55/83

SUPREME COURT OF VICTORIA

R v KENT

Crockett J

7 November 1979

BAIL – APPLICATION FOR – INDICTABLE OFFENCE COMMITTED WHILST AWAITING TRIAL – MEANING OF "AWAITING TRIAL" – BURDEN ON APPLICANT: *BAIL ACT* 1977, S4(4).

K. was arrested and charged with theft in October 1978; he was later admitted bail. In March 1979, K. was arrested again and charged with conspiracy and with incitement of a witness to give false evidence. The conspiracy appeared to he connected with the previous theft and the incitement. K. was admitted to bail until the subsequent committal proceedings but when he was committed for trial, the magistrate refused bail. It was submitted that because K. allegedly committed offences whilst on bail awaiting trial for an indictable offence, then the burden rested upon him to show why he should be admitted to bail. Upon application to the Supreme Court for bail—

HELD: Application granted.
1. Upon arrest and being charged with an indictable offence, a person must be treated as awaiting trial as from that time.

2. Therefore, that person falls within the terms of the *Bail Act* 1977, s4(4)(a), and the burden rests upon him to show why he should be admitted to bail.

CROCKETT J: *[After setting out the facts of the application, His Honour continued]* … **[3]** What I think told with the Magistrate is that the applicant, in 1964, 1966, 1972 and 1972 again, always on charges of dishonest conduct, failed to answer his bail and, presumably, the Magistrate reached the conclusion that those events displayed sufficient likelihood of, or propensity to, the applicant's repetition of absconding if he should he admitted to bail in this case. I might say about that, that it seems to involve some inconsistency at the magisterial level in dealing with this matter, that the applicant should not be considered a risk as to absconsion prior to committal but that he should be such a risk subsequent thereto. Perhaps the explanation is that different Magistrates dealt with the matter.

However, the matter now has to be dealt with and the Crown submits that the applicant falls within sub-s4(a) of s4 in the *Bail Act* which reads:

> "Where the accused person is charged with an indictable offence that is alleged to have been committed while he was at large awaiting trial for another indictable offence the court shall refuse bail unless the accused person shows cause why his detention in custody is not justified."

[4] If the applicant falls within the sub-section, the burden rests upon him to show why he should be admitted to bail, otherwise the burden would lie upon the Crown. In the first instance, Mr Campbell, appearing for the applicant, has submitted that the applicant does not fall within that sub-section at all. It was said that as the committal has now been held all the offences are merged for bail purposes. And further that he had already applied prior to committal for bail and its being granted. To use counsel's words, to refuse it now would be to put the applicant in double jeopardy. I am not sure that I fully understand the implication of that submission but at all events I am not persuaded that it has validity. It was then said that until he was committed for trial, he could not be said to be awaiting trial and that the offence of conspiracy, or at all events certainly that of incitement to a witness to give false evidence, (which the Crown says took place whilst the applicant was on bail awaiting trial for an indictable offence), did not occur whilst he was awaiting trial. It is said that it occurred, if it occurred at all, whilst he was awaiting committal. In my view that contention equally cannot be sustained. Upon arrest and being charged with an indictable offence, a person must he treated to be awaiting trial as from that stage and I think that was the position so for as this applicant is concerned. I think, therefore, he falls within the terms of sub-s4(a) and the burden rests upon him to show why he should be admitted to bail. *[After further discussion, His Honour granted the application and fixed bail.]*