18/83

SUPREME COURT OF VICTORIA

R v SANGHERA

McGarvie J

17 September 1982 — [1983] VicRp 76; [1983] 2 VR 130

BAIL – APPLICATION FOR BAIL – OBJECTION BY CROWN – WHETHER HEARSAY EVIDENCE ADMISSIBLE ON APPLICATION: *BAIL ACT* 1977, S8.

The defendant applied to the Supreme Court for the grant of bail. The Crown opposed the application, and sought to lead evidence in support, from a member of the Police Force whose opinion that the defendant was an unacceptable risk was based upon what he had been told by persons described as members of the defendant's community. It was submitted that in respect of an application for bail pursuant to the provisions of the *Bail Act* 1977, hearsay evidence is inadmissible, and that the Court is limited to receiving evidence which is admissible according to the ordinary rules of evidence.

HELD: On an application for bail, a Court may go beyond the normal rules of evidence in admitting or acting upon evidence put before it. Under the *Bail Act* 1977, s8(e), it is open to the Court to receive any relevant evidence whether admissible under the rules of evidence or not, which it may consider credible or trustworthy.

McGARVIE J: *[At p2 of his Ruling]:* ... I consider that the *Bail Act* gives a Court on an application for bail a power to go beyond the normal rules of evidence in admitting, and if thought fit, acting upon evidence put before it. In dealing with such issues as whether bail is to be granted, the Court is concerned to make a decision which will achieve a result. It is concerned to make a decision which pays proper regard to the interest of the accused in his liberty, but which is likely to result in the accused answering his bail, not endangering the safety of other citizens, not interfering with witnesses, not committing other offences, and so on.

Although the decision, of course, is a judicial decision, it inevitably has a large administrative component. In my opinion, in making such a decision, it is open to a Judge to take into account information or evidence properly placed before him, of the type that a responsible administrator would take into account in deciding what course to take to produce the desired result or results. That is the approach which, in practice is followed in making decisions of the type I have mentioned during a trial. Although I am told it has not been challenged in this Court before, that is the practice which has been followed since the *Bail Act* came into operation. I have been informed by counsel that there has been no decision by a Judge of this Court as to whether the Court is entitled to take into account on an application for bail, evidence which is not admissible under the strict rules of evidence.

I consider that the power to act on such evidence comes particularly from s8 of the *Bail Act* which provides:

> "In any proceedings with respect to bail—
> (a) the court may, subject to paragraph (b), make such enquiries on oath or otherwise of and concerning the accused as the court considers desirable; ...
>
> (e) the court may receive and take into account any evidence which it considers credible or trustworthy in the circumstances."

Having heard argument on the operation of s8, I have reached the conclusion that under sub-s (e) of that section, it is open to the Court to receive any relevant evidence, whether admissible under the rules of evidence or not, which it may consider credible or trustworthy, and to take that evidence into account if in fact the Court considers it credible or trustworthy in the circumstances. In reaching that conclusion I have borne in mind the existence of s7 which enables a Court to prevent publication of anything that occurs on a bail application. In the absence of that power it

would be unfair to admit evidence on the bail application, if that would lead to publication through the media to potential jurors of prejudicial material which would be inadmissible at the trial. In making a decision on an application for bail the Court is concerned with more than the interest of the accused in obtaining bail. Sometimes the Court has to weigh the interest of the accused in obtaining bail against the risk to a Crown witness if he does.

I turn to the precise issue before me. Senior Sergeant Florence has given evidence of his opinion that there is an unacceptable risk. I do not consider him as having been qualified to give that opinion, and although it was not objected to, I will not act on it. Mr Galbally objected to the substantial evidence which the witness was about to give as to the information he had. I do, however, take the view that I may well regard it as appropriate to act on evidence as to what the witness has been told by other persons, even though the evidence is hearsay evidence. Accordingly I propose to receive evidence of what the witness was told. I will in due course make a decision as to whether I consider that credible or trustworthy in the circumstances and whether I will act upon it.

APPEARANCES: Mr F Galbally for Applicant. Mr G Livermore, counsel for the Crown.
