

NEOPTOLEMOS GEORGHIOU LEFTIS,

Appellant,

v.

THE POLICE,

Respondents.

NEOPTOLEMOS
GEORGHIOU
LEFTIS

v.

THE POLICE

(Criminal Appeal No. 3441).
(Criminal Application No. 3/73).
(Civil Application No. 9/73).

*Bail—Application for release on bail pending trial by an Assize Court—
Judge below declining to deal with said application on the ground
that, upon his committal for trial, the accused (Applicant) was
earlier remanded in custody by another Judge—Said Judge under
a legal duty to deal with the fresh application—Section 157 of the
Criminal Procedure Law, Cap. 155—Order of mandamus directed
to the Judge requiring him to deal with the application for bail
and decide it on its merits forthwith.*

*Mandamus—Order for—It will, as a general rule, be refused when
there is an alternative specific remedy at law which is not less
convenient, beneficial and effective—Cf. further supra.*

Criminal Procedure—Bail—See supra.

On April 10, 1973, the Appellant-Applicant (*infra*), who was then in custody till his trial by an Assize Court in Nicosia, applied to the District Court of Nicosia for an order releasing him on bail until his said trial. He had been committed for trial on March 6, 1973, the committing Judge making then the relevant order for remand in custody. His said application of April 10, was dealt with by a Judge other than the one who made the order for remand of March 6 (*supra*); the Judge held that as there had been made an order for remand in custody and as such order was still in force he had no jurisdiction, as a Judge of first instance, to examine the circumstances in which the earlier order had been made and to proceed, then, to make himself a new order in the matter. The Applicant has appealed against this decision and he has also applied to this Court for an order of mandamus directing the Judge to deal with the merits of his application for release on bail. The Supreme

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Court hearing together the said appeal and application made an order of mandamus as applied for.

Held, (1). The learned Judge erred in approaching the application for release on bail; he had not been called upon to review the remand order of March 6, 1973; all that was expected of him was to decide whether or not, in the light of the new situation on which the application before him—that of April 10, 1973—had been based, the Applicant ought to be released on bail pending his trial.

(2) This course involved the exercise by the Judge of first instance of jurisdiction in the light of the facts placed before him and if he decided that it was proper to release the Applicant on bail this would not have amounted to setting aside the previous remand order, but to making a new, further, order in the matter.

(3) And it would not be correct to say that after a person has been remanded in custody, on being committed by a Judge of a District Court for trial by an Assize Court, he should have no right to seek his release on bail pending his trial by applying either to the committing Judge or to another Judge on the ground that circumstances have arisen in the meantime which justify his release on bail.

(4) (a) It is correct to say that this Court in the exercise of its discretion, will refuse as a general rule an order of mandamus when there is an alternative specific remedy at law which is not less convenient, beneficial and effective (see *R. v. Poplar Borough Council* (No. 1) [1922] 1 K.B. 72, at p. 85). But, whether or not in a case such as the present one we possess jurisdiction to deal with the decision of the Court below on appeal, or to grant, directly, bail, are issues on which we are not prepared to pronounce without hearing further argument from counsel, on another date.

(b) On the other hand we have no doubt that, as, because of the provisions of section 157 of the Criminal Procedure Law, Cap. 155, the Judge below had a legal duty to deal with the merits of the application of April 10, 1973, for bail and as the matter is of an urgent nature, the more effective remedy in the circumstances, is an order of mandamus, which we accordingly make.

Order accordingly.

Cases referred to:

R. v. Poplar Borough Council (No. 1) [1922] 1 K.B. 72, at p. 85.

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Appeal, Application for mandamus and Application for bail.

Appeal, application for an order of mandamus and application of bail arising out of the decision of the District Court of Nicosia (A. Ioannides, Ag. D.J.) made on the 19th April, 1973, whereby Appellant's application for an order releasing him on bail until his trial in Criminal Case No. 337/73 was refused.

E. Efstathiou with *C. Indianos*, for the Appellant.

N. Charalambous, Counsel of the Republic, for the Respondents.

The judgment of the Court was delivered by:—

TRIANTAFYLLIDES, P.: We shall proceed to deliver judgment in relation to criminal appeal No. 3441, criminal application No. 3/73 and civil application No. 9/73, which we have heard together in view of their nature; they have all been filed by one and the same person to whom we shall be referring as "the Appellant".

On the 10th April, 1973, the Appellant, who is in custody till his trial by an Assize Court in Nicosia, on the 7th May, 1973, in respect of a charge of unlawful possession of firearms, applied to the District Court of Nicosia for an order releasing him on bail until his trial. He had been committed for trial on the 6th March, 1973, but on that date he did not apply for bail as he had been already remanded in custody earlier, in respect of a charge for another offence, which was, also, to be tried by an Assize Court. He was, later on, acquitted of that other offence; and, on the same day, he applied to be released on bail, as aforesaid.

His application was dealt with by a Judge other than the one who had committed him for trial on the 6th March, 1973; the Judge held that as there had been made an order for the remand in custody of the Appellant and as such order was still in force he had no jurisdiction, as a Judge of first instance, to examine the circumstances in which that earlier order had been made and to proceed, then, to make, himself a new order in the matter. The Appellant has appealed against this decision (by means of criminal appeal No. 3441) and he has also applied (by means

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of civil application No. 9/73) for an order of mandamus requiring the Judge to deal with the merits of his application for release on bail, and he has filed, too, an application (criminal application No. 3/73) requesting to be released on bail by the Supreme Court.

We are of the opinion that the learned Judge erred in approaching, as aforementioned, the basic issue before him; he had not been called upon to review the remand order of the 6th March, 1973; all that was expected of him was to decide whether or not, in the light of the new situation on which the application before him—that of the 10th April, 1973—had been based, the Appellant ought to be released on bail pending his trial; this course involved the exercise by the Judge of first instance jurisdiction in the light of the facts placed before him and if he decided that it was proper to release the Appellant on bail this would not have amounted to setting aside the previous order, but to making a new, further, order in the matter. It would not be correct to say that after a person has been remanded in custody, on being committed by a District Court for trial by an Assize Court, he should have no right to seek his release on bail pending his trial by applying to the District Court (either to the committing Judge or another Judge) on the ground that circumstances have arisen in the meantime which justify his release on bail.

As stated already, the decision complained of in this case has been challenged not only by way of appeal, but, also, a fresh application to us for bail has been made, and there is being sought, too, an order of mandamus directed to the Judge concerned and requiring him to deal with the merits of the Appellant's application to him, of the 10th April, 1973.

It is stated in Halsbury's Laws of England, 3rd ed., volume 11, paragraph 200, p. 107, that "the Court will as a general rule, and in the exercise of its discretion, refuse an order of mandamus when there is an alternative specific remedy at law which is not less convenient, beneficial, and effective" (and see, also in this respect, *R. v. Poplar Borough Council (No. 1)* [1922] 1 K.B. 72, at p. 85). Whether or not, in a case such as the present one, we possess jurisdiction to deal with the decision of the Court below on appeal, or to grant, directly, bail, are issues on which we are not prepared to pronounce without hearing further arguments from counsel, on another date; on the other hand, we have no doubt that, as, because of the provi-

sions of section 157 of the Criminal Procedure Law, Cap. 155, the Judge had a legal duty to deal with the merits of the application of the Appellant made on 10th April, 1973, and as the matter is of an urgent nature, the more effective remedy, in the circumstances, is an order of mandamus, which we accordingly make.

An order of mandamus is, therefore, directed to the Judge concerned requiring him to deal with the said application and decide it on its merits forthwith.

Once the subject matter of the criminal appeal and criminal application, which were being heard together with the civil application for mandamus, has been dealt with as above, no useful purpose would be served by proceeding further with the said appeal and criminal application and proceedings therein have to be, and are hereby, stayed.

Order accordingly.

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