

6/97

SUPREME COURT OF VICTORIA

KHAI LE v KEATING and ANOR

Beach J

11, 14 November 1996

BAIL – REVOKED – SUBSEQUENT APPLICATION FOR GRANT OF BAIL – APPLICATION DECLINED FOR LACK OF JURISDICTION – APPEAL WHERE BAIL REFUSED – WHETHER APPEAL MAY BE MADE WHERE BAIL REVOKED: *BAIL ACT 1977*, SS18, 24.

It is a prerequisite to an appeal pursuant to s18 of the *Bail Act 1977* ('Act') that the applicant has been refused bail. Where a person's bail had been revoked pursuant to s24 of the Act and that person subsequently applied to a Magistrates' Court for an order granting bail, the Court was not in error in declining to hear the application on the basis that it had no jurisdiction to do so.

BEACH J: [1] I have before me an originating motion whereby the plaintiff, Khai Le, seeks an order in the nature of a mandamus requiring the Magistrates' Court of Victoria to hear and determine the application for bail made by the plaintiff to the Magistrates' Court on 6 November 1996. On 10 October 1996 the plaintiff was arrested by police and charged with trafficking in a drug of dependence and using a drug of dependence. The plaintiff appeared before a bail justice later that day and was released on bail to appear at the Magistrates' Court at Melbourne on 13 December 1996.

One of the conditions of the plaintiff's undertaking of bail was that he not attend the Melbourne Central Building District bounded by Flinders, Spencer, Spring and La Trobe Streets. On 4 November 1996 the plaintiff was apprehended by police in the Melbourne Central Building District as so defined, and was taken before a bail justice. Being satisfied that the plaintiff had breached one of the conditions of his undertaking of bail, the bail justice revoked the undertaking of bail and committed the plaintiff to prison until 13 December 1996. In revoking the plaintiff's undertaking of bail, the bail justice acted pursuant to the provisions of s24 of the *Bail Act 1977*, the relevant sub-sections of which read:

"24. (1) Any member of the police force may without warrant arrest any person who has been released on bail—

(a) if the member of the police force has reasonable grounds for believing that the person is likely to break the condition for his appearance or any other condition on which he was admitted to bail, or has reasonable cause to suspect that the person is breaking or has broken any such other condition.

(2) A person arrested under sub-section (1)—

(a) shall be brought before a bail justice as soon as [2] practicable after his arrest and in any event within 24 hours thereafter.

(3) Where a person is brought before a bail justice or court pursuant to the provisions of paragraph (a) or paragraph (b) of sub-section (2) the bail justice or court—

(a) if he or it is of opinion that the person has broken or is likely to break a condition of the undertaking on which he was admitted to bail—

may revoke the bail and commit him to prison with a direction to the officer in charge thereof that he be brought before the court at the time when he is required by the conditions of the bail to appear or release him on his original undertaking or on a new undertaking with or without sureties."

On 6 November 1996 the plaintiff appeared before the Magistrates' Court at Melbourne and made application to the court that he be released on bail pending his appearance before the court on 13 December 1996. The court declined to hear the application on the basis that it had no jurisdiction to do so. The section in the *Bail Act* dealing with appeals against a refusal of bail is s18, the relevant sub-sections of which read:

"18. (1) Where a person is detained in custody pending a preliminary hearing or trial for an offence or pending the determination of the matter of an information and that person has been refused

bail by a bail justice or the Magistrates' Court or, having been granted bail by a bail justice or the Magistrates' Court, objects to some amount fixed or condition imposed for his discharge from custody he may make application—

(a) to the Magistrates' Court; or

(b) to the court to which he would be required to surrender himself under the conditions of the bail—

for an order granting bail or varying the amount of any bail fixed or condition imposed (as the case requires).

4. Where application is made under sub-section (1) to a court in respect of an order made by a court, the first-mentioned court shall not proceed to hear the matter of the application unless the applicant was [3] not represented by counsel or a solicitor when the order was made or the applicant satisfies him that new facts or circumstances have arisen since the making of the order that were not disclosed to the court which made that order."

In declining to hear the plaintiff's application for bail the magistrate, before whom the plaintiff appeared, stated that he had no jurisdiction to entertain the application because the plaintiff had not been refused bail by a justice or magistrate or Magistrates' Court as required by sub-sect.1 of s18 and in that situation had no entitlement to make a further application for bail to a magistrate or to the court to which he was required to surrender himself.

Having considered the provisions of s18 I am of the opinion that that is the correct view of the matter. It is a prerequisite to an appeal pursuant to the section that the applicant has been refused bail. In the present case the plaintiff has not been refused bail, his bail has been revoked. In that situation I consider his only recourse is to make application to this court. In my opinion there is no reason why the costs of this proceeding should not follow the event.

I order that the originating motion is dismissed. I order that the first-named defendant's costs of the proceeding be taxed and, when taxed, paid by the plaintiff.

APPEARANCES: For the Applicant: M Dean, counsel. Solicitors: Victoria Legal Aid. For the Respondent: Miss B King QC, counsel. Solicitor: Director of Public Prosecutions.
