

1987 July 14

[A' LOIZOU, DEMETRIADES, STYLIANIDES, JJ.]

ANDREAS CHRISTOU KTIMATIAS ALIAS PATSIKAS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4886).

Appeal — Bail — Interference by this Court with the exercise of a committing or trial Judge's discretion as to bail — Principles applicable.

5 The trial Judge committed under the provisions of Law 42/74 the accused for trial before the Assize Court, but refused bail on account of the seriousness of the offences (Possessing two firearms and 49 rounds of ammunition), the punishment prescribed by law (15 and 10 years respectively), the nature and contents of the evidence and the «absence of any other exceptional circumstances».

Hence the present appeal directed against the refusal to grant bail.

10 Held, *dismissing the appeal*: (1) This Court does not interfere with the discretion in matters relating to bail of a committing or a trial Judge, unless persuaded that such a Judge acted on a wrong principle or failed to take into consideration what he ought to have taken or took into consideration matters, which he should not have taken.

15 (2) There is no reason to interfere with the exercise of the committing Judge's discretion in this case.

Appeal dismissed.

Cases referred to:

Attorney-General v Mehmet (1966) 2 C.L.R. 12.

20 Appeal against remand order.

25 Appeal by Andreas Christou Ktimatias alias Patsikas against the order of the District Court of Nicosia (Papadopoulou (Mrs.) Ag. D.J.) made on the 3rd July, 1987 whereby appellant was remanded in Police custody until the 21st September, 1987, when his trial would begin.

A Eftychiou, for the appellant

A M Angelides, Senior Counsel of the Republic, for the respondent

A LOIZOU J gave the following judgment of the Court The appellant was on the 3rd July 1987, committed for trial before the Assize Court sitting in Nicosia on the 21st September 1987, by a Judge of the District Court of Nicosia, acting under the provisions of section 3 of the Criminal Procedure (Temporary Provisions) Law 1974, (Law No 42 of 1974), without holding a preliminary inquiry

Copy of the statements and other exhibits were handed over to him and upon the application of the prosecuting officer and after hearing counsel appearing for the appellant, the learned trial Judge refused bail and remanded him in custody until his trial

In the exercise of her discretion the learned trial Judge took into consideration the seriousness of the offences with which the appellant was charged, the punishment prescribed by Law and the nature of the contents of the evidence which was placed before her and on the basis of which the appellant was committed for trial and as she added «in the absence of any other exceptional circumstances» She relied on the legal principles expounded in the case of the *Attorney-General of the Republic v Yousouf Yousouf Mehmet*, (1966) 2 C L R 12 and on the statement of the Law made, by reference to the authorities, in the textbook of Criminal Procedure in Cyprus by A N Loizou and G Pikiş, pp 34-37

The appellant was charged with three counts, the first two were for possessing two firearms, the importation of which is prohibited by Law, contrary to sections 2, 3(1)(a)(b)(c), 2(b), and 28 of the Firearms Law 1974 (Law No 38 of 1974), as amended by Law No 27/78, and the third one for possession of 49 rounds of ammunition of 303 and 45 rounds of ammunition of 9 m m , contrary to sections 2 and 4(1)(3), 4(d) and 5(a)(b), of the Explosive Substances Law, Cap 54, as amended by Law No 27 of 1978

The sentence provided by Law in respect of which offences contained in the first two counts is one of 15 years imprisonment and for the third count ten years imprisonment

We do not consider it proper to comment on the nature of the

evidence against the appellant as the learned committing Judge had the opportunity of going through it and form an opinion as to the extent of the implication of the appellant.

5 As it has been repeatedly stated, this Court sitting on appeal will only interfere with the exercise of judicial discretion in matters relating to bail by a committing Judge or a trial Judge if it is persuaded that such a Judge acted on a wrong principle of Law or failed to take into consideration what he ought to have taken or he took into consideration matters which he should not have taken.

10 In the present case we find no reason to interfere with the exercise of the committing Judge's discretion as she relied on the proper principles of Law. The severity of the punishment provided by Law and the extent of the implication of the appellant, as well as the likelihood of the sentence to be imposed, are most material
15 considerations in deciding for or against the remand in custody of a person committed for trial by the Assize Court. Needless to say that in cases of serious offences such as for example cases involving firearms subversion trafficking of narcotics et cetera, bail should in general be granted only if exceptional circumstances
20 justify such a course.

For all the above reasons this appeal is dismissed.

Appeal dismissed.