

JERSEY / JUDGMENT

# AG -v- Caruso [2015] JRC 066B (30 March 2015)

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## JUDGMENT

THE BAILIFF: 1. This is an application for a review of the refusal of bail by the Assistant Magistrate. The charge of which the defendant has been charged is conspiracy with two others, at least, maybe others unknown, to commit fraud by a false representation. The fraud victim is not identified and presumably it will be before trial but, on the face of it, the potential victims certainly include the bank and the fraud would be an agreement to obtain banking services by deception. It may be that there are other potential charges and the Crown will undoubtedly be considering what, if any, those might be. But we decide this simply on the basis of the existing charge because we agree with the submission of Advocate Hall that if it had been the case that the charge was not capable of being made out by the evidence, the Magistrate would have been wrong to refuse bail. 2. We think that is not the case here and that the material before the Magistrate was capable of supporting the charge which has been brought. 3. The next step is the analysis of how extensive the review of the evidence ought to be. The case of AG-v-Whelan

[2001] JRC 098 shows that we are not to hold a mini trial, nor is the Magistrate to hold a mini trial, and we do not do so. We recognise that the evidence, which will be produced at trial, may go beyond that which was before the Assistant Magistrate but, as we have indicated, we think there was sufficient before him to pass the threshold where a conviction on the charge with which he was dealing could reasonably be contemplated. 4. The nature of the application before this Court is that it is one of judicial review. That is to say the applicant has to show us that the Assistant Magistrate either proceeded in a procedurally improper way, or that he acted illegally, or that he acted irrationally. No objection is taken before us that he acted in a procedurally improper way or, indeed, that he acted illegally. 5. I emphasise that the judicial review application is the basis of our approaching this case because at the moment the case remains firmly before the Magistrate's Court, and we do not know whether it is coming up to this Court or not. So it is not an appeal and not an exercise of discretion in relation to a matter in this Court's original jurisdiction, for the moment at least, but a matter for judicial review. 6. What the Magistrate had to assess was whether the defendant would fail to attend trial, would interfere with evidence or witnesses, or otherwise obstruct the course of justice or commit further offences whilst on bail, those being the usual grounds upon which bail might be refused, with the starting

point that unless a ground for refusing bail could be made out, then bail ought to be granted. His decision in this case was set out in this way:- "An application has been made this morning for bail by Advocate Hall. There is a presumption in favour of granting bail, and that presumption can only be overruled in certain defined circumstances. The two circumstances that the Prosecution rely upon are that, if you were granted bail, you would fail to surrender on the appointed date, and also that you might interfere with the ongoing investigation. Obviously, you have no ties with Jersey and you have your business and family in Italy and, to an extent, in Austria. Advocate Hall, quite rightly, emphasised the level of evidence that is currently against you, but, of course, the evidence that the Police currently have is only one part of the whole picture. This is a complex international investigation that will inevitably take rather longer than normal to conclude. Because of the seriousness of the allegation against you, you would face a lengthy custodial sentence if found guilty, and this would give a considerable incentive to flee. Even the surrender of identity documentation cannot guarantee that you would not do so. You do have some relevant previous convictions in Italy and, whilst I acknowledge that the level of evidence against you currently is not strong and that may be dealt with further at the point of committal, I nevertheless agree with the Prosecution that the grounds for opposing bail do exist and that even stringent conditions would not be sufficient adequately to mitigate the risks. I am therefore, refusing bail on the grounds that you might fail to surrender and that you might interfere with the investigation and, in support of that, my reasons are the nature and seriousness of the charge against you; the likely sentence; the strength of evidence and the ongoing complex investigation; your lack of community ties with Jersey; and your character and antecedents." So those are the reasons which the Magistrate gave for refusing bail. 7. Now it is said, amongst her other submissions, by Advocate Hall that the Assistant Magistrate ought not to have referred to the complexity of the international investigation that will take longer than normal to conclude because there was no evidence of that and we simply say that it is correct that the statements made to the Assistant Magistrate came from counsel, who was not giving evidence, but one has to recognise that in applications before the Magistrate, the Court will frequently, for the purposes of the expeditious dealing of business in that Court, accept, unless challenged by counsel, statements as to the nature of the investigation made by the Prosecution and we do not criticise the Assistant Magistrate in this case for doing so. 8. It seems to us that the Magistrate was entitled, within his area of discretion, to reach the conclusion he did and there was no basis for criticism of his exercise of that discretion. It is clear that the circumstances with which he was dealing in this case are unusual and, given that it was possible, in our judgment, for the evidence that was put before him to support the charge that was put before him, he was entitled then to look, as he did, at the grounds upon which bail might be refused, and to conclude there was a real risk of a failure to surrender, for the purposes of trial, and furthermore that there might be an interference with the investigation. 9. This is a judgment call; if it had been our original decision, this Court would have exercised its judgment in the same way as the Assistant Magistrate and we reject the application. Bail is refused. Authorities AG-v-Whelan 2001/98. Page Last

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Prepared on 26 October 2026 · Esheria