Neutral Citation Number: [2009] IEHC 193

THE HIGH COURT

2009 607 SS

IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF IRELAND, 1937

BETWEEN:

WILLIAM RYAN

APPLICANT

AND

THE GOVERNOR OF CLOVERHILL PRISON

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr Justice Michael Peart delivered on the 23rd day of April 2009:

On the 12th March 2009 the applicant was sent forward from the District Court *"to the present sitting of the Circuit Criminal Court for Dublin City and County in custody"* for trial on three charges in respect of which he had been arrested and charged on the 19th January 2009. An application for bail was refused by the District Judge, but bail was subsequently granted by the High Court on the 26th January 2009 but on terms which thus far the applicant has not been able to meet.

The undisputed fact is that the applicant was never brought before the Circuit Criminal Court prior to the end of the *"present sitting of the Circuit Criminal Court"* as directed by the said order. To date he has still not been brought before the Circuit Criminal Court for reasons which will appear.

It is submitted therefore that the applicant is now no longer in lawful custody on foot of the Committal Warrant signed by the District Judge upon the making of the said order sending him forward for trial. It is submitted that the warrant does not authorise the detention of the applicant beyond the end of what was at the time of the making of the return for trial *"the present sittings of the Circuit Court … for the disposal of criminal business",* and that since that date passed without the applicant being brought before those sittings, the warrant is now spent. This submission is made notwithstanding that the warrant speaks of the applicant being detained by the Governor until his trial and his discharge in due course of law.

The Committal Warrant signed by the District Judge on the 12th March 2009 contains two recitals; firstly that the applicant was that day before the District Court on these charges, and secondly that the applicant has been sent forward for trial on the said charges *"to the present sittings of the Circuit Court … for the disposal of criminal business"* (my emphasis), and then commands *"You to whom this warrant is addressed to lodge the accused William Ryan in Cloverhill Prison there to be detained by the Governor thereof until his/her trial for the said offence and his/her discharge in due course of law."* (my emphasis)

The only person to whom this warrant is addressed is the Governor of Cloverhill Prison, rather than any member of An Garda Siochana who would actually lodge the applicant at the prison for detention by the Governor as directed by the warrant. I simply advert to that aspect of the warrant in passing, as no submission has been made on this application as to the form of that warrant itself. The fact is that the applicant was lodged at Cloverhill Prison and remains detained there by the Governor on foot of that warrant.

When the application for an inquiry into the lawfulness of the applicant's detention was first moved on the 21st April 2009, there was another ground for release urged in the grounding affidavit. It was averred as therein that the return for trial order itself when transmitted by the District Court and received in the County Registrar's office had not in fact been signed by the District Judge, and that therefore the return for trial had not been transmitted within the period of fourteen days from the making of the order as required by Order 24, rule 11 of the Rules of the District Court, 1997, as amended by S.I. No. 149 of 2006.

I heard oral evidence on this application in relation to that matter, and having done so I am satisfied that in fact the order returning for trial for the applicant had been signed prior to transmission within fourteen days, and that it was in fact only the return for trial in respect of a co-accused that had not been signed by the District Judge through some oversight. This ground therefore does not provide any basis for making an order for the release of the applicant. Nevertheless this aspect of the case has relevance in explaining why the applicant has not to date been brought before the Circuit Criminal Court and for completeness I should deal with that matter to some extent.

It has become clear from the evidence given by relevant personnel from the County Registrar's office and the District Court that the return for trial of the applicant was transmitted to the County Registrar's office on the 16th March 2009 along with that for his co-accused as the same Book of Evidence is common to each accused. The papers travelled together, and when it was noticed in the County Registrar's office that the return for trial order for the co-accused had not been signed by the District Judge, all the papers received were returned to the District Court office on the 18th March 2009, including the applicant's return for trial.

In fact the District Judge was on vacation at that time and the co-accused's return for trial could not be signed until his return from vacation. The papers were once more returned to the County Registrar's office on the 26th March 2009

despite the fact that the co-accused's return for trial was still not signed. This happened, according to the evidence which I have heard, because the official concerned was aware that the accused persons would have to be brought before the "present sittings". The County Registrar's office again returned all the papers including the applicant's signed return for trial to the District Court office to await the return of the District Judge so that he could sign the return in respect of the applicant's co-accused.

It is clear from the evidence which I have heard that the relevant personnel in both offices were alive to the fact that each accused needed to be brought before the Circuit Criminal Court during what was then "the present sittings", and that those sittings were about to conclude on the 3rd April 2009, but felt helpless in that regard because one of the returns for trial was unsigned. It does not seem to have occurred to anybody that since the applicant's return for trial was signed and in order, he did not have to necessarily wait until his co-accused's return was signed before being brought before the Circuit Criminal Court.

The only issue to be determined on this application is whether the Committal Warrant signed by the District Judge on the 12th March 2009 is in these circumstances still a lawful basis for the continued detention of the applicant by the respondent beyond the end of last sittings of the Circuit Criminal Court which concluded on the 3rd April 2009. I am not concerned in any way with determining whether the return for trial itself is now spent, and I make no finding one way or the other in that regard.

Legal submissions:
Pauline Walley SC for the applicant submits at the outset that the applicant may under the Constitution be deprived of his liberty only in accordance with law. That much is certainly uncontroversial. She refers to the provisions of Section 4A, sub-section (1) of the Criminal Procedure Act, 1967, as amended which in mandatory terms requires that where an accused person is brought before the District Court charged with an indictable offence "the Court shall send the accused forward for trial to the court before which he is to stand trial….", provided that the remainder of the provisions of that section are fulfilled, including the requirement in s. 4B thereof to have served the Book of Evidence and other documents as set forth therein. All these matters were in order on the 12th March 2009 when the District Judge made his order for the return for trial in the case of the applicant.

Ms.Walley has referred also to the provisions of Order 24, rule 12 of the District Court Rules 1997 which provides:

> "12. Where the Court makes an order sending a person forward for trial or sentence, the Court may by warrant (Form 24.10, Schedule B) commit such person to prison to await his or her trial or sentence or release the person conditionally on his or her entering into a recognizance (Form 18.2 or 18.4, Schedule B, as the case may be)."

The form of Committal Warrant signed by the District Judge on the 12th March 2009 was in the form for such a warrant provided for in Form 24.10, Schedule B. The form of order returning the applicant for trial was also in the prescribed Form 24.9, Schedule B.

Each of these prescribed forms requires the District Judge to make a choice between the present sittings and the next sittings when sending the accused person forward. In each of the forms used in the present case the judge opted for "the present sitting" by deleting the word "next". Both Section 4A of the 1967 Act as amended and Order 24 of the District Court Rules 1997 are silent as to which sittings the accused must be sent forward to. It is accepted that in the present case there would have been nothing to preclude the District Judge from sending the applicant forward to the "next sitting" rather than "the present" sitting should there have been any perceived need so to do. However, since there were still several weeks from the 12th March 2009 before the end of the "present sittings" it is safe to presume that he saw no reason why the applicant would not be brought before the Circuit Criminal Court before the end of last term, to be further remanded thereafter by the Circuit judge.

I have already referred to the fact that at the end of the curial part of the Committal Warrant it states that the applicant is to be detained by the Governor *"until his trial for the said offences and his discharge in due course".* Ms. Walley submits that it cannot be the case, particularly given the reference in the second recital already set forth to the applicant having been sent forward to "the present sitting", that the Governor would be thereby authorised to detain the applicant indefinitely, and literally until his trial whenever that may occur in the future. In that regard, Ms. Walley refers to the statutory scheme for the processing of accused persons facing an indictable offence, showing, in her submission, a clear concern on the part of the Oireachtas when enacting the scheme that an accused person should not be held in custody other than for strictly limited and controlled periods, and certainly not for an indefinite and unascertainable period of time while they await his or her trial. It is for this reason, in her submission, that while neither the Act itself nor Order 24 of the District Court Rules state that the judge shall send the accused person forward to any particular sittings of the Circuit Criminal Court, nevertheless the prescribed form of return for trial order and Committal Warrant specify either the present sittings or the next sittings. Ms. Walley has referred to certain remarks of Blayney J. in Attorney General v. Judge Sheehy [1990] 1 IR. 434 in which, although the case involved entirely different facts and was heard at a time when the District Court (Criminal Procedure) Act, 1967) Rules, 1967 operated, the learned judge stated at pp. 438-439:

> *"…… the obligation of a District Justice is a simple obligation to return the accused for trial. The form of order prescribed by the rules adds in, as a matter of basic fairness, a requirement to specify whether the return is to the present or next sitting …… All that the return has to indicate in order to comply with the form in the Rules is whether the return is to the present or next sittings of the court. The order here does that. If it had gone no further there is no doubt that it would have been a valid order."*

Ms. Walley has referred to similar remarks by Henchy J. in his judgment in *Hughes v. Neylon* [1982] ILRM 108 at p. 110 where he referred to s. 8 of the 1967 Act (later repealed by s. 10 of the Criminal Justice Act, 1999) and the power contained therein to send an accused person forward for trial, and stated, inter alia, as follows:

> "3. The obligation of a District Justice, who on preliminary examination is satisfied that a sufficient case has been made out in the Book of Evidence and on any dispositions [sic] which have been taken, created by the Criminal Procedure Act, 1967, is a simple obligation to return the accused for trial.

> 4. Obviously, as a fair and necessary procedure, if the accused is returned for trial he or she, whether remanded in custody or on bail, must be aware firstly, as to whether the return is for a present or next sitting and secondly, of the venue for the trial. Without such knowledge, an accused could not adequately prepare for his defence, nor in the case of a person remanded on bail, answer his bail."

Accordingly it is submitted that the specification of the particular sitting is an integral part of the procedure, and a matter of fair procedure, and is accordingly referred to in the recital of the Committal Warrant as well as in the return for trial itself. It is submitted that this recital cannot be regarded as mere surplussage meaningless, and that the evidence before the court from the court personnel in question who gave evidence shows that in their minds it was necessary that the applicant and his co-accused were required to be brought before the Circuit Criminal Court before the end of those present sittings. Notwithstanding what is stated at the end of the curial part of the warrant she submits that the warrant in reality authorises the detention of the applicant by the Governor only to the end of those sittings, and that this was the intention of the District Judge when opting to send him forward to the "present sittings" and signing a Committal Warrant to reflect that order.

When making her submissions prior to the hearing of the evidence of the court personnel referred to, which showed that the return for trial in respect of the applicant had in fact been signed by the District Judge prior to the transmission of that return for trial to the County Registrar's office within the required period of fourteen days, Ms. Walley submitted that as the return for trial had not been signed when transmitted, transmission of the return for trial had not occurred in fact, and therefore the order which underpinned the Committal warrant was of no longer of any effect, and that this alone was sufficient to successfully impugn the Committal Warrant. The force of that argument is now greatly diluted since it is a fact, as found by me having heard the evidence in that regard, that the return had been signed. Nevertheless, Ms.Walley refers to the fact that after the return had been transmitted it was returned with the return of the co-accused to the District Court office, and later sent back by that office, and she submits that while there is provision for its transmission, there is none which allows for any later re-transmission, and to that extent she submits that the return was not properly transmitted to the County Registrar's office in accordance with the relevant statutory provision and the Rules.

It has been submitted finally that in all matters concerning the liberty of the citizen, a penal statute and any rules pertaining thereto must be construed strictly.

Eilis Brennan BL for the respondent has submitted in response to the applicant's submissions, firstly that the return for trial is a valid return for trial even though the applicant has not as yet been brought before a sitting of the Circuit Criminal Court, and the fact that he was not brought before "the present sittings" as provided by the order does not invalidate it as a return for trial. In that regard she has referred to the provisions of the Act and the District Court Rules to which I have already made reference above, and places reliance upon the fact that in neither is it provided that the District Judge must send an accused person forward to either the present sittings or the next sittings, and that it is only in the prescribed form of order for the return for trial and Committal Warrant that the judge is required to indicate whether it is to one or the other sittings. In such circumstances she submits that the return continues to be a valid return for the purpose of being the lawful basis for the continued detention of the applicant on foot of the Committal Warrant. She refers also to the direction in the warrant to the Governor that he is to detain the applicant until his trial or his discharge. She has referred also to what is provided in Order 12, rule 25 of the District Court Rules, 1997 as follows:

> "25. Subject to any relevant rules of statute, any non-compliance with any of these Rules shall not render any proceedings void, but in the case of such non-compliance, the judge may direct that the proceedings be treated as void, or that they be set aside in part as irregular, or that they be amended or otherwise dealt with in such manner or upon such terms as the Judge thinks fit."

It is submitted that the District Judge could on an application being made to him extend the time for transmission of the return in any event.

In support of her submission that the return for trial remains valid and effective in spite of the fact that the applicant was not brought before the Circuit Criminal Court during those "present sittings", Ms. Brennan has referred to the judgments of Walsh J. and O'Daly J. in the Supreme Court in *In the Matter of Paul Singer (No.2)* 98 ILTR. 112. In that case the applicant had been arrested on charges and returned for trial to the Circuit Criminal Court. He was brought before that Court but before any indictment had been presented. This had led to his release being ordered by the Supreme Court in earlier proceedings, but immediately following his release he was re-arrested leading to further charges being preferred against him. On a second application for his release by way of habeas corpus that application was refused by the High Court on the basis that the original return for trial was still valid in respect of the original charges notwithstanding the failure of the State to arraign the prosecutor at *"the next sitting of the Circuit Criminal Court after the return for trial"* as had been ordered by the return for trial order signed by the District Justice. It was the view of Murnaghan J. at first instance that the basis on which the prosecutor had been released earlier by the earlier Supreme Court order had been that the Committal Warrant was spent since he had not been indicted at "the next" sitting of the Circuit Criminal Court, and not that the underlying return for trial was spent. That view of the reasoning of the earlier Supreme Court's decision to release the prosecutor was affirmed by the Supreme Court on appeal from the refusal to release by Murnaghan J. In that regard, O'Daly J. stated in his judgment at p. 132:

> *"I have come to the conclusion that the better view is that the return for trial survives as a valid return notwithstanding the failure on the part of the prosecution to indict and arraign the appellant at the due sittings of the Circuit Court and notwithstanding the absence of an order of that Court formally adjourning the trial. The order of the District Court returning the appellant for trial in my opinion has not lost its validity as a return although not acted upon in due time. It would, I am satisfied, require an order of the court of trial or of the High Court to set it at nought."*

On this basis Ms. Brennan submits that the return for trial in the case of the applicant herein is still a valid return for trial even though the applicant was not brought before "the present sitting" of the Circuit Criminal Court as ordered by the District Judge. Accordingly she submits that the failure to have brought the applicant before those sittings does not result in any unlawful detention of the applicant once those sittings came to an end, as the order which underpins the

Committal warrant still subsists.

Ms. Brennan relies upon the final direction in the Committal Warrant where the Governor is mandated to detain the applicant until his trial or his discharge, and submits that the recital earlier in that warrant of the fact that the applicant has been sent forward for trial "to the present sittings" is no more than a recital of fact and does not limit the duration of the detention authorised by the Committal Warrant.

Conclusion:
This Court is concerned only with whether the Committal Warrant survives beyond the 3rd April 2009 in circumstances where the applicant, as is undisputed, was not brought before the Circuit Criminal Court prior to the conclusion of the then "present sittings" of that term. It is not an application to quash the return for trial, or for a declaration that it is now spent in these circumstances. As stated by O'Daly J. in the *Singer (No.2*) judgment *"it would …… require an order of the court of trial or of the High Court to set it at nought."*

I intend to proceed with my conclusions on the basis that the return for trial remains valid, but I should make it clear that I am making no direct finding in that regard lest by doing so on this application I trespass upon the merits of any application which may be made in that regard by the applicant in the future, when that matter may be more fully ventilated than it has been on the present application before me for the applicant's release. On the present application this Court may decide only upon the question of the lawfulness of the applicant's present detention on foot of the Committal Warrant, and if not satisfied that it is in accordance with law must direct his release. That is the only order which can be made in those circumstances. It is the Committal warrant which has been certified as being the lawful authority for the detention of the applicant by the Governor, and not the return for trial.

Neither am I concerned any longer with any doubt which was originally raised by the applicant as to whether that return for trial order was signed when it was first transmitted to the County Registrar's office. As already stated, I am satisfied that it was signed at the relevant time. Neither am I concerned with the argument made that there is no provision under the District Court Rules, 1997 for any re-transmission of the return for trial to the County Registrar's office after it had been sent back to the District Court office along with the unsigned return for trial in respect of the co-accused.

The only matter for decision is whether the Committal Warrant lapsed or otherwise ceased to be a lawful authority for detaining the applicant once he had not by the end of the then "present sittings" of the Circuit Criminal Court on the 3rd April 2008 been brought before the Circuit Criminal Court.

There is no doubt in my mind that the intention of the District Judge, when returning the applicant for trial to the "present sittings", was that the Committal Warrant signed by him following the making of that order was to endure until such time as that occurred. The prescribed form of Committal Warrant includes a recital to the effect that he was returned for trial to the present sittings, and that recital serves the purpose of informing firstly the applicant that his detention is so that he can be brought before those sittings, and also of ensuring that the Governor is not authorised to detain indefinitely pending trial, especially in view of the inevitable and perhaps considerable delay in a trial date becoming available.

It cannot have been the intention of the Oireachtas when enacting the relevant provisions of the Criminal Procedure Act, 1997, and its subsequent amendments which require strict time limits to be observed in the processing of persons charged with offences, and in this this case indictable offences, that even though those strict and limited time periods are observed, nevertheless an accused person might remain indefinitely detained for a lengthy and indefinite period on foot of the Committal Warrant signed upon the making of the return for trial order.

The clear intention of the Oireachtas is that the District Judge must firstly order a return for trial to either the present or next sittings of the Circuit Criminal Court, and sign a Committal Warrant for the purpose of detaining a person who is not on bail until that occurs, and in the expectation that thereafter the accused will be further remanded by the Circuit Judge and be subject to a further Committal Warrant or Warrants from time to time thereafter. That seems to me to be a view that is entirely consistent with what is stated by Henchy J. in *Hughes v. Neylon*, and the similar remarks of Blayney J. in *Attorney General v. Judge Sheehy* as set forth above. The applicant was entitled to know for what period his detention on this Committal Warrant was to last, and in this case he will have been aware, or could have been advised, that he would be brought before the present sittings of the Circuit Criminal Court when he would either be discharged or be made the subject of a further Committal Warrant(s) pending his trial taking place.

To conclude otherwise would result in a situation where an accused person in respect of whom a return for trial has been made and who has been remanded in custody to either the present sitting or the next sitting could remain indefinitely detained on foot of the Committal warrant signed by the District Judge until some undetermined time in the distant future, a date which could not at the time of the signing of the Committal Warrant be known or even guessed at with any accuracy by the District Judge, who, of necessity, has no control over the listing of cases in the Circuit Criminal Court.

It is helpful to consider what is stated in the judgments of the Supreme Court in the first Singer case which resulted in the Supreme Court directing the release of the prosecutor because at the time he was brought before the Circuit Criminal Court the indictment had not been presented.

That case *In the Matter of Paul Singer* is reported at 97 ILTR. 130. I will refer to it for convenience as *"Singer No.1".* It predates of course the *Singer (No.2)* judgment to which I was referred by Ms. Brennan. The Court was not referred to this particular judgment during the course of submissions though reference is made to the decision in the Singer (No.2) judgment to which reference was made and to which I have already referred.

Singer (No.2) did not involve a decision upon the validity of the Committal Warrant as such, and as far as relevant to the present case, was dealing with an application to prohibit the trial on the basis that the return for trial was spent and of no effect.

In Singer No.1, the head-note states that it was held (reversing the High Court):

> *"that according to the tenor of the warrant of committal the Governor of Mountjoy Prison was required to keep S. in custody until the sitting of the next Circuit Criminal Court, understanding thereby, a sitting of the Circuit Court for the discharge of criminal business. That period had elapsed and the applicant was entitled to be discharged*

from custody."

In Singer No. 1 the facts, briefly stated, were that on the 23rd January 1960 S was returned for trial, the preliminary investigation which followed his arrest having been completed on that date. He was allowed bail but was unable to take it up. The return for trial was stated in the order to be "to the next Circuit Criminal Court". A Committal Warrant was signed upon the making of that order and this directed the Governor of Mountjoy Prison as follows:

> *"… Therefore, the said prisoner you are in safe custody to keep, until legally discharged. And for so doing this shall be your sufficient warrant".*

Two lines above the signature of the District Justice the additional sentence appears: *"For trial at the next Circuit Criminal Court".*

Though the wording of that warrant differs slightly from its more modern counterpart, it effectively amounts to the same document as the Committal warrant in the present case.

Without going into the facts in exhaustive detail it suffices to say that the prosecutor was never indicted before the Circuit Criminal Court before the end of "the next Circuit Criminal Court", even though he had in fact been before the Court at his own request when certain matters pertaining to his trial were "discussed" but no order of any kind was made, and certainly no indictment was presented and no further Committal Warrant was issued. He remained in custody in Mountjoy Prison under the authority of the Committal Warrant which had issued in the District Court on the 23rd January 1959, and he thereafter sought his release by way of application for habeas corpus on the basis that he was entitled to be released once not indicted before the end of the "next sittings".

In the High Court, Davitt P had concluded:

> *"The answer to this contention is that the applicant is not being detained under this order [i.e. the return for trial] but under the District Justice's warrant of committal of the same date. That warrant is addressed to the Governor of Mountjoy Prison, it recites that the applicant stands charged …… and that he is for trial at the next Circuit Criminal Court for the City of Dublin and County of Dublin. What I might call the curial portion of the warrant is that the Governor is required to detain the applicant in custody until he legally discharged. The applicant has not been legally discharged and is being held under this warrant. In our opinion Counsel's first submission is not well-founded."*

In relation to this conclusion, Lavery J., with whom Kingsmill Moore and O'Daly JJ agreed in their separate judgments in the Supreme Court, stated:

> *"This is a construction of the warrant that is plausible enough, but in my opinion it is not correct to regard that portion of the warrant requiring the Governor to detain the applicant in custody until he is legally discharged as the complete 'curial portion of the warrant'.*
>
> *A warrant of committal must show 'convenient jurisdiction' to use the phrase of Platts case 1 Leach 167 and therefore it should show the cause of the detention and the period for which it is to endure.*
>
> *I cannot read the warrant in the sense that the statement that the applicant stands charged with certain offences and that he is for trial at the next Circuit Criminal Court for Dublin are mere recitals. In my opinion they are part of the curial portion of the warrant. The period of detention might, as the learned President said, be considered to have been defined partly by the words 'until he is legally discharged', but the period provided for detention is more explicitly stated by the words 'for trial at the next Circuit Criminal Court'.*
>
> *The view which I take of this warrant is that according to its tenor the Governor is required to keep the applicant in custody until the next sitting of the Circuit Criminal court, understanding thereby a sitting of the Circuit Court for the discharge of criminal business.*
>
> *If that is the period of detention ordered, then as it has elapsed the applicant is entitled to go to the High court on an application for habeas corpus as he has done and to secure his legal discharge and thus satisfy every part of the warrant."*

Kingsmill Moore J. in his judgment at p. 145 states in similar vein:

> *"… But it seems to me that the District Justice has only power to commit to prison up to the date mentioned or indicated in his order returning for trial as being the date – or period within which – the trial is assigned to take place, and that when that date has passed or that period has expired, the order is spent to the extent that it is no longer a good basis for the continuance of the warrant. To hold otherwise would be to give to the District justice a power to order the imprisonment of the accused for a period, after his own functions and jurisdiction had ceased, which is not merely a period intervening between the termination of the proceedings in the District Court and the time fixed for trial, but which might be of indefinite duration if the responsible authorities take no steps to put the trial in train. To confer any such power on a justice, in the absence of the most specific statutory authorisation to that effect, would seem to me to run counter to the whole spirit of our criminal law."*

The point at issue on that application was so similar to the issue to be decided on the present application that it is impossible to distinguish this decision in any way on its facts. It is a decision with which I respectfully agree, but in any event it is a binding decision upon this Court since it has not to my knowledge been departed from by any subsequent Supreme Court or affected by any subsequent statutory enactment. It seems to me to be an answer to the issue and leaves in no doubt the conclusion that the Committal Warrant on which the applicant is being held by the respondent is spent since the 3rd April 2009 and no longer of any validity for the purpose of lawfully detaining the applicant, he not having been brought before the Circuit Criminal Court before the end of last sittings. I would conclude by remarking also

that I have no doubt either, for what it is worth, that when the District Judge made his order returning the applicant for trial and committed him to prison, he did so in the knowledge or certain expectation that the applicant would be brought before the Circuit Criminal Court before the end of those present sittings and that the Circuit Judge would if appropriate sign a fresh Committal Warrant to carry the matter forward.

I reiterate that nothing in this judgment is intended by me to reach or even suggest any conclusion to the issue as to whether the order returning the applicant for trial subsists. If that discrete issue arises for determination in any other proceedings by the applicant it can be fully argued before whatever judge hears that application, and this judgment in no way speaks to that question.

For the reasons appearing above, I am not satisfied that the applicant is being held by the respondent in accordance with law, and I direct his immediate release.