

25/94

SUPREME COURT OF VICTORIA

DPP v PARKER

Mandie J

19 August 1994

BAIL – ACCUSED CHARGED WITH ARMED ROBBERIES AND OTHER OFFENCES – ACCUSED REQUIRED TO SHOW WHY DETENTION NOT JUSTIFIED – THREE MONTHS BEFORE TRIAL – STRONG CASE – SOME ADMISSIONS MADE – OFFENCES ALLEGEDLY COMMITTED WHILST ON PAROLE – NUMEROUS PRIORS – WHETHER MAGISTRATE IN ERROR IN FINDING DETENTION NOT JUSTIFIED AND FIXING BAIL: *BAIL ACT 1977*, SS4(4), 18A.

Where an accused person was charged with 13 counts of theft, 3 armed robberies of banks, perjury and possession of a drug of dependence, and it was alleged that the offences were committed whilst the accused was on parole and that there was a strong case in relation to the charges of armed robbery, a magistrate was in error in placing undue weight upon the fact that the trial date was more than three months away and in finding that the accused person had shown cause why his detention in custody was not justified.

MANDIE J: [1] This is an appeal by the Director of Public Prosecutions pursuant to s18A of the *Bail Act 1977*. The respondent, Kevin Patrick Parker, was granted bail by a Magistrate in the Springvale Magistrates' Court on 22 July 1994 subject to a number of conditions as to reporting, not contacting witnesses, a curfew and the like, and a surety, Mrs Baragwanath, provided security being an interest in real estate, the surety being in the amount of \$35,000. The respondent is charged with 13 counts of theft, three counts of armed robbery, perjury and possession of a drug of dependence.

The DPP has appealed on the grounds: that the Magistrate erred in placing undue weight on the expected delay between the date of the bail application and the trial date; that he erred in finding pursuant to s4(4) of the *Bail Act 1977* that the respondent had shown cause why his detention in custody was not justified; that he failed to accord sufficient weight to the nature and circumstances of the alleged offences and the strength of the prosecution case, the risk that the respondent will interfere with witnesses, the risk the respondent will fail to answer bail, the respondent's criminal history and antecedents, and the combined effect of the foregoing factors and, finally, that the learned Magistrate had erred in finding that Mrs Baragwanath was a suitable and adequate surety.

[2] It is common ground that the relevant section of the *Bail Act* which was applicable to the application before the Magistrate (s4(4)) provides that the court shall refuse bail unless the accused person shows cause why his detention in custody is not justified, and in any such case where the court grants bail the court, if constituted by a Judge or Magistrate, shall include in the order a statement of reasons for making the order. I indicated in the course of argument that I thought, as it appeared that the Magistrate had not included in his order a statement of his reasons for making the order, nor was there any transcript of his reasons for making the order, that the magistrate had failed to comply with the requirements of the *Bail Act*, that his order was a nullity and that this Court should consider the matter for itself unless there was some authority to the contrary. No authority was pointed to and I think that what I have just stated is the correct position, and that accordingly it falls to this Court to determine under s18A(6) what order should be made in a wider sense than would otherwise be the case. In saying that, I have had regard to what the Full Court said in *Beljajev v DPP*, a decision of the Full Court on 8 August 1991.

Miss Douglas, who appeared for the appellant, said that there were a number of reasons why the respondent's detention in custody was not shown to be not justified, and she referred to the fact that there was a trial date fixed for 31 October this year; that there was a strong case involving allegations of armed robberies of banks with loaded weapons; planned thefts of motor

cars done in a professional way – and I note that there appear to be some [3] admissions by the respondent; the offences were allegedly committed whilst on parole; the respondent had a lengthy prior history of offences; and among other matters mentioned was the unsatisfactory nature of the security, having regard to the position of Mr Baragwanath, who, Miss Douglas said, was suffering from Alzheimer's Disease and apparently was resident in the house which has been offered as security.

Mr Danos, who appeared for the respondent, did not seem to contradict much of that, and he indicated more or less expressly that he could not, but he said that the delay was so inordinate that, nevertheless, bail should be granted, and the time involved was a very long one.

The respondent was in custody for 32 months before bail was granted by the Magistrate; and, as Crockett J indicated in *Pietrobon's Case* on 13 January 1988, it can often be outrageous for a person to be held in custody for that length of time, no matter how strong the case, the likelihood of conviction, the likelihood of the imposition of a severe penalty and similar matters.

Indeed, he suggested that society had to take the risk in some of these cases that persons who are lawbreakers should nevertheless be released into the community because the system was such that persons had to wait inordinate periods of time for trial. I must say, with the greatest of respect to Crockett J, that I do not feel in full sympathy with the latter statement, particularly having regard to the mandate of Parliament in a case such as this. The Court is required to refuse bail unless the accused person shows cause why his detention in custody is not justified.

[4] The respondent in this case, having obtained bail from the Magistrate, has already been charged with a number of further offences. The only one which seems to be undisputed, or at least not seriously challenged for the purpose of this hearing, is that of driving an unregistered vehicle. It seems to me that that kind of conduct hardly gives cause for confidence that there is not an unacceptable risk that the accused person might continue to commit offences whilst on bail, and that is another factor which, added to the ones which have not really been challenged and which have been listed by Miss Douglas, gives me considerable cause for concern.

In the end, I think that I have to have regard to the fact that the trial is set for 31 October and to the further fact that the respondent is not precluded from making further bail applications if that date proves to be incorrect or other circumstances arise. Clearly it is a very long time, but I think that the public interest and the dictates of Parliament have to take precedence.

I am not satisfied that the further detention of the accused person in custody is unjustified. Accordingly, I think that this appeal should be allowed. The order of the Magistrate granting bail is revoked.

APPEARANCES: For the appellant DPP: Ms C Douglas, counsel. For the respondent Parker: Mr T Danos, counsel.
