

JIMMY ZUO, Petitioner, v. **HIS HONOR JOHN N. MORRIS**, Assigned Circuit Judge, First Judicial Circuit, Criminal Assizes "C", Montserrado County, and **THE REPUBLIC OF LIBERIA**, represented by and thru the Minister of Justice, Respondents.

PETITION FOR THE WRIT OF MANDAMUS TO THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, COURT "C".

Heard: June 1, 1994. Decided: September 22, 1994.

1. All accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offense or grave offenses as defined by law.
2. Excessive bail shall not be required, or excessive fines imposed, nor excessive punishment inflicted." LIB. CONST., Art. 21 (d)(i)(ii).
3. The purpose of bail is to serve the convenience of the accused, without interfering with or defeating the administration of justice. Therefore in the exercise of his right to bail, an accused shall be given a fair opportunity to obtain bail.
4. The primary purpose of bail in a criminal case are to relieve the accused of imprisonment, to relieve the state of the burden of keeping the accused pending trial and at the same time to keep the accused constructively in the custody of the court, whether before or after conviction, to ensure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his attendance is required.
5. The statute entitled "An Act To Amend Chapter 15 Of The New Penal Law, By Adding Thereto A New Sub-Chapter To Be Sub-chapter "F" To Provide For The Crime of "Economic Sabotage", approved July 31, 1989 and published September 22, 1989, is unconstitutional in so far as it requires an accused "to post a cash bond in the amount equivalent to the amount charged.

These mandamus proceedings emanate from the refusal of the assigned judge of the Circuit Court, First Judicial Circuit, Criminal Assizes "C", Montserrado County, to approve a criminal appearance bond in favour of petitioner, who was charged with the crime of economic sabotage. Petitioner, in order to secure his release from jail on bail, had tendered a bond executed by legally qualified sureties which was secured by their property value at \$102,600.00, an amount which was over one hundred percent

of the amount charged against the accused. The trial judge refused to approve of the bond on the grounds that it did not meet the requirements of the Economic Sabotage statute which requires that a person charged with the crime of economic sabotage shall "post a cash bond in the amount equivalent to the charge. Petitioner, not satisfied with the judge's refusal, applied to the Chambers Justice for a writ of mandamus to compel His Honour Judge Morris to approve his bond, contending that the Economic Sabotage statute, in so far as it relates to the securing of a bond, denies him of his constitutional right to bail and deprives him of his constitutional right to equal protection of the law. Petitioner also prayed the Court to declare the Act unconstitutional. Because of the constitutional issues raised, the Chambers Justice forwarded the petition to the full bench.

The Supreme Court *en banc*, upon review of the records and argument of the parties, opined that the purpose of the constitutional provisions relating to the right of an accused to obtain bail is to prevent the practical denial of bail either by fixing the amount so unreasonably high that it cannot be given, or restraining the means by which bail can be given. Criminal statutes enacted in pursuance of these constitutional provisions, the Supreme Court continued, are also for the purpose of ensuring that an accused shall have the widest opportunity to obtain bail fairly, cheaply and without unnecessary difficulty. The Court found that the Economic Sabotage Statute is inimical to such purpose, as it denies the accused the right to choose any one of the four modes provided for under section 63.1 of the Civil Procedure Law which he may desire or which may be convenient or fair to enable the accused to obtain his release from detention. This choice of the accused is an independent choice which no individual or law shall be permitted to prohibit. The Court held that petitioner was denied his right to choose, which is tantamount to a denial of his constitutional right to bail as well as his right to be treated equally before the law.

For the aforesaid reasons, the Supreme Court held that the Economic Sabotage Statute is unconstitutional insofar as it requires an accused "to post a cash bond in the amount equivalent to the amount charged. Accordingly, the peremptory writ was ordered issued and the respondents ordered to approve the proper bond which conforms to the requirements under the Criminal Procedure Law, whenever it is presented by the petitioner.

Benedict F. Sannoh appeared for appellant. *John L. Greaves*, Solicitor General of Liberia, of the Ministry of Justice, appeared for appellee

MR. CHIEF JUSTICE BULL delivered the opinion of the Court.

The defendant in these mandamus proceedings, Mr. Jimmy Zuo, is a former comptroller of the Judicial Branch. Seven months ago to date, Mr. Zuo was arrested and charged with the crime of Economic Sabotage, for allegedly converting to his own use \$50,000.00 of Government funds intended for jurors' pay. He was thereafter put into prison, where he is presently. Following his arrest, defendant first appeared before the magisterial court at the Temple of Justice. Later, he was transferred to Criminal Court "C" presided over at the time, by His Honour Judge John N. Morris. In order to secure his release from detention, defendant then tendered to Judge Morris for his approval, a bond executed by two legally qualified sureties. Said bond was secured by unencumbered real property owned by these sureties with an assessed value of \$102,600.00. Judge Morris refused to approve the bond because he was not satisfied that said bond met the requirements of the statute relating to the crime of economic sabotage with which the defendant is charged, which requires that a person charged with the crime of Economic Sabotage shall post a cash bond in the amount equivalent to the charge.

The accused being dissatisfied with the Judge's refusal to approve his bond, fled to the Chambers of Mr. Justice Hne, the Justice presiding in Chambers of the Supreme Court, and prayed for a writ of mandamus to compel His Honour Judge Morris to approve the bond which defendant had tendered for his release.

The gravamen of petitioner's contentions are essentially that section 15.86 under sub-chapter "F" of the New Penal Law which relates to bail bond for a person charged with economic sabotage: (a) denies petition of his constitutional right to bail; and (b) deprives petitioner of his right under the Constitution to enjoy equal protection of the law. Petitioner therefore requests this Court to declare this statute unconstitutional. The predecessor statute to this one, now before us for review, is the worthless check statute, which required an accused charged with issuing a bad check to post a cash bond to the value of the dishonoured check in order to obtaining his release from detention. This Court, in the case *Addo Mills v. Thorpe et al*, 24LLR 27 (1975), declared the worthless check act unconstitutional in so far as it relates to "the presentation of a cash bond equal to one and a half times the face value of the dishonoured instrument." We are again called upon to consider the constitutionality of a law which is almost identical to the Worthless Check Act.

Our Constitution is very clear on the question of an accused person's right to bail. We shall quote below the relevant portion of the Constitution:

(d)(i) "All accused persons shall be bailable upon their personal recognizance or by sufficient sureties, depending upon the gravity of the charge, unless charged for capital offense or grave offenses as defined by law.

(ii) Excessive bail shall not be required, or excessive fines imposed, nor excessive punishment inflicted." LIB. CONST., Art. 21(d)(i)(ii).

The subject statute which we are called upon to declare unconstitutional is section 15.86, entitled bail bond, under sub-chapter "F" of the New Penal Law which reads as follows:

"A person charged under this sub-chapter "F" shall be required to post a cash bond in the amount equivalent to the amount charged, but shall not be less than the amount of the fine of \$10,000.00 as prescribed herein."

In further support of petitioner's claim that the above quoted Penal Law is unconstitutional, petitioner contends that under the Criminal Procedure Law, Rev. Code 2: 63.1, any person charged with the commission of an offense, which is not a capital offense, shall be entitled as of right to be admitted to bail either before conviction or pending an appeal after conviction. Further that such person shall obtain his release from custody upon posting a bond in accordance with the Civil Procedure Law, Rev. Code 1:13.1(2) and 13.3.

These two statutory provisions under our Criminal Procedure Law, petitioner argued, are valid, unrepealed, and are consistent with the provisions of Article 21 (d) of the Constitution.

Section 63.1 of chapter 63 of the Civil Procedure Law, which Section 13.3 of the Criminal Procedure Law refers to, provides four modes by which a person may post a bond, namely:

- a. Cash to the value of the bond; or cash deposited in the bank to the value of the bond as evidenced by a bank certificate;
- b. Unencumbered real property on which taxes have been paid and which is held in fee by the person furnishing the bond;
- c. Valuable to the amount of the bond which are easily converted into cash; or

d. Sureties who meet the requirements of section 63.1.

The Economic Sabotage Act quoted above, denies the accused the right to choose any one of the four modes which he may desire or which may be convenient or fair to enable the accused to obtain his release from detention. The accused is given a single mode only to post bail for his release from detention under this Act.

In *Addo-Mills v. Thorpe*, 24 LLR 27(1975), this Court, speaking through Mr. Justice George E. Henries, said:

"We see no justifiable reason for limiting the means of obtaining bail to the presentation of cash bond. The purpose of bail is to serve the convenience of the accused, without interfering with or defeating the administration of justice. Therefore in the exercise of his right to bail, an accused shall be given a fair opportunity to obtain bail."

This Court continues to believe as was expressed in *Addo-Mills* by Mr. Justice George Henries, that the purpose of the constitutional provisions relating to the right of an accused to obtain bail is "to prevent the practical denial of bail either by fixing the amount so unreasonably high that it cannot be given, or restraining the means by which bail can be given." We should also add that the criminal statutes enacted in pursuance of these constitutional provisions are also for the purpose of ensuring that an accused shall have the widest opportunity to obtain bail fairly, cheaply and without unnecessary difficulty. The statute under review is inimical to such purpose.

The fair opportunity to obtain bail is provided for under section 63.1 of the Civil Procedure Law because under this law defendant may choose any of four reasonable modes which said section allows to obtain bail. This choice of the accused is an independent choice which no individual or law shall be permitted to prohibit. The petition was denied his right to choose. Hence, such denial is tantamount to a denial of the accused constitutional right to bail as well as his right to be treated equally before the law. Petitioner's liberty even now is being restrained by his detention because of an oppressive law which prevented him from obtaining his release by posting a bail bond under section 13.3 of the Criminal Procedure Law. Petitioner has been denied his right of enjoying liberty and also equal protection of the law as guaranteed to him under Article 11 of the Constitution of Liberia.

The Economic Sabotage Act limits the securing of bail to cash only. This limitation denies petitioner's right to choose the mode for an accused to obtain a bail.

It is an accepted principle under Anglo-American law, to which we in this jurisdiction also subscribe, "that the primary purpose of bail in a criminal case are to relieve the accused of imprisonment, to relieve the state of the burden of keeping the accused pending trial, and at the same time to keep the accused constructively in the custody of the court, whether before or after conviction, to ensure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his attendance is required." 8 AM. JUR. 2d., *Bail*, § 4.

The accused in the case tendered a bond executed by legally qualified sureties which was secured by their property value at \$102,600.00, an amount which is over one hundred percent of the amount charged against the accused. Can we not say with great emphasis that the purpose for which bail in this criminal case is required would be achieved so as to warrant the release of the petitioner.

The statute under review appears to have as its primary objective to keep the accused in jail until he has been tried and either acquitted or found guilty. The practice adopted by Anglo-American law, and which we have also adopted in this jurisdiction, is intended to keep an accused out of jail until he is found guilty. This practice squares with our basic principle which presumes that an accused is presumed innocent until he is found guilty in accordance with due process of law. The statute under review is not in harmony with the Constitution and therefore we have to declare it unconstitutional.

Finally, unless it is believed that the respondent judge erred by refusing to approve petitioner's bond, let us say here that said judge was obliged to deny bail where the bond tendered did not satisfy the requirement of the applicable law.

For the reason stated in this opinion, we hold that the statute entitled "AN ACT TO AMEND CHAPTER 15 OF THE NEW PENAL LAW, by adding thereto a new sub-chapter to be SUBCHAPTER "F" to provide for the crime of "Economic Sabotage" approved July 31, 1989 and Published September 22, 1989, is unconstitutional insofar as it requires an accused "to post a cash bond in the amount equivalent to the amount charged."

The peremptory writ is hereby ordered issued and the respondents are ordered to approve the proper bond which conforms to the requirements under the Criminal Procedure Statutes whenever it is presented by the petitioner.

The Clerk of this Court is hereby ordered to send a mandate to the Court below commanding the Judge presiding therein to resume jurisdiction over this case and give effect to this opinion. And it is hereby so ordered

Petition granted.