

1977
April 16

[TRIANAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, JJ.]

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LOIZOS SAVVA
AND ANOTHER
(NO. 2)

LOIZOS SAVVA AND ANOTHER (NO. 2),

Appellants,

v.

v.
THE POLICE

THE POLICE,

Respondents.

(Criminal Appeals Nos. 3794, 3795).

*Bail—Committal for trial by Assizes for homicide—Refusal of bail—
Seriousness of offence—Appellants will not be hampered in the
preparation of their defence if they are to stay in custody—Article
12.5(b) of the Constitution and Article 6(3)(b) of the European
Convention on Human Rights—Even though trial Judge has given
undue weight to the strength of the evidence against the appellants,
the decision to refuse bail was the right one on the basis of all
relevant factors.*

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The appellants were refused bail pending trial after they had
been committed to be tried for homicide by the Nicosia Assizes.

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The main reason for which bail was refused was that there
could not be excluded the likelihood that the appellants would
fail to appear at their trial. The Judge reached this conclusion
by taking into account the seriousness of the offence of homicide
and the severity of the punishment that may be imposed on the
appellants if they were convicted of it; also, he seems to have
been influenced, in refusing bail, by what he described as the
strength of the evidence against the appellants.

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Upon appeal against the refusal of bail:

Held, (1) that this Court has not been satisfied that if the
appellants are to stay in custody, pending their trial, they will be
hampered in the preparation of their defence in such a manner
as would entail a contravention of Article 12.5(b) of the Constitu-
tion, or of the corresponding Article 6(3)(b) of the European
Convention on Human Rights, which forms, too, part of the law
of Cyprus, and has, particularly, noted, in this respect, the
unequivocal pledge given by counsel for the respondents that
he will take steps to ensure that the appellants, while in custody,
shall be facilitated as much as possible in preparing their defence.

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5 (2) That in the light of the above and, on the one hand, bearing in mind the seriousness of the charge against the appellants, while, on the other hand, not having lost sight of the fact that through no fault of the appellants quite a long time has elapsed between the commission of the offence in question and the bringing of the case before the Courts, this Court still remained unconvinced—and it was up to the appellants to convince it about it—that in this instance it should interfere with the refusal of the Judge to allow the appellants out on bail pending the trial.

10 (3) That, even though the Judge has given undue weight to the factor of the strength of the evidence against the appellants his eventual decision to refuse bail, was, nevertheless, the right one on the basis of the totality of all the relevant factors; and that, accordingly, the appeals will be dismissed.

15 *Appeals dismissed.*

20 *Per curiam:* Any decision regarding bail holds good so long as the circumstances in which it has been taken continue to exist; so, if between now and the trial there arises any situation which is of such a nature as to warrant a new application for bail, in view of materially changed circumstances, counsel for the appellants are at liberty to apply afresh before a Judge of the District Court and the matter will have to be dealt with, again, on its merits.

Appeal against refusal to grant bail.

25 Appeal by Loizos Savva and Another against the refusal of the District Court of Nicosia (A. Ioannides, D.J.) dated the 17th March, 1977, to release the appellants on bail after they had been committed for trial before the Assize Court of Nicosia for the offence of homicide in Criminal Case No. 3115/77.

30 *L. N. Clerides* with *A. Papacharalambous*, for appellant 1.

C. Indianos, for appellant 2.

A. Evangelou with *A.M. Angelides*, Counsel of the Republic, for respondents.

The judgment of the Court was delivered by:—

35 TRIANTAFYLIDIS, P.: The appellants seek to set aside the decision of a District Judge by means of which they were refused bail pending trial after they had been committed by him to be tried for homicide by the next Nicosia Assizes, which will sit as from May 9, 1977.

The main reason for which bail was refused by the Judge was that there could not be excluded the likelihood that the appellants would fail to appear at their trial; and this is, indeed, a proper consideration for which bail can be refused. The Judge reached this conclusion by taking into account the seriousness of the offence of homicide and the severity of the punishment that may be imposed on the appellants if they are convicted of it; also, he seems to have been influenced, in refusing bail, by what he described as the strength of the evidence against the appellants; he, obviously, had in mind, in this respect, the summaries of the statements of the prosecution witnesses, which were made available to the appellants in the course of committing them for trial without holding a preliminary inquiry.

There can be no doubt that homicide is a very serious offence; and, though we are not prepared to hold that whenever a person is charged with homicide he should invariably be refused bail pending trial, we do think that it was reasonably open to the Judge to take such a view in the present instance.

As regards, however, the factor of the strength of the evidence we are of the opinion that the Judge has wrongly given undue weight to it, in the sense that the evidence on the basis of which the appellants were committed for trial is not of such a nature as to deprive the appellants of all reasonable expectation of being possibly acquitted and to make them, consequently, feel more or less certain that they will be convicted, with the result that they will, in all probability, decide to try to evade their trial.

It is not, however, inevitable that, whenever in the exercise of judicial discretionary powers concerning bail a certain factor is given undue weight, the decision, which is the outcome of such exercise, should be set aside on appeal; it may still be proper to pronounce that on the basis of a proper evaluation of all relevant considerations bail should have been, and should be, refused.

In the present instance we must stress, first, that we have not been satisfied that if the appellants are to stay in custody, pending their trial, they will be hampered in the preparation of their defence in such a manner as would entail a contravention of Article 12.5(b) of the Constitution, or of the corresponding Article 6(3)(b) of the European Convention on Human Rights, which forms, too, part of the law of Cyprus. We have, particu-

larly, noted, in this respect, the unequivocal pledge given by counsel for the respondents that he will take steps to ensure that the appellants, while in custody, shall be facilitated as much as possible in preparing their defence; as, for example, by tracing
5 and making available to meet counsel for the appellants, and even the appellants themselves if their counsel deem this necessary, any potential defence witness who is not already a witness for the prosecution; or, by responding to any reasonable request
10 of counsel for the appellants for arrangements enabling their clients to visit with their counsel, and, of course, with appropriate police escort, the locus of the commission of the offence with which they are charged, or any other place relevant to the preparation of their defence, so that the appellants will be in a position to give all necessary relevant instructions to their
15 counsel.

In the light of the foregoing and, on the one hand, bearing in mind the seriousness of the charge against the appellants, while, on the other hand, not having lost, at all, sight of the fact that
20 through no fault of the appellants quite a long time has elapsed between the commission of the offence in question and the bringing of the case before the Courts, we still remain unconvinced—(and it was up to the appellants to convince us about it)—that in this instance we should interfere with the refusal of the Judge to allow the appellants out on bail pending the trial;
25 we are, on the contrary, of the view that, even though, as already found by us, he has given undue weight to a particular aspect of the matter before him, his eventual decision to refuse bail, was, nevertheless, the right one on the basis of the totality of all the relevant factors.

30 As a result these appeals are dismissed.

We should point out, before concluding this judgment, that any decision regarding bail holds good so long as the circumstances in which it has been taken continue to exist; so, if
35 between now and the trial there arises any situation which is of such a nature as to warrant a new application for bail, in view of materially changed circumstances, counsel for the appellants are at liberty to apply afresh before a Judge of the District Court and the matter will have to be dealt with, again on its merits.

Appeals dismissed.