

1966
May 5

[VASSILIADIS, TRIANTAFYLIDIS AND JOSEPHIDES JJ.]

THE ATTORNEY-
GENERAL OF
THE REPUBLIC

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Appellant,

v.

YOUSOUF
YOUSOUF
MEHMET

YOUSOUF YOUSOUF MEHMET,

Respondent.

(Criminal Appeal No. 2816)

Criminal Procedure—Bail—Appeal by Attorney-General against order of the committing Judge granting bail—Matters to be considered in granting bail—Power to grant bail prescribed in section 157 (1) of the Criminal Procedure Law, Cap. 155 a clearly discretionary power—Proper approach on appeal in a case of this nature.

Bail—See under “Criminal Procedure” above.

This was an appeal by the Attorney-General against an order granting bail to the respondent on certain conditions upon his committal for trial by the Assize Court on charges of conspiracy to commit a felony and incitement to commit a felony, contrary to sections 371 and 370 (a) of the Criminal Code Cap. 154, respectively, and of carrying explosive substances contrary to section 4 (1) (e) (4) (d) of the Explosive Substances Law Cap. 54.

The appeal was mainly argued on the ground that the nature of the facts presented by the evidence upon which the respondent was committed for trial, and the conditions prevailing in the Island at the time, were such, that bail, in the proper exercise of the Judge's discretion in the matter, should have been refused.

Held, (1) on the question of bail :

(1) As it has been pointed out in previous cases, the power of the Judge to grant bail is prescribed in section 157 (1) of the Criminal Procedure Law (Cap. 155) and it is clearly a discretionary power. As stated more than once, this Court will only interfere with the exercise of the Judge's discretion in the matter, if it is shown on appeal, that the Judge acted on wrong principle, or did not take into consideration circumstances which he should have taken into account in the exercise of his discretion in favour or against granting bail.

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(2) In a case of this nature, the proper approach on appeal, is not whether the Judges dealing with the appeal would themselves grant or refuse bail in similar circumstances. It is whether the appellant has shown sufficient reasons for interfering with the order made in the exercise of the original Judge's discretion. In this particular case, after consultation, we all feel that in a case of this nature bail should only be granted in very exceptional circumstances. But this is not what falls to be decided in the present appeal. It is common ground that recently bail has been frequently granted in serious cases of this nature, without objection or opposition on the part of the Police. This seems to have most unfortunately started a line of precedent in the District Courts which we find very difficult to understand.

(3) In this particular case, we cannot see anything in the ground upon which the learned Judge exercised his discretion, to justify our interfering with his decision; even though, as we have already said, had we been in his position we would have acted differently.

Held, (11) on the conditions of bail:

After giving this matter our best consideration, we are inclined to the view that the conditions imposed, are inadequate for the purpose which they are intended to serve and the Order must, therefore, be varied to that extent.

*Appeal allowed in part.
Conditions of the order for
bail varied accordingly.*

Per curiam: We can only express the hope that prosecuting officers will in future, give better assistance to the Courts in dealing with bail in cases of carrying dangerous arms and explosives.

Appeal.

Appeal by the Attorney-General of the Republic against the order of the District Court of Nicosia (Emin D.J.) made on the 30th April, 1966, in Cr. Case No. 6725/66 whereby the respondent was granted bail, after his committal for trial by the Assize Court, on charges of conspiracy to commit a felony and incitement to commit a felony, contrary to sections 371 and 370 (a) of the Criminal Code, Cap. 154, respectively, and of carrying explosive substances contrary to section 4 (1) (e) (4) (d) of the Explosive Substances Law, Cap. 54.

L. Loucaides, Counsel of the Republic, for the appellant.

A. Dana, for the respondent.

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The facts sufficiently appear in the judgment of the Court which was delivered by :

VASSILIADES, J.: This is an appeal on behalf of the Attorney-General against an order granting to the accused bail after his committal for trial by the Assize Court on the charges appearing on the record.

The appeal is taken on the two grounds contained in the notice, prepared and signed by learned counsel who argued the appeal before us this morning. We need not go again, at this stage, into the form in which the grounds were put ; the substance of the appeal is that the nature of the facts presented by the evidence upon which the respondent was committed for trial, and the conditions prevailing in the island at the time, are such, that bail, in the proper exercise of the Judge's discretion in the matter, should have been refused.

As it has been pointed out in previous cases, the power of the Judge to grant bail is prescribed in section 157 (1) of the Criminal Procedure Law (Cap. 155) and it is clearly a discretionary power. As stated more than once, this Court will only interfere with the exercise of the Judge's discretion in the matter, if it is shown on appeal, that the Judge acted on wrong principle, or did not take into consideration circumstances which he should have taken into account in the exercise of his discretion in favour or against granting bail.

In a case of this nature, the proper approach on appeal, is not whether the Judges dealing with the appeal would themselves grant or refuse bail in similar circumstances. It is whether the appellant has shown sufficient reasons for interfering with the order made in the exercise of the original Judge's discretion. In this particular case, after consultation, we all feel that in a case of this nature bail should only be granted in very exceptional circumstances. But this is not what falls to be decided in the present appeal. It is common ground that recently bail has been frequently granted in serious cases of this nature, without objection or opposition on the part of the Police. This seems to have most unfortunately started a line of precedent in the District Courts which we find very difficult to understand. Having said that, we may now proceed to deal with the appeal before us which is whether it has been shown here that the committing Judge has failed to take into account any matter or circumstance which he should have considered in the exercise of his discretion.

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The ruling of the learned Judge gives fully his approach to the matter, and what he has taken into consideration in granting bail. There is no doubt that he has been influenced by the statement that in similar cases—cases of carrying arms and explosives even in more serious circumstances—bail has been granted repeatedly in the Court of Limassol. And that this was done without any objection on the part of the Police ; nor, apparently, consideration of the reasons which render desirable the keeping in custody of accused persons pending trial. Mr. Loukaides this morning frankly conceded this ; and in doing so, he affirmed Mr. Dana's contentions on behalf of the respondent. We can only express the hope that prosecuting officers will, in future, give better assistance to the Courts in dealing with bail in cases of carrying dangerous arms and explosives. As remarked during the argument, it does not help to retain the confidence of the public in their Courts, if they are not actually convinced that law is being enforced and applied without discrimination ; and in the interest of public safety and good order.

In this particular case, we cannot see anything in the grounds upon which the learned Judge exercised his discretion, to justify our interfering with his decision ; even though, as we have already said, had we been in his position we would have acted differently.

The trial Judge, however, granted bail on certain conditions, which indicate to us that he would not be prepared to grant bail unconditionally. These conditions are stated at the end of his decision ; and they are that the accused should deliver his passport to the Police ; that he should reside only in Limassol town ; and that he must report daily to the Police. In addition, the accused was required to lodge the sum of £200 in cash, as security that he will comply with the order.

After giving this matter our best consideration, we are inclined to the view that the conditions imposed, are inadequate for the purpose which they are intended to serve. And the Order must, therefore, be varied to that extent. Has the passport been handed over to the Police Mr. Dana ?

Mr. Dana : Yes, Your Honour, it has. Also the £200 have been lodged.

Court : In the circumstances we would vary the conditions as follows :—

1. The accused having delivered his passport to the

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Police, is to abstain from taking any steps to get any other papers enabling him to leave the island, pending his trial.

2. The accused to reside in Limassol, in the house of Mustafa Fehim of Limassol (described by learned counsel on his behalf during the argument) and if required, better described in the order upon information to be given to the Registrar.

3. The accused not to leave the municipal area of the town of Limassol, without a permit in writing from the Police.

4. The accused to remain indoors at the house in question, between sunset and the following sunrise ; the Police being facilitated by the householder in checking the accused at any time during the day or night.

5. If the accused is out of the house during the day, to leave at the house full particulars in writing as to where the Police can contact him in order to check his presence in Limassol.

6. Furthermore, the accused to report to the Police twice a day at about 10 a.m. and 5 o'clock in the afternoon.

Mr. Dana : I wonder if it would be a great inconvenience if he were to call at about 9 a.m. or 8 a.m. so that he could attend for work ?

Court : Let us say about 9 o' clock in the morning ; but the Police should know where he is going to work. The object of the Police in checking his presence in Limassol will not be to prevent this man from exercising his right to work ; the Police, we have no doubt, will help him. They will only make sure that he is at Limassol ; and that they know where he is. If you find that actually there is any cause of complaint, Mr. Dana, you can bring the matter up.

7. As regards the amount, we think that, considering the gravity of the offence and the other circumstances of the case, the appropriate amount should be one thousand pounds (£1,000) out of which £200 have already been lodged. The rest may be in the form of a Bank guarantee, or other solvent security to the satisfaction of the Registrar of the Supreme Court.

The appeal will be allowed to this extent ; and the conditions of the order varied accordingly.

We may add that in deciding this case in the way we did, we took into consideration the assurance of learned counsel for the accused that it is his client's intention and desire to stand his trial ; and that he will do everything in his power to fulfil his undertaking. We have no doubt that the learned trial Judge who granted bail, also took into account this. And we feel that if the Courts find that they can safely act on such assurances, their work in this respect, will be materially facilitated.

*Appeal allowed in part.
Conditions of the order for
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