

1988 August 10

(A LOIZOU, P., DEMETRIADES, PIKIS, JJ.)

GEORGHIOS LOUKAIDES AND OTHERS,

*Appellants,*

v.

THE POLICE,

*Respondents.*

*(Criminal Appeals Nos. 5017, 5018, 5019, 5020).*

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5 *Bail — Committal to trial by Assize — Principles governing the exercise of the discretion of the Court in granting or refusing bail — Likelihood of accused attending his trial the main, but not the only consideration — How the forecast of this likelihood may be made — Gravity of offence and strength of evidence are factors relevant to such forecast — Possibility of another offence being committed or of tampering with witnesses are also considerations relevant to the exercise of the discretion.*

10 *Bail — Exercise of discretion — Court may rely on the evidence adduced at the preliminary inquiry or, if such inquiry has been dispensed with, on the material placed before it — If, however, there exists other evidence wherefrom conclusions may be drawn (e.g. efforts by accused to obtain a passport), such evidence may be adduced as separate evidence.*

15 *Bail — Exercise of discretion by trial Court — Interference with such exercise on appeal — Principles applicable.*

The facts of this case appear in the judgment of the Court.

*Appeals dismissed.*

*Cases referred to:*

20 *Attorney-General v. Mehmet*, (1966) 2 C.L.R. 12;

*Police v. Nicola*, 7 C.L.R. 14;

*Rex v. Solomonides and 11 Others*, 14 C.L.R. 127;

*Varellas v The Police*, 19 C.L.R. 46.

*Rodosthenous and Another v The Police*, 1961 C.L.R. 50,

*Savva v. The Police* (1977) 2 C.L.R. 292;

*Papakleovoulou v. The Police* (1978) 2 C.L.R. 446.

*Re Ellinas* (1988) 1 C.L.R. 57

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#### Appeals against remand order.

Appeals by Georghios Loukaides and Others against the order of the District Court of Limassol (Pampallis, Ag. D.J.) dated 4th July, 1988 whereby accused were remanded in custody till the 20th September, 1988 for trial by the next Limassol Assizes.

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*K. Savenades*, for the appellant in Criminal Appeal 5017.

*L. Detathiou*, for appellant in Criminal Appeals Nos. 5018, 5019.

*F. P. coui*, for appellant in Criminal Appeal No 5020.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondents

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A. LOIZOU F gave the following judgment of the Court. In appeals of this nature against the judgment of the trial Judge by which he refused to release on bail the appellants until the date of their trial by the Assize Court, the main duty of this Court is to determine whether the trial Judge exercised his discretionary power properly guided by the relevant principles of Law and taking into consideration the facts he ought to have taken, or not taking into consideration those that he ought to have excluded. Such appeals can neither be a second attempt for release on bail, nor succeed by the substitution of the approach of the trial Judge by the view which this Court could have formed for the same circumstances.

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With this in mind we have listened to the learned counsel of the appellants on all points which they argued before us and we have come to the conclusion that these appeals should be dismissed.

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The learned trial Judge exercised his discretionary power correctly and he was guided by our Case Law and the principles enunciated therein. He also approached the facts in the proper manner and as he himself observes and says at the end of his judgment, he had studied the application of the defence, bearing

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in mind the seriousness of the offences for which they are charged, the sentence provided by law in case of conviction, the nature of the evidence adduced and was placed before him as Exhibit «C» for the purpose of committing the appellants for trial without  
5 holding a preliminary inquiry, and came to the conclusion that he could not exclude the likelihood of other offences being committed, or their not attending at their trial and added that on the basis of all these it was in the interests of justice to refuse the application of the appellants for release on bail.

10 It is clear from the reference to the various authorities which he made that our Case Law, which we fully adopt, has propounded certain principles. We would like to refer first to the case of *The Attorney-General of the Republic v. Yousouf Mehmet* (1966) 2 C.L.R. 12 where the power of a Judge to grant bail as prescribed  
15 by s.157(1) of the Criminal Procedure Law Cap.155 was held to be a discretionary one. This principle was expressed in three other cases, namely *Police v. Stavros Nicola*, 7 C.L.R. 14; *Rex v. Solomonides and eleven others*, 14 C.L.R. 127; *Varellas v. Police*, 19 C.L.R. 46.

20 The next case is that of *Lefkios Rodosthenous and Another v. The Police*, 1961 C.L.R. 50 at pp.51, 52 where it was established that the primary ground in considering bail is whether or not the accused is likely to attend and stand trial. That, however, not being the only matter that has to be considered; and that amongst others  
25 are the seriousness of the offence, the likelihood of another offence being committed or the same offence being repeated while on bail, and the possibility of witnesses being tampered with. And that this Court on appeal will not interfere with the discretion of a trial Judge or lower Court except for grave reasons and in  
30 exceptional cases.

Reference may also be made to the cases of *Loizos Savva v. The Police* (1977) 2 C.L.R. 292 at p. 295; and *Papakleovoulou v. The Police* (1978) 2 C.L.R. 446 at p. 449 where the principles expressed in *Rodosthenous Case* (supra) were adopted and  
35 followed.

Needless to say that these are not the only cases in which the principles governing the question of release on bail or not have been established, but it may be said that in all of them the same principles are propounded. Learned counsel for the appellants  
40 have referred us to «Criminal Procedure in Cyprus» by Loizou and

Pikis, and we would like to refer to one passage from p. 36 which we fully adopt. It reads:

«....The main consideration is the likelihood of the accused attending his trial. A forecast of this likelihood may be made, inter alia, on a consideration of the gravity of the offence and the strength of the evidence as it may emerge before the Court, factors that normally shed light on the possibility of the accused failing to attend his trial. However, though the likelihood of the accused attending his trial is the main consideration to which the Court will have regard, it is not the only consideration, and the Court may properly have regard to such other factors as the possibility of another offence being committed in the meantime and the likelihood of the accused's tampering with witnesses. In making an assessment of the strength of the evidence against the accused, the Court may have regard to the evidence given in the preliminary inquiry. The principles formulated in *Rodosthenous and Another v. The Police* (supra), along the lines of English decided cases, were adopted and applied by the Supreme Court in *Attorney-General v. Mustafa Ibrahim and Others*, 1964 C.L.R. 195. In *Tsouka v. The Police*, 1962 C.L.R. 261, the Supreme Court upheld the Judge's refusal to admit the accused to bail, in the face of evidence that there was a possibility of the accused committing another offence in the meantime and that the life of the accused would, if released, be in danger. This decision illustrates that ancillary considerations such as those noted above may have a decisive effect on the outcome of an application for bail.»

The learned trial Judge referred also to the case of *In Re Yiannakis Ellinas*, (1988) 1 C.L.R. 57. He did so in response to the argument of the defence that the likelihood of the accused not attending their trial and the possibility of witnesses being tampered with, was merely a statement of the prosecution. This case however, has no direct relevance to the case in hand, as we are not examining here the sufficiency of the evidence for committal but the force of the evidence and the likelihood of the appellants being convicted. Moreover the foreseeability is not based on the sufficiency, but on the force of the evidence. That is we examine

the nature of the offence, the likelihood of conviction and the possibility of the appellant receiving a serious sentence. On the totality of the circumstances we have come to the conclusion that in the present case the learned trial Judge had this in mind in  
5 examining the question whether he would release the appellants on bail or not.

The case against the appellants, that is the charge which is common for all, is that of conspiracy to commit the offence of forgery contrary to s.371 of the Criminal Code and punishable  
10 with seven years' imprisonment which links all of them to such a degree that there does not exist a question of differentiation between them and it cannot be said that there exists any indication in the judgment of the trial Judge that he was affected by the fact that two of the appellants are charged with the offence of forgery  
15 contrary to section 336 of the Code which carries a term of imprisonment for life and that he overlooked the fact that the other two are charged with a lesser offence.

All kinds of offences with which the appellants are charged either jointly or separately are of a very serious nature, the  
20 evidence appears strong, and the likelihood to receive heavy sentences, if convicted, exists. Consequently we could not conclude that the learned trial Judge went wrong.

What we would like to add is, that in cases where a trial Judge or a Court has to examine if the accused would be released on bail  
25 or not, such likelihood and foreseeability are inferred from the evidence which has already been adduced at the conclusion of the preliminary inquiry or where the procedure dispenses with the holding of a preliminary inquiry from the material which there has been placed before the Judge. There is no need to adduce other  
30 evidence, if same does not exist. If there exists, however, such evidence as to acts from which inferences may be drawn, it may be given as separate evidence. Such evidence may, for example, be in the nature of efforts on the part of the accused to obtain a passport or make other arrangements for travel which may tend to  
35 show that there is a likelihood of his absconding from Cyprus. Also evidence of threats or other behaviour indicative of certain intentions relevant to the conduct that the refusal of bail aims at preventing.

It is for all the above reasons that this Court dismisses all these  
40 appeals.

*Appeals dismissed.*