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ROYAL COURT
(Samedi Division)

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8th July, 1994

Before: The Bailiff, and
Jurats Coutanche and Rumfitt

The Attorney General

- v -

MH

Application for review of Magistrate's decision to refuse Bail, following not guilty pleas to the following charges: (1) rape; (2) indecent assault; and (3) contravening Article 16 of the Road Traffic (Jersey) Law, 1956.

The Attorney General.
Advocate D.F. Le Quesne for the Applicant.

JUDGMENT

THE BAILIFF: On 17th June, 1994, the representor, MH, applied to the Magistrate for bail. He was charged with two serious offences, the more serious one being that of rape. The Magistrate heard the application and refused bail.

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In the course of his judgment he referred to three matters. The first was that rape is a very serious crime and he linked that with the principle which is quite clearly followed in this Court by saying that: "it is not a crime for which bail is normally granted". He then distinguished the case of rape from the two cases of manslaughter cited by Mr. Le Quesne for the representor this morning, and before the Magistrate, which he was entitled to do.

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The second head of the Magistrate's judgment was the question of possible interference with the witnesses and he reached the conclusion that having heard the evidence and having heard the submissions of Mr. Le Quesne there was a genuine danger of interference particularly with one named witness.

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Thirdly, he felt that there might be an effect on the complainant were the representor to be allowed bail. Had that been the sole matter it might possibly have been said that he misdirected himself, but we are not prepared to say that in a small island the release of somebody charged with a very serious crime might not be a relevant matter to take into account. One has only to cast one's mind back to the Paisnel matter years ago where it would have been impossible to release him in view of the very serious crimes with which he was charged, and one of the grounds for refusing to release him could well have been the effect on a number of people who were concerned with what he had been doing, or was alleged to have been doing. But that is not really the reason for the Magistrate's decision.

Mr. Le Quesne has said that as the Magistrate had found that there was no question of absconding, the ground of the seriousness of the offence could not be regarded by the Magistrate as a separate and proper head. We have no hesitation in saying that that view of the law is misconceived; the case of A.G. -v- Makarios (1979) JJ 85 makes it clear that the gravity of the offence is a matter to which the Court may be entitled to have regard independently of the question of absconding, or whether the applicant will surrender to bail as it is put in that case.

There is also the question of a previous conviction for a grave and criminal assault for which the applicant was sentenced in 1988 for 18 months; and there is also the question of the interference with witnesses. However, as I say, the Magistrate heard the evidence and he reached the conclusion that there was the possibility of interference.

Under all the circumstances we cannot find that the Magistrate misdirected himself and the application is refused.

Authorities

A.G. -v- Makarios (1979) JJ 85.

Archbold (36th Ed'n): section 7, paras 201-204: p.p. 71-2.

Archbold (1992 Ed'n): 3-1 to 3-16: p.p. 306-313.
3-47 to 3-55: p.p. 327-331.

A.G. -v- Pockett (21st December, 1990) Jersey Unreported; (1990)
J.L.R. N.14.

A.G. -v- Hanley (1st October, 1993) Jersey Unreported.

