BAIL- EXTRADITION ACT
SC. CR. 76 031

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF The Extradition Act, Revised Statutes of Canada, 1970, Chapter E-21

18-Feb-1976

AND IN THE MATTER OF Angelo di Stefano presently of Inuvik in the Northwest Territories and previously of Italy (also known as Angelo DeSterfano, Aldo Alessiani and Ivan Stefanovic)

ORAL REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE W. G. MORROW

The issue before me today is as to the right to seek release from custody on bail of a person persently incarcerated under Warrant to Apprehend issued under the provisions of the *Extradition Act*, R.S.C. 1970, C. E-21. The applicant, according to the material set forth in the Information sworn to before the issue of the Warrant to Apprehend, is subject to a warrant of arrest issued May 18, 1971, by the Judicial Authorities in Rome, Italy, for misrepresentation of qualifications, having been alleged to have forged identification documents and medical school diploma and having obtained a position as Assistant Surgeon at a hospital at Ceprano - Frosinone, Italy. This is alleged to be a crime in Italy and appears to be included in the list of crimes set forth in Schedule I to the Extradition Act. Crown counsel resisted the application on the ground that myself, sitting as extradition judge had only the powers given me by the statute itself and that bail not being included in the statute then it could not be granted. Further that the whole tone of the language of Part I of the

statute was to incorporate the terms of the treaty between the two countries and that bail was not intended to be in any way included in the language of both when read together. Counsel for the applicant made five arguments in favour of his position, namely that bail could be granted if the judge saw fit.

These arguments were:

1. That the statute was continuing law that was in effect long before the bail reform provisions and that therefore bail could be granted.

2. That Section 13 of the Act by requiring the fugitive to be brought before a judge who then was to hear the case "in the same manner as nearly as may be as if the fugitive was brought before a justice of the peace, charged with an indictable offence committed in Canada" was by inference incorporating the provisions of the *Criminal Code* as on a preliminary hearing which must therefore include the bail provisions of the Code.

3. That Section 27(2) when it states "that all provisions of the *Criminal Code* relating to indictable offences created by an enactment, and all the provisions of the *Criminal Code* relating to Summary Convictions apply to all other offences created by an enactment except to the extent that the enactment otherwise provides" must give effect to the bail provisions in the *Code*, the *Extradition Act* being an enactment and not otherwise providing.

4. That Section 2(f) which requires every law of Canada to be construed so as not to deprive a person charged with a criminal offence the right to reasonable bail.

5. The present statute was analagous to the *Immigration Act*.

6. The inherent common law right to grant bail has not been taken away where the extradition judge is a superior court judge.

It is not necessary for me to consider all six of the grounds submitted by counsel in view of the position I am taking. I should first observe that I would instinctively find it distasteful if I should have to find that a protection such as the provision of bail which is almost automatic in respect to a subject of Canada charged with an offence is not equally afforded to the subject of some other country while he is in Canada.

I am impressed by the language of Section 27 of the *Interpretation Act*. The applicant here is charged in Italy with an offence that appears to come within the ambit of an indictable offence here in Canada. That the Italian warrant may be enforced here is due to the provisions of the *Extradition Act* which is the vehicle used to implement the provisions of Canada's treaty with Italy. This Act is surely an enactment within the meaning of this section and therefore the bail sections of the *Code* must apply.

I am also persuaded that Section 2(f) of the *Bill of Rights* quoted below is a guarantee of the right to reasonable bail in the absence of any express declaration to the contrary, the *Extradition Act* not carrying any such express declaration. I quote:

> "2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge

> "or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to
>
> > (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or "

Finally it is my opinion that as a superior court judge sitting as Extradition Judge my inherent power to grant bail as has always been the case at common law has not been lost to me. I rely on such decisions as *Re Gaynor* (1905) 9 C.C.C. 255 and *U.S. Government v. Gifford* 1929 1 W.W.R. 879 wherein it was held that the judge had the power in his discretion to grant bail. In this respect it is interesting to examine the remarks of Lord Russell, C.J. made back in 1898 in reference to the Fugitive Offender Act of England at that time. His remarks beginning at page 620 of the report of *R. v. Spilsbury* 1898 2 Q.B. 615 show how the right to bail has become enshrined in our law even that far back in time.

> "It is necessary to consider first how the question is to be viewed. Was Mr. Sutton right in saying that the defendant was bound to shew that power is given to admit to bail under the Fugitive Offenders Act, 1881, or, in other words, is the onus of shewing that the power to admit to bail exists cast on the defendant? I think not. This Court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore the case ought to be looked at in this way: does the Act of Parliament, either expressly or by necessary implication,

"deprive the Court of that power?

> "I have come to the conclusion that the provisions of the statute are consistent with the recognition of the power of this Court to admit to bail in such cases as the present. This inherent power to admit to bail is historical, and has long been exercised by the Court, and if the Legislature had meant to curtail or circumscribe this well-known power, their intention would have been carried out by express enactment. But how ought the power to be exercised? Considering the class of cases which are likely to arise under the Fugitive Offenders Act, it is obvious that the power ought to be exercised with extreme care and caution.

In this respect I have carefully examined the two cases of *Re the Commonwealth of Virginia and Cohen* (1973) 12 C.C.C. (2d) 1; and *Re Controni and United States of America* (1973) 15 C.C.C. (2d) 76. In the first, the limited report before me does not show that the verdict reached by the Federal Court of Appeal was based on the same issues as were argued before me today. Similarly the second decision appears to be directed to the power of a judge other than a superior court judge. With great deference therefore I do not consider these decisions authoritative in the present instance.

I have also considered among other cases: *Re. U. S. & Sheppard*, 19 C.C.C. (2d) 32; and *Re State of Wisconson and Armstrong*,

(1973) 10 C.C.C. (2d) 271.

In the result I agree that the applicant has the right to apply for bail under the present charge.

W. G. Morrow

Yellowknife, N.W.T.
18 February 1976.

Counsel:

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Counsel for the
Attorney General of Canada
and for the Government of Italy

J. E. Richard, Esq.,
Counsel for the bail applicant

NO.

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