same power under this provision as it has under section 498 of the Criminal Procedure Code for the purpose of granting bail in non-bailable cases including those in which an accused was tried on a capital charge. The relevant portion of section 498 provides "the High Court ——— may in any case ——— direct that any person be admitted to bail." Similarly, in section 427 it is provided "the High Court may ——— commit him to prison pending the disposal of the appeal or admit him to bail." Both in section 498 and section 427 no restrictions have been imposed as under section 497 in respect of offences which are punishable with death or imprisonment for life. It would, therefore, be appropriate at this stage to make reference to those cases where the principles governing the grant of bail under section 498 of the Criminal Procedure Code have been considered.

(31) In *K. N. Joglekar* v. *Emperor* (17), Sulaiman acting Chief Justice, speaking for the Special Bench, while noticing that the High Court had wide powers to grant bail under section 498 which were not handicaped by the restrictions in the preceding section, made the following observations—

> "It has been observed by Mukerji, J., *Emperor* v. *Hutchinson* (18), on general principles, and on principles on which Sections 496 and 497 (as amended in 1923) are framed the grant of bail should be the rule and the refusal of bail should be the exception."
>
> With great respect, we do not think that any such rule exists as regards serious non-bailable offences which are punishable with death or transportation for life. On the other hand in cases where there is a reasonable ground for believing that the accused has been guilty of an offence punishable with death or transportation for life, as regards which the legislature has thought fit to prohibit Magistrates from granting bail at all, the grant of bail by a Sessions Judge or the High Court, who have undoubtedly power under S. 498, Criminal P.C., is to be made not as a general rule but only in exceptional cases. This is particularly so

(17) A.I.R. 1931 All. 504.
(18) A.I.R. 1931 All. 356.

when the accused is on his trial, the prosecution evidence is closed and the Sessions Judge has refused to exercise his discretion in his favour. This is a rule of practice and caution only."

Reference may then be made to *Kishan Singh* v. *Punjab State* (19), wherein the following observations appear:—

"For this purpose, generally speaking, the nature of the accusation, the kind of evidence in support thereof, the severity of the punishment which the conviction will entail and the character, behaviour, means and the status of the accused have to be taken into account, and this is usually done for the purpose of determining whether or not the accused is likely to endeavour to escape punishment by absconding; in cases where he is likely to abscond bail should not be granted; but in cases where there are no reasonable grounds for supposing that the accused is likely to abscond, there should be no difficulty in ordering release on bail.

Of course, the Court is also entitled to take into consideration the possibility of the accused —— considering his status, character and influence —— intimidating or otherwise winning over or influencing the witnesses for the prosecution. The general policy of the law is to allow bail rather than refuse it and bail should not be withheld as a measure of punishment, or for the purpose of putting obstacles in the way of defence."

Having regard to the view taken in *J. N. Joglekar's* (17), and the observations of Sulaiman, acting Chief Justice, referred to above, it appears that rather too broad a statement of the general policy of the law has been made in *Kishan Singh's* (19), case especially in relation to cases which were liable to be punished with death or imprisonment for life. Reference in this respect may particularly be made to the following observations of the Supreme Court in *State* v. *Captain Jagjit Singh* (20),—

"Where an offence is bailable, bail has to be granted under S. 496 on the Code of Criminal Procedure, but if the offence

(19) A.I.R. 1960 Pb. 307.
(20) A.I.R. 1962 S.C. 253.

is not bailable, further considerations arise and the Court has to decide the question of grant of bail in the light of those further considerations, such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations, which arise when a Court is asked to admit accused to bail in a non-bailable offence. Under S. 498 of the Code of Criminal Procedure, the powers of the High Court in the matter of granting bail are very wide; even so, where the offence is non-bailable, various considerations such as those indicated above have to be taken into account before bail is granted in a non-bailable offence."

(32) Keeping in view the observations made in the above-mentioned cases and the language of section 427, there is ample scope for the conclusion that under section 427 the power of the Court to grant bail is very wide and no limitation has been imposed on its power even in respect of cases where ultimately sentence of death or imprisonment for life may be passed. An equally reasonable inference would be that while exercising this discretion a variety of considerations, some of which have been highlighted by the Supreme Court in Captain *Jagjit Singh's* (20), case, have to be kept in view. It may be that some circumstances which would be relevant when the question of bail is considered under section 498 may not be attracted when this question arises under section 427 of the Criminal Procedure Code, but there are other considerations which would be equally relevant with such modification as the changed situation would warrant. Notwithstanding the order of acquittal in favour of the accused, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, reasonable possibility of the presence of the accused not being secured at the time when the sentence of imprisonment for life or death is to be undergone and the larger interests of the public and the State would still have to be taken notice of when the Court is asked to admit the accused to bail under section 427 especially when the trial originally was on a capital charge. Besides, the degree of the possibility of the appeal succeeding cannot be lost sight of.

(33) At this stage another argument canvassed on behalf of the petitioners-appellants need be examined. Contending that the object of the detention of an accused person during trial being only two-fold, namely, to ensure that the accused, considering his character, status and influence, does not interfere with the fair trial of the case and to secure his presence so that he may serve out the sentence which the Court may impose on him and that the first object not being relevant at the stage the question of bail is considered under section 427, it is urged the second consideration alone is not such as of necessity to require the detention of the accused as an under-trial when the appeal is pending. In this view of the matter it is contended that the accused would generally be entitled to the grant of bail after he has secured an acquittal at the trial. This argument, though attractive at the first sight, is not wholly devoid of flaws when considered in detail. Besides the main objects of the detention of an accused person during his trial referred to above, it is also in the public interest that a person against whom serious allegations are levelled which carry the sentence of death or life imprisonment is not at large till his case is finally decided. Leaving the question of public policy apart, even the consideration that an accused ought to be available to abide by and serve out the sentence which may ultimately be imposed has to be viewed in the context of the nature of the accusation and the punishment which will ultimately be imposed and also the character, status and means of the accused. Generally, there is absence of evidence on the record to give indication whether the accused would appear to suffer the sentence especially if the sentence is one of death or imprisonment for life and all that the Court can consider is the probability of the accused appearing to undergo the sentence. In order to judge this probability, to borrow the words of I.D. Dua, J., (as his Lordship then was) in *Kishan Singh's case* (19), "the nature of the accusation, the kind of evidence in support thereof, the severity of the punishment which the conviction will entail and the character, behaviour, means and the status of the accused" would all be relevant factors. To these may be added another consideration which may be peculiar to the situation in which the accused is placed after an appeal against his aquittal is admitted. When a case is registered against an accused relating to a murder charge the investigating agency is active both in the matter of tracing the culprit and seuring his presence and this zeal on the part of the investigating agency does not leave much opportunity or scope for the accused to disappear

having regard to the status and means that are generally available to him. On the other hand, having secured acquittal if the accused is allowed to retain liberty for two or three years at the end of which period the appeal is likely to be heard, greater opportunity and temptation would fall in his way to acquire means and make arrangements for absconding especially when he visualises that the ultimate result of the appeal may entail a sentence of imprisonment for life or even death. Would it, therefore, be correct to say that bail, as a general rule, may be granted in cases falling under section 427 of the Criminal Procedure Code merely because there is no occasion for the accused to interfere with the trial of the case or there is not sufficient material to form an opinion that the accused would abscond if the bail is allowed ? The answer, in my opinion, would be in the negative, as this cannot form the only or even the dominant consideration while considering the question of bail under section 427. It will be more reasonable to take the view that as it will not be difficult for the Court to devise ways and means to secure the attendance of an accused the question of bail may be considered liberally where the accused once secures an acquittal and is brought before the Court on appeal by the State.

(34) There are three other reasons which necessitate that the question of bail under section 427 of the Criminal Procedure Code should be viewed liberally in favour of the accused. At the conclusion of the trial if an accused is convicted and he challenges his conviction bail may be allowed to him by the appellate Court under section 426 of the Code. While exercising this power of granting bail under section 426, the Court has, however, to record reasons in writing. The obligation to record reasons, in my opinion, signifies that strong reasons have to be found for granting bail in cases where an accused has been sentenced to death or imprisonment for life. No limitation as to recording reasons exists in section 427 of the Code implying thereby that the Court may have a liberal approach while determining the question of bail in cases where an appeal is filed against the acquittal of an accused person.

(35) The second reason is found in the language of section 427 itself. Under this section the power to grant bail can be exercised not only by the High Court, but also by a subordinate Court before which the accused is brought on a direction issued by the High Court when an appeal is presented against his acquittal under section 411-A

(2) or section 417. This conferment of power on a subordinate Court by the Legislature is clearly indicative of the liberality with which it was intended that the question of bail should be considered where an accused has been acquitted by the trial Court.

(36) Lastly notice has to be taken of the fact that an appeal against acquittal often comes up for hearing after more than three years and it cannot be denied that if the accused is not allowed bail he would suffer the hardship of remaining as an undertrial for all this period. It may however, be added that this hardship is not confined only to cases where the State files an appeal against the acquittal of an accused, but often arises even at the stage of trial where an accused, who is charged with a capital offence remains as an undertrial and is ultimately acquitted. This hardship is also not uncommon in cases where a trial ends in conviction which is successfully challenged in appeal by the accused and he had to serve the sentence for three years or more simply because bail had not been allowed to him earlier. In my opinion, it would, therefore, not be correct to consider this as a compelling reason for allowing bail in serious offences when the State files an appeal against acquittal. It would, however, be appropriate that the Court is fully alive to this hardship when the question of bail is brought before it in an appeal against acquittal.

(37) For the reasons recorded above with great respect for my learned brother, I am unable to agree that respondents in a State appeal against their acquittal of capital charges are normally eligible to be released on bail during the pendency of such appeals and that only for grave and exceptional reasons should the bail be declined. In cases other than those punishable with death or imprisonment for life bail may generally be allowed. However, in cases where the trial was on capital charges the correct rule would be to approach the question of bail with a fair degree of liberality regard being had to the various considerations relevant to the grant of bail in non-bailable cases and the degree of the likelihood of the appeal succeeding. This, in my opinion, would be a fair and reasonable construction of section 427 of the Criminal Procedure Code keeping in view the initial presumption of innocence which has been reinforced by the acquittal of the accused and the intention of the legislature to view the matter of bail liberally. To say that even in cases of capital charges bail is to be refused only for grave

and special reasons would result in placing restriction on the discretion which rests with the Court while deciding whether the accused is to be detained in custody or directed to be released, which restriction is neither warranted by the language of section 427 nor by any other consideration relevant to the issue.

(38) Viewing the facts of the present case in the light of the principles enunciated above, I find that the fatal blow was alleged to have been given by Puran Singh accused. The injury attributed to him was found sufficient to cause death in the ordinary course of nature while no other injury was found to be of such a nature. Moreover, it is the prosecution case itself that the occurrence had taken place because of the quarrel as to when the turn of the complainant party to take water from canal would end. It would be open to the accused other than Puran Singh to canvass at the hearing that section 149 of the Indian Penal Code was not attracted in this case so far as the fatal injury to the deceased was concerned. Without expressing any opinion on the merits of this argument, suffice it to say that as this argument would ultimately be available only to the accused other than Puran Singh, the case of these accused is distinguishable. Having regard to this and other circumstances, I find that whereas Puran Singh is not entitled to bail, I allow bail to the other accused which may be furnished to the satisfaction of the Chief Judicial Magistrate, Sangrur.

ORDER OF THE COURT

(39) In view of the majority decision, the petition succeeds and it is hereby directed that all the six petitioners be released on bail on their furnishing adequate security to the satisfaction of the Chief Judicial Magistrate at Sangrur.

K. S. K.

FULL BENCH

Before D. K. Mahajan, H. R. Sodhi and Bal Raj Tuli, JJ.

THE COMMISSIONER OF GIFT TAX, PATIALA,—*Applicant.*

Versus.

TEJ NATH,—*Respondent.*

Income Tax Reference No. 10 of 1970

November 9, 1971.

Gift Tax Act (XVIII of 1958)—Sections 2(viii), 2(xii) and 2(xxiv)—Gift by a Karta of Hindu undivided family in favour of coparceners and