

1976  
Oct. 29

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

CHRISTODOULOS  
POLYNIKI  
ZISIMIDES

CHRISTODOULOS POLYNIKI ZISIMIDES,

*Applicant,*

v.

v.

THE REPUBLIC

THE REPUBLIC,

*Respondent.*

(Criminal Application No. 1/75).

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*Bail—Bail pending appeal—Powers of Court of Appeal discretionary—It is an unusual and exceptional course to grant bail pending appeal—Short term of imprisonment and the anticipation that the appeal will not be determined early enough in relation to the length of the term of imprisonment create a situation in which, exceptionally, bail may be granted—Conviction for stealing by a servant and fraudulent false accounting—Sentence varying from six months to three years' imprisonment—Serious issues to be determined in the appeal—Not an exceptional instance in which bail may be granted—But hearing of appeal expedited.*

The applicant, who was on the 21st August, 1975, convicted of offences such as stealing by a servant and fraudulent false accounting and sentenced to varying concurrent terms of imprisonment ranging from six months to three years, having appealed against both conviction and sentence he also applied, under s. 157 of the Criminal Procedure Law, Cap. 155, to be released on bail pending the determination of his appeal, which was due to be heard on the 24th November, 1975; the hearing of the appeal was expected to last for several days.

A somewhat peculiar feature of this case was that in respect of practically half of the offences of which the appellant was convicted he has been sentenced to concurrent terms of only six months' imprisonment and that these offences appeared, *prima facie*, to be unconnected, as regards their salient facts, with the offences in respect of which he was sentenced to concurrent terms of two and three years' imprisonment, respectively.

There were also serious issues to be determined in the appeal, including, apparently, a quite novel point in the field of the law of evidence.

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5 *Held*, (1) It is indeed, an unusual and exceptional course to grant bail pending the appeal to someone who is serving a sentence of imprisonment. (See *Petri v. The Police* (1968) 2 C.L.R. 1, *Gordon*, 7 Cr. App. Rep. 182, *Gott*, 16 Cr. App. Rep. 86, *Fitzgerald*, 17 Cr. App. Rep. 147, *Klein*, 23 Cr. App. Rep. 173, *Lang and Another*, [1969] Crim. L.R. 97 and *Neville and Others* [1971] Crim. L.R. 589).

15 (2) On the other hand, it is accepted that, exceptionally, bail may be granted, in a situation such as the above, when there appears to exist the combination of the following two factors: A short sentence of imprisonment and the anticipation that the appeal will not be determined early enough in relation to the length of the term of imprisonment. (See the *Neville* case (*supra*), *Selkirk*, 18 Cr. App. Rep. 172, *Charavanmuttu*, 21 Cr. App. Rep. 184 and *Harding and Others*, 23 Cr. App. Rep. 143).

25 (3) Having taken all factors, which seemed to be relevant, into account we still do not find ourselves in the position to say that we are faced with an exceptional instance in which we should grant bail pending the determination of the appeal. We shall, however, try to shorten, as far as possible, the length of time which has to intervene between the conviction and imprisonment of the appellant and the hearing of his appeal by bringing forward the hearing of his appeal. (See in this respect the *Petri* case (*supra*) where the same course was adopted).

*Application dismissed.*

Cases referred to :

- 35 *Petri v. The Police* (1968) 2 C.L.R. 1;  
*Gordon*, 7 Cr. App. Rep. 182;  
*Gott*, 16 Cr. App. Rep. 86;  
*Fitzgerald*, 17 Cr. App. Rep. 147;  
*Klein*, 23 Cr. App. Rep. 173;

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*Lang and Another* [1969] Crim. L.R. 97;

*Neville and Others* [1971] Crim. L.R. 589;

*Selkirk*, 18 Cr. App. Rep. 172;

*Charavanmuttu*, 21 Cr. App. Rep. 184;

*Harding and Others*, 23 Cr. App. Rep. 143.

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#### Application for bail.

Application for bail under section 157 of the Criminal Procedure Law, Cap. 155, pending the hearing of an appeal against conviction and concurrent sentences, ranging from six months to three years' imprisonment, for offences of stealing by servant contrary to sections 255 and 268 of the Criminal Code, Cap. 154 and of fraudulent false accounting contrary to section 313(c) of the Criminal Code, Cap. 154. 10

*G. Cacoyiannis*, for the appellant. 15

*R. Gavrielides*, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :-

TRIANAFYLLIDES, P. : The applicant—(appellant)—has been convicted on the 21st August, 1975, of offences such as stealing by a servant, contrary to sections 255 and 268 of the Criminal Code, Cap. 154, and fraudulent false accounting, contrary to section 313(c) of Cap. 154, and was sentenced to varying concurrent terms of imprisonment ranging from six months to three years; having appealed already against both conviction and sentence he has now applied, under section 157 of the Criminal Procedure Law, Cap. 155, to be released on bail pending the determination of his appeal, which is due to be heard on the 24th November, 1975; the hearing of the appeal is expected to last for several days. 20 25 30

We have considered carefully all that has been submitted by counsel for the applicant and the respondent in this connection, with a view to exercising our relevant powers which are, obviously, of a discretionary nature (see *Petri v. The Police*, (1968) 2 C.L.R. 1). 35

It is a well established principle that it is, indeed, an unusual and exceptional course to grant bail pending

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the appeal to someone who is serving a sentence of imprisonment; in addition to the *Petri* case (*supra*), reference may be usefully made to the cases of *Gordon*, 7 Cr. App. Rep. 182, *Gott*, 16 Cr. App. Rep. 86, *Fitzgerald*, 17 Cr. App. Rep. 147, *Klein*, 23 Cr. App. Rep. 173, *Lang and Another*, [1969] Crim. L.R. 97, and *Neville and Others*, [1971] Crim. L.R. 589.

On the other hand, it is accepted that, exceptionally, bail may be granted, in a situation such as the above, when there appears to exist the combination of the following two factors: A short sentence of imprisonment and the anticipation that the appeal will not be determined early enough in relation to the length of the term of imprisonment; in this respect, in addition to the case of *Neville* (*supra*), reference may be made to the cases of *Selkirk*, 18 Cr. App. Rep. 172, *Charavanmuttu*, 21 Cr. App. Rep. 184 and *Harding and Others*, 23 Cr. App. Rep. 143.

A somewhat peculiar feature of this case is that in respect of practically half of the offences of which the appellant was convicted he has been sentenced to concurrent terms of only six months' imprisonment and that these offences appear, *prima facie*, to be unconnected, as regards their salient facts, with the offences in respect of which he was sentenced to concurrent terms of two and three years' imprisonment, respectively.

Also, there can be no doubt that there are serious issues to be determined in this appeal, including, apparently, a quite novel point in the field of the law of evidence.

Having taken fully into account the above, as well as any other factor which seemed to be relevant, we still do not find ourselves in the position to say that we are faced with an exceptional instance in which we should grant bail pending the determination of the appeal.

We shall follow, however, the course adopted by this Court in the *Petri* case, *supra*, namely to try to shorten, as far as possible, the length of time which has to intervene between the conviction and imprisonment of the appellant and the hearing of his appeal; we have, therefore, decided that the hearing of this appeal should be

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brought forward so as to commence on the 17th November, 1975, and that it should be continued on at least another six days during the same month, affording, thus, to counsel what appears to be, at this stage, sufficient time to cover a lot of ground.

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In the circumstances, this application for bail is dismissed; but we might add that if for any reason, which cannot be now foreseen, it becomes, later, necessary for a further application for bail to be made, the matter will, of course, be duly considered once again, on the basis of such new application.

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*Application dismissed.*