

ROYAL COURT  
(Samedi Division)

20th January, 1995

14.

Before: The Deputy Bailiff and Jurats  
Coutanche and Le Ruez

\_\_\_\_\_  
The Attorney General

- v -

Duncan Carl Raffray

\_\_\_\_\_  
Application for review of the Assistant Magistrate's decision to refuse bail, following a reserved plea (now a guilty plea) to:

1 count of acting in contravention of Article 77(b) of the Customs and Excise (General Provisions)(Jersey) Law, 1972.

\_\_\_\_\_  
W.J. Bailhache, Esq., Crown Advocate  
Advocate Mrs. S.A. Pearmain for the Applicant

\_\_\_\_\_  
JUDGMENT

THE DEPUTY BAILIFF: The Court is entirely satisfied that the Magistrate approached the matter properly in the Police Court and exercised his discretion in a perfectly reasonable manner.

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There is, however, one matter which has caused us some concern and that is that the bail application was conducted by the duty advocate at a time when the Prosecution was aware that the applicant was represented by a particular firm of advocates. We are not saying, and we wish to emphasise this, that in every case there is a duty on the Police or Customs to notify Defence Counsel that an arrest is about to take place. But, in the particular circumstances of this case where a very long interview had been conducted by Customs Officers with the applicant several days before in the presence of the legal adviser, and furthermore where the decision was taken not to detain the applicant pending charge, we think that it would have been desirable if the Customs Officers had given the applicant's legal advisers notice of the fact that he was to be presented before the Police Court and an application made by the Centenier for his remand in custody.

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It is not, as the Crown Advocate has rightly reminded us, for this Court to substitute its own discretion for that of the Magistrate. We have, however, a lurking doubt whether, if addressed on the full background by Counsel as we have in this Court been addressed by Counsel for the applicant, the Magistrate would have arrived at the same decision.

We have noted that the applicant has pleaded not guilty to the charge, and that he has no previous relevant convictions at the age of 34. On that basis, in order to avoid a possible injustice, we have decided that we are prepared to grant the application and to grant bail which we think, Mrs. Pearmain, should be in a substantial sum having regard to the gravity of the offence. We fix the bail at £1,000. The applicant will report to the Police Headquarters once a week and we order the applicant to surrender his passport. Bail on those terms.

**No Authorities**