

**Republic v Dubignon
(1998) SLR 47**

Romesh KANAKARATNE for the Republic
Frank ELIZABETH & John RENAUD for the accused

Ruling delivered on 23 July 1998 by:

PERERA J: This is an application for bail made while the trial is in progress. Warrant of arrest of the accused was issued by this Court under section 69(1) of the Criminal Procedure Code on 10 February 1998 on an application made by the prosecution. It was submitted that the police were unable to serve charges on the accused who was absconding. On 19 February 1998, the Court being satisfied on the sworn evidence of ASP Ronnie Mousbe regarding the visiting of various places where the accused was known to reside, made an order under section 133(1) of the Criminal Procedure Code permitting the prosecution to adduce the evidence of witnesses in the form of depositions. The depositions of six overseas witnesses were duly recorded on 24 February 1998.

On 13 April 1998, the accused was produced before this Court. It was submitted by the prosecution that the accused had surrendered to the police in the evening of the previous day. Counsel appearing for the accused at that time, Mrs Antao, submitted that he surrendered as soon as he became aware of a radio announcement that his presence was required. Be that as it may, the accused has been on remand since then. Previous applications for bail were refused by this Court on the grounds of (1) the seriousness of the offence (2) the availability of substantial grounds for believing that the accused would fail to appear for the trial or will interfere with the witnesses if released. The trial in the presence of the accused commenced on 1 July 1998 and today is the fourteenth day of trial. The prosecution has already adduced the evidence of 27 witnesses. Counsel for the prosecution has informed the Court that he proposes to close the prosecution case tomorrow. However the witness who is presently testifying, ASP Mousbe, will be proceeding overseas on an official course and will not be available for one week. His cross-examination if not completed today will have to be adjourned to a date when he has returned.

Counsel for the accused has, in supporting the application for bail, emphasised the delay in the trial. It was submitted that the prosecution listed 27 witnesses originally but added 10 more after the trial commenced. It was further submitted that the defence too intended to summon certain witnesses from abroad and hence the trial would be further delayed. The right of the prosecution and the defence to adduce the evidence of any number of witnesses cannot be denied to either party. Article 19(1) of the Constitution gives the right to an accused person to a fair hearing "within a reasonable time." Reasonableness depends on the nature and circumstances of each individual case. As long as there is no purposeful delay, the right to a fair hearing within a reasonable time is not violated.

Counsel for the accused has also referred this Court to article 18(1) of the Constitution which gives every person a right to liberty and security of the person. Article 18(7) provides the derogations in cases where a person is produced in court on a criminal charge. Those derogations are now embodied in section 101(5) of the Criminal Procedure Code as amended by Act 15 of 1995. An application for bail should therefore be made under section 101 of the Criminal Procedure Code and not under article 18(7) of the Constitution.

Counsel for the accused also referred to the cases of *R v Jumaye*, *R v N Padayachy*, and *R v Akbar* wherein this Court granted bail pending trial. In those cases where the charges were based on the Misuse of Drugs Act, bail was granted prior to the commencement of the trial. The accused in those cases were released on bail on strict conditions, and there was the possibility of their bail orders being cancelled if they defaulted any of the conditions imposed.

The accused in the instant case has passed that stage. Bail is now being sought after 27 witnesses for the prosecution have testified against him. The Practice Direction (Crime: Bail during Trial) [1974] 2 All ER 794, though not binding on this Court, provides good guidance for bail applications made once a trial has begun. It states that each case must be decided in the light of its own circumstances and with regard to the judge's assessment from time to time of the risk involved. As a guideline it is suggested that bail may be refused where the court considers that –

- (1) A point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for him or for any other reason.
- (2) There is a real danger that he may interfere with witnesses or jurors.

As a general rule bail is not granted after the "pinch" of the case has been felt. Having those guidelines in mind, and on a consideration that the prosecution case is almost at an end, I find no change in circumstances to justify making an order for bail at this stage of the case.

The application for bail is therefore refused.

Record: Criminal Side No 3 of 1998