IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS SUIT NO. M. 44/93

IN THE FULL COURT

Before: THE HON. MR. JUSTICE THEOBALDS
THE HON. MR. JUSTICE BINGHAM
THE HON. MR. JUSTICE LANGRIN

Regina vs. Superintendent of Prisons General Penitentary
Ex parte Richard Dudley

Lord Anthony Gifford Q.C. and Patrick Bailey for the Applicant

Lloyd Hibbert Senior Deputy Director of Public Prosecutions for the requesting State

Lackston Robinson instructed by The Director of State Proceedings for The Superintendent of Prisons.

Hearing on November 8, 9, 10 and 12, 1993

Reasons for Judgment

BINGHAM J.

In this matter the applicant by Notice of Motion dated 24th March, 1993 sought by way of a Writ of Habeas Corpus to quash an order of the learned Resident Magistrate for the parish of St. Andrew committing him to the General Penitentary to await an order of the Honourable Minister of National Security and Justice that he be extradited to the United States of America to stand his trial on certain criminal charges including Murder.

This application was heard by us over a period of four days at the end of which we dismissed the Motion. In a brief oral judgment delivered at that time we promised then to put our reasons for coming to our decision into writing. This is now a fulfilment of that promise.

The statement of the grounds upon which this application was based were:-

"(1) That the learned Resident Magistrate erred in law in holding that there was sufficient evidence to warrant the trial of the applicant for the offence of Murder, and thereby in ordering that he be extradited to the United States for that offence; and in particular:

(a) The United States government relied upon the affidavit of a witness Dionne Lewis, who by reason of her previous testimony in the same matter was manifestly a witness who was unworthy of belief in so far as she implicated the applicant in the offence of Murder.

(b) The evidence of the said Dionne Lewis, taken at the highest, was not sufficient to prove that the applicant commanded or procured or was otherwise a party to a Murder.

(c) The evidence of Harold Taylor, also relied upon by the United States government, was too vague and too deficient in particularity to be a proper basis for finding a prima facie case of Murder against the applicant.

(2) That the learned Resident Magistrate erred in holding that there was sufficient evidence to warrant the applicant's trial for offences of distribution and possession of cocaine, and in particular the evidence adduced did not prove that the applicant had committed those offences as charged against him in certian counts of the indictment of the United States Grand Jury, to wit Counts 9, 15, 23 and 29.

(3) That the applicant might, if he is extradited be denied a fair trial."

At the commencement of these proceedings a fourth ground was added. This was as follows:-

"(4) That the accusation against the applicant has not been made in good faith in the interest of justice. In particular, the central accusing witness on the charge of Murder and kidnapping one Dionne Lewis, has testified falsely in order to obtain a light sentence for herself and not in order to assist the Court with the truth.

Therefore, it is respectfully submitted that it would be unjust and/or oppressive to extradite the applicant."

By way of supporting the grounds filed affidavits of the applicant, one Elissa Krauss, Thomas H. Mogill and the witness Dionne Lewis were filed.

An affidavit from Mr. Thomas Suddath Jnr., an attorney-at-law and Assistant State Prosecutor who practices law in Eastern Pennsylvania the area in which the trial of the applicant is scheduled to take place, was filed in reply by the respondents.

The affidavit of the applicant in so far as it is relevant states:-

"I Richard Daley being duly sworn make oath and say as follows:-

(1) I am presently detained in custody by order and warrant of the Resident Magistrate for the parish of St. Andrew, who on 12th March, 1993 ordered that I be committed to custody to await my extradition to the United States for the offences of Murder, kidnapping, conspiracy to distribute cocaine, possession of cocaine.

(2) That I am innocent of all these charges.

(3) That I fear that I will not receive a fair trial in the United States Court owing to the prejudice which is present against black people in general and Jamaicans in particular and I wish to present new evidence to show the extent of such prejudice in Philadelphia and the inadequacy of the legal safeguards against such prejudice."

Of the four grounds filed Ground 2 was abandoned at the outset and nothing further need be said in that regard.

As later events proved the argument of counsel for the most part focussed on Ground 3 which may conveniently at this stage be referred to as "the fair hearing" ground. This was the main ground relied upon by the learned counsel for the applicant.

I shall now proceed to deal with the three remaining grounds filed in the order in which they were considered.

Ground 4 - The Fresh Evidence Ground

Learned counsel for the applicant sought to adduce fresh evidence with a view to establishing that Dionne Lewis, a witness for the State in certain criminal charges preferred against co-accused persons charged along with the applicant had entered into an arrangement with the prosecution which had as its objective her testifying against the applicant in exchange for her receiving a lighter sentence. In this regard reliance was placed by counsel upon an affidavit sworn to by Miss Lewis that her testimony given at the trials of these accused persons as well as that given at the extradition hearing before the Resident Magistrate in so far as it sought to incriminate the applicant, was not worthy of belief.

An affidavit sworn to by Miss Lewis supporting this contention was submitted by learned counsel for the applicant. This affidavit in so far as it is relevant reads as follows:-

"(3) That the matters that I have alleged against Richard Desmond Anthony Daley (also known as Richard Paul Daley) are false and I hereby withdraw those allegations in their entirety.

(4) That at the time of giving the said affidavit I was confined in prison in the United States of America for murder of Edward Dixon and I was given life sentence. The Pennsylvania police authorities granted me an opportunity to plea bargain so as to reduce the sentence from life. Throughout the preparation of the said affidavit the police representatives dictated the matter they wanted included in the affidavit and whatever they dictated to me I went along with it in an effort to have my life sentence reduced and so as to get out of my predicament.

(5) I lied when I made the allegations against Richard Anthony Daley so as to gain an advantage for myself. My life sentence was reduced to 6 to 15 years. I have since been released from prison and have returned to Jamaica.

(6) That I specifically state that Richard Desmond Anthony Daley gave no order to murder Edward Dixon or anyone as alleged in the said affidavit or at all, and I never heard Barrington Clarke, Anthony Johnson or anyone admit that they had killed Edward Dixon or anyone.

(7) That at no time did I know Richard Daley to operate any drug organisation and I was never involved with him in any activities."

It is important to note that this witness whose affidavit now sought to impeach her deposition had at two previous trials those of Barrington Clarke and Anthony Johnson who were charged on the same indictment with the applicant, as well as at the extradition hearings before the Resident Magistrate for St. Andrew had given evidence implicating the applicant in the offences for which the extradition order is now sought. She did not swear to this latter affidavit until after the extradition hearing was concluded. The reason, which she proffers for her change of heart is that "she lied to implicate the applicant while seeking to gain an advantage for herself by obtaining a reduced sentence."

In this regard the affidavit which was sworn to after these present proceedings had commenced and had been adjourned for this later hearing date, raises a number of issues of fact touching upon the conduct of the witness, a matter which properly devolves upon the trial Court as the sole tribunal of fact and not this Court to determine as to whether:-

(a) Her testimony at any of the earlier hearings, at all of which her testimony was given with a marked degree of consistency was truthful.

(b) Whether she is in fact lying as to what she now depones.

The evidence contained in this latter affidavit of the witness Dionne Lewis and sworn to on 23rd September, 1993 was rejected, however, having regard to the fact that the evidence contained therein had emerged after the order for committal by the learned Resident Magistrate. In any event as it raises questions touching upon the credibility of the witness even if it had been material available at the extradition hearings before the Magistrate it could hardly have effected the con-

clusion to which she came. This is so as such issues are inherently matters falling for determination by the Court of trial and not the Magistrate.

(See R. v. Galbraith [1982] 2 All. E.R. 1060 supporting the above statement).

In this regard the Court was also guided by the authority relied on by learned counsel for the respondents of Schtraks and Government of Israel and others [1964] A.C. 556, a decision of the House of Lords per dictum of Lord Reid which when examined in my opinion is sufficient to fully dispose of arguments raised in favour of the applicant on this ground. There in dealing with a not too dissimilar situation the noble Lord said:- (p. 558)

> "The accused sought to adduce further evidence before your Lordships in order to show that on the whole material now available it would be improper to commit him. In my judgment we are not entitled to look at such evidence and we have not done so. Owing to the restricted character of habeas corpus proceedings a Court is not concerned with anything that comes to light after committal. This could easily lead to injustice if the accused had no other remedy: there may well be cases where new evidence throws a different light on the material originally before the Magistrate. But that is a matter which the Secretary of State is entitled to consider when deciding whether to grant extradition."
>
> (Emphasis supplied)

Neither is it a matter falling for our decision but for the ministerial authority seized of the facts in deciding the appropriate course to take. This ground accordingly fails.

This brings me, therefore, to the substantive grounds.

Ground 1 - The Evidential Ground

The arguments raised revolve around the sufficiency and/or reliability of the evidence of Dionne Lewis at two previous trials of the co-accused persons charged along with the applicant, at the extradition hearing, as well as the affidavit sworn to by the witness. Learned counsel for the applicant sought to contend that a comparison of her evidence at these hearings revealed certain inconsistencies and conflicts which ought at the end of the committal hearing to have been resolved in favour of the applicant.

We are unanimously of the view that such matters were entirely for the committing magistrate to determine and in that regard this Court cannot substitute its discretion for that of the Magistrate. Having examined the material upon which the order for committal was made by the learned Resident Magistrate we are also of the view that there was evidence upon which she could have come to the conclusion to which she came.

In this regard it bears repeating that this Court does not hear this application by way of appeal so as to reverse the Magistrate's decision on fact or alter a discretion properly exercised. See dictum of Lord Wilberforce in Tarling v. Government of The Republic of Singapore [1978] 70 Cr. App. R. 77 at 108. Also in point is the dictum of Lord Goff of Chieveley in Alves v. Director of Public Prosecutions and another [1992] 4 All. E.R. 787 at 793 where the noble Lord said: (787 A - B)

> "There can, after all, be more than one possible explanation why a witness may retract evidence given by him on a previous occasion .... one possibility may be that it is the latter retraction, rather than the earlier evidence which is not worthy of belief. At all events in the present case the question whether in the light of Price's subsequent retraction before the magistrate, his Swedish evidence was sufficient to justify the respondent's committal was essentially a matter for the decision of the magistrate who had heard Price give evidence before him."

Having examined the evidence upon which the order for committal by the learned Resident Magistrate was based we are of the view that there was sufficient material upon which she could have come to the conclusion at which she arrived. This ground therefore also fails.

Ground 3 - The Fair Hearing Ground

In the light of protective provisions set out in Section 7 (1)(c) of the Extradition Act 1991, learned counsel for the applicant submitted that if the material in the affidavits tendered in support of the application establshes that the applicant might not receive a fair trial the Court is obliged to refuse the request for committal. This he contends is because the law leans over to ensure that the applicant ought to receive a fair trial.

The burden of proof is on the applicant to prove this fact. The burden then shifts to the State to show that such a trial will be fair. Section 7 (1) reads:-

> "A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purposes of such extradition, if it appears to the Minister, to the Court of committal or to the Supreme Court on an application for Habeas Corpus.
>
> (a) .....
>
> (b) .....
>
> (c) That he might if extradited be denied a fair trial or punished, detained, or restricted in his personal liberty by reason of his race, religion, nationality or political opinions."

The words "might if extradited be denied a fair trial" in the subsection has been the subject of judicial comment. See Fernandes v. Government of Singapore and others [1971] 2 All. E.R. 691.

These words were there interpreted to mean, based on the following test:-

> "has the (applicant) satisfied us that there are substantial grounds for thinking that he might if extradited be dealt with in a particular way?"
>
> (emphasis supplied)

This test which was laid down by Lord Parker C.J. in delivering the judgment in the Divisional Court [1971] 2 All. E.R. at p. 30 (F-G) was later approved by the House of Lords. [1971] 2 All. E.R. p. 691 Lord Diplock in delivering the main opinion of the Court on this question said: - (p. 696 G-H).

> "But the phrase is inappropriate when applied not to ascertaining what has already happened but to prophesying what, if it happen at all, can only happen in the future. There is no general rule of English law that when a Court is required either by statute or at common law to take account of what may happen in the future and to base legal consequences on the likelihood of it happening it must ignore any possibility of something happening merely because the odds on it happening fractionally may be more than evens."

The English Court was there dealing with section 4 (1)(c) of the Fugitive Offenders Act, a similar provision to section 7 (1)(c) of the Extradition Act, 1991.

In so far as the applicant is contending that he will not receive a fair trial he needs to show therefore, on the material provided that there are substantial grounds for thinking that there is the likelihood that if he is extradited he will not get a fair trial.

The affidavit of Elissa Krauss when examined shows that:-

(1) The matter of jury selection by way of the voir dire is one which is left entirely to the Judge's discretion as to the manner in which this selection is carried out.

(2) The fact that the prospective jurors are questioned individually and the jury in the applicant's case which will be selected will include many biased individuals some of whom have been hopelessly tainted by exposure to generally biased publicity linking Jamaican nationals with illegal drugs, crime and violence. The odds are therefore great that the applicant will not receive a fair trial.

The affidavit filed in support of the applicant Kenneth Mogill, an attorney-at-law while admitting that there are constitutional guarantees in the United States Constitution which secure to the individual the right to a fair trial before an impartial and independent tribunal, he deponed, however that having regard to his experience at the Bar it is his belief that the judicial safeguards based on the jury selection methods of the jury in the applicant's case would not be sufficient to exclude potentially biased individuals, hence it was highly likely that any jury selected to sit in judgment of the applicant would include individuals who were so biased against him that they would not be able to give him a fair trial.

It is of some significance that Mr. Mogill who has sought to canvass an opinion on jury selection methods in Pennsylvania does not practice law in that State but in the State of Michigan. His conclusions are based mainly on certain assumptions derived from the sociological research data compiled by Elissa Krauss and upon his beliefs that the facts contained in her affidavit are true.

Thomas H. Suddath Jnr. an Assistant United States attorney assigned to the criminal division of the United States Attorney's Office in the Eastern District of Pennsylvania deponed that his duties include the prosecution of persons charged with violation of federal law. He has personal knowledge and is familiar with the procedure relating to the jury selection process which was applied in relation to the applicant's co-defendants some of whom were acquitted of similar charges as the accused is indicted for.

The composition of the jury revealed that the majority of the jury at these trials were Black. Black jurors actually over represented the black population in this Dictrict.

Prejudice and bias as a state of the human mind is as old as civilisation itself. Indeed Smith C.J. in Grant v. Director of Public Prosecutions (1981) 29 W.I.R. p. 235 at 246 (F-H) and in dealing with the limits to which this question falls to be considered puts the matter in this way:

> "Dealing with pre-trial prejudice in particular, the State could not be held to guarantee in advance that jurors empanelled to try a particular case will be free from prejudice. It may be difficult, if not impossible, to find a human being who is entirely free from one kind of prejudice or another. Existing statutory provisions for summoning and empanelling jurors are designed to eliminate those known or suspected to be prejudiced against the person(s) charged or against the prosecution so that, as far as possible an impartial jury is left to decide the question of guilt or innocence."

The Suddath affidavit when summarised at paragraph 9 deposes to the fact that the allegations in the affidavits of both Kenneth Mogill and Klissa Krauss are speculative and contain subjective allegations about jury selection procedures in the Eastern District of Pennsylvania. This is borne out by the fact that Miss Klauss is not an attorney and her research is limited to negroes charged with drug offences and violent crimes. Mogill for his part has no actual trial experience in the area under consideration.

The fact that Thomas Suddath Jnr. has actual familiarity as an attorney-at-law who is practicing in the State of Pennsylvania tends in my opinion to give more weight to the contents of his affidavit when compared and contrasted with the evidence contained in the affidavits of Mogill and Krauss. In so far as he depones that:-

> "(9) In their affidavits Mogill and Krauss allege, without any personal knowledge about the facts of this case, that the jury selection process in general in the Eastern District of Pennsylvania is so unfair and biased that Daley will be unable to receive a fair trial if he was extradited to the United States. However, they were either unaware of or choose to ignore the actual jury selection process used in the two prior trials of Daley's co-defendants. Because Daley's trial will be presided over by the same judge similar jury selection procedures are likely to be used. Based on my personal participation in the jury selection in the two trials involving Daley's co-defendants as well as numerous other federal criminal trials in the Eastern District of Pennsylvania, I am of the opinion that the allegations that have been made by Mogill and Krauss are wholly unsupported by the record in the case."

On the basis of the above the deponent concludes that the applicant would receive a fair trial if he is extradited to the United States.

In this regard the applicant's safeguards rests in the common law and other remedial measures among which are the following:-

(1) A change of venue to a parish distant from the area in which the accused or the deceased lived and had friends or associates.

(2) The postponement of the trial to allow adverse publicity to fade in the potential jurors minds.

(3) The exercise by the judge of his discretion in allowing each juror to be examined on the voir dire in relating to challenges

for cause with a view to excluding potential jurors on the grounds of bias or prejudice and in order to "keep the springs of justice pure and undefiled" - all reasonings alluded to by the learned judges in the case of Grant v. Director of Public Prosecutions (referred to supra).

These measures have their parallel situations in the State where the trial is scheduled to take place (see paragraph 9 of Suddath affidavit referred to supra).

When the system in place in the State of Pennsylvania is examined and tested in the atmosphere of a trial it clearly withstood the test as paragraph 15 of the Suddath affidavit indicates. He deponed that:-

"(15) In sum I have participated in jury selection and trials of fifteen Jamaican co-defendants of Daley who were also charged with drug trafficking offences. Each defendant was ably represented by counsel who had personal knowledge about the facts of the case and the jury selection procedure in the Eastern District of Pennsylvania. None of the attorneys for any of these defendants ever made any allegations that challenged the jury selection process that was used or the likelihood of a Jamaican defendant receiving a trial by a fair and impartial jury."

In light of the above facts which stands uncontroverted there is no evidence to show that was 'a reasonable chance,' or ' substantial grounds for thinking' or 'a serious possibility' that if the applicant was extradited to the United States to stand his trial he would not receive a fair trial, and accordingly that ground also fails.

Given the evidence contained in the affidavits tendered in support of the applicant and the respondent, therefore, when considered there is nothing to lead us to come to a conclusion that we have "substantial grounds for thinking" that the applicant if he is extradited to the United States will not get a fair trial and on that basis this ground also must fail.

The applicant's remedy lies in the judicial safeguards which were alluded to by both Kenneth Mogill and Thomas Suddath Jnr.

It is important to mention at this stage that in so far as section 20 (1) of Jamaica Constitution seeks to secure to an individual "the right to a fair hearing within a reasonable time by an independent and impartial tribunal appointed by law", a provision similar to the 5th and 6th Amendment of The Constitution of the United States of America, and this subsection when examined; it has been judicially recognised that:

> "The State does not .....
> ..... guarantee in advance that a person charged will receive a fair hearing or that the Court will in fact be impartial. It provides means, by law, whereby any infringement of that person's right will be redressed."
> Per dictum of Smith C.J. in Grant and others v. Director of Public Prosecutions (1981) 29 W.I.R. p. 235 at 246 (B-C).

A fortiori this applicant could here lay claim to no greater right than he is entitled to by virtue of the protective provisions laid down in section 20 (1) of our Constitution and on that basis alone the relief sought ought to be refused.

It was for the reasons as set out above that on November 12, 1993 the Motion was dismissed.

Since preparing the draft of this judgment I have had the opportunity to read the draft opinion prepared by Langrin J. which deals entirely with the questions raised in ground 3. I wish to state that I am in complete agreement with the reasons which he has advanced and the conclusion arrived at as to why that ground should fail.

LANGRIN, J.

I have had the advantage of reading the judgment of Bingham J, in draft and gratefully adopt his statement of the facts. I agree that this motion must be dismissed for the reasons which he states but will add some brief observations of my own on this vital ground:

That the applicant might, if he is extradited be denied a fair trial.

At paragraph 4 of the applicant's affidavit in support of his application he states as follows:

> "4. That I fear that I will not receive a fair trial in the United States owing to the Prejudice which is present against Black people in general and Jamaicans in particular, and I wish to present new evidence to show the extent of such prejudice in Philadelphia, and the inadequacy of the legal safeguards against such prejudice."

By appendices to affidavit, newspaper reports and articles published in Pennsylvania containing prejudicial publicity about Jamaicans associated with drugs and violence were placed before us. We were also supplied with affidavits from three persons who have done an analysis of the factual matrix pertaining to a fair trial in relation to the applicant.

Elissa Krauss, a Social Scientist, deponed that based on a review she concluded that the odds are great that the jury pool from which the applicant's jury will be selected will include many biased individuals, some of whom have been hopelessly tainted by exposure to generally biased publicity linking Jamaican nationals with illegal drugs, crime and violence. Thus the odds are great that the applicant will not receive a fair and impartial trial.

Kenneth Mogill an attorney, deponed that based on his experiences at the bar it is his belief that it is highly likely that any jury selected to sit in judgment of the applicant would include individuals who are so biased against him that they would

not be able to give him a fair trial.

Thomas H. Suddath JR. an Assistant United States Attorney assigned to the Criminal Division of the United States Attorney's Office in the Eastern District of Pensylvania deponed that his duties include the prosecution of persons charged with violations of federal law and he has personally participated in the preparation and trial of over 70 cases involving violation of federal law. He is familiar with jury selection process used in the Eastern District of Pennsylvania as well as the process which was applied to the applicant's co-defendants, some of whom were acquitted. The majority of the jury there being black. Neither Mogill or Krauss are Attorneys who have been admitted to the bar of the Eastern District of Pensylvania. In summary he deponed that the allegations in the affidavits of both Mogill and Krauss are speculative and contain subjective allegations about the jury selection procedures in the Eastern District of Pennsylvania. In fact, he depones that the record establishes that the applicant will receive a trial before a fair and impartial jury if he is ordered extradited to the United States.

It was submitted by Counsel for the applicant that the prospective jurors were infected with bias against the applicant by reason of his being a Jamaican accused of offences relating to drugs and violence. It was argued that the questions usually asked by the Presiding Judge to reveal the existence of bias in prospective jurors are usually inadequate and insufficient. It was said that Miss Krauss testified as an expert in relation to bias while Mr. Suddath was not an expert in the field. Finally he argued that the end result in whether there is a serious possibility of the applicant getting a fair trial.

For the respondents it was submitted that on the evidence before the Court it cannot be said that there are substantial grounds for thinking that the applicant cannot get a fair trial. Since the material provision in the statute does not protect drug dealers

and the affidavit evidence is not confined to nationality, there is no basis on which the Court can make an order in favour of the applicant.

Section 7(1)(c) of The Extradiction Act 1991 provides as under:-

> 7-(1) A person shall not be extradited under this Act to an approved State or committed to or kept in custody for the purpose of such extradition, if it appears to the Minister, to the Court of committal or to the Supreme Court on an application for habeas corpus -
>
> (c) that he might, if extradited, be denied a fair trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions" or ..."
>
> (underlining mine)

In the case of Grant v. Director of Public Prosecutions (1981) 30 WIR 246, Lord Diplock in delivering the judgment of the Board on the question whether a right to a fair trial under Sec. 20(1) of the Constitution was likely to be violated, had this to say at p.305:

> "The Judiciary in Jamaica have wide and up to date experience of juries in criminal cases. In face of their opinion that, despite the prejudicial pretrial publicity that had taken place, it had to impanel an impartial jury, their Lordships, lacking that experience, would hesitate long and anxiously before being persuaded to the contrary."

From this passage it appears that once the Court is of the view that it has not been shown that it would be impossible to impanel an impartial jury then the application must fail. It does appear that the applicant would not be entitled to any higher standard of proof under the Extradition Act than he would derive under the Constitution of Jamaica.

However, in Fernandez v. Government of Singapore & Others (1971) 2 ALLER 691 The House of Lords was here interpreting Sec.4(1)(c) of the Fugitive offenders Act, a similar provision to Sec.7(1)(c) of the Extradition Act when they approved a statement in the judgment of the Divisional Court by Lord Parker C.J.:

> "the burden is ..... to satisfy the Court on a balance of probabilities, but what has to appear has to be merely that the [appellant] if returned be dealt with in a certain way. As it seems to me "might" there does not mean "might" as a matter of mere possibility but it is for the Court to say: has the [appellant] satisfied us that there are substantial grounds for thinking that he might be dealt with in a particular way?"

Lord Diplock delivered the main judgment of the Court and in dealing with the question of the balance of probabilities had this to say:

> "But the phrase is inappropriate when applied not to ascertaining what has already happened, but to prophesying what, if it happen at all; can only happen in the future. There is no general rule of English law that when a Court is required either by statute or at common law to take account of what may happen in the future and to base legal consequencies on the likelihood of happening it must ignore any possibility of something happening are fractionally less than even."

In summary, therefore, it seems plain from these judgments that this Court would be justified in giving effect to the provision of Sec.7(1)(c) of the Act, if an applicant showed that there was a 'reasonable chance' or 'substantial ground for thinking' or a 'serious possibility' that he might not get a fair trial by reason of his nationality. The United States Constitution guarantees to every defendant a right to a fair trial. As indicated in Mr. Suddath's affidavit there are residual measures such as change of venue, exercise by the Judge to reveal the existence of bias in prospective jurors, and postponement of the trial to allow the adverse publicity to fade in the minds of potential jurors. I do not find that these measures are inadequate. Further, I find as a fact that the appendices to the affidavit of Elissa Krauss include mainly biased publications relating to Jamaican nationals involved with drugs, crime or violence. Such evidence was not confined to nationality. The extradition Act at Sec.7(1)(c) protects only against race, religion, nationality or political opinions.

I can see nothing in the evidence in the instant case to justify discharging the applicant on the ground that he might not get a fair trial by reason of his nationality. The evidence before the Court does not satisfy this test.

THEOBALDS, J.

I have read the draft judgments of my brothers Bingham and Langrin. The facts recited therein, the arguments and submissions of Counsel and the views of the individual members of the Panel are all accurately recited in these drafts. The motion therefore stands dismissed.

The Respondent having waived any application being made for cost there is no order as to cost.

Cases referred to

1. R v Gaebralta (1982) 2 All ER 1060
2. Sobtraks and Government of Israel and others (1964) A.C. 556
3. Tan Eng v Government of the Republic of Singapore (1978) 20 G. Appeal R 77
4. Alwis v Director of Public Prosecutions and another (1992) 4 All ER 787
5. Fernandez v Government of Singapore and others (1971) 2 All ER 691
6. Grant and others v Director of Public Prosecutions (1981) 29 W.I.R. 235

(2 others not cited)