

1924
 V.P.R.V.
 CHOKA-
 LINGAM
 CHETTY
 AND ONE
v.
 SEETHAI
 ACHA.
 YOUNG
 AND
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deed in favour of Bansilal Abirchand was good. This finding, which is now beyond direct appeal, carries with it a finding that—as between him and Bansilal Abirchand's purchasers—the sale to Bansilal Abirchand is good.

This being the case, the two appeals must both fail, and they are dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Duckworth.

H. M. BOUDVILLE

v.

KING-EMPEROR.*

1924
 July 18.

Bail—Grant of bail in non-bailable cases—Effect of the Amendment Act of 1923 (XVIII of 1923) on section 497, Criminal, Procedure Code (V of 1898), where offence punishable with death or transportation for life—High Court will not depart from the general rule unless under exceptional circumstances.

Held, that the Amendment Act of 1923 tends to limit rather than to enlarge the power of Magistrates in granting bail in non-bailable cases, where the offence is punishable with death or transportation for life.

Held, further, that although a High Court is not limited within the bounds of section 497 of the Code of Criminal Procedure but has absolute discretion in the matter, it must nevertheless follow the general law as a rule and not depart from it except under very special circumstances.

G. W. Henderson v. King-Emperor, 6 L.B.R., 172—*followed*.

Aiyangar—for the Applicant.

Lüttler—or the Crown.

DUCKWORTH, J.—This is an application for bail, pending his trial before the Sessions Court, Mandalay, on three charges under section 409, Indian Penal Code, by the applicant, H. M. Boudville.

He is an Anglo-Indian, aged 53.

* Criminal Miscellaneous Application No. 15 of 1924 of the High Court (sitting at Mandalay).

He alleges that he is sickly, as he suffers from Asthma, but there is not even an affidavit to this effect, and the fact is not admitted by the Crown.

There is evidence, which, if believed, would warrant his conviction. This is clear from the committal proceedings.

It would be improper for this Court to express any further opinion upon the merits.

The offences, with which Boudville is charged are punishable with transportation for life, and section 497, Criminal Procedure Code must be read, as amended in 1923.

The case of *G. W. Henderson v. King-Emperor* (1) must be referred to. It is true that that decision was based on the unamended sections 497 and 498, Criminal Procedure Code, but, the principles there laid down by Sir Charles Fox, C.J., still appear to me to hold good. In fact, the amended section 497 seems to me, in the case of offences punishable with transportation for Life and Death, to limit, rather than enlarge, the powers of Magistrates in granting bail in non-bailable cases. The principle enunciated by Sir Charles Fox is that in deciding questions of granting bail to persons accused of non-bailable offences, *Magistrates* must follow the provisions of section 497, Criminal Procedure Code, 1898. But a *High Court* is not limited within the bounds of that section. It has absolute discretion in the matter. As however, the Legislature has placed the initial stage of dealing with crimes with Magistrates, and having, in effect, enacted that persons accused of non-bailable offences shall be detained in custody, except when there are, in the opinion of the Magistrate dealing with the case, no reasonable grounds

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for believing that the accused has committed the offence charged against him, a High Court is bound to follow the general law as a rule, and not to depart from it, except under very special circumstances, especially so in the initial stages of a case. Here the committing Magistrate, in committing Boudville to stand his trial, has strongly expressed his opinion that there are reasonable grounds for believing in his guilt. The learned Sessions Judge has also, for reasons given in his order, dated July 6th, 1924, rejected an application for bail. There are quarters in the Mandalay Central Jail set apart for European prisoners. There is no proof that applicant's health will suffer from custody. The case does not appear to be one in which his pleader will require careful instructions about accounts. I see no special reasons for granting bail.

The application is therefore dismissed.