

# CASES

DECIDED BY

## THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL  
FROM THE ASSIZE COURTS AND DISTRICT COURTS.

[VASSILIADES, P. TRIANTAFYLLIDES AND JOSEPHIDES, JJ.]

MICHAEL ANTONI PETRI.

v.

THE POLICE,

*Applicant,*

*Respondents.*

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*(Criminal Application No. 6/67)*

*Criminal Procedure—Bail—Bail pending appeal—Power of the Supreme Court to grant such bail—Discretionary power which should only be used sparingly and in exceptional circumstances—Matters to be considered—The Criminal Procedure Law, Cap. 155, section 157 (1)—Corresponding English provisions: The Criminal Appeal Act 1907, section 14 (2)—English principles can form a useful guide—See, also, herebelow.*

*Bail—Bail pending appeal—Position of applicant different from that of an unconvicted applicant—Powers of the Court of Appeal—Discretionary powers which should only be used sparingly and exceptionally—See, also, above under Criminal Procedure.*

*Appeal—Bail—Bail pending appeal—See above.*

This is an application for bail under section 157 (1) of the Criminal Procedure Law, Cap. 155, made on behalf of the applicant, after the filing of his appeal against conviction by the President of the District Court of Nicosia on four counts as follows :

(a) Two counts for breach of trust by a public officer contrary to section 133 of the Criminal Code, Cap. 154 ;

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- (b) A count for attempt to induce payment of money by false pretences contrary to sections 298 and 366 of the Criminal Code ; and
- (c) A count for fraud by public officer contrary to section 133 of the Criminal Code, arising out of the same transaction as in the previous counts.

The applicant was sentenced to twelve months imprisonment on the 29th December, 1967, immediately after his conviction.

Section 157 (1) of the Criminal Procedure Law, Cap. 155 reads as follows :

“ 157. (1) Subject to the provisions of sub-section (2) of this section, any Court exercising criminal jurisdiction may, if it thinks proper, at any stage of the proceedings, release on bail any person charged or convicted of any offence, upon the execution by such person of a bail bond as in this Law provided.”

In refusing the application for bail, the Court :—

*Held*, (1) considering the wording of the section (*supra*), we take the view that this Court after the lodging of an appeal, is clearly a Court exercising criminal jurisdiction within the provisions of the section in question : and that consequently it has power to grant bail “ if it thinks proper ” at any stage of the proceedings.

(2) The power of the Court under this section is a discretionary power as stated and held in a number of cases (see *Rodosthenous and Another v. The Police* 1961 C.L.R. 50 ; *Tsouka v. The Police*, 1962 C.L.R. 261 ; *The Attorney-General v. Ibrahim*, 1964 C.L.R. 95 ; *The Attorney-General v. Yousouf Mehmet* (1966) 2 C.L.R. 12).

(3) (a) The corresponding provision in England on the powers of the Court of Criminal Appeal to grant bail is section 14 (2) of the Criminal Appeal Act 1907. (Note : The sub-section is fully set out *post* in the judgment).

(b) The approach of the English Court in such proceedings is that the discretionary power of the Court should only be sparingly exercised in exceptional circumstances : and this approach is well-understandable with cases after conviction and sentence of the applicant whose position is different from that of an unconvicted applicant.

(c) Cases to be considered as exceptional for the purposes of bail after conviction in England are usually : (a) where leave to appeal has been granted and there seems to be a strong likelihood that the appeal will succeed ; and (b) where there is a risk that otherwise the sentence will have been served by the time the appeal is heard, or very shortly thereafter, and the appeal is at any rate arguable. Bail might, also, be granted in some cases where the nature of the offence and of the offender is such that there is no risk of any further offence being committed during bail and no question but that the appellant will surrender when his appeal is to be heard.

(4) (a) We think that the above principles can form a useful guide in deciding whether the present case is a proper one for bail after conviction under section 157 (*supra*). As far as the research of counsel before us went, no reported Cyprus case was traced where bail has been granted in similar circumstances.

(b) We agree with the submission of counsel for the applicant that this is a case of quite some complexity and that the charge on which the applicant has been convicted does not appear to have a precedent in this country and it is of rather rare occurrence even in England. Moreover there are indeed serious issues arising for consideration, including an apparent irregularity of the procedure at the trial which may be found to go to the root of the matter. It is also correct and undisputed that the applicant is a man of previously excellent character, and that there is no question of his absconding.

(5) Having weighed all the above matters together with the submissions of counsel on either side and bearing in mind that the power to grant bail should only be used sparingly and exceptionally, we have decided, not without some difficulty, that the proper course would be to refuse bail, but at the same time to give special directions for an early trial so as to eliminate as much as possible the element of delay.

*Bail refused. Directions  
to Registrar for a speedy  
trial.*

Cases referred to :

*Rodosthenous and Another v. The Police* 1961 C.L.R. 50 ;  
*Tsouka v. The Police* 1962 C.L.R. 261 ;  
*The Attorney-General v. Ibrahim* 1964 C.L.R. 95 ;  
*The Attorney-General v. Yousouf Mehmet* (1966) 2 C.L.R. 12.

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### Application for bail.

Application for bail, under section 157 (1) of the Criminal Procedure Law, Cap. 155, pending the hearing of an appeal against conviction and sentence of twelve months' imprisonment on two counts for breach of trust by a public officer contrary to section 133 of the Criminal Code Cap. 154, a count for attempt to induce payment of money by false pretences contrary to sections 298 and 366 of the Criminal Code and a count for fraud by public officer contrary to section 133 of the Criminal Code, arising out of the same transaction as in the previous count.

*Sir P. Cacoyiannis* with *E. Efstathiou*, for applicant.

*L. Loucaides*, Counsel of the Republic, for the respondents.

The judgment of the Court was delivered by :

VASSILIADES, P. : This is an application for bail under section 157 (1) of the Criminal Procedure Law, Cap. 155, made on behalf of the appellant, after the filing of his appeal against conviction by the President of the District Court of Nicosia on four counts (out of nineteen in the charge sheet) as follows :

- (a) Two counts for breach of trust by a public officer contrary to section 133 of the Criminal Code ;
- (b) A count for attempt to induce payment of money by false pretences contrary to sections 298 and 366 of the Criminal Code ; and
- (c) A count for fraud by public officer contrary to section 133 of the Criminal Code, arising out of the same transaction as in the previous count.

The applicant was sentenced to 12 months imprisonment in respect of the three counts, for breach of trust and fraud, under section 133 ; no sentence was imposed in respect of the attempt to induce payment of money by false pretences as it arose out of the same facts as one of the other three counts. The applicant was convicted on the 29th December ; and was sentenced immediately after conviction. He lodged an appeal against conviction and sentence on the same day, and filed this application for bail to this Court on the following day.

The first question which falls to be determined is whether this Court has power to grant bail in such circumstances

The relevant statutory provision upon which the application is based, is section 157 (1) of the Criminal Procedure Law Cap. 155 which reads as follows :

“ 157.—(1) Subject to the provisions of subsection (2) of this section, any Court exercising criminal jurisdiction may, if it thinks proper, at any stage of the proceedings, release on bail any person charged or convicted of any offence, upon the execution by such person of a bail bond as in this Law provided.”

That this Court has power to grant bail, under this section, after the lodging of an appeal, was conceded by counsel appearing on behalf of the respondents. Considering the wording of the section, we take the view that this Court after the lodging of an appeal, is clearly a Court exercising criminal jurisdiction within the provisions of the section in question ; and that consequently it has power to grant bail “ if it thinks proper ” at any stage of the proceedings. The power of the Court under this section is a discretionary power as stated and held in a number of cases to which we need not now specifically refer. (*Rodosthenous and Another v. The Police* 1961 C.L.R. 50; *Tsouka v. The Police* 1962 C.L.R. 261 ; *The Attorney-General v. Ibrahim* 1964 C.L.R. 95 ; and *The Attorney-General v. Yousouf Yousouf Mehmet* (1966) 2 C.L.R. 12.

The corresponding provision in England on the powers of the Court of appeal to grant bail is section 14 (2) of the Criminal Appeal Act 1907, which provides that :

“ The Court of Criminal Appeal may, if it seems fit, on the application of an appellant admit the appellant to bail pending the determination of his appeal.”

The approach of the English courts in such proceedings is that the discretionary power of the Courts should only be sparingly exercised in exceptional circumstances ; and this approach is well-understandable with cases after conviction.

This approach is based, *inter alia*, on the consideration that the applicant already stands convicted and sentenced and his position is different from that of an unconvicted applicant. There is, generally speaking, greater temptation to abscond after conviction.

Cases to be considered as exceptional for the purposes of bail after conviction in England are usually : (a) where leave to appeal has been granted and there seems to be

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a strong likelihood that the appeal will succeed ; and (b) where there is a risk that otherwise the sentence will have been served by the time the appeal is heard, or very shortly thereafter, and the appeal is at any rate arguable. In this connection delay in the preparation of the record and setting the appeal for hearing becomes a material factor to be considered. Bail might, also, be granted in some cases where the nature of the offence and of the offender is such that there is no risk of any further offence being committed during bail and no question but that the appellant will surrender when his appeal is to be heard.

We think that these principles can form a useful guide in deciding whether this case is a proper one for bail after conviction under section 157. As far as the research of counsel before us went, no reported Cyprus case was traced where bail has been granted in similar circumstances.

The grounds in the application for bail, are set out in the two affidavits filed in support of the application. On the other hand counsel appearing for the Attorney-General opposed the application on the ground that this is not an exceptional case.

We agree with the submission of learned counsel for applicant that this is a case of quite some complexity and that the charge on which the applicant has been convicted does not appear to have a precedent in this country and it is of rather rare occurrence even in England. Moreover there are indeed serious issues arising for consideration, including an apparent irregularity of the procedure at the trial which may be found to go to the root of the matter. It is, also correct and undisputed that the applicant is a man of previously excellent character, and that there is no question of his absconding.

Counsel for the respondent in dealing with the question of bail has conceded that if this case were to be heard as late as May next, it could well amount to an exceptional case warranting the granting of bail on the ground of such delay, but if the case were to be heard as early as March it would only be a border-line case, as far as delay is concerned, and then he submitted, it should not be considered as an exceptional case warranting the granting of bail.

Having weighed all the above matters together and bearing in mind that the power to grant bail should only be used sparingly and exceptionally, we have decided, not without some

difficulty, that the proper course would be to refuse bail, but at the same time to give special directions for an early trial so as to eliminate as much as possible the element of delay.

And we hereby direct the Registrar to fix the appeal for hearing on the 6th February, to continue, if necessary, thereafter from day to day. We, moreover direct that all necessary steps be taken forthwith to have the record ready for the parties by the 26th January. We are giving the date of hearing from now so as to give the longest possible notice to counsel for the preparation of their case. We may add that if for any unforeseen reason it may not be possible for the case to be heard as fixed, a new application for bail may be made.

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*Bail refused. Directions to  
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