

CHRISTODOULOS POLYNIKI ZISIMIDES,

Applicant,

v.

THE REPUBLIC,

Respondent.

CHRISTODOULOS
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(Criminal Application No. 2/76).

Bail—Appeal—Discretion of Court of Appeal—Application for bail pending delivery of the reserved judgment in the appeal—Appeal of a complicated nature—And its hearing lasted for 23 days—No compelling special reasons exist requiring the taking of the quite exceptional step of allowing an appellant on bail pending outcome of appeal—See Zisimides v. The Republic (1975) 2 C.L.R. 166 at pp. 168–189.

Appeal—Right of appeal—No constitutionally entrenched right of appeal—Articles 30 and 155 of the Constitution and Article 6 of the European Convention on Human Rights—Right of Appeal, existing under the Criminal Procedure Law, Cap. 155, to be enjoyed, by those using it, in such a manner as happens to be feasible in the light of the specific situation in each particular case.

The applicant was on August 21, 1975 convicted on several counts involving offences of dishonesty* and was sentenced to terms of imprisonment ranging from six months to three years, running concurrently. He appealed both against his conviction and sentences. Bail pending appeal was refused by this Court on October 29, 1975,** and the appeal was heard on various dates between November 17, 1975 and January 30, 1976 but the reserved judgment of the Court had not yet been delivered. The hearing of the appeal lasted in all for twenty-three days, during which this Court sat, as a rule both in the mornings and in the afternoons. The record of the trial, which lasted before the Assize Court for two months, consisted of more than 900 pages. Due to the unexpected and unprecedented length of the proceedings in this appeal and in view of its other urgent

* Stealing by servant and fraudulent false accounting.

** Vide (1975) 2 C.L.R. 166

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work this Court has not been able to hear this appeal without interruptions and according to the Court's programme of work it was impossible for the Court to be ready with its decision as to its outcome in less than two months time.

The applicant filed on April 10, 1976, an application by means of which he sought to be released on bail pending the delivery of the reserved judgment. Counsel for the applicant invited the Court to distinguish this case from that of *Petri v. Police** (1968) 2 C.L.R. 1 in which bail pending the outcome of the appeal was refused; he has argued that there the appellate proceedings were concluded more expeditiously than in the present instance.

Held, dismissing the application, in the absence of any so compelling special reasons as would require us to take the quite exceptional step of allowing an appellant out on bail pending the outcome of his appeal (see *Zisimides v. The Republic* (1975) 2 C.L.R. 166 at p. 168-169) we cannot exercise our discretionary powers in favour of the applicant so as to release him on bail pending the determination of his appeal merely on the ground that due to the very lengthy nature of the case this Court has not yet been able to deliver its reserved judgment in his appeal.

Application dismissed.

Per curiam: (1) It should not be lost sight of, at all, that the applicant stands convicted by a competent Court and that he has no constitutionally entrenched right of appeal (see Article 30 of our Constitution which corresponds to Article 6 of the European Convention on Human Rights; see also, Article 155 of the Constitution).

(2) The right of appeal existing under the Criminal Procedure Law, Cap. 155 has to be enjoyed, by those who use it, in such a manner as happens to be feasible in the light of the specific situation in each particular case.

Cases referred to:

Zisimides v. The Republic (1975) 2 C.L.R. 166 at pp. 168-169;
Petri v. The Police (1968) 2 C.L.R. 1.

* See the facts of this case at pp. 95-96 *post*.

Application for bail.

Application for bail pending the delivery of the reserved judgment in 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.

G. Cacoysiannis, for the applicant.

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

Cur. adv. vult.

The judgment of the Court was delivered by:—

15 TRIANTAFYLIDIS, P.: The applicant was convicted by the Limassol Assizes, in criminal case No. 8386/75, on several counts involving offences of dishonesty, 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. He was sentenced to terms of imprisonment ranging from six months to three years, running concurrently.

20 He has appealed, both against his conviction and against the sentences imposed on him, by filing Criminal Appeal No. 3645.

An application for the release of the applicant on bail pending the determination of his Appeal was dismissed on October 29, 1975 (see *Zisimides v. The Republic*, (1975) 2 C.L.R. 166).

25 The hearing of his Appeal was concluded on January 30, 1976, but the reserved judgment of this Court has not yet been delivered. So, the applicant has filed on April 10, 1976, the present application by means of which he seeks to be released on bail pending the delivery of the reserved judgment.

30 Counsel for the applicant has invited us to distinguish this case from that of *Petri v. The Police*, (1968) 2 C.L.R. 1, in which bail pending the outcome of the Appeal was refused; he has argued that there the appellate proceedings were concluded more expeditiously than in the present instance.

35 It is, therefore, pertinent to mention certain relevant dates as regards the *Petri* case: The appellant in that case was sentenced on December 29, 1967, to *one year's imprisonment*; bail pending the Appeal was refused by this Court on January 9, 1968, the hearing of the Appeal began on February 6, 1968, and was con-

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cluded on February 19, 1968; the outcome of the appeal was announced on February 23, 1968, and a reasoned judgment was delivered later, on April 13, 1968.

In the present case the appellant was sentenced, on August 21, 1975, to *three years' imprisonment*; bail pending the appeal was refused by this Court on October 29, 1975, and the appeal was heard on various dates between November 17, 1975 and January 30, 1976. The hearing of the Appeal lasted in all for twenty-three days, during which this Court sat, as a rule, both in the mornings and in the afternoons. The record of the trial, which lasted before the Assize Court for two whole months, consists of more than 900 pages. In view of the complexity of the case and of the numerous issues that have been raised on appeal—one of them being a novel thorny legal matter—counsel for the appellant addressed us for thirteen and a half days, counsel for the respondent addressed us for six days, and then counsel for the appellant replied for another three and a half days.

Unfortunately due to the unexpected and unprecedented length of the proceedings in this appeal, and in view, also, of other urgent work of this Court, we have not been able to hear this appeal without interruptions and, according to our present programme of work, it is impossible for us to be ready with our decision as to its outcome in less than two months' time from now; because, in order to do justice in this case, we have to study carefully its voluminous record in the light of elaborate submissions of learned counsel on both sides and to peruse more than 250 cases and textbooks which have been cited in argument before us.

The question to be answered by us, now, is whether or not the applicant should be released on bail because his appeal could not be determined as expeditiously as in the *Petri* case, *supra*, and because it will not be determined before the lapse of another two months from today.

It should not be lost sight of, at all, that the applicant stands convicted by a competent Court and that he has no constitutionally entrenched right of appeal; this is clear from the wording of Article 30 of our Constitution, which corresponds to Article 6 of the European Convention on Human Rights; and Article 6 of the Convention has been authoritatively construed as not providing for the existence of a right of appeal. Article 155 of our Constitution vests in the supreme judicial organ in the

State the jurisdiction to deal with appeals, but it does not create, by itself, a right of appeal.

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5 It is true, on the other hand, that under the relevant statute, the Criminal Procedure Law, Cap. 155, there does exist a right of appeal in a case such as the present one; but such right is to be enjoyed, by those who use it, in such a manner as happens to be feasible in the light of the specific situation in each particular case.

10 An appellant who can present his appeal in a way involving the raising of rather few grounds of appeal, which can be argued in a day or two, has, naturally, a much better chance of having his appeal quickly disposed of than an appellant, such as the present one, whose appeal has become a veritable forensic marathon.

15 We do not want to be misunderstood, in the least, that we are expressing the view that in this case the right of appeal has been abused in any way; we are merely stating what is the position as it has developed due to the very complicated nature of this appeal; and we are, indeed, grateful to counsel on both sides
20 for the valuable assistance which they have given us.

Having given the matter most anxious consideration we have decided that, in the absence of any so compelling special reasons as would require us to take the quite exceptional step of allowing an appellant out on bail pending the outcome of his appeal
25 (and see, in this respect, the *Zisimides* case, *supra*, at pp. 168-169), we cannot exercise our discretionary powers in favour of the applicant so as to release him on bail pending the determination of his appeal merely on the ground that due to the very lengthy nature of the case this Court has not yet been able to
30 deliver its reserved judgment in his appeal.

In the result this application has to be dismissed.

Application dismissed.