

IN THE SUPREME COURT OF FIJI
Criminal Appeals Nos. 32 and 33 of 1958

VICHITRA SINGH AND NABAB SINGH Appellants
v.
REGINA Respondent

Bail pending trial—procedure to be observed following a refusal by a Magistrate to grant bail pending trial—application to the Supreme Court.

Held.—If an accused is aggrieved by the refusal of a Magistrate to grant bail pending trial his remedy is an application for bail to the Supreme Court by Chamber Summons.

S. D. Sharma for appellants.

J. F. W. Judge for respondent.

LOWE, C.J. [5th June, 1958]—

These two cases have been consolidated.

In each case the accused petitioned this Court by way of appeal against the order of the learned first class Magistrate at Nausori, refusing bail. I treated the Petitions of Appeal as Applications for Bail, as the correct procedure requires merely a Chamber Summons supported by an application requesting this Court to direct that bail be granted, reciting, of course, the refusal by the Magistrate of a prior application, to him, for bail.

There seems to have been some doubt in the mind of Counsel as to the correct procedure to be followed in bail applications. In a previous ruling, which dealt with the case of an accused seeking bail *pending appeal*, I held that the procedure to be adopted was for the appellant to lodge an appeal against a Magistrate's order refusing bail. In the instant cases what the accused are seeking is bail *pending trial* and a different provision of the Criminal Procedure Code applies. Section 109 (1) makes the necessary provision for a court, or a police officer who has arrested or detained the accused, to admit him to bail. Subsection (3) goes on to say:

“Notwithstanding anything contained in subsection (1) of this section, the Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a Magistrates' court or police officer be reduced.”

This section seems clearly to intend that any order by a Magistrate refusing bail *pending trial* can be questioned by an application to the Supreme Court which may, despite such refusal, direct that the accused be admitted to bail. Such an application should be made by Chamber Summons and should not form the subject of a petition of appeal.

In the instant cases, the accused had given no satisfactory grounds upon which I would be prepared to make any order which would have the effect of reversing the order of the Magistrate. The nature of the offences charged against both accused is such that, in any event, this Court would hesitate before interfering with a discretion which was not shown to have been exercised unlawfully, wrongfully or unjustly.

For these reasons I dismissed the applications.