

1951  
May 5

ANTONIS  
CHR. VA-  
RELLAS &  
OTHERS  
v.  
THE  
POLICE.

[JACKSON, C.J., AND GRIFFITH WILLIAMS, J.]

(May 5, 1951)

ANTONIS CHR. VARELLAS & OTHERS,

*Applicants,*

v.

THE POLICE,

*Respondents.*

(*Criminal Application No. 40/51*)

*Criminal Law—Bail—Refusal by Magistrate prior to committal—Powers of Supreme Court to review order refusing bail.*

The primary task in considering an application for bail is the probability that an accused person will appear at his trial. Difference in attitude of higher Court in reviewing refusal of Magistrate to grant bail depending on whether accused is remanded while awaiting the conclusion of the preliminary enquiry into his case, or after he is committed for trial. A higher Court is extremely reluctant to interfere with a lower Court's discretion while it still has the accused persons before it and the responsibility of completing the preliminary enquiry into their case.

*Police v. Stavros Nicola* C.L.R. VII, p. 14, and *Rex v. Haralambos Solomonides* C.L.R. XIV, 127, distinguished.

*Mr. L. Clerides, Mr. G. Ch. Pelagias and Mr. Ph. Clerides,* for the appellants.

*Mr. R. R. Denktash,* Junior Crown Counsel, for the respondents.

JACKSON, C.J. : The applicants in this case are three men, aged respectively 33 years, 18 years and 22 years, who have been charged in the District Court of Nicosia under sections 275 and 206 of the Criminal Code. The section first mentioned relates to demanding property by written threats and the second to written threats of murder. They were arrested on the 10th April last. Since then they have been brought before the Magistrate in Nicosia at the customary intervals and are now awaiting the commencement of the preliminary enquiry into their case with a view to their committal for trial by the Assize Court.

On each remand by the Magistrate they applied for bail, but bail was objected to by the prosecution on the ground of the seriousness of the charges and was refused by the Magistrate. The applicants have therefore remained in custody since the 10th April. They now appeal to this Court against the Magistrate's order refusing bail and ask that it should be granted to them by this Court.

Their application is opposed on behalf of the Crown and it was first argued by the Crown Counsel that this Court has no jurisdiction to review the Magistrate's order. We have already said, during the argument, that we feel unable to accept that contention. This Court has already exercised jurisdiction in two reported cases and has reviewed orders by a Magistrate refusing bail. Those were the case of *Police v. Stavros Nicola* which is reported in the

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7th volume of the Cyprus Law Reports, page 14, and the case of *Rex v. Haralambos Solomonides* which is reported in the 14th volume of the Cyprus Law Reports at page 127. Those were cases in which bail had been refused by Magistrates when accused persons were committed for trial and not when they were remanded prior to committal. There is a distinction between those two stages but we think it would be entirely wrong if this Court had no jurisdiction to review the order of a Magisterial Court refusing to grant bail, at any stage, no matter how unreasonable that order might be. We feel fully satisfied, therefore, that we have jurisdiction to intervene in this case if it seems to us proper to do so.

It is well known that the primary test in considering an application for bail is the probability that an accused person will appear at his trial, but there is a difference in the attitude which a higher Court will take, in reviewing the refusal of a Magistrate to grant bail, according to whether bail has been refused when an accused person is remanded while awaiting the conclusion of the preliminary enquiry into his case or when an accused person is committed for trial. It is well settled that a higher Court will be extremely reluctant to interfere in the exercise of a lower Court's discretion when that Court still has the accused persons before it and the responsibility of completing the preliminary enquiry into their case. In this particular case we find no sufficient ground to justify us in differing from the view taken by the Magistrate in the proceedings now before him.

We considered during the argument the possibility that though we might not be prepared to intervene at this stage, we might possibly do so if the applicants were refused bail when they are committed for trial. That stage has not yet been reached but, in view of the course which the argument took, it seems desirable that we should give some indication of the attitude which we now feel that we would probably take, in this particular case, if another application is then made to us after committal.

As we have said, the primary consideration in granting or refusing bail, is to secure the attendance of an accused person at his trial. But that is not the only consideration for which bail may be properly refused. An authority was quoted to us which indicates that bail may properly be refused if, for example, it seems likely that an accused person will repeat his offence, or commit some similar offence, if he is left at liberty in the interval between his committal by the Magistrate and his trial by a superior Court (*R. V. Phillips* 32 Crim. App. Rep. 47). It has been suggested that, in this case, there is some appreciable danger that an offence will be committed if these three persons are left at large. Nothing has been said to suggest that there is any special risk that they, or any of them, would abscond. Two of them are described in the charges

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as formerly resident in Cairo, and that description might suggest the possibility that they might return there and that they have in fact somewhere to go if they could escape from Cyprus. It appears, however, that the connection of these two men with Cairo ended very long ago and no real likelihood that they will abscond is suggested by the fact that they once lived there. But it was suggested that there is a reasonable possibility that the three accused men may commit another offence if they are left at large and, in order to assess that possibility, we must look at the particular offences with which they are charged. It is stated that all three of them were concerned in addressing a letter to an elderly gentleman in Nicosia, well known to be a man of means, in which they demanded that he should place a sum of £250 behind a particular milestone on the road from Nicosia to Limassol and threatened him with death in three separate passages in the letter, if he failed to do so or if he informed the police. A trap was laid for them at the place at which they had demanded that the money should be placed and one of them, the eldest, who is 33 years of age, was arrested at the spot, after putting up a particularly determined resistance. The other two were arrested not far away. The offence with which they were charged is, of course, an extremely serious one and in our view the possibility cannot be excluded that, knowing that they will probably receive a heavy sentence if convicted, they might, in desperation, take revenge in some form or another, while at large, upon the elderly gentleman whom they had threatened and who had disregarded their threats and so had brought them into the situation in which they now are. They would naturally hope to escape detection. The gentleman concerned has stated that he is apprehensive of that possibility and we cannot say that it would not be a legitimate reason for which bail might be refused on committal.

We do not know if this possibility was in the Magistrate's mind when he refused bail on remand. The only reason that he gave was the objection of the prosecution on the ground that the offence was a very serious one. Nevertheless the possibility that we have mentioned is one which, in our view, it would be proper for the Magistrate to take into account. We ourselves cannot exclude it in the particular circumstances of this case.

We have already said that, at the stage which the proceedings have now reached, we can find no sufficient reason to reverse the order which the Magistrate has made or to intervene in the exercise of his discretion on the ground that it was not judicially exercised. We think therefore that this application must be dismissed.

*Application refused.*