

19/82**SUPREME COURT OF VICTORIA*****Application for Bail by KEVIN PATRICK PARKER*****McInerney J — 19 February 1982****BAIL - APPLICATION FOR BAIL - ACCUSED FOUND IN POSSESSION OF HEROIN - APPLICANT TO SHOW CAUSE WHY DETENTION NOT JUSTIFIED - APPLICATION REFUSED: BAIL ACT, S4(4).**

McINERNEY J: This is an application by Kevin Patrick Parker for bail. He stands presently charged with trafficking in a drug of addiction; selling a drug of addiction; preparing a drug of addiction and possession of a drug of addiction.

As I understand it, it is alleged by the police that when he was apprehended on the 28 January 1982, he was found, on being searched, to be in possession of 13 silver foils, which it is alleged contained heroin. He was apprehended at premises at Flat 14, 44 Fitzroy Street, St Kilda which is not his place of residence, and premises occupied by one Rodney Duckworth and the de facto of that person. The committal proceedings against him, in respect of those offences, are fixed for the 10 March 1982. The *Bail Act* by recent amendment provides that where an accused person is charged with an offence of growing, preparing, selling, dealing, or trafficking in a drug of addiction such as heroin, the court shall refuse bail unless the applicant shows cause why his detention in custody is not justified.

The applicant has put material before me to show that he is a married man and living with and supporting his child, his two children; one a stepchild. That he is the proprietor of a business which he was conducting and which, in his period of custody, has had to be sublet to another person, so that he and his wife are deprived of the income, normally about \$360 a week, which came from that business; that he has a number of commitments which he is not able to meet in the absence of income, and that he has to pay some \$412 a month in reduction of the purchase price of his house. The house is presently up for sale and has been up for sale for two months. Constable Saunders says that the applicant told him his wife was suing the applicant, that the applicant's wife was suing the applicant for divorce and the date of the hearing was fixed for the 1st of April. The applicant denies that he knows anything of any such proceedings and says that he and his wife are on good terms apart from the usual domestic argument.

Constable Saunders has also given evidence of the making by the applicant of threats against people who have made statements, which I assume implicate him, and in particular he named a lady named Hunter and threats against her. She has apparently made a statement which Constable Saunders says that the applicant denies and was shown to the applicant during the questioning by the police. In all those circumstances, conscious of the financial and other difficulties which arise by reason of the applicant having been detained in custody, I have to give effect, I think to the policy of the legislature. The legislature must be aware that whenever person, a wage-earner is charged with an offence and ceases inconsequential of his intention to earn income that hardship will flow either to the applicant or his dependent; but the legislature has specifically by an amendment enacted on the 5 January 1982 and operative from that date put offences of the character with which the applicant is charged in the category of cases where the accused must be denied bail unless he shows cause why his detention in custody is not justified. The meaning of those words may yet require (inaudible) by a court of higher authority than a single judge sitting at first instance. But from the formal point of view, the detention in custody is justified by the fact the charges have been laid, that he has not been granted bail; but if one goes further than the more formal points of view, the allegation that threats have been made against witnesses has been made on oath, it is denied on oath. This court cannot determine whether or not the allegation is true. I say it cannot determine because it is not appropriate that an investigation of that kind should be undertaken in this court. And while that allegation stands, and it is made on oath before me, I think that that may be taken into account also in determining whether cause has been shown why the detention and custody is not justified. In all those circumstances, the application is refused.