MOTI RAM & ORS. A

v.

STATE OF M.P.

August 24, 1978

[V. R. KRISHNA IYER AND D. A. DESAI, JJ.] B

Bail jurisprudence—Enlargement on bail with or without sureties—Scope of Ss. 440(1), 441, 445 *read with s.* 389(1) *of the Code of Criminal Procedure,* 1973 *—Criteria to guide in quantifying the amount of bail and acceptance of surety whose estate is situate in a different district or State, explained.*

C

Pursuant to the directions of the Supreme Court for releasing the petitioner-appellant "on bail to the satisfaction of the Chief Judicial Magistrate," the Magistrate ordered that a surety in a sum of Rs. 10,000/- be produced. When the petitioner produced one, the magistrate made an odd order refusing to accept the suretyship of the petitioner's brother because he and his assets were in another district. Frustrated by magisterial intransigence the prisoner moved this Court again to modify the original order "to the extent that the petitioner be released on furnishing surety to the tune of Rs. 2,000/- or *on executing a personal bond* or pass any other order or direction as this Hon'ble Court may deem fit and proper". Directing the Magistrate to release the petitioner on his own bond in a sum of Rs. 1,000/- the Court, D

HELD : (1) Social Justice is the signature tune of our Constitution and the littleman in peril of losing his liberty is the consumer of social justice. And the grant of bail can be stultified or made impossibly inconvenient and expensive if the Court is powerless to dispense with surety or to receive an Indian bailor across the district borders as good or the sum is so excessive that to procure a wealthy surety may be both exasperating and expensive. The problem is plainly one of human rights, especially freedom *vis-a-vis,* the lowly and necessitates the Supreme Court to interdict judicial arbitrariness deprivatory of liberty and ensure "fair procedure" which has a creative connotation after *Maneka Gandhi* [1978] 2 SCR 621. [338 C-F, 339 A-B] E F

(2) Bail covers release on one's own bond with or without sureties. as the legal literature, Indian and Anglo-American on bail jurisprudence lends countenance and the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights justifies. When sureties should be demanded and what sum should be insisted on are dependent on variables. [344 G, 347 C] G

(3) A semantic smog overlays the provisions of bail in the Code and prisoners' rights, when cast in ambiguous language become precarious. [345 C]

(a) 'Bail' in s. 436 of the Criminal Procedure Code suggests 'with or without sureties'. And, 'bail bond' in s. 436(2) covers own bond. [345 E]

(b) 'Bail' in s. 437 (2) suggests release, the accent being on undertaking to appear when directed, not on the production of sureties. But s. 437(2) distinguishes between bail and bond without sureties. [345 F-G] H

A (c) Section 445 suggests, especially read with the marginal note that deposit of money will do duty for bond 'with or without sureties'. [345 G]

(d) Superficially viewed, s. 441(1) uses the words 'bail' and 'own bond' as antithetical, if the reading is liberal. Incisively understood, section 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' B as including only cases of release *with* sureties will stultify the sub-section, for then, an accused released on his own bond without bail, i.e. surety, cannot be conditioned to attend at the appointed place. Section 441(2) uses the word 'bail' to include 'own bond' loosely as meaning one or the other or both. Moreover, an accused, in judicial custody, actual or potential, may be released by the Court to further the ends of justice and nothing in s. 441(1) compels a contrary meaning. S. 441(2) and (3) use the word 'bail' generically because C the expression is intended to cover bond with or without sureties; [345 H, 346 A-C]

(e) When the Court of appeal as per the import of s. 389(1) may release a convict on his own bond without sureties, surely, it cannot be that an undertrial is worse off than a convict or that the power of the Court to release increases when the guilt is established. It is not the Court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation D *pro tempore without sureties* while an undertrial cannot, is a *reductio ad absurdum.* [346 D-E]

(5) The Supreme Court's powers to enlarge a prisoner, as the wide words of Order 21 Rule 27 (Supreme Court Rules 1966) show, contain no limitation based on sureties, which means that a murderer, concurrently found to be so, may theoretically be released on his own bond without sureties while a suspect, presumed to be innocent cannot be. Such a strange anomaly could not be, even E though it is true that the Supreme Court exercises wider powers with greater circumspection. [346 F-G]

(6) If sureties are obligatory even for juveniles, females and sickly accused while they can be dispensed with, after being found guilty, if during the trial when the presence to instruct lawyers is more necessary, an accused must *buy release only* with sureties while at the appellate level, suretyship is expendable, F there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if the Court reads 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean, viz. a generic expression used to describe judicial release from *custodia juris.* [347 A-B]

(7) Art. 14 protects all Indians *qua* Indians, within the territory of India. Art. 350 sanctions representation to any authority, including a Court, for redress G of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India, save where a valid legislation to the contrary exists. Otherwise, an Adivasi will be unfree in Free India, and likewise many other minorities. The process of making Indians aliens in their own homeland should be inhibited : *Swaraj* is made out of united stuff. The best guarantee of presence in Court is H the reach of law, not the money tag. [347 G-H, 348 A-B, D]

[The Court left open to the Parliament to consider whether in our socialist republic with social justice as its hallmark, monetary superstí-

A

tion, not other relevant consideration like family ties, roots in the community, membership of stable organisations should prevail for bail bonds to ensure that the 'bailee' does not flee justice.]

CRIMINAL APPELLATE JURISDICTION : Criminal Misc. Petition 1649 of 1978. Application for bail.

B

S. S. Khanduja for the Appellant.

I. N. Shroff and *S. K. Gambhir* for the Respondent.

C

V. M. Tarkunde, K. T. Harinder Nath, R. K. Jain and *H.K. Puri* for the Intervener

The Order of the Court was delivered by

KRISHNA IYER, J.—"The law, in its majestic equality, forbids D the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread", lampooned Anatole France. The reality of this caricature of equal justice under the law, whereby the poor are priced out of their liberty in the justice market, is the grievance of the petitioner. His criminal appeal pends in this Court and he has obtained an order for bail in his favour "to the satisfaction of the E Chief Judicial Magistrate". The direction of this Court did not spell out the details of the bail, and so, the magistrate ordered that a surety in a sum of Rs. 10,000/- be produced which, in actual impact, was a double denial of the bail benefit. For one thing the miserable mason, the petitioner before us, could not afford to procure that huge sum or manage a surety of sufficient prosperity. Affluents do not befriend F indigents. For another, the magistrate made an odd order refusing to accept the suretyship of the petitioner's brother because he and his assets were in another district.

If mason and millionaire were treated alike, egregious inegality G is an inevitability. Likewise, geographic allergy at the judicial level makes mockery of equal protection of the laws *within the territory of India*. India is one and not a conglomeration of districts, untouchably apart.

When this Court's order for release was thus frustrated by H magisterial intransigence the prisoner moved this Court again to modify the original order "to the extent that petitioner be released

on furnishing surety to the tune of Rs. 2,000/- or *on executing a personal bond* or pass any other order or direction as this Hon'ble Court may deem fit and proper". From this factual matrix three legal issues arise (1) Can the Court, under the Code of Criminal Procedure, enlarge, on his own bond *without sureties,* a person undergoing incarceration for a non-bailable offence either as under-trial or as convict who has appealed or sought special leave ? (2) If the Court decides to grant bail *with sureties,* what criteria should guide it in quantifying the amount of bail, and (3) Is it within the power of the court to reject a surety because he or his estate is situate in a different district or State ?

This formulation turns the focus on an aspect of liberty bearing on bail jurisprudence. The victims, when suretyship is insisted on or heavy sums are demanded by way of bail or local bailors alone are *persona grata,* may well be the weaker segments of society like the proletariat, the linguistic and other minorities and distant denizens from the far corners of our country with its vast diversity. In fact the grant of bail can be stultified or made impossibly inconvenient and expensive if the court is powerless to dispense with surety or to receive an Indian bailor across the district borders as good or the sum is so excessive that to procure a wealthy surety may be both exasperating and expensive. The problem is plainly one of the human rights, especially freedom *vis-a-vis* the lowly. This poignant import of the problem persuaded the Chamber Judge* to invite the Supreme Court Bar Association and the Citizens for Democracy to assist the Court in decoding the Code and its provisions regarding bail. The Kerala State Bar Federation was permitted to intervene and counsel for the parties also made submissions. We record our appreciation of the *amici curiae* for their services and proceed to discuss the triple issues formulated above.

There is already a direction for grant of bail by this Court in favour of the petitioner and so the merits of that matter do not have to be examined now. It is a sombre reflection that many little Indians are forced into long cellular servitude for little offences because trials never conclude and bailors are beyond their meagre means. The new awareness about human rights imparts to what might appear to be a small concern relating to small men a deeper meaning. That is why we have decided to examine the question from a wider perspective bearing in mind prisoner's rights in an

* Justice V. R. Krishna Iyer.

international setting and informing ourselves of the historical origins and contemporary trends in this branch of law. Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice.

There is no definition of bail in the Code although offences are classified as bailable and non-bailable. The actual Sections which deal with bail, as we will presently show, are of blurred semantics. We have to interdict judicial arbitrariness deprivatory of liberty and ensure 'fair procedure' which has a creative connotation after *Maneka Gandhi.*(1)

Before we turn to the provisions of the Code and dwell on the text of the Sections we may as well remember what Justice Frankfurter said :

> "there is no surer way to misread a document than to read it literally."[2]

Speaking generally, we agree with the annotation of the expression 'bail' given in the American Jurisprudence (2nd Edn. Vol. 8, Art. 2, p. 783) :

> "The term 'bail bond' and 'recognizance' are used interchangeably in many bail statutes, and quite generally without distinction by the courts, and are given a practically identical effect."

According to the American Jurisprudence, Art. 6, p. 785, there is power in the court to release the defendant without bail or on his own recognizance. Likewise, the definition of bail as given in Webster's Third New International Dictionary :

> "The process by which a person is released from custody."

The concept of bail has a long history briefly set out in the publication on 'Programme in Criminal Justice Reform' :

> "The concept of bail has a long history and deep roots in English and American law. In medieval England, the custom grew out of the need to free untried prisoners from disease-ridden jails while they were waiting for the delayed trials conducted by travelling justices. Prisoners were bailed, or delivered, to reputable third parties of

(1) [1978] 2 S.C.R. 621—[1978] 1 S.C.C. 248.
(2) *Massachusetts B. and Insurance Co.* v. *U. S.*, 352 U.S. 128. 138.

A their own choosing who accepted responsibility for assuring their appearance at trial. If the accused did not appeal, his bailor would stand trial in his place.

Eventually it became the practice for property owners who accepted responsibility for accused persons to forfeit B money when their charges failed to appear for trial. From this grew the modern practice of posting a money bond through a commercial bondsman who receives a cash premium for his service, and usually demands some collateral as well. In the event of non-appearance the bond is forfeited, after a grace period of a number of days C during which the bondsman may produce the accused in court."(1)

It sounds like a culture of bonded labour, and yet are we to cling to it! Of course, in the United States, since then, the bondsman emerged as a commercial adjunct to the processes of criminal D justice, which, in turn, bred abuses and led to reform movements like the Manhattan Bail Project. This research project spurred the National Bail Conference, held in 1964, which in its crucial chain reaction provided the major impetus to a reform of bail law across the United States. The seminal statutory outcome of this trend was the enactment of the Bail Reform Act of 1966 signed into law by E President Lyndon B. Johnson. It is noteworthy that Chief Justice Earl Warren, Attorney General Robert Kennedy and other legal luminaries shared the view that bail reform was necessary. Indeed, this legislative scenario has a lesson for India where a much later Criminal Procedure Code 1973 has largely left untouched ancient provisions on this subject, incongruous with the Preamble to the F Constitution.

An aside. Hopefully, one wishes that socio-legal research projects in India were started to examine our current bail system. Are researchers and jurists speechless on such issues because pundits regard these small men's causes not worthwhile? Is the art of academic monitoring of legislative performance irrelevant for India? G

The American Act of 1966 has stipulated, *inter alia,* that release should be granted in non-capital cases where there is reasonable assurance that the individual will reappear when required; that the Courts should make use of a variety of release options depending on the circumstances; that information should be developed about the H individual on which intelligent selection of alternatives should be based.

(1) Vera Institute of Justice Ten-year Report 1961-71 p. 20.

The Manhattan Bail Project, conducted by the Vera Foundation and the Institute of Judicial Administration at New York University School of Law, found that about sixty-five percent of all felony defendants interviewed could be recommended for release *without bail.* Of 2,195 defendants released in this way *less than one per-cent failed to appear* when required. In short, risk of financial loss is an insubstantial deterrent to flight for a large number of defendants whose ties with the community are sufficient to bring them to court.

The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.

It is interesting that American criminological thinking and research had legislative response and the Bail Reforms Act, 1966 came into being. The then President, Lyndon B. Johnson made certain observations at the signing ceremony :

> "Today, we join to recognize a major development in our system of criminal justice : the reform of the bail system.
>
> This system has endured—archaic, unjust and virtually unexamined—since the Judiciary Act of 1789.
>
> The principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest.
>
> How is that purpose met under the present system ? *The defendant with means can afford to pay bail.* He can afford to buy his freedom. But the *poorer defendant cannot pay the price* He languishes in jail weeks, months and perhaps even years before trial.
>
> He does not stay in jail because he is guilty.
>
> He does not stay in jail because any sentence has been passed.
>
> *He does not stay in jail because he is any more likely to flee before trial.*
>
> *He stays in jail for one reason only—because he is poor. . . .*"
>
> (emphasis added)

A Coming to studies made in India by knowledgeable Committees we find the same connotation of bail as including release on one's own bond being treated as implicit in the provisions of the Code of Criminal Procedure. The Gujarat Committee from which we quote extensively, dealt with this matter in depth :

B "The bail system, as we see it administered in the criminal courts to-day, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused C from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Man- D hattan Bail Project and D. C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, *the bail system causes discrimination against the poor* since the poor would not be able to furnish bail on account of their poverty while the weal- E thier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for *a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish* F *bail even in a small amount.*"

(emphasis added)

The vice of the system is brought out in the Report :

"The evil of the bail system is that either the poor accus- G ed has to fall back on touts and professional sureties for providing bail or suffer pre-trial detention. Both these consequences are fraught with great hardship to the poor. In one case the poor accused is fleeced of his moneys by touts and professional sureties and sometimes has even to incur debts to make payment to them for securing his H release; in the other he is deprived of his liberty without trial and conviction and this leads to grave consequences, namely : (1) though presumed innocent he is subjected to

A

the psychological and physical deprivations of jail life; (2) he loses his job, if he has one, and is deprived of an opportunity to work to support himself and his family with the result that burden of his detention falls heavily on the innocent members of the family, (3) he is prevented from contributing to the preparation of his defence; and (4) the public exchequer has to bear the cost of maintaining him in the jail."(1)

B

The Encyclopaedia Britannica brings out the same point even in more affluent societies :

C

"*bail,* procedure by which a judge or magistrate sets at liberty one who has been arrested or imprisoned, upon receipt of security to ensure the released prisoner's later appearance in court for further proceedings.....Failure to consider financial ability has generated much controversy in recent years, for bail requirements may discriminate against poor people and certain minority groups who are thus deprived of an equal opportunity to secure their freedom pending trial. Some courts now give special consideration to indigent accused persons who, because of their community standing and past history, are considered likely to appear in court."(2)

D

E

"We should suggest that the Magistrate must always bear in mind that *monetary bail is not a necessary element of the criminal process* and even if risk of monetary loss is a deterrent against fleeing from justice, it is not the only deterrent and there are other factors which are sufficient deterrents against flight. *The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail.* That concept is out-dated and *experience has shown that it has done more harm than good.* The new insight into the subject of pre-trial release which has now been developed in socially advanced countries and particularly the United States should now inform the decisions of the Magistrates in regard to pre-trial release. Every other feasible method of

F

G

(1) Report of the Legal Aid Committee appointed by the Govt. of Gujarat 1971, and headed by the then Chief Justice of the State, Mr. Justiee P.N. Bhagwati p. 185.

H

(2) Encyclopaedia Britannica, Vol. I, P. 736 (15th Edn) Micro edn.

A pre-trial release should be exhausted before resorting to monetary bail. The practice which is now being followed in the United States is that the accused should ordinarily be released on order to appear or on his own recognizance unless it is shown that there is substantial risk of non-
B appearance or there are circumstances justifying imposition of conditions on release.....*If a Magistrate is satisfied* after making an enquiry into the condition and background of the accused *that the accused has his roots in the community and is not likely to abscond, he can safely release the accused on order to appear or on his own recogni-*
C *zance*....."(1)

(emphasis added)

A latter Committee with Judges, lawyers, members of Parliament and other legal experts, came to the same conclusion and proceeded on the assumption that release on bail included release on the
D accused's own bond :

"....We think that a liberal policy of conditional release without monetary sureties or financial security and release on one's own recognizance with punishment provided for violation will go a long way to reform the bail system and help the weaker and poorer sections of the community
E to get equal justice under law. Conditional release may take the form of entrusting the accused to the care of his relatives or releasing him on supervision. The court or the authority granting bail may have to use the discretion judiciously. When the accused is too poor to find sureties, there will be no point in insisting on his furnshing bail with
F sureties, as it will only compel him to be in custody with the consequent handicaps in making his defence."(2)

Thus, the legal literature, Indian and Anglo-American, on bail jurisprudence lends countenance to the contention that bail, loosely used, is comprehensive enough to cover release on one's own bond
G with or without sureties.

We have explained later that the power of the Supreme Court to enlarge a person during the pendency of a Special Leave Petition or of an appeal is very wide, as Order 21 Rule 27 of the Supreme Court Rules discloses. In that sense, a consideration of the question

H (1) Report of the Legal Aid Committee appointed by the Govt. of Gujarat 1971. P. 185.

(2) Report of the Expert Committee on Legal Aid—Processual Justice to the People, May 1973.

as to whether the High Court or the subordinate courts have powers to enlarge a person on his own bond without sureties may not strictly arise. Even so, the guidelines which prevail with the Supreme Court when granting suspension of sentence must, in a broad sense, have relevance to what the Code indicates except where special circumstances call for a different course. Moreover, the advocates who participated—many of them did—covered the wider area of release under the Code, whether with or without sureties, and that is why we consider the relevant provisions of the Code in some detail.

Let us now examine whether there is anything in the provisions of the Code which make this meaning clearly untenable.

A semantic smog overlays the provisions of bail in the Code and prisoners' rights, when cast in ambiguous language become precarious. Where doubts arise the Gandhian talisman becomes a tool of interpretation : "Whenever you are in doubt....apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use of *him.*" Law, at the service of life, must respond interpretatively to raw realities and make for liberties.

Primarily Chapter XXXIII is the nidus of the law of bail. Sec. 436 of the Code speaks of bail but the proviso makes a contradistinction between 'bail' and 'own bond without sureties'. Even here there is an ambiguity, because even the proviso comes in only if, as indicated in the substantive part, the accused in a bailable offence is prepared to give bail'. Here, 'bail' suggests 'with or without sureties'. And, 'bail bond' in Sec. 436(2) covers own bond. Sec. 437(2) blandly speaks of bail but speaks of release on bail of persons below 16 years of age, sick or infirm people and women. It cannot be that a small boy or sinking invalid or *pardanashin* should be refused release and suffer stress and distress in prison unless sureties are haled into a far-off court with obligation for frequent appearance ! 'Bail' there suggests release, the accent being on undertaking to appear when directed, not on the production of sureties. But Sec. 437(2) distinguishes between bail and bond without sureties.

Sec. 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond *'with or without sureties'*. Sec. 441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively

A understood, Sec. 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release *with* sureties will stultify the sub-section; for then, an accused released on his own bond without bail, i.e., surety, cannot B be conditioned to attend at the appointed place. Sec. 441(2) uses the word 'bail' to include 'own bond' loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Sec. 441(1) compels a contrary meaning.

Sec. 441(2) and (3) use the word 'bail' generically because the C expression is intended to cover bond with or without sureties.

The slippery aspect is dispelled when we understand the import of Sec. 389(1) which reads :

> 389 (1) : Pending any appeal by a convicted person the Appellate Court may, for reasons to be recorded by it D 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.

The court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse of than a E convict or that the power of the court to release increases when the guilt is established. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation *pro tempore without sureties* while an undertrial cannot is a *reductio ad absurdam.*

Likewise, the Supreme Court's powers to enalage a prisoner, as F the wide words of Order 21 Rule 27 (Supreme Court Rules) show, contain no limitation based on sureties. Counsel for the State agree that this is so, which means that a murderer, concurrently found to be so, may theoretically be released on his own bond without sureties while a suspect, presumed to be innocent, cannot be. Such a strange anomaly could not be, even though it is true that the Supreme G Court exercises wider powers with greater circumspection.

The truth, perhaps, is that that indecisive and imprecise language is unwittingly used, not knowing the draftsman's golden rule :

> "In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but H it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand."
> (Lux Genthum Lex—Then and Now 1799-1974, p. 7)

If sureties are obligatory even for juveniles, females and sickly accused while they can be dispensed with, after being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release *only* with sureties while at the appellate level suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean, viz., a generic expression used to describe judicial release from *custodia juris*. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigent's rights, we hold that bail covers both—release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables.

Even so, poor men—Indians are, in monetary terms, indigents young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances put whatever reasonable condition you may.

It shocks one's conscience to ask a mason like the petitioner to furnish sureties for Rs. 10,000/-. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by 'We, the People of India", is meant for the butcher, the baker and the candle-stick maker—shall we add, the bonded labour and pavement dweller.

To add insult to injury, the magistrate has demanded sureties from his own district: (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamilian or Andhra to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam of Chandni Chowk ? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a *morcha*. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications ? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes geographic, sometimes linguistic, sometimes legalistic. Art. 14 protects all Indians *qua* Indians, within the territory of India. Art. 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a *vakalat*

A or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an *adivasi* will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own home-land. *Swaraj* is made of *united* stuff.

We mandate the magistrate to release the petitioner on his own bond in a sum of Rs. 1,000/-.

An After word

We leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organisations, should prevail for bail bonds to ensure that the 'bailee' does not flee justice. The best guarantee of presence in court is the reach of the law, not the money tag. A parting thought. If the indigents are not to be betrayed by the law including bail law, re-writing of many processual laws is an urgent desideratum; and the judiciary will do well to remember that the geo-legal frontiers of the Central Codes cannot be disfigured by cartographic dissection in the name of language of province.

S.R. *Petition allowed.*