



CRIMINAL COURT

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

Sitting of the 28th December, 2009

Number 5555/2009

The Police
(Inspector Pierre Grech)

v.

Jovica Kolakovic and
Tomas Mikalauskas

To-day, Monday 28th December 2009

The Court:

Having seen the application filed by Tomas Mikalauskas on the 24th instant whereby the requested that he be released on bail pending the outcome of the criminal proceedings against him;

Having seen the reply filed earlier this morning by the Attorney General whereby he objected to the granting of bail as requested;

Having heard counsel for applicant, Dr Giannella Caruana Curran, and counsel for the respondent Attorney General, Dr Maurizio Cordina during to-day's sitting; having also heard on oath the Honorary Consul for Lithuania in Malta, Mr Anthony Zahra, as well as the Police Prosecuting Officer, Inspector Pierre Grech;

Having examined the record of the case solely for the purpose these proceedings;

Considers:

That while it is quite true that, as a rule, the mere fact that a person is charged with a very serious offence like the ones with which applicant stand charged – to wit conspiracy for the purpose of trafficking in cannabis and possession of the same said substance – is not by itself a valid reason for withholding the granting of bail other than for a short initial period following arraignment¹, the seriousness of the offence (or offences) must be considered in the light of all the other circumstances of the case, including the circumstances specifically mentioned in Article 575(1) of the Criminal Code, so that the Court can determine whether there exist or otherwise, in a tangible and concrete manner, the dangers mentioned in paragraphs (a) to (e) of the same said article.

This Court, like the Inferior Court (see the decree of the 17th instant in the record of the case) is of the view that, considering the evident international ramifications of the case and in particular that applicant has absolutely no ties with Malta, there is a serious danger that if applicant is granted bail these proceedings will be thwarted in the manner referred to in paragraphs (a), (b) and (d) abovementioned. The fact that the Honorary Consul for Lithuania in Malta has intervened and is generously offering accommodation in Sliema for applicant (and also offering to employ him), and the fact that applicant is a

¹ In this case applicant and the other co-accused were arraigned before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on the 10th September 2009.

Lithuanian citizen and that Lithuania is an member of the EU, are not significant variables in the equation in this case. Apart from the fact that the existence of the European Arrest Warrant is no panacea in matters concerning bail, any well connected person who seeks to avoid and evade due judicial process would, after leaving Malta, not repair to an EU country.

In short, this Court fully agrees with the Inferior Court that in this case, and at least at this stage of the proceedings, bail should not be granted. Needless to say, the fact that bail is thus being refused places an added burden upon all concerned – Court and prosecution – to expedite proceedings and to show “special diligence” in the conduct thereof. Should this special diligence not be forthcoming (for instance, through needless referrals by the Attorney General to the Court of Inquiry, failure to summon witnesses, unnecessary adjournments, etc.), this Court may take a different view of the situation even if the maximum time limits mentioned in sub-articles (6) and (9) of Article 575 of the Criminal Code will not have as yet expired.

For these reasons and *rebus sic stantibus* this Court dismisses applicant’s request for bail. Orders that a copy of this decree be forthwith served upon applicant, upon the respondent Attorney General and upon Inspector Pierre Grech.

< Final Judgement >

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