Republic v Bibi
(1999) SLR 9

Wilby LUCAS for the Republic
Frank ELIZABETH for the accused

[Appeal by the accused was dismissed on 13 August 1998 in C/ 1998]

Ruling delivered on 6 December 1999 by:

PERERA J: This case has been assigned to me for trial with consequent to the earlier trial being aborted while in progress.

Mr Elizabeth, counsel for the accused, making an application f l submitted that his client proposed to appeal against an order of the trial judge in th vious proceedings, and as there was no likelihood of such appeal being heard until 2000, it would be a special circumstance to be considered in granting bail.

However, the proceedings before me for a trial de novo must co e. Hence whatever order that has been made in the previous proceedings would no bearing on an application for bail made in these proceedings.

Section 100(1) of the Criminal Procedure Code (Cap 54) which ded that "when any person, other than any person accused of murder or on is arrested or detained ..... may be admitted to bail" was repealed by the C al Procedure Code (Amendment) Act No 15 of 1995. There is no distinction no ween offenders for murder or treason, and others. As was held by the Court of Ap in the case of *Jean Baptiste Serret v R* (unreported) CA 12/1996 that "section 10 gives the Supreme Court the discretion to admit persons to bail including where fence is murder or treason".

The provisions as to bail are now consistent with the fundar l right to liberty as contained in article 18 of the Constitution. However one of the ations of that right, as provided in article 18(7)(b) is "the seriousness of the of ". The legislative counterpart of that restriction is contained in section 100(5)(b) c Criminal Procedure Code (as amended by Act No 15/1995).

Undoubtedly, the offence of murder is one of the most serious t the most serious, offence in the Penal Code. There is constitutional justification epriving the right to liberty of a person arrested or being detained for allegedly nitting any serious offence.

In the case of *DPP v District Magistrate of Port Louis and another* (1997) SCJ (Mauritius) the Court observed that –

> The established practice of our courts hasbeen consistently to refuse bail to an accused who is formally charged with murder unless there are compelling reasons to decide otherwise ..... such a compelling reason existed, it is noted, in the case of *The Police v G Duval* since the late Sir Gaetan Duval was prosecuted in 1989 for the offence of murder which had allegedly been committed since 18 years back in 1971.

A similar view was expressed by Simpson CJ in the case of *Ngui v Republic of Kenya* [1986] LRC (Const) 308 -

> The practice in Kenya, as in England, is that bail should not as a general rule be granted in cases of murder, particularly since in Kenya, unlike in England, that offence carries the death penalty and the accused may be subject to the temptation to abscond or "jump-bail".
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> ……. In all cases such as the present, lengthy adjournments should be avoided and undue consideration should not be given to the convenience of advocates when the accused is facing a possible death penalty.

In Seychelles the offences of murder and treason were brought under the general category of "serious offence" so that those offenders would not be singled out for discrimination in terms of the right to equal protection of the law. Hence the Court is now able to use its discretion generally. But although the death penalty has been abolished in Seychelles, the possibility of an accused faced with a possibility of a sentence of life imprisonment absconding cannot be underestimated.

In the exercise of its discretion a factor the Court may also consider is the right of the accused to a "fair hearing within a reasonable time" as contained in article 19 of the Constitution. The offence the accused is charged with was allegedly committed on 28 September 1999. The trial commenced on 22 November 1999 and was aborted on 26 November 1999. Counsel for the accused submitted that the reason for stopping the trial was not attributable to any default on the part of the accused and hence this Court ought to consider the prejudice that would be caused to him consequent to any delay that would ensue. Although the term "reasonable time" has not been defined in the Constitution, for the purpose of exercising judicial discretion, what is a reasonable time between arrest and trial must depend on the circumstances of each case. In the case of *R v Joachim Florentine* (unreported) Criminal Side 167/1997 the accused, who was charged with the offence of murder, was on remand from 27 April 1997 until the trial was concluded on 17 July 1997 and was sentenced to life imprisonment. However the Court of Appeal set aside the conviction and sentence and ordered a re-trial. This Court, on a consideration of the prejudice caused to the accused consequent to the delay, granted bail on 6 April 1998.

However that order was subsequently vacated as the accused could not find two sureties to sign the bail bond. Hence he continued to be in custody until the trial de novo

was concluded on 15 June 1998 and was once again convicted and sentenced to a term of life imprisonment.

In the present case, state counsel vehemently opposed the application for bail mainly on the ground that the order of the trial judge in the aborted trial was not appealable. That order is not in the case file before me, and in any event the appealability is a matter to be considered if and when an appeal is filed.

In the meantime, this Court would make necessary arrangements for the trial to commence within a reasonable time. On a consideration of the seriousness of the offence and on a consideration of the fact that there has not been any undue delay in this case, I refuse the application for bail.

Record: Criminal Side No 38 of 1999