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entered and passed by the subdivisional Magistrate. The District Magistrate will take the necessary steps to secure the arrest of the respondents and their recommitment to proper custody.

WORT, J.—I agree.

Acquittals set aside.

Accused convicted and sentenced.

CRIMINAL MISCELLANEOUS.

Before Mullick, A. C. J., and Wort, J.

KRISHNA CHANDRA JAGATI

v.

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May, 31.

Bail—non-bailable offence—grounds on which bail should be granted or refused—Code of Criminal Procedure, 1898 (Act V of 1898), section 498.

In deciding whether a person charged with a non-bailable offence should or should not be enlarged on bail during the trial the following circumstances, inter alia, should be taken into consideration, namely, the nature of the accusation; the nature of the evidence in support of the accusation; the severity of the punishment which conviction will entail; the character of the sureties, that is to say, whether they are independent or indemnified by the accused; the character and behaviour of the accused.

Tampering with the prosecution witnesses may be a good reason for refusing bail.

In re *Robinson* (1), not followed.

Nagendra Nath Chakrabarty v. King-Emperor (2), referred to.

*Miscellaneous criminal application against an order passed by B. K. Ghosh, Esq., Sessions Judge of Cuttack, dated the 13th May, 1927, upholding an order, dated the 6th May, 1927, passed by Babu A. C. Das, Subdivisional Magistrate of Kendrapara.

(1) (1854) 23 L. J. Q. B. 286.

(2) (1923) 38 Cal. L. J. 388.

Hasan Imam (with him *G. P. Das*), for the petitioners.

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C. M. Agarwala, Assistant Government Advocate, for the Crown.

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MULLIK, A. C. J:—Hari Krishna Mahanty is now under trial before the Subdivisional Magistrate of Kendrapara for an offence under section 372 of the Indian Penal Code for having sold his daughter Kanak Dei for Rs. 500 to Krishna Chandra Jagati and Rangadhar Rai who are said to have made the purchase for the proprietor of the Aul estate in Orissa. It is said that the girl was below eighteen years of age and that the sale took place about seven months ago and that the girl died within one month of her arrival at the palace of the proprietor. Krishna Chandra Jagati and Rangadhar Rai have been arrested for an offence under section 373 of the Indian Penal Code.

The petitioners applied for bail to the Subdivisional Magistrate which was refused. They then applied to the Sessions Judge; but as they were unsuccessful also in that Court, they have made the present application under sections 497 and 498 of the Code of Criminal Procedure. The application has been resisted by the Crown.

The principles on which the Courts should exercise their discretion in regard to non-bailable offences have been set out in *Nagendra Nath Chakrabarty v. King-Emperor* ⁽¹⁾ and in this respect it has been said that there is no difference between the English and the Indian practice. Bail is not to be withheld merely as a punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. In my opinion the test is to be applied by reference to the following considerations amongst others:—

(1) The nature of the accusation.

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(2) The nature of the evidence in support of the accusation.

(3) The severity of the punishment which conviction will entail.

(4) The character of the sureties; that is to say, whether they are independent or indemnified by the accused.

(5) The character and the behaviour of the accused.

It was said [In re *Robinson*(1)] that the character or behaviour of the accused is irrelevant; but other authorities are of a contrary opinion, and in *Inida* I think any allegation that the accused is tampering or attempting to tamper with witnesses and thereby obstructing the course of justice would, in my opinion, be a very cogent ground for refusing bail.

I will first of all consider what is the evidence before us in support of the charge. Evidence in Court has not yet been heard in the presence of the accused, but the police diaries have been produced by the Crown. Ordinarily I do not think we ought to interfere if a *prima facie* case is established but I do think that here there are special circumstances.

At the same time it is not desirable that I should say more than is necessary with regard to the weight of the available evidence lest I should in any way prejudge the trial. I will only say that it appears from the materials before us that the following points will arise for consideration :—

Is the father's defence that he did not sell the girl for illicit intercourse but gave her in *phulbebahee* marriage true? In this connection *Explanation* no. 2, recently added to section 372 of the Indian Penal Code, must be considered. It is urged that it is the practice for the proprietors of certain hill states in Orissa to contract *phulbebahee* marriages. In such cases the wife is not a concubine and has a distinct legal status.

(1) (1854) 23 L. J. Q. B. 286.

It is urged on behalf of the petitioners before us that there is another form of marriage called chauki bebahee marriage which is preliminary to a phulbebahee marriage and that in this case the girl Kanak Dei died before the phulbebahee marriage was celebrated but that it was the intention of the accused Krishna Chandra and Rangadhar to have the phulbebahee marriage celebrated at the proprietor's palace.

It has next to be considered whether, even though no legal marital relationship can be established, there was a quasi-marital relationship which protects Hari Krishna Mahanty from prosecution under section 372. In some parts of the country such relationship is established by exchange of betel leaf and by payment of money. In the present case there is evidence that there was a formal gathering of castemen and that the ceremonies in the father's house were conducted with some publicity.

The next circumstance to be considered is that the father belongs to a caste from which phulbebahee wives are obtained and that there was no object why a sale should have been resorted to. It is contended by the Crown that there is evidence that a phulbebahee or a chauki marriage cannot be contracted where the girl is below the age of puberty. But the decision on this point will depend on evidence of custom and I notice that of the two witnesses already examined under section 164 of the Code of Criminal Procedure one has admitted that among poor families the giving of a daughter of immature age is permitted. We are informed by the learned Assistant Government Advocate that there is evidence to show that the father was contemplating the giving of another girl in phulbebahee marriage to the proprietor and that a protest meeting was held by the members of his caste at which he promised not to give any of his other daughters in marriage to the proprietor.

It is said that he made some admission of guilt at the meeting; but this is not clear from the evidence

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now before us. It may be that the prosecution will at the trial be able to prove that the ceremonies performed in the father's house were mere pretence to cloak a sale; but I think on the whole the application of Krishna Chandra and Rangadhar Rai should be allowed.

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With regard to Hari Krishna, there is evidence that he has been attempting to instigate a witness to after a palm-leaf document on which the date of the birth of Kanak Dei is recorded. This, if true, is clearly a circumstance to be taken into account against him in the matter of bail; but as the principal question in the case will be whether he was entitled to give an immature girl in phulbebahee marriage his conduct in attempting to tamper with the witness is not really material. Some inference might no doubt be drawn from his act to prove his intention in giving the girl; but having regard to all the circumstances I think that bail should be granted in his case also.

The petitioners will, therefore, be released on bail to the satisfaction of the Subdivisional Magistrate till the conclusion of the cross-examination, if any, of the prosecution witnesses.

WORT, J.—I wish to say only this. The case of *In re Robinson* (1) decided by Lord Coleridge cannot be regarded as an authority in England and certainly not in India for the proposition that an alleged tampering with the prosecution witnesses is not any ground for refusing bail. First, Lord Coleridge merely said that he would not regard that argument which is not the same thing as saying that that argument may never be regarded in any case. Secondly, the English Courts have an untrammelled discretion in refusing or granting bail and owing to the criminal procedure in England it is almost impossible to get an authoritative decision on the question of what grounds there should be in a case where bail is to be granted or

(1) (1854) 23 L. J. Q. B. 286.

refused. For these reasons, as I have already stated, the case of *In re Robinson* (1) cannot be looked upon as an authority for the proposition urged in this case and, in my view, having regard to the state of the law in England, it would be impossible for any party to get a decision from a divisional Court of the King's Bench Division laying down dogmatically and exhaustively the limits or grounds upon which an application for bail should be treated.

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WORT, J.

APPELLATE CIVIL.

Before Das and Allanson, JJ.

FIRM NAYAMAT RAM PUJARA LAL

v.

LAL RAMESHWAR NATH SHA DEO.*

1927.

June, 1.

Chota Nagpur Tenancy Act, 1908 (Beng. Act VI of 1908), section 181A—decree for rent obtained by landlord—transfer of decree but no assignment of interest in land—assignee, application for execution by, whether maintainable.

I obtained a decree for rent against R and others under the Chota Nagpur Tenancy Act. The decree was subsequently transferred to N, but there was no assignment of the landlord's interest in the land to the assignee of the decree. The latter, however, applied for the execution of the decree as a money decree. The judgment-debtors contended that the application was barred by section 181A, Chota Nagpur Tenancy Act, 1908, which provides as follows :

"An application for the execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the land has become and is vested in the assignee."

*Appeal from Appellate Order no. 239 of 1926, from an order of G. Rowland, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 9th July, 1926, reversing an order of Babu Pramatha Nath Bhattacharji, Subordinate Judge of Ranchi, dated the 24th April, 1926.

(1) (1854) 23 L. J. Q. B. 286.