



CRIMINAL COURT

**HIS HONOUR THE CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 21st December, 2009

Number 6666/2009

The Police

v.

Scott Dixon

Monday 21st December 2009

The Court:

1. This is a decree pursuant to an application filed by the Attorney General on the 18th instant in terms of sub-article (4A) of Article 575 of the Criminal Code, requesting either the re-arrest of accused Scott Dixon or *in subsidium* the variation of his bail conditions and the imposition of a curfew. The application was set down for hearing before this Court for Saturday 19th December 2009.

2. The said Scott Dixon was arraigned before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on the 9th October 2009 charged with conspiracy in the trafficking of cannabis and cannabis resin, trafficking in cannabis and cannabis resin, possession of the same two illegal substances, and with being in breach of a conditional discharge imposed upon him by the Court of Magistrates on the 14 March 2008 after he had been found guilty of possession of cocaine. In the instant case the Attorney General, acting pursuant to Article 22(2) of the Dangerous Drugs Ordinance, has ordered that the accused Dixon be tried by the Criminal Court, which explains why the Inferior Court proceeded to deal with the case as a Court of Criminal Inquiry and not as a Court of Criminal Judicature.

3. On the 1st December 2009, the accused filed an application for bail, which request was roundly opposed by the Attorney General. The Attorney General, in the said reply (dated 3rd December 2009), referred to the fact that Dixon did not have a fixed address in Malta with the consequent high risk of his leaving the Islands surreptitiously or of absconding. He further alluded to the fact that in this case the maximum punishment for the offences with which the accused was charged was life imprisonment, and therefore there was a higher risk of his disappearing.

4. On the 17th December 2009 the Court of Magistrates (Malta) as a Court of Criminal Inquiry, after hearing submissions by the Police prosecuting officer and by counsel for the accused, Dr Michael Sciriha, and after hearing accused's mother and a prospective employer on oath, allowed Dixon's request and granted him bail under several conditions including, *inter alia*, the condition that he report at the St Julian's Police Station every day between 8.00 in the morning and 8.00 in the evening, that he reside at no. 3 Triq il-Karmnu, St Julian's, and that he deposit by way of security for bail the sum of €15,000 and that he enter into a personal recognizance in the further sum of €25,000. The Inferior Court further allowed that instead of depositing the €15,000 the accused could produce a sufficient surety – that is a third party whom the

court considers to be suitable – who would enter into a written recognizance in the said sum.

5. When giving evidence on Saturday, 19th December 2009 before this Court, Inspector Dennis Theuma explained that applicant Scott Dixon had been arrested in the course of an operation which netted close to half a ton of cannabis (not all of which was in Dixon's possession), and in the course of which a number of other people, including both Maltese and foreigners, were arrested and subsequently charged with offences similar to those with which Dixon stands charged. Dixon was arrested in Scotland under a European Arrest Warrant, which warrant he did not challenge. In Malta he co-operated with the Police investigation. According to the said Inspector, the prosecution's preoccupation stems from the fact that whereas it is true that Dixon has been living in Malta for about three years prior to his arrest, and his mother has been living here for four years, it cannot be said that he has any strong community ties with the Islands. While here in Malta he has had several relationships – even children from these different relationships – and has changed jobs a number of times. Moreover, in view of the international ramifications of the case, the prosecution believes that the Inferior Court should not have been satisfied that there were none of the dangers referred to in sub-article (1) of Article 575 of the Criminal Code.

6. Counsel for Dixon, for his part, stressed the fact that the respondent had not contested his extradition from the UK to Malta, that he co-operated fully with the police investigation as evidenced by the record of the compilation of evidence (and as confirmed by Inspector Theuma in the course of his deposition on Saturday), that his mother was willing to take him to stay with her at her residence, and that a certain Charles Mizzi, who works as a turnkey contractor (and who gave evidence before the Inferior Court on the 2nd December) was willing to employ him if he were to be granted bail.

7. Now, it is trite knowledge that bail proceedings, though not dealing with the merits of a criminal charge, are

nonetheless important and delicate proceedings which should be given proper attention by the court seized of such proceedings, whether in first instance or, as in this case, by way of a request for review. Although strictly speaking there is no “right” to bail, the general rule is that after a person is arraigned in court under arrest, if the court is satisfied that there are none of the dangers mentioned in paragraphs (a) to (e) of sub-article (1) of Article 575 of the Criminal Code, or when these dangers cease to exist or can be satisfactorily neutralised by appropriate bail conditions, then bail is to be granted. Suspicion that a person has committed an offence, while a necessary condition for his arrest and subsequent arraignment in court, does not suffice to justify detention continuing beyond a short initial period, even where the accused is charged with a particularly serious crime and the evidence against him is strong. It is only the existence of the dangers abovementioned – which are to be assessed in the light of the particular circumstances of each case and, in particular, in the light of the nature and seriousness of the offence and of the character, antecedents, associations and community ties of the accused¹ – that can be a bar to the granting of bail. Where bail is denied, it becomes incumbent upon all concerned, that is to say upon the prosecution and the Court, to expedite proceedings – the so called “special diligence rule” in the conduct of the proceedings. When bail is thus refused, the Criminal Code sets time limits, depending on the gravity of the offence with which the accused is charged, within which certain stages of the proceedings, including the determination of the case at first instance, must be reached. If these stages are not reached within those time limits, then bail must be granted. The courts, especially the Magistrates Court must, of course, resist the temptation of granting bail simply in order to avoid the “special diligence rule” and the pressure, in terms of work and time constraints, that necessarily attaches thereto.

¹ Art. 575(1).

8. In the instant case, this Court is satisfied that the Inferior Court applied its mind correctly to the facts of the case with reference to the granting or otherwise of release on bail, and that therefore the decision to grant bail was substantially correct. The dangers to which the legislator adverts in paragraphs (a) to (e) of Article 575(1) of the Criminal Code can, given the circumstances of the case, be reasonably neutralised by the imposition of appropriate bail conditions. What this Court finds fault with are the conditions themselves. This Court has repeatedly stated that it takes a very dim view of the mere recognizance of the person accused (the so-called “personal guarantee”) as a way of giving security in terms of Article 577 of the Criminal Code. Condition number 4 in the Court decree of the 17th December 2009 – that is that the accused “does not commit any crime of a voluntary nature while on bail” – is a non-starter and is absolutely useless (although expressly mentioned in Article 579(1)), since unless there is an immediate admission by the person on bail that he has actually committed such a crime, separate proceedings would be needed to determine whether such a crime has been committed, during which proceedings he would still have to be considered on bail and not in breach of the said condition number 4! As the applicant Attorney General rightly observes, this case also merited the imposition of a curfew. And the address where the accused is supposed to reside is not properly indicated in the decree of the Inferior Court. In fact when the Court Marshall, who was unaware that the respondent was still in prison as he had not yet given security in terms of Article 577, went to serve the court decree setting down the application for hearing for last Saturday, he found at the address given in the bail decree, that is 3, Triq il-Karmnu, St Julian’s, another English gentleman, with no connections whatsoever to Dixon or to this case. When the Court Marshall informed him that this was the address where respondent Dixon was supposed to reside, the said gentleman was understandably very upset. The correct address, as supplied by accused to the Inferior Court, was El Shaddai, Marble Arch Residence, 3 Carmel Street, St Julian’s.

9. For these reasons the Court allows in part the application by the Attorney General, revokes all the conditions as stated in the decree of the Court of Magistrates (Malta) as a Court of Criminal Inquiry of the 17th December 2009, and instead grants temporary release from custody to Scott Dixon in these proceedings under the following conditions:

I. that he abides with and by every order or summons of this Court and of every other Court dealing with these proceedings, or with any question arising out of these proceedings or connected therewith, and that he also appears before the competent Court whenever so ordered by the Executive Police or by any other officer of the Court;

II. that he does not communicate or attempt to communicate in any way, whether directly or indirectly or through third persons, with any prosecution witness;

III. that he resides at El Shaddai, Marble Arch Residence, 3 Carmel Street, St Julian's, and that he does not leave the said residence except between 7.00 in the morning and 7.00 in the evening; and, unless otherwise authorised by a competent court, he is not to leave the confines of St Julian's (the said confines being, for the purposes of this condition, the confines of the jurisdiction of the Local Council of St Julian's), other than as may be strictly necessary for the purpose of complying with condition number I, *supra*;

IV. that he reports twice daily at the St Julian's Police Station between 7.00 am and 7.30 am and between 6.30 pm and 7.00 pm;

V. that he delivers his passport and any other travel document that may be in his possession, including any identity cards (other than such passport and/or travel documents as may already have been exhibited in the records of the compilation of evidence) to Inspector Dennis Theuma; that he does not leave or attempt to leave these Islands; and that he does not board or

attempt to board any boat, yacht, ship or any other vessel or means of transport by sea whatsoever;

VI. that he gives security for bail in respect of these conditions and for all the purposes of Article 579(1) of the Criminal Code either

by depositing under the authority of this Court the sum of nineteen thousand euros (€19,000), or

by producing a sufficient surety who shall enter into a written recognizance in the sum of nineteen thousand euros (€19,000) – provided that if such surety is produced applicant is to give a twenty-four hour notice of the proposed surety (Article 582(2), Cap. 9) and this decree granting bail shall in any case have no effect unless and until the said surety has been approved by this Court.

10. Finally the Court orders that a copy of this decree be served forthwith upon the applicant Attorney General, upon the respondent Scott Dixon, and upon Inspector Dennis Theuma.

< Final Judgement >

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