[2018] IEHC 605

THE HIGH COURT

[2017 No. 347 J.R.]

BETWEEN

WOLFGANG KOLTZE

APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 16th day of October, 2018

1. On 19th April, 2017, the applicant appeared before the District Court sitting in Dublin at the Criminal Courts of Justice and was on that date convicted of nine offences. Upon his conviction, the applicant was sentenced on each charge, with each sentence to run consecutively, so that he was required to serve a total sentence of imprisonment of ten months. The applicant immediately indicated an intention to appeal against the conviction and sentence. The District Judge entered upon an enquiry as to the applicant's means. She was told that his sole income comprised social welfare payments of €193 per week, and that he lived in his own house. Although it was not made absolutely clear in the course of these proceedings, it appears that he owns that house free from charge or encumbrance. The District Judge then fixed recognisances in the sum of €100 in the applicant's own bond, no cash to be lodged, and an independent surety of €1,000, with no provision for cash to be lodged in lieu. These proceedings are concerned with the terms of the recognisance as so fixed by the District Judge insofar as they relate to the independent surety requirement of €1,000. In this regard, the applicant claims that he is unable to take up his recognisances due to his inability to procure an independent surety. He says that he is a foreign national who does not have friends or family in this jurisdiction and does not know anybody who would be in a position to act as an independent surety. It is not claimed that the applicant informed the District Judge that he would have any difficulty in obtaining an independent surety, so it may be presumed that the District Judge was unaware of this state of affairs when fixing recognisances.

2. By these proceedings, the applicant seeks to quash the decision of the District Judge to set recognisances at a level which the applicant claims is plainly beyond his means. The applicant obtained leave to issue these proceedings on 4th May, 2017, on which date a stay was placed upon the operation of the conviction and sentence imposed upon him by the District Judge. The applicant had, until that date, been detained in custody consequent upon his conviction and sentence.

Background to conviction

3. The charges which the applicant was facing on 19th April, 2017, of which there were eleven, were relatively minor in character. Eight of them were charges brought pursuant to s. 117(1)(b) of the Criminal Justice Act 2006, pursuant to which it is an offence not to comply with a civil order to which a person is subject. Seven of the charges were concerned with causing noise in such a manner as to cause disruption or annoyance to others. There was one charge of being intoxicated in a public place to such an extent as to give rise to an apprehension that the applicant might endanger himself, contrary to s. 4 of the Criminal Justice (Public Order) Act 1994. There was another charge with causing an obstruction to traffic, while intoxicated, also under s. 117(1)(b) of the Criminal Justice Act 2006. Importantly, for the purposes of determination of bail conditions or recognisances for the purposes of an appeal, there were two charges of failing to appear before the court while on bail, in accordance with the bail conditions previously fixed by the District Judge, pending determination of charges. The applicant was convicted of just one out of the two of these latter charges. Prior to his conviction, the bail conditions set by the court for the applicant comprised only an own bond provision, coupled with a daily "sign on" condition, and an order that he remain sober pending determination of charges. It was admitted by the applicant that he had breached the latter condition on two occasions.

4. It is the applicant's case that in fixing the recognisances that she did, the District Judge acted unreasonably and irrationally in imposing an independent surety requirement, as a condition of fixing recognisances, which denies the applicant the right to an effective appeal, and that in fixing recognisances at a level that was unattainable for the applicant, the District Judge acted without jurisdiction. It is claimed that the District Judge erred in law and acted in excess of jurisdiction in so doing, and that she failed to take into account relevant considerations and took into account irrelevant considerations in determining recognisances. In particular, it is claimed that the fact that the applicant had turned up for trial on his "own bond" and without a surety should have been taken into account and on the other hand the fact that he owned his own home should not have been taken into account.

5. In her statement of opposition, the respondent claims that the applicant had an alternative remedy for any grievance that he had either by way of an application to the High Court, exercising its original jurisdiction in bail matters, or alternatively pursuant to the District Court Rules, specifically the District Court (Criminal Justice Act 2006) Rules 2009 (S.I. No. 105 of 2009) which, it is claimed, permits a person to apply to the District Court at any time to have a condition of recognisances varied or revoked.

6. Alternatively, it is claimed that before fixing recognisances, the District Judge had received evidence that the applicant had "taken" two bench warrants in respect of charges before the court, and that he had breached his bail conditions on four occasions, by failing to appear on those two occasions and by failing to observe the requirement to remain sober on two other occasions. It is therefore denied that the District Judge acted unreasonably and/or irrationally. Furthermore, it is claimed that in fixing the applicant's own bond in the sum of €100 with no lodgement shows that the District Judge took into account his financial circumstances.

7. The respondent also claims that the applicant has not engaged with the facts of the case and provided no evidence of any efforts made by him to obtain an independent surety or to explain why no one was willing to act as an independent surety. It is pleaded that the fact that bail was fixed beyond the reach of an applicant, is not of itself an indication that bail was fixed without jurisdiction or otherwise in accordance with law.

Applicant's arguments

8. It is submitted on behalf of the applicant that in fixing terms of recognisances, there is a duty upon a District Judge to act reasonably and on a rational basis. It is submitted that this is clear from the terms both of O.101, r.4 of the District Court Rules 1997 (as amended), as well as authorities such as *Meadows v. Minister for Justice* [2010] 2 I.R. 701 and *Croake v. Coughlan & Anor* [2017] IECA 65.

9. It is submitted that in this case the District Judge acted unreasonably and irrationally because:-

> (1) The fact that the applicant owned his own house should have removed any prospect of him being considered a flight risk and in any event the gardaí never suggested that he was a flight risk;

(2) There was no "signing on" condition in the terms of recognisances, as there had been in the terms of his bail while awaiting trial. The applicant had been required to sign on daily and sometimes twice daily prior to his trial. If he was considered a flight risk, this might have been expected as a condition of his appeal. Therefore, the condition requiring an independent surety is more consistent with a belief that the applicant would be in custody pending his appeal i.e. that he would be unable to obtain independent surety in the sum of €1,000.

(3) In the same vein, this is consistent with an inference that the District Judge, by requiring an independent surety in the sum of €1,000, was intending that the applicant would remain in custody pending trial so as to remain sober pending his appeal, which had previously been a condition of his bail, pending his trial. Since the District Judge did not impose a condition of continued sobriety on the applicant in the event of his release on bail (as she had done in the terms of bail leading up to the trial), it seems likely that she was endeavouring to ensure his sobriety by fixing an independent surety at €1,000.

10. Accordingly, there was no rational basis for the imposition of an independent surety of €1,000, or alternatively it was imposed in order to ensure the sobriety of the applicant pending trial, which is an irrelevant consideration.

11. It is submitted that in *People (Attorney General) v. O'Callaghan* [1966] 1 I.R. 501 the Supreme Court (Walsh J.) made it clear that the vital issue to consider in any bail application was whether the individual was likely to evade justice by flight. In relation to the fixing of recognisances, counsel relied upon the following passage from the decision of Walsh J at pp. 518 to 519:-

> "If persons come from a humble walk in life or are of little means it is most likely that their friends or those of them who are prepared to go as surety for them are of the same condition and the amount of bail required must be just and reasonable in all the circumstances having regard to the condition and ability of the accused, bearing in mind all the time the overriding test of the probability of the accused failing to appear for trial."

12. The applicant relied upon *Croake* in the context of consideration of the reasonableness of the decision of the District Judge to require independent surety of €1,000. In *Croake*, Hogan J. applied the test established by the Supreme Court in *Meadows* stating at para. 29:

> "Accordingly, where – as here – it is alleged that the exercise of a discretion fundamentally affects the substance of a constitutionally protected right, then the appropriate test is that articulated by Denham J. in *Meadows v. Minister for Justice, Equality and Law Reform* [2010] IESC 3, [2010] 2 I.R. 701 where she said:-
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> > 'In determining the reasonableness of an administrative decision which affects or concerns constitutional rights the standard to be applied is that stated by Henchy J., in *The State (Keegan) v. Stardust Victims' Compensation Tribunal* [1986] I.R. 642, 658:-
> >
> > 'I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does, then the decision-maker should be held to have acted ultra vires, for the necessarily implied constitutional limitation of jurisdiction in all decision-making which affects rights or duties requires, inter alia, that the decision-maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.'
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> This test includes the implied constitutional limitation of jurisdiction of all decision-making which affects rights and duties, that, inter alia, the decision-maker should not disregard fundamental reason or common sense in reaching his or her decision. The constitutional limitation of jurisdiction arises inter alia from the duty of the courts to protect constitutional rights. When a decision-maker makes a decision which affects rights then, on reviewing the reasonableness of the decision: (a) the means must be rationally connected to the objective of the legislation and not arbitrary, unfair or based on irrational considerations; (b) the rights of the person must be impaired as little as possible; and (c) the effect on rights should be proportional to the objective.'"

13. It is submitted on behalf of the applicant that his constitutional right of appeal has been violated in circumstances where:-

(1) He served a nine month sentence, and since he could not obtain an independent surety he was likely to spend most of that time in custody pending his appeal;

(2) The effect on applicant's right of appeal is therefore disproportionate;

(3) The District Judge took into account an irrelevant consideration – is the fact that he owned his own house, a factor which was not rationally connected to the objective;

(4) The applicant turned up for trial in the District Court on his own bond (notwithstanding the issue of the two bench warrants previously).

14. In relation to the question of alternative remedy, the applicant contends that it is clear from the decision of the Court of Appeal in *Croake*, in which the Court of Appeal considered whether or not there is a right of appeal from a decision of the District Court requiring an independent surety, that there is no appeal from the District Court to the High Court in such matters. Hogan J. considered this precise issue in his decision and stated at para. 21 as follows:-

> "If there were to be such a right of appeal against the decision of the District Court in relation to the fixing of recognisances, then it would have to be provided for 'by law' in the manner contemplated by Article 34.3.4 of the Constitution. The term 'law' in this context 'means statute law and … the right of appeal [in Article 34.3.4] is one which requires statutory vesture': see *The State (Hunt) v. O'Donovan* [1975] I.R. 39, 48, per Finlay J. As it happens, statute law does indeed provide for a right of appeal against the imposition of bail conditions by the District Court. The difficulty confronting the applicant is that the only statutory provisions which the helpful researches of counsel could identify do not appear to apply in a case such as the present one where the condition was imposed as part of a recognisance in the event of an appeal."

15. Hogan J. then went on to consider the circumstances in which a right of appeal has been provided for by statute, and concluded

that the Criminal Procedure Act 1967 (the "Act of 1967") only provides for such a right of appeal in circumstances where a court remands a person or sends him forward for trial or sentence, but not following upon a conviction and sentence. On this basis, Hogan J. concluded that there is no right of appeal against the District Court's decision insofar as the requirement of an independent surety for the purposes of a recognisances is concerned.

16. In responding to the plea of the respondent that it has always been within the inherent jurisdiction of this Court to deal with all aspects of bail, it is argued on behalf of the applicant that there is no authority for this proposition or that the High Court can, as part of this jurisdiction, assume such a jurisdiction in circumstances where the State has expressly provided for matters concerning bail by statute and by the District Court Rules. Order 101, rule 4 of the latter deals with matters concerning recognisances and the procedures relating thereto are clearly set out. While it is accepted that there are similarities between applications made under O.101, r.4 and bail applications, they are not the same thing, and O.101, r.4, which deals with recognisances, makes no mention of bail at all.

17. Furthermore, it is submitted that in order for a respondent to rely upon an alternative remedy, the remedy should be clear and available in law. Reliance upon the inherent jurisdiction of this Court lacks sufficient clarity for the purpose of relying upon it as an alternative remedy.

18. The applicant disagrees that, as argued to the respondent, the argument relating to the inherent jurisdiction of this Court in such matters was not made or considered by the Court of Appeal in *Croake*. The applicant also argues that those authorities which deal with the inherent jurisdiction of this Court in matters concerning bail were all concerned with bail pending trial and none related to appeals. It is submitted that this court never exercises such a jurisdiction up to the decision in *Callaghan* and that this is clear from the decision of Walsh J. where he stated at pp. 512 to 513:-

> "The question of the jurisdiction of the High Court to grant bail to convicted persons pending their appeal is one which has not yet been litigated, although in *Attorney General v. Cashell* 62 I.L.T.R. 31 the Court of Criminal Appeal in dealing with an application for bail pending leave to appeal expressly left open the question as to whether there was any other method of obtaining bail besides applying to the Court of Criminal Appeal. Undoubtedly if a convicted person applies for and obtains an order of *habeas corpus* in the High Court, the High Court has power to grant bail on such an application. Apart, however, from any question of bail arising on a *habeas corpus* application, the High Court has a jurisdiction to grant bail to a person who has been convicted as the jurisdiction of the High Court in bail matters as in other matters is considerably wider than that of the Court of Criminal Appeal. In the latter Court bail is only allowed to a convicted person after leave to appeal has been granted. It is, however, unnecessary to deal with the circumstances under which the High Court might think it proper to allow bail in such a case."

19. Counsel further submitted that even if the respondent is correct, and this Court does enjoy the jurisdiction to revoke or vary the order the District Judge in relation to recognisances, this Court does not have the power to stay the prison sentence imposed by the District Judge as part of its original jurisdiction, other than to design such a remedy itself.

Submissions of respondent

Alternative remedy
20. It is the submission of the respondent that, although not provided for in statute, it was open to the respondent to apply to this Court to fix recognisances pending the hearing date of his appeal, following upon the decision of the District Court. This jurisdiction is not based on an appeal from a decision of the District Court *per se*, but forms part of the original jurisdiction of the High Court.

21. The respondent says this is clear from the decision of the Supreme Court in *O'Callaghan* wherein Walsh J. stated at pp. 510 to 511:-

> "While there is a distinction between applications for bail in the cases of prisoners who are on remand and those who have already been committed for trial and the cases of persons who have already been convicted and in respect of which an appeal is pending, there are certain underlying principles common to all three forms of bail motion. The jurisdiction of the High Court to grant bail is an original jurisdiction and is in no sense a form of appeal from the District Court or from any other Court which may have dealt with the question of the bail of the applicant … That the High Court has this jurisdiction in full cannot be doubted. Not only has it had transferred to it the jurisdiction which at the commencement of the State was vested in or capable of being exercised by the then High Court of the Supreme Court of Judicature in Ireland or any division or judge thereof it is, by the very words of the Constitution itself in Article 34, invested with full original jurisdiction in all matters whether of *law or fact*, civil or criminal."

22. The respondent further relies upon the more recent decision of the Supreme Court in the case of *Butenas v. The Governor of Cloverhill* [2008] 4 I.R. 189. This case was concerned with the jurisdiction of the High Court to admit a person to bail between the date on which their surrender had been ordered under the European Arrest Warrant Act 2003, and the date of surrender. There was no provision for the granting of bail during this period contained in the Act. However, that notwithstanding, the Supreme Court affirmed the power of the High Court to grant bail. Murray C.J. stated at p. 198, para. 37, as follows:-

> "Both parties acknowledge that the power of the High Court to grant bail *in lieu* of exercising a power to remand a person in prison derives from its inherent jurisdiction. It is an inherent discretionary power that is exercised when a court is considering whether imprisonment is required, not for its own sake, as in the case of imposing a sentence as a punishment after conviction, but for an ulterior or collateral purpose, such as to prevent the evasion of justice by a person absconding, whether in criminal or extradition proceedings. Generally speaking, bail may be granted where the court is satisfied that admitting the person to bail, subject to appropriate conditions, will be sufficient to ensure that that ulterior purpose can be served without depriving the person concerned of his or her liberty."

23. Later, at para. 56, Murray C.J. continued:-

> "While it may be said that the interpretation of any provision of a statute should be considered in the context of its other provisions and indeed in the context of the Act as a whole, it has to be borne in mind that in this case the issue concerns the inherent jurisdiction of the court to grant bail when there is no necessary purpose for the imprisonment of the individual. To conclude that the Oireachtas, by omitting to make an express provision permitting the High Court to grant bail, thereby ousted its inherent jurisdiction to do so would be akin to treating the grant of bail as a privilege to be conferred by the State, contrary to the dicta of Walsh J., cited above. The historic jurisdiction of the High Court to grant bail is not dependant on express statutory provisions. Accordingly, the court is of the view that the fact that other sections of the Act make express provision for bail is not in itself sufficient to justify a decision that a section which is

silent as to bail was necessarily intended to oust what the court has already described as a fundamental and inherent jurisdiction of the High Court."

24. So, it is submitted that the High Court enjoys an original jurisdiction of bail in matters even if there is no statutory provision specifically providing for such a jurisdiction. It is further submitted that *Croake* may be distinguished because it is apparent from the decision in *Croake* that these arguments were not made before the Court of Appeal in that case. While it is accepted that there is no *right of appeal* against an order of the District Court fixing recognisances, this does not oust the original jurisdiction of the High Court in such matters, including in cases involving appeals from convictions of the District Court.

25. It is further submitted that S.I. 105/2009 also provides an alternative remedy in providing, at the end of a form to schedule 2 thereof that:-

"The accused may apply to the Court at any time to have a condition of the recognisance varied or revoked."

26. Finally, as to the question of alternative remedy, counsel for the respondent informed the Court that prior to the decision of the Court of Appeal in Croake, there were, on average, 500 "appeals" per annum heard by the High Court from decisions of the District Court in relation to terms of recognisances fixed by the District Court. Counsel informed the Court that the DPP has, since *Croake*, put in place a mechanism whereby such matters may come before the court by way of notice of motion, and that as a matter of fact, that is now operational. However, this was not put on affidavit. Counsel for the applicant objected to the introduction of evidence in this manner and added that it is no function of the DPP to devise procedures of this kind, and she does not have jurisdiction to do so.

Basis on which recognisances were fixed

27. It is submitted that when the District Judge was fixing recognisances, the defendant at no time intervened to inform the court that he would not be in a position to get a surety, whether in the amount fixed by the court, or in any amount. Accordingly, it is difficult to see how it can be claimed that the judge acted in an irrational or unreasonable manner in requiring an independent surety in the sum of €1,000. Moreover, the applicant has not set out any efforts made by him, if any, to obtain such a surety.

28. It is further submitted that having regard to the history of the applicant in respect of the charges dealt with by the District Judge, i.e. that it had been necessary to issue two bench warrants in respect of offences of which he was convicted, and that he also breached the requirement to remain sober on two further occasions, the court was entitled to have regard to those matters and acted within jurisdiction when requiring an independent surety.

29. Even if it is the case that the applicant was not in a position to get an independent surety, the fact that bail is fixed at a level that a person cannot meet is not of itself an indication that it was fixed without or in excess of jurisdiction. The respondent relies upon the decision of the Supreme Court in *Broderick v. Director of Public Prosecutions* [2006] 1 I.R. 629 in which the Supreme Court stated that a court, when fixing bail, has to balance on the one hand the requirement to ensure that an applicant would stand trial by fixing bail at an appropriate level having regard to the gravity of the offence and on the other hand not fixing it at a level which cannot be met. In this case while acknowledging that individually, the offences were not serious, taken collectively they must be regarded as serious, and the court had to balance the history of breaches of bail with the amount of bail, including that to be provided by a surety, pending the hearing of the appeal.

30. For the above reasons it is submitted the District Judge acted reasonably and within jurisdiction in fixing the terms of bail pending the hearing of the appeal.

Decision

31. There can scarcely be any doubt about the inherent jurisdiction of this Court in matters of bail. While the legislature may regulate procedures for the granting of bail, as it has done, it cannot oust the jurisdiction of the High Court to grant bail, and nor has it purported to do so. It is clear from *Butenas* that if there is a gap or lacuna in any of the procedures laid down by the Oireachtas, then that gap may be filled through the exercise by this Court of its inherent jurisdiction.

32. It is equally clear that while arguments based upon the inherent jurisdiction of the High Court are very often considered to be a last refuge, in matters concerning bail, they are very real and tangible. Individuals regularly have recourse to this Court and receive relief in matters of bail which, it is apparent from the decision of Walsh J. in *O'Callaghan* is not an appeal process but an exercise of the inherent jurisdiction of this Court.

33. The applicant however contends that there is a distinction to be drawn between bail applications in respect of those who have already been convicted and who have an appeal pending and the other forms of bail. In this regard the applicant relies upon the statement of Walsh J. in *O'Callaghan*, at p. 512, that "The question of the jurisdiction of the High Court to grant bail to convicted persons pending their appeal is one which has not yet been litigated …". But in the same paragraph, Walsh J. went on to say "Apart, however, from any question of bail arising on a *habeas corpus* application the High Court has a jurisdiction to grant bail to a person who has been convicted as the jurisdiction of the High Court in bail matters as in other matters is considerably wider than that of the Court of Criminal Appeal."

34. Moreover, this has been affirmed by the Supreme Court in *Butenas* which has a resonance with this case insofar as the application was the result of a lacuna in procedures provided for by legislation. In both cases the applicant was facing detention without remedy (with the exception of judicial review) unless this Court stepped in to exercise its inherent jurisdiction in bail applications.

35. The applicant argued that the decision of the Court of Appeal in *Croake* made it clear that there is no appeal against the decision of the District Court insofar as the requirement of an independent surety for the purposes of a recognisance is concerned. Of course it is absolutely correct that the Court of Appeal so held in *Croake*, following consideration of the relevant provisions of the Act of 1967 and in particular the definition of "bail" in providing for a right of appeal from decisions of the District Court to the High Court. Since the applicant in *Croake* was neither a person remanded or a person sent forward for trial or sentence by the District Court, he was not an applicant for bail (as the term is defined in the Act of 1967) and could not therefore exercise the statutory right of appeal.

36. However, the respondent is correct in pointing out that it does not appear as though arguments as to the inherent jurisdiction of this Court were made in *Croake.* While the applicant does point to some text in the judgment which refers to an appropriate or alternative remedy in the form of an appeal to this Court against terms of recognisances, that text is in fact an extract from the decision of this Court in that case, and that is the extent of the reference in the entire decision of the Court of Appeal in *Croake* to that process. If the original jurisdiction of this Court had been argued in *Croake*, as being a basis upon which the applicant in that case could have sought relief by way of alternative remedy, then I have little doubt but that the issue would have been considered in

detail and adjudicated upon by the Court of Appeal, but it is very clear that this did not occur. For all of the foregoing reasons, I have no doubt whatsoever from the authorities to which I have been referred that it was open to the applicant in this case to apply to this Court, exercising its inherent jurisdiction, to have the terms of his recognisances varied or revoked.

37. It is also clear from the authorities that such applications do not, unless so provided by legislation, arise by way of appeal but by way of application to the High Court in the exercise of its inherent jurisdiction. The Court was informed by counsel for the DPP that a process for making such applications has been put in place on a formal basis following the decision of the Court of Appeal in *Croake*, and that before that such applications had been treated as appeals. While counsel for the applicant submitted that this information was presented to the court by counsel for the DPP and not as evidence on affidavit, this Court can scarcely ignore the reality of its own processes. It was open to the applicant to issue a motion before this Court seeking to vary or revoke the order of the District Judge and he did not do so. He therefore failed to avail of an alternative remedy.

38. While it was submitted on behalf of the applicant that if this Court holds that such applications form an inherent part of this Court's jurisdiction, that should not serve to defeat this application because there has not, until now, been a determination to this effect, I find it difficult to accept that submission for two reasons. Firstly, the jurisprudence referred to in this decision as regards the inherent jurisdiction of the High Court in all matters of bail was clear and unambiguous, even if the specific question posed by these proceedings had not been addressed. Secondly, the very fact that applications to review decisions of the District Court in relation to recognisances, post conviction, have for a very long time been accepted and disposed of by this Court, whether considered as an appeal (erroneously) pre *Croake* or by way of an application post *Croake*, is a factor which must mitigate against the applicant.

39. Finally, on this issue, it is necessary to state that the argument made by the respondent that there was another alternative remedy available to the applicant pursuant to S.I. No. 105/2009 is patently incorrect. An examination of s. 6A of the Bail Act 1997 (as inserted by the Criminal Justice Act 2007 s. 10) makes it clear that this is a procedure that is only available to the accused in relation to conditions imposed upon the accused himself, and not those relating to the provision of an independent surety.

40. I have given consideration as to whether or not I should make any determination on the merits of the issue i.e. the basis on which recognisances were fixed, in light of my finding as to the exercise of an alternative remedy. While my initial inclination was to consider and determine the issue, on reflection, I think it would be inappropriate to do so unless I proceeded to deal with the matter as an application for bail in the exercise of this Court's inherent jurisdiction, outside the scope of these judicial review proceedings. While the facts have been laid before me, and while it might appear expedient and efficient that I should do so, I have decided against doing so because it was only in these proceedings that the applicant, for the first time, said that he would not be able to obtain an independent surety, and this is something that requires at least a degree of scrutiny for the purposes of considering any application that the applicant may wish to make to this Court to revoke or vary the conditions of recognisances. In the circumstances, it seems to me to be appropriate that I should make no determination as to the reasonableness or otherwise of the decision of the District Judge. Assuming the applicant wishes to do so, he should make application to revoke or vary that decision to this Court through the bail list. If he does wish to do so, I propose putting a stay on the operation of the order for his committal to afford him time to do so.