



MALTA

CRIMINAL COURT

**THE HON. CHIEF JUSTICE
VINCENT DE GAETANO**

Sitting of the 14th July, 2006

Number 57511/2006

**The Police
(Inspectors Norbert Ciappara
and Dennis Theuma)**

v.

Steven John Lewis Marsden

The Court:

This is a decree pursuant to an application filed by the Attorney General on the 12 July 2006 under subsection (9) of Section 574A of the Criminal Code.

On Tuesday 11 July 2006, respondent Steven John Lewis Marsden was arraigned before the Court of Magistrates as a Court of Criminal Inquiry charged with having on the night of the 9th and 10th instant and during the months prior to that date (1) conspired for the purpose of selling or dealing in a drug (ecstasy) in breach of Chapter 31 of the Laws of Malta, (2) imported or offered to import the said

drug in breach of the said Chapter 31, and (3) with having been in possession of the same said drug under such circumstances which indicate that that possession was not for his exclusive use.

On the same day and notwithstanding the objections raised by the two police prosecuting officers – Inspector Norbert Ciappara and Inspector Dennis Theuma – the Court of Magistrates as a Court of Criminal Inquiry granted bail to respondent on condition, among others, that he reports daily at the Qawra Police Station between 5.00 pm and 7.00 pm, and fixed the security (in the form of a deposit) in the sum of Lm10,000. A copy of the decree, in the standard form (but with the condition relating to the restriction as to the movement to and from the residence of the accused having been expressly deleted) is found at folio 13 of the record.

The Attorney General's contention is that, given the circumstances of the case, respondent should not have been granted bail, at least at this stage when the evidence has still to be compiled, in view of the danger of his absconding or leaving the Islands surreptitiously and of his tampering with the evidence.

As this Court has had the opportunity to observe in its decree of the 18 February 2006 in the names ***Il-Pulizija (Spetturi Chris Pullicino u Louise Calleja) v. Anthony Bugeja u Piero di Bartolo*** – a case where both accused stood charged with wilful homicide and were granted bail more than three months after their arraignment in court – the procedure under subsection (4A) of Section 575 of the Criminal Code whereby the Attorney General applies to this Court for the re-arrest and continued detention of the person released on bail by the Inferior Courts, was not intended so that invariably and in every case where bail is granted by those Courts, the Criminal Court would revise that decision to see whether it (i.e. this Court) agreed with it or not, and, if it did not agree with it, revoke that decree granting bail. Upon a proper construction of this subsection, the procedure was introduced so that where the Inferior Court exercises its discretion in a manner

which is manifestly wrong, the position can be rectified by a Superior Court upon an application filed by the Attorney General (the Attorney General having, under our system, a general supervisory role in matters concerning bail). The same is, of course, true in respect of the procedure under subsection (9) of Section 574A (the provision which is being invoked in the instant case). The granting of, or the refusal to grant, bail is a very important and delicate matter: it concerns both the fundamental right to liberty of an individual with the concomitant fundamental right to be presumed innocent until proved guilty and also the right and duty of the State to protect itself and its citizens primarily by ensuring the integrity of any criminal proceedings which it may deem appropriate to undertake against a person in pursuance of that right to protect itself and its citizens (paragraphs (a) to (d) of subsection (1) of Section 575). Bail proceedings cannot be dealt with by a Court, whether Inferior or Superior, in a cavalier manner, but must always be approached with diligence, often with a great degree of patience in order to determine, albeit *prima facie*, all the relevant circumstances of the case, and must ultimately always be determined by the appropriate Court with the application of common sense and sound judgment on the part of the presiding magistrate or judge.

In the case under examination, the accused (respondent) stands charged with a number of very serious offences, which carry a maximum punishment of life imprisonment. Although the gravity of the offence with which a person stands charged is not, of and by itself, necessarily a ground for refusing to grant bail – whether upon arraignment or subsequently – it is certainly a very important factor to be taken into account in the general assessment that a Court must undertake when weighing all the relevant circumstances and the competing interests for the purpose of determining whether or not there are any of the dangers envisaged in paragraphs (a) to (e) of subsection (1) of Section 575, as well as for determining the amount and mode of security should it decide to grant bail (Sections 576 and 577).

From the evidence of Inspectors Norbert Ciappara and Dennis Theuma it transpires that respondent has virtually no ties whatsoever with Malta and appears to have stronger ties both with Spain and with the United Kingdom. Although he has a rented flat in Malta, it is not clear what trade, profession or calling he exercises here in Malta. The amount of drugs involved and the way in which they were allegedly found hidden in a vehicle suggest – always for the limited purposes of the instant bail proceedings – that there are or may be other persons involved; and police investigations have not been concluded. Moreover – and this is a point which, quite frankly, perplexes this Court – contrary to normal practice bail was granted in this case by the Court of Criminal Inquiry before the bulk of the evidence against respondent had been compiled by that same Court. Although technically the Court of Criminal Inquiry may grant bail, even in serious cases, upon arraignment, common sense in the application of Section 575(1) dictates that in such cases the evidence is first compiled before a general assessment is undertaken in order to determine whether or not bail is to be granted and, if it is to be granted, under what conditions.

From the circumstances which have been brought to the attention of this Court – which circumstances, this Courts understands, were also brought to the attention of the Court of Magistrates – it is patently obvious that the Inferior Court exercised its discretion in a manner that was manifestly wrong. Everything suggests that, at least at this stage of the proceedings, there is a danger – a clear and present danger – of interference with the proper administration of justice in the manner envisaged in paragraphs (a) to (d) of Section 575(1) of the Criminal Code if bail is granted. No reason whatsoever was given by the Inferior Court, whether in the minutes of the sitting of the 11 July 2006 or in its decree granting bail, for the “unusual” way in which this case was dealt with.

For these reasons, the Court allows the request made by the Attorney General in his application of the 12 July 2006, revokes the decree of the Court of Magistrates as a

Informal Copy of Judgement

Court of Criminal Inquiry of the 11 July 2006 whereby respondent was granted bail, and orders the re-arrest and continued detention of Steven John Lewis Marsden.

< Final Judgement >

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