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ROYAL COURT  
(Samedi Division)

202.

7th October, 1994

Before: F.C. Hamon, Esq., Commissioner,  
and Myles and Le Ruez

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The Attorney General

- v -

MH

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Application for bail, following not guilty pleas to:

1 count of rape; 1 count of indecent assault; and 1 count of  
contravening Article 16 of the Road Traffic (Jersey) Law, 1956, as  
amended.

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J.A. Clyde-Smith, Esq., Crown Advocate.  
Advocate D.F. Le Quesne for the Applicant.

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JUDGMENT

THE COMMISSIONER: This is an application by Mr. Le Quesne for bail.  
There are charges of rape and indecent assault. A plea of not  
guilty has been entered to these counts. There have been two  
applications before the Magistrate in this matter and one before  
5 this Court. All were refused.

On 8th July, 1994, this Court, at the hearing before the  
learned Bailiff, said this:

10 "In the course of his judgment he (the learned Magistrate)  
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  
15 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."

Now, of course, we are dealing with this matter *de novo* because the accused, **MH**, was indicted today.

5 It seems to us that there are certain matters which we are bound to take into consideration in an application of this nature and these matters are the nature of the accusation made against the accused; the evidence in support of that accusation; and the severity of the punishment which conviction will entail.

10 In the case of A.G. -v- Makarios (1978) JJ 215, the following passage occurs on p.216:

15 *"Upon hearing the applicant through the intermediary of his advocate and upon hearing the Solicitor General, Acting Attorney General, the Court held that when an application to be admitted to bail is made by any accused, the gravity of the offence is a matter to which the Court to which the application is made is entitled to have regard independent of the question of whether or not he will surrender to his bail, and accordingly dismissed the application."*

20 Mr. Le Quesne - and we need to say this: Mr. Le Quesne has more than adequately argued on his client's behalf every point that could properly be raised - cited to us other cases where bail was granted, but these seem to us to be of no significant help today. They cannot, of course, create a precedent as each case which comes before the Court is adjudicated on its own facts and in its own circumstances.

30 Mr. Clyde-Smith read to us the statement of the complainant and the statement of the other main prosecution witness, Mr. J.

35 Mr. Le Quesne rightly points out that there are matters contained in each of these statements which will need in time to be forensically examined. Of course we agree with that but we have had regard to the following statement in Archbold (1992 Ed'n): p.p.330-331: 3-53:

40 *"The strict rules of evidence are inherently inappropriate in a court concerned to decide whether there are substantial grounds for believing something."*

45 There was sufficient in the statement of each witness to leave us in no doubt that the crime alleged is very serious indeed. Further, if the allegation is true then it seems to us that a prison sentence of some severity may well be the natural consequence. We can sympathise with the effect that incarceration is having on the applicant's family; they are, of course, entirely innocent of any of these matters, but we cannot  
50 - and we have reflected long and hard - see that there are any grounds there to influence our decision.

5 There is also a question raised concerning possible intimidation. Again, we accept entirely what Mr. Le Quesne told us but there was a statement by the accused's brother which, on the face of it, raises in our minds sufficient concern that, at a later stage, there may be some attempt at intimidation.

On those grounds alone and particularly on the serious offence, we have no hesitation in saying that we reject the application for bail.

Authorities

A.G. -v- Makarios (1978) JJ 215.

Archbold (36th Ed'n): p.71: Section 7: Bail.

Archbold (1992 Ed'n): p.p.330-1: 3-53.