

1977
IN THE GRAND COURT OF THE CAYMAN ISLANDS (Civil)

BEFORE JUDGE L.T. MOODY, Q.C. CHIEF JUSTICE OF THE CAYMAN ISLANDS
ON 7TH DAY OF NOVEMBER, 1977.

IN THE MATTER of the Application for Bail
by Paul Harris

JUDGMENT

The Applicant was arrested on the 9th day of September, 1977, on a provisional warrant, according, to the provisions of Section 6(i)b. of the Cayman Islands Order, 1968 and appeared before the Stipendiary Magistrate on the 13th September, 1977 and was granted bail by the Stipendiary Magistrate until the 26th September, 1977.

On the 16th day of September, 1977, an application was granted for an Issue for a Warrant of Arrest of the Applicant on four charges of conspiracy. On the 26th September, 1977 Application was made on behalf of the United Kingdom Government for an order that the Applicant be committed to custody in respect of the charges. The Applicant was remanded on bail to 10th October, 1977, when the Application was heard for the Order to be made for the custody of the Applicant in regard to the charges set out in the Warrant. The hearing was concluded on the 13th October and on the 14th October, the Stipendiary Magistrate committed the Applicant to custody to await his retention in custody pending his return to the United Kingdom.

On the 26th October, Application for leave was granted for the hearing of an Application for the issue of a Writ of Habeas Corpus. On the 3rd November, an application was made for bail until 15th November or such other date as the Court may allow.

There are two points which have arisen from my decision:

1. Has the Court jurisdiction to entertain the Application to grant bail, pending the Habeas Corpus Application.
2. If, the Court has jurisdiction, should the Court exercise its discretion in favour of the Applicant to grant bail as prayed.

The Court was referred to the case of "Regina v. Spillsbury, 1898, 2 Q.B.D. Page 615".

That case is very helpful and it agreed with my experience and conclusion that I have reached on the evidence before me. On examination of the Spillsbury Case, L.C.J. Russell, after dealing with the hearing of the Writ of Habeas Corpus came to the conclusion that there was sufficient evidence before the Magistrate of a strong or probable presumption and he refused the Application for Habeas Corpus.

The Application for Habeas Corpus, also contained an application for the grant of bail. In that connection, he said that the Court has independently of statute, by the common law, jurisdiction to admit to bail and he gives the source of his conclusion 1 Chitty's Criminal Law, 2nd Edition Page 97.

The Grand Court Law in the Cayman Islands, Section 13 says that the Court shall be a superior of record.....

Therefore, if this jurisdiction is exercised or found to be exercised by the High Court of Justice in the United Kingdom, it may, in my view, be exercised here.

I also refer to Section 27 (iii) of the Criminal Procedure Code.

The words are wide, very wide "at any stage", or "in every case".

There is also a statement in the Annual Practice 1967, White Book which says that these words cannot be limited or cut down in any way unless in the rules themselves there is some limitation placed on them.

This is in the chapter dealing with procedure generally in the Rules of Court and is a statement by Lord Esher (Part vii - Miscellaneous Parties and Proceedings - Volume II - Page 541 of the White Book). I also refer to *exparte Noriss* 1886 17 Q.B.D. Page 731 and *A.G.V. Emerson* 1890 24 Q.B.D. Page 56.

In my view, these two passages in the Grand Court Law and the Criminal Procedure Law gives the Grand Court the power to admit anyone to bail in any case and at any stage.

I now turn to deal with the other question as to whether the words "or other process" refer to the question of bail or not. I think the words of the L.C.J. on this matter are enlightening. At Page 621, the question asked by the Magistrate whether a defendant, committed by a Magistrate, can be admitted to bail and it is asked how can a defendant apply for Habeas Corpus. The answer is that he could apply for Habeas Corpus and be released on bail.

The words "or other like process" refers to the means of questioning the validity of the Order and not really the question of the bail (see page 621).

Then on page 622 the L.C.J. deals with the power to direct bail to be given and how the power should be exercised. It reads that "The power should be exercised with extreme care and caution". I then refer to the remainder of Page 622 which deals with the granting of bail in various circumstances.

I cannot add any words to the passages, which I have referred to. I refer to the Armah case but I do not derive much assistance from this Authority as it only refers to the fact that Armah was in fact on bail but the Authority refers to a different state of things that exist here.

I refer to the Tarling Authority and in view of the approach that I have taken that the Laws of the Cayman Islands do give power to grant bail, in cases like this one before me, the Tarling case, I respectfully say much of the relevance has been over-shaddowed by the local law. I am grateful to the Attorneys for making so great efforts to procure this Authority for the assistance of the Court.

I have one observation and that is there does appear to be a paucity of authority on the question of whether anyone has been granted bail, notwithstanding the refusal of an application for a Writ of Habeas Corpus and I think the reasons for that paucity of authority is because whether or not bail is granted, depends on the exercise of the discretion of the Judge, who hears the Bail Application. In the case of Regina v. Spillsbury, the Lord Chief Justice pointed out that this was the first case he knew of in which an Application for Bail was made.

My understanding of the Fugitive Offenders Order 1968 is that once an application is made for hearing of the issue of a Writ of Habeas Corpus, the return of the Applicant to the Country that requests his presence cannot take place until a completion of the hearing of the Court of Appeal - see Section 8 (sub-section 5).

The other point I had to deal with in this Application for Bail, is that I do not have before me the evidence, which was before the Stipendiary Magistrate who committed the Applicant to be detained until his return and it seems to me, that it is a very relevant consideration whether there has been a relevant offence.

One of the items is whether it is "a relevant offence" (see Archibold's 38th Edition - Paragraph 4059). Broadly speaking, on looking at Paragraphs 4059, 4060, it seems to me the conspiracies within that section, apply to the Cayman Islands. It suggests there is a relevant offence, in existence for which these Courts would have jurisdiction. It is not possible to mention all the considerations that I have taken into consideration, which are relevant here; therefore, what I have said is to indicate how widespread the examination of my material has been and I reach the conclusions on the way in which the matters stand before me, having heard the submissions of both Counsel.

My view is that the Court does have jurisdiction to admit the Applicant to bail in the circumstances like the present, but, in my view, this is not a case, in which the Court should exercise its discretion to grant bail to the Applicant as the matter stands now. This is my decision.