

## MISCELLANEOUS CRIMINAL.

*Before Mr. Justice Dalal.*

EMPEROR *v.* FATEH SINGH.\*

1929  
January, 22.

*Criminal Procedure Code, section 498—Bail—Cross-cases—  
One party already on bail.*

Where members of two parties were being prosecuted and one of them was released on bail, and the other party applied for bail for the purpose of instructing counsel, as otherwise the opposite party would have a better chance of presenting their case before the court:

*Held* that the reasons alleged must weigh with a court, and if there was no danger of the applicant absconding if released on bail, he should be released.

Babu *Sailu Nath Mukerji* and *Munshi Girdhari Lal Agarwala*, for the applicant.

The Crown was not represented.

DALAL, J. :—This is an application for bail of one Fateh Singh, against whom an investigation is being made by the police on a charge under section 304 of the Indian Penal Code, punishable with transportation for life. The Magistrate, guided as he was by the provisions of section 497 of the Criminal Procedure Code, expressed his inability to grant bail in such a case as there appeared to be reasonable grounds for believing that Fateh Singh was guilty. The Sessions Judge, however, had wide powers under section 498 of the Criminal Procedure Code and has not considered the petition of appeal with care. It is represented that Fateh Singh is required to instruct his counsel, that members of two parties are being prosecuted, and that a member of the other party is released on bail and that, therefore, the other party will have a better chance of their case being properly represented in court.

\* Criminal Miscellaneous No. 33 of 1929.

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It is true that against the other party there is no charge under section 304 of the Indian Penal Code. At the same time these reasons must weigh with a court, and if there is no danger of the applicant Fateh Singh absconding if released on bail, I think that he should be so released. It was necessary for the Sessions Judge to consider all these points under section 498 of the Criminal Procedure Code.

The trying Magistrate is directed to release Fateh Singh on bail if he is satisfied that there is no apprehension of his absconding on proper sureties being ordered and secured. The trying Magistrate will please fix a bond and security accordingly if, in his opinion, such a bond and security will be sufficient to prevent Fateh Singh from absconding.

## APPELLATE CIVIL.

*Before Mr. Justice Sulaiman and Mr. Justice Kendall.*

1929  
 January, 23.

ZALIM SINGH AND ANOTHER (DEFENDANTS) *v.* RAGHUNANDAN AND OTHERS (PLAINTIFFS AND DEFENDANTS).\*

*Act (Local) No. XI of 1922 (Agra Pre-emption Act), sections 3 and 5—Custom of pre-emption recorded in two out of three mahals formed by partition of a village—Presumption.*

A village was divided into three mahals; a custom of pre-emption was recorded in two mahals and in the third mahal, in which the vended property was situated, the *wajib-ul-arz* did not record any custom of pre-emption and simply stated that it was owned by a single proprietor. *Held*, in the absence of any *wajib-ul-arz* of the village prior to partition, it could not be presumed that the *wajib-ul-arz* of the parent mahal must have recorded a similar right.

\*Second Appeal No. 1784 of 1926, from a decree of Syed Ziaul Hasan, Additional Judge of Cawnpore, dated the 29th of June, 1926, reversing a decree of Sarup Narain, Second Additional Subordinate Judge of Cawnpore, dated the 30th of September, 1925.