

1978 August 31

[TRIANTAFYLIDIS, P., DEMETRIADES AND SAVVIDES, JJ.]

CHARALAMBOS GEORGHIOU PAPAKLEOVOULOU,
Appellant,

v.

THE POLICE,
Respondents.

(*Criminal Appeal No. 3888*).

Bail—Committal for trial by Assize Court—Conspiring to commit felonies contrary to sections 371 and 325 of the Criminal Code, Cap. 154—Discretion of Judge—Principles on which Court of Appeal interferes with exercise of—Seriousness of the charge—Sufficient as a reason justifying refusal to release on bail—Not the duty of Court of Appeal to evaluate adequacy of evidence on which appellant was committed for trial—Personal circumstances—State of health of appellant and his wife—Nothing to show that such state requires, for the time being, appellant’s release on bail—Appellant may apply afresh for bail in case there is a material alteration of circumstances—Appeal dismissed. 5 10

The appellant was committed for trial by the Assize Court on one count of the offence of conspiring together with other co-accused of his to commit felonies contrary to sections 371 and 325 of the Criminal Code, Cap. 154. 15

Upon appeal against the refusal of the committing Judge to allow him out on bail pending his trial counsel appearing for him contended:

(a) That the appellant ought to have been treated differently from his co-accused mentioned in the above count, who were also denied bail, because the said co-accused faced more charges, in other counts, concerning the carrying of fire-arms; 20

(b) that the evidence on the basis of which he was committed for trial is not of such a nature as to render it certain that he will be eventually convicted; 25

(c) that personal circumstances of the appellant militate in favour of his being released on bail, namely that he is still affected by the after-effects of an injury which he suffered during the Cyprus liberation struggle of 1955 to 1959, and that his wife is, also, afflicted by heart stenosis.

Held, (after stating the principles on which the Court of Appeal will interfere with the exercise of discretion of a Judge on the question of bail—vide p. 448 post) (1) that the charge which the appellant is facing is so serious as to suffice as a reason justifying the decision of the Judge to refuse to let him out on bail; that the seriousness of the offence charged and the severity of the punishment that may be imposed on him in case he is convicted are both factors relevant to the paramount consideration of whether or not the appellant is likely to turn up at his trial in case he is let out on bail in the meantime.

(2) That the appellant was committed for trial on the basis of evidence which was considered to be adequate for the purposes of the committal and it is not the duty of this Court to evaluate, at this stage, on appeal, such evidence.

(3) That there is nothing before this Court to show that the state of the health of either the appellant or his wife requires, for the time being, his release on bail; that there is always the possibility of another application for bail being made by the appellant, even before his trial, in case either his health or that of his wife deteriorates to such an extent as to cause a material alteration of circumstances requiring that there should be examined afresh by the District Court the matter of his release on bail; and that, accordingly, his appeal cannot succeed and is dismissed.

Appeal dismissed.

Cases referred to:

Rodosthenous v. The Police, 1961 C.L.R. 50 at p. 52;

The Attorney-General of the Republic v. Mehmet (1966) 2 C.L.R. 12 at pp. 14, 15;

Mavros and Others v. The Police (1977)* 12 J.S.C. 2097 at p. 2099;

Savva and Another (No. 2) v. The Police (1977)* 12 J.S.C. 2092 at p. 2094.

* To be reported in (1977) 2 C.L.R.

Appeal.

Appeal by Charalambos Georghiou Papakleovoulou against the refusal of the District Judge, who committed him for trial by the next Limassol Assize Court, to allow him out on bail pending his trial. 5

A. Eftychiou, for the appellant.

S. Nicolaidis, Senior Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by:

TRIANTAFYLIDIS P.: In the present case the appellant, who is accused No. 5 in criminal case No. 8606/78 and has been committed, on July 1, 1978, for trial by the next Limassol Assize Court, on October 16, 1978, has appealed against the refusal of the District Judge, who committed him for trial, to allow him out on bail pending the trial. 10
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It has been repeatedly stressed in the past that this Court will interfere, on appeal, with the exercise of the discretion of a Judge in a matter of this nature only if it is satisfied by the appellant that the decision of the Judge is wrong in principle or that he has failed to take into account a material consideration or has given undue weight to an immaterial consideration; in other words, if it is satisfied that his discretion was exercised wrongly (see, *inter alia*, *Rodosthenous v. The Police*, 1961 C.L.R. 50, 52, *The Attorney-General of the Republic v. Mehmet*, (1966) 2 C.L.R. 12, 14, 15, *Mavros and Others v. The Police*, (1977)* 12 J.S.C. 2097, 2099 and *Savva and Another (No. 2) v. The Police*, (1977)* 12 J.S.C. 2092, 2094). 20
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The information in the criminal case in question, in which there are eight other accused in addition to the appellant, contains twenty-nine counts. It is, indeed, correct that the appellant is involved in one count only, that is the first count, which charges him with conspiring together with other co-accused of his to commit felonies, contrary to sections 371 and 325 of the Criminal Code, Cap. 154; it appears, however, from the particulars of that count that the appellant is charged with having conspired, between January 1, 1977, and April 8, 1978, to, *inter alia*, cause damage to premises of political parties and of foreign embassies in Cyprus by means of explosive 30
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* To be reported in (1977) 2 C.L.R.

substances and to use fire-arms against persons and property in the Republic.

5 Counsel for the appellant has submitted that his client ought to have been treated differently from his co-accused, who are mentioned in count No. 1 (that is accused Nos. 1, 2, 3, 4, 6 and 9), and to whom there was, also, denied bail pending trial; counsel stressed, in this respect, that the appellant's co-accused in count No. 1, face, also, more charges, in other counts, concerning the carrying of fire-arms.

10 We think that the charge which the appellant is facing by means of count No. 1 is so serious as to suffice as a reason justifying the decision of the Judge to refuse to let him out on bail; the seriousness of the offence charged and the severity of the punishment that may be imposed on him in case he is convicted are both factors relevant to the paramount consideration of whether or not the appellant is likely to turn up at his trial in case he is let out on bail in the meantime.

20 It has been contended, by counsel for the appellant, that the evidence on the basis of which he was committed for trial is not of such a nature as to render it certain that he will be eventually convicted; the fact remains, however, that he was committed for trial on the basis of evidence which was considered to be adequate for the purposes of the committal and it is not the duty of this Court to evaluate, at this stage, on appeal, such evidence. It suffices to say that there appears at present to exist on record *prima facie* evidence against the appellant.

30 It has been stated by his counsel that personal circumstances of the appellant militate in favour of his being released out on bail, pending his trial, namely that he is still affected by the after-effects of an injury which he suffered during the Cyprus liberation struggle of 1955 to 1959, and that his wife is, also, afflicted by heart stenosis. There is, however, nothing before us to show that the state of the health of either the appellant or of his wife requires, for the time being, his release on bail; and, as was pointed out in the case of *Savva (No. 2)*, *supra*, there is always the possibility of another application for bail being made by the appellant, even before his trial, in case either his health or that of his wife deteriorates to such an extent as to cause a material alteration of circumstances requiring that

there should be examined afresh by the District Court the matter of his release on bail pending his trial.

For all the above reasons we find that this appeal cannot succeed and it is dismissed accordingly.

Appeal dismissed. 5