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87/76

ROYAL COURT

27 26th November, 1987

Before The Bailiff,

Jurats J.H. Vint and

J.J.M. Orchard.

Her Majesty's Attorney General

-v-

Paul Henriette

Application for Bail

Solicitor General for the Crown

Advocate P.C. Sinel for the applicant.

JUDGMENT

The Bailiff:...."all that can be said in support of this application, we cannot find that the learned Magistrate failed to exercise his discretion judicially. There is a right of appeal of course, but the article which gives the Magistrate right to grant bail requires him to exercise his discretion. The Magistrate exercised his discretion in a way that was unfortunate for your client, but we cannot say it was wrong. The application is dismissed. Having said that, I return to what I said earlier this morning that we must expedite this appeal, and I rely on counsel to do so, certainly the Court will sit at short notice."

In the Royal Court of Jersey

In the year one thousand nine hundred and eighty-seven, the twenty-seventh day of November.

PAUL HENRIETTE - who has appealed against the sentence of six months' imprisonment imposed on him by the Police Court on the 18th November, 1987, and whose application to the Police Court for admission to bail pending the determination of the said appeal has been refused - applied to the Court for admission to bail as aforesaid.

Her Majesty's Solicitor General, acting Attorney General, filed the following answer:-

1. That on the 26th October, 1987, the applicant was presented before the Police Court on five charges.
2. That the applicant, having pleaded guilty to the said charges, was remanded in custody to the 2nd November, 1987.
3. That on the 2nd November, 1987, the applicant was remanded in custody until the 9th November, 1987, and that on the 3rd November, 1987, the applicant, having applied to the Magistrate for admission to bail, was admitted to bail in the sum of £50.00.
4. That the applicant was thereafter remanded at weekly intervals until the 18th November, 1987.
5. That on the said 18th November, 1987, the applicant, having answered to his bail and having renewed his plea of guilty to the charges laid against him, was sentenced by the Magistrate, in respect of the said charges, to terms of imprisonment totalling six months, against which sentence the applicant gave notice of appeal in accordance with the provisions of Article 14 of the Police Court

(Miscellaneous Provisions) (Jersey) Law, 1949.

6. That on the 23rd November, 1987, the applicant applied to the Magistrate in accordance with the provisions of Article 21 of the said law for bail pending the determination of the appeal.

7. That the Magistrate, having considered the submissions of the applicant's advocate, refused the said application.

8. That the said law does not provide for an appeal to the Royal Court against a refusal by the Magistrate to grant bail on an application made under the said Article 21.

9. That in the case of A.G. -v- Chapman (1978) 40 P.C. 413, the Royal Court held that:-

"...it could not entertain such an application or appeal unless it could be shown that the Assistant Magistrate had failed properly to exercise his discretion when he refused to release the applicant on bail pending the determination of the appeal",

but because the Assistant Magistrate had considered the application in chambers, and neither the applicant nor the prosecution had been given the opportunity to be heard, remitted the application to the Assistant Magistrate with a direction that he hear and determine the matter in open Court, and that all parties concerned be given the opportunity to appear and be heard thereon.

10. That in the instant case, the applicant's advocate was heard and it was only thereafter that the Magistrate, in the exercise of his discretion, refused the applicants application for bail.

11. The grounds of the application are that the applicant is "Jersey born, has stable accommodation, a common law wife and a baby son and that employment is available to him if released on bail".

12. That all those factors were, in terms, pleaded before the Magistrate and were properly considered by him before bail was refused.

13. That on the 20th November, 1987, in the case of A.G. -v- Chapron (a similar

application) the judgment of the Court delivered by the Deputy Bailiff was in the following terms:-

"The Court approves and applies the principle of law set down by the Royal Court in the case of A.G. -v- D.H. Chapman 40 P.C. 413 to the effect that this Court will not entertain such an application or appeal unless it could be shown that the Assistant Magistrate had failed properly to exercise his discretion when he refused to release the applicant on bail, pending the determination of his appeal. Applying that principle of law and taking into account everything which has been said to us, we are not satisfied that the Assistant Magistrate erred, we believe that he did properly exercise his discretion. Accordingly the application is dismissed".

14. That the application concludes with a request that the applicant be granted bail on such terms and conditions as the Court thinks fit.
15. That for the aforesaid reasons and as a matter of law, it is not open to the Court to grant the prayer of the application.
16. Wherefore Her Majesty's Solicitor General, acting as aforesaid, requests that the application be dismissed.

Upon hearing the applicant's advocate and the Solicitor General, the Court dismissed the application.

Judicial Greffier.

S.G.

P.C.S.