

ROYAL COURT
(Samedi Division)

78

22nd April, 1994

Before: The Deputy Bailiff, and
Jurats Myles and Vibert

The Attorney General

- v -

Perry James Quirke

Representation by the accused applying to vary bail conditions imposed by the
Magistrate on 29th March, 1994.

Advocate A.D. Hoy for the accused.
The Solicitor General.

JUDGMENT

THE DEPUTY BAILIFF: The applicant, Perry James Quirke, has been committed by the Police Court for trial by this Court on charges of importation and possession of a Class A drug.

5 On 29th March, 1994, he made a successful application to the
Magistrate for bail which was granted, subject to a number of
conditions. The conditions were, apparently, that the representor
- the applicant that is - should provide bail in the sum of £500
10 and report daily to the States of Jersey Police sub-station in
Halkett Place and that he should not leave the Island until
further order.

15 We have been told that the applicant now has a full-time job
which requires him to work between the hours of 7.30 a.m. and
10.00 p.m. during Monday to Friday. It is pointed out that the
sub-station to which he is required to report opens only at 8.00
a.m. and closes at 10 o'clock in the evening, and that
consequently the applicant finds it difficult to comply with the
20 conditions of bail if he is to retain the employment which he has
obtained.

The applicant has not yet been indicted before this Court and it has been put to us that we have no jurisdiction to hear this application pending the laying of the indictment.

5 It has also been suggested that the Police Court does not have jurisdiction to hear the application because the Magistrate has committed the applicant for trial before this Court.

10 We cannot accept the proposition that there is a stage of the proceedings when a defendant is in limbo between the Police Court and this Court so that neither Court has jurisdiction to entertain either an application for bail or an application for variation of the terms and conditions of bail which has been granted. That would appear to the Court to be contrary to justice and indeed to
15 commonsense.

We agree with the Solicitor General that this Court does not have the jurisdiction to entertain an application for bail *de novo* until the indictment has been laid. It has, of course, the power
20 to review the decision of the Police Court and has done so on the application of defendants on innumerable occasions.

It would seem therefore that logically the Police Court must retain jurisdiction until the indictment has been laid. The
25 Solicitor General has drawn our attention, however, to Article 20 of the Loi (1864) réglant la procédure criminelle which provides:

30 **"En tout état de la cause, même lors du renvoi à la Cour Royale, le Juge pourra, s'il y a lieu, admettre le prévenu à donner caution de sa comparution en Justice, et fixera le montant du cautionnement à fournir, soit à la Cour même, soit à l'Officier de la Cour que le Juge désignera."**

The Solicitor has rightly submitted that this Article was
35 considered by this Court in the case of Le Cocq -v- A.G. (1991) JLR 169. We have taken the opportunity in Chambers to read this Judgment and it is true that the Court there referred to it in the following terms at page 178, line 19:

40 **"Article 20 of the 1864 Law provides that at every stage of the case, even at the time of the committal to the Royal Court, the Judge shall be empowered, if appropriate, to admit the accused to bail (to give security for his appearance before the Court) and shall fix the amount of
45 the bail".**

We think that, with respect to the Court as then constituted, this was a mistranslation of the passage in question. In our
50 judgment, the proper translation is:

"...at every stage of the proceedings even when the accused has been committed to the Royal Court ..." (and so on).

5 The jurisdiction of the Magistrate therefore continues until that moment when the Royal Court becomes seized of the matter, that is when the indictment is laid. We are satisfied that the translation of Article 20 in Le Cocq was *obiter*.

10 In this case the Magistrate has not yet been invited to consider the application and no question of review by this Court can therefore arise. In our judgment the Police Court has the jurisdiction to hear this application and the applicant should apply in that forum. The application is therefore dismissed.

Authorities

Le Cocq -v- A.G. (1991) JLR 169 @ 178.

Loi (1864) réglant la procédure criminelle.