

1961  
March 24

LEFKIOS  
CHRISTODOULOU  
RODOSTHENOUS  
AND ANOTHER  
v.  
THE POLICE

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

1. LEFKIOS CHRISTODOULOU RODOSTHENOUS,
  2. ANDREAS CHRISTODOULOU MOUSTAKAS,
- Appellants,*

v.  
THE POLICE,

*Respondents.*

*(Criminal Appeals Nos. 2339 and 2340).*

*Criminal Procedure—Bail—Evidence in considering bail—Evidence adduced in the course of the preliminary inquiry may be sufficient—Matters to be considered in determining bail—Discretion of the Judge of first instance—Principles upon which a Court of Appeal would interfere with that discretion.*

*Held*: (1) A judge is entitled to have regard to the evidence that had been put before him at the preliminary inquiry in determining whether or not bail should be granted. Evidence "*ad hoc*" is not indispensable.

(2) The primary ground in considering bail is whether or not the accused is likely to attend and stand trial. But that is not the only matter that has to be considered and, amongst others, are the seriousness of the offence, the likelihood of another offence being committed, or the same offence being repeated while on bail, and the possibility of witnesses being tampered with.

(3) The High Court will not interfere with the discretion of a lower court except for grave reasons and in exceptional cases.

(4) In this case the trial judge rightly approached the question as the law required.

*Appeal dismissed.*

Cases referred to :

*Antonis Chr. Varellas and others v. the Police* (1951) 19 C.L.R. 46

**Appeal against the refusal of the lower Court to grant bail.**

The appellants were, on the 10th March, 1961, refused bail at the District Court of Nicosia (Loizou D.J.) on completion of their preliminary inquiry into charges of stealing and

demanding money by menaces etc., (Cr. Case No. 2219/61) and for possessing a pistol - appellant No. 1 only - (Criminal Case No. 2220/61), whereby they were committed for trial by the Assizes.

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*St. Pavlides*, Q.C. with *A.P. Anastassiades* for appellant No. 1.

*D. Liveras* for appellant No. 2.

*Criton Tornaritis*, Attorney-General of the Republic, with  
*K.C. Talarides* for the respondents.

The judgment of the Court was delivered by :-

O' BRIAIN, P. : This is an appeal against the refusal of the judge who committed the two appellants for trial to grant them bail. Several matters involving constitutional issues were referred to or raised, at one stage, by counsel for the appellants but they were expressly abandoned, in open Court by Mr. Pavlides, and this Court decides the appeal, abstracting entirely from these constitutional issues. The ground put forward by Mr. Pavlides and adopted by Mr. Liveras on behalf of the other appellant was that in dealing with the question of bail in this case the District Judge, who was exercising a judicial discretion, was bound to exercise that discretion upon evidence and that, in fact, he dealt with the matter without evidence.

It is true that at the end of the case no "evidence *ad hoc*," to adopt Mr. Pavlides' term, was led by the prosecution or considered by the District Judge but this Court is satisfied that the learned District Judge was entitled to have regard, as he did in connection with this matter, to the evidence that had been put before him in considering whether or not the accused should be returned for trial. The Court is quite satisfied that the long established practice in Cyprus has been to that effect and that it has, for many years past, been the practice of the Courts in this country to act in that way. Accordingly we are satisfied that the learned District Judge did not act without evidence.

Now, there is no difference between the parties as to the matters that are to be considered by a Court or by a Judge in determining whether or not bail should be granted. The primary ground is whether or not the accused is likely to attend and stand trial, but that is not the only matter that has

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to be considered and, amongst others, are the seriousness of the offence, the likelihood of another offence being committed, or the same offence being repeated while on bail, and the possibility of witnesses being tampered with. All these are matters that may be taken into consideration, and, in some of the decided cases, one or more of these matters have been the governing factors in deciding to refuse bail.

In this case, and I stress once more the view of this Court, that this is an appeal and not an application to the Court as a Court of first instance, we have to approach this matter from the point of view of considering whether or not there are grounds for our interference with the judicial discretion of the learned District Judge. He expressed his own view in this matter in his judgment and said, "I have considered the submission made with regard to bail very carefully. In view of the gravity of the offence with which accused are charged and the severity of the punishment which conviction will entail and in the light of the evidence adduced at the preliminary inquiry, the probability that the accused might attempt to abscond cannot be excluded. I am also satisfied, in the light of the evidence adduced in the course of the preliminary inquiry that there is appreciable danger that the prosecution witnesses might be interfered with. In the circumstances I consider it my duty to refuse bail".

It is well established that the High Court will not interfere with the discretion of a trial judge or lower court except for grave reasons and in exceptional cases. It seems that, in this case, the trial judge very rightly approached the question as the law required and this Court sees no ground to criticize or fault, in any way, the reasons he has expressed and which moved him to refuse bail.

There is only one other matter that the Court should mention. If the decision in the *Varellas* case (19 C.L.R. 46) which has been referred to this Court is still an authority in this country, and it was decided ten years ago, as the learned Attorney-General has said, the grounds that were put forward to the Supreme Court and accepted by it in that case, apply *a fortiori* to the present case.

This Court is unanimously of the opinion that we should not interfere with the discretion of the learned District Judge and that this appeal should be dismissed.

*Appeal dismissed.*