1953 *Present:* **Swan J.**

R. MUTHURETTY, Petitioner, *and* THE QUEEN, Respondent

IN THE MATTER OF AN APPLICATION FOR BAIL

S. C. 21—Kandy Sessions 3rd Circuit—M. C. Nuwara Eliya, 6,298

Bail pending appeal—Complexity of case—Insufficient ground for granting bail.

In an application for bail pending appeal, the complexity of a case is by itself not a sufficient ground for the granting of bail.

APPLICATION for bail pending appeal to the Court of Criminal Appeal.

Issadeen Mohamed, for the petitioner.

L. B. T. Premaratne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 9, 1953. SWAN J.—

The petitioner who is the third accused in this case applies for bail pending appeal. The Crown opposes the application. The petitioner was charged with certain others with (1) conspiracy to commit breach of trust and (2) abetment of criminal breach of trust. By an unanimous verdict the Jury found all the accused guilty on both counts, and the petitioner was sentenced to five years' simple imprisonment on each count, the sentences to run concurrently. He has appealed against the conviction and sentence. The appeal I understand is listed for hearing on 27.4.1953. The grounds on which the application is made are that this is a complicated case and that it is necessary that the petitioner should instruct Counsel personally. The trial lasted 31 days and about 1,000 documents were produced. The type-written record

runs into more than 500 pages. The petitioner states that the system of accounting followed in the Bank and the method of entering various books and documents cannot be understood by a mere reading of the proceedings. Mr. Mohamed who appeared in support of the application stated that the advocate who originally defended the petitioner dropped out of the case after two days of hearing and that thereafter very junior counsel appeared for him.

Mr. Mohamed relies on the case of *The King v. Cooray*[1] where Windham J. allowed bail. In that matter the grounds upon which bail was granted were—

(1) the complexity of the case,
(2) the ill-health of the applicant, and
(3) that the applicant was not likely to abscond.

The petitioner does not say that he is not likely to abscond but I shall take that for granted. With all respect to the learned Judge who allowed bail in the above-mentioned case I would say that the improbability of absconding would be a relevant consideration in an application for bail pending trial, and not in an application for bail pending appeal.

A Court will not grant bail as a rule. Bail is granted only in exceptional circumstances. As regards the complexity of the matters involved, learned Crown Counsel relies on a certain English case where complexity was not regarded as an exceptional circumstance to warrant the granting of bail. In *R v. Henry Charles Ernest Howeson and another* [2] the application was refused despite the fact that the case was one of great complication. I should mention that in that matter the Director of Public Prosecutions neither supported nor opposed the application. In *R v. Arthur Jack Klein* [3] bail was refused although it was a case of great complexity and it was urged that the prisoner's freedom would materially assist in the preparation of the appeal. Hewart L.C.J. in refusing the application said that this was not an exceptional circumstance.

I would follow the rule of the English Courts that the complexity of a case is by itself an insufficient ground for the granting of bail. The application is refused.

Application refused.