

1988 December 20

(A. LOIZOU, P., MALACHTOS, STYLIANIDES, PAPADOPOULOS,  
HJITSANGARIS, CHRYSOSTOMIS, ARTEMIDES, JJ.)

PANAYIOTIS KAFKARIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

*(Criminal Application No. 2/88).*

---

*Criminal Procedure — Bail — The Criminal Procedure Law, Cap. 155, section 157(1) and (2) — Original Jurisdiction of Supreme Court — Confined to offences punishable by death (s.157(2)) — In all other cases, the matter is within the jurisdiction of the Criminal Court seized with the case — Latter's decision can only be reviewed by way of appeal.* 5

The applicant, who is charged with premeditated murder and other offences before the Assize Court of Limassol, filed this application for his release on bail.

Held, *dismissing the application*: (1) As none of the offences with which the applicant is charged carries the death penalty, the case is not within the jurisdiction of this Court under s.157(2) of Cap. 155. 10

(2) The jurisdiction to release an accused on bail - except as provided by s.157(2) - lies with the Court seized with the case. A decision of such Court can only be reviewed by this Court by way of appeal (*Rodosthenous and Another v. Police*, 1961 C.L.R. 48 adopted). 15

*Application dismissed.*

*Cases referred to:*

*Rodosthenous and Another v. Police*, 1961 C.L.R. 48; 20

*Leftis v. Police* (1973) 2 C.L.R. 87;

*Theodossiou v. The Republic* (1963) 1 C.L.R. 93.

**Application.**

Application by Panayiotis Kafkaris, who was remanded in custody during his trial before the Assize Court of Limassol sitting at Nicosia with premeditated murder and other offences, for his  
5 release on bail.

*M. Pissas*, for the applicant.

*M. Kyprianou*, Senior Counsel of the Republic with *A. Vassiliades*, for the respondents.

10 **A. LOIZOU P.** gave the following judgment of the Court. This is an application for the release on bail of the Applicant, who is charged before the Limassol Assize Court sitting in Nicosia, with premeditated murder, and other offences, and who has been by order of that Court remanded in custody during his trial.

15 The application is based on section 157 subsection (2) of the Criminal Procedure Law Cap. 155 and we find it useful to refer to the whole section which reads as follows:

20 «157. (1) Subject to the provision of subsection (2) of this section, any Court exercising criminal jurisdiction may, if it thinks proper, at any stage of the proceedings, release on bail any person charged or convicted of any offence, upon the execution by such person of a bail bond as in this Law provided.

25 (2) In no case a person upon whom sentence of death has been passed shall be released on bail; and no person charged of any offence punishable with death shall be released on bail, except by an order of a Judge of the Supreme Court.»

30 Under subsection (1) any Court exercising criminal jurisdiction may at any stage release on bail any person charge or convicted of any offence. This power to grant or refuse bail is subject to review on appeal by this Court which will not entertain any complaint in whatever form it is submitted against the decision regarding bail except by way of appeal.

In the case of *Rodosthenous and Another v. The Police*, 1961 C.L.R. 48 it was held that an application to the High Court for a

review of the decision of a lower Court as to bail is in fact an appeal under section 25(2) of the Courts of Justice Law 1960 (Law No. 14 of 1960) against such decision and the provisions, therefore, of sections 138 and 139 of the Criminal Procedure Law Cap. 155 relating to appeals should be complied with. In fact the Court went on to hold that that matter, the subject of a Criminal Application, was not properly before it as an appeal, by reason of not complying with the aforementioned sections. 5

The jurisdiction therefore, to release on bail, in the first instance, lies with the Court seized of a case in the exercise of its criminal jurisdiction. It may be mentioned here that any other judge of the District Court than the one who dealt originally with the question of bail has jurisdiction if need arises, to hear and determine a new application for bail if of course new facts came into existence in the meantime justifying such fresh consideration of the matter (See *Leftis v. The Police* (1973) 2 C.L.R. 87. 10 15

The jurisdiction given to this Court by sub-section (2) of the aforementioned section is only confined to instances when the offence is punishable with death. In such cases the accused person may be released on bail only by an order of a Judge of this Court. (See *Theodossiou v. The Republic* (1963) 1 C.L.R. 93). 20

On the facts of the case and the nature of the charges with which he is charged, none of which carries the death sentence, as same has been abolished as regards premeditated murder and substituted by a mandatory sentence of imprisonment for life, the case of the applicant before us does not come within the ambit of subsection (2) of the aforesaid section. This application therefore will have to be dismissed by reason of being neither directed by way of appeal against a decision of the trial Court nor of this Court having jurisdiction to entertain in the first place outside the ambit of subsection (2) of applications for bail. 25 30

The application is therefore dismissed accordingly.

*Application dismissed.*