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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISON

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IN THE MATTER OF AN APPLICATION BY
BG
(An Applicant for Bail)

_____

McCLOSKEY J

The Matrix of the Present Case

[1] This application for bail is brought by an accused person recently charged with murder. While this charge is the impetus for the present application, the overall bail matrix, however, possesses certain additional ingredients.

[2] In brief compass, the relevant chronology is the following:

(a) On 15th August 2011, the Applicant was charged with conspiring with others to rob, entering with intent armed with a knife and possession of a weapon with intent to commit robbery. All three offences are alleged to have occurred on 12th August 2011. The Applicant was remanded in custody by the Magistrates' Court on foot of these charges.

(b) Whilst remanded in custody, the Applicant was interviewed further by police, following which on 18th November 2011 he was charged with murder and was further remanded in custody by the Magistrates' Court.

(c) On 24th January 2012, the Applicant applied to the Magistrates' Court for bail. The application was refused on the ground of potential risk of interference with evidence.

(d) Consequent upon (c), the Applicant now applies to the High Court to exercise its inherent jurisdiction to grant him bail.

The single most important feature of the matrix is that when the Applicant was charged with murder, he was already in custody, having been remanded in respect of the series of other, unrelated criminal charges detailed in (a) above. This has the consequence that in pursuing his application for bail to the Magistrates Court and in challenging the refusal decision by mounting a further application to this court, the Applicant, come what may, will remain in custody for an indefinite period. This circumstance prompted the court to invite fuller submissions from prosecution and defence and these were duly provided.

Some of the Questions which Arise

[3] It would appear that this kind of matrix is far from uncommon. By virtue of what appears to be current practice, the status of an accused person, as regards bail, can have multiple manifestations at various stages of the criminal justice process. An accused person charged with unconnected offences or multiple series of unconnected offences may find himself remanded in custody in respect of offence X but, simultaneously, on (theoretical) bail in respect of offence Y. Fragmentation and a lack of co-ordination are evidently ingrained traits. In the present case, both before the Magistrates' Court and on application to this court, the Applicant's quest for bail was confined exclusively to the later, unrelated offence. I consider that where this type of matrix materialises, there are questions of both principle and practice for the two courts concerned. Where, as in the instant case, an application for bail is one of these isolated, single varieties, alienated in its entirety from the original charge or charges giving rise to the remand in custody of the accused person, it appears to me that two questions in particular arise:

(a) Is it appropriate *in principle* for either the Magistrates' Court or the High Court to purport to grant bail to an accused person who, by virtue of his status, will remain in custody for an indefinite period?

(b) As a matter of good practice, is it desirable that the later application for bail should be considered entirely in isolation from a similar application for bail in respect of the earlier charge/s?

While I have identified these two issues in particular, this does not purport to be an exhaustive list. The first question invites some reflection on the essential character of bail. The second throws up for consideration issues bearing on good practice and administration.

The Power to Grant Bail in the Magistrates Court

[4] The relevant powers are contained in the Magistrates' Courts (Northern Ireland) Order 1981 ("*the 1981 Order*"), as amended. This makes provision for bail decisions in a range of different circumstances. The main provision is Article 47, which provides, insofar as material:

"Remands (Arts.47-52)

Period of remand in custody or in bail [am.2003 NI 13 from 28 July 2003]

47. – (1) Without prejudice to any other provision of this Order, in adjourning any proceedings for an offence a magistrates' court may remand the accused-

(a) in custody, that is to say, commit him to custody to be brought at the end of the period of remand before that court or any other magistrates' court for the county court division for which the court is acting or before any other magistrates' court having jurisdiction to conduct the proceedings; or

(b) on bail, that is to say, take from him a recognizance conditioned for his subsequent appearance before such court;

and may, if the accused is remanded in custody, certify in the prescribed manner its consent to the accused being remanded on bail in accordance with subparagraph (b), in which event the court shall fix the amount of the recognizance with a view to its being taken subsequently.

(2) Subject to Article 49, the period for which the accused is remanded in custody shall not exceed-

(a) in the case where-

(i) the accused is before the court and he consents, or

(ii) the court has previously remanded the accused in custody for the same offence; or

(iii) the accused is already detained under a custodial sentence,

twenty-eight days;

(b) in any other case, eight days;

commencing on the day following that on which the accused is remanded, so, however, that in a case to which sub-paragraph (a)(iii) applies, the court shall inquire as to the expected date of the accused's release from that detention, and if it appears that he will be released before twenty-eight days have expired, he shall not be remanded in custody for a period exceeding eight days or (if longer) a period ending with that date.

(4) Where the accused is admitted to bail and he and prosecution consent, the period for which the accused is remanded may exceed the period referred to in paragraph (2).

(4A) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the [Police Service of

NI] not below the rank of inspector, commit the accused to detention at a police station.
(4B) In the exercise of its power under paragraph (1)(a) to remand in custody an accused to whom this paragraph applies, a magistrates' court may, on an application made under this paragraph by a member of the [Police Service of NI] not below the rank of inspector, commit the accused to the custody (otherwise than at a police station) of a constable. (4C) The period for which an accused is remanded under paragraph (4A) or (4B) shall not exceed 3 days commencing on (and including) the day following that on which he is remanded."

Where a recognizance is required, this is designed to secure the accused person's future appearance in court in the same proceedings. By Article 48, where future hearings eventuate, the court is empowered to vary the order. Where the accused is remanded in custody, the maximum permitted period is twenty-eight days. The power to grant bail also arises in the context of a pending appeal to the County Court or a pending case stated to the Court of Appeal: see Article 148. One of the other landmark statutory provisions is Article 37(3), which provides that in committing a person for trial before the Crown Court, the Magistrates' Court may do so either in custody or on bail. One of the specific requirements of the statutory regime is that a person remanded in custody, or committed for trial to the Crown Court, must be informed of his right to apply to the High Court for bail: per Rule 51(1) of the Magistrates' Courts Rules (Northern Ireland) 1984 ("*the 1984 Rules*"); or, where such right exists, his right to reply to the Crown Court for bail: per Rule 51(2). In summary, under the existing legislation, where the Magistrates' Court does not finally determine a criminal prosecution it adjourns the proceedings and, in doing so, must exercise the choice of remanding the accused person either in custody or on bail.

[5] The prosecution may apply to the Magistrates' Court for reconsideration of its decision, or a police decision, to grant bail in criminal proceedings in connection with an offence punishable on indictment: see Article 133A and the precondition (newly available information) enshrined in Article 133A(3). [See also, *infra*, the prosecution right of appeal].

<u>The Crown Court: Power to Grant Bail</u>

[6] Section 51(4) of the Judicature (Northern Ireland) Act 1978 provides that the Crown Court can admit to bail any person who has been committed in custody for appearance before the Crown Court or any person in the custody of the Crown Court pending disposal of his or her case. The phrase "*in the custody of the Crown Court*" appears to include both persons committed on bail who surrender to the custody of the court and those committed in custody who are brought before the court by prison authorities. The Crown Court can therefore grant bail to a defendant who has appeared before the Court but has not yet been arraigned. Once a person

has been sentenced the Crown Court can no longer grant bail. [The High Court is subject to the same prohibition: ***ex parte Blyth*** [1944] KB 532]. Bail granted in the Crown Court does not necessarily require the defendant to surrender back into the custody of the Court. Thus the Crown Court can therefore grant compassionate bail whereby the defendant is required to surrender to the custody of a prison governor. Like the Magistrates' Court, the Crown Court on issuing a warrant for a person's arrest may endorse the warrant for bail.

The High Court: Power to Grant Bail

[7] The jurisdiction of the High Court in bail matters is fundamentally inherent in nature. It is statutory only where the newly introduced device of prosecution appeals is concerned: see Section 10 of the Justice (Northern Ireland) Act 2004. In such cases, no further appeal is possible. The inherent jurisdiction of the High Court is conveniently summarised in the Northern Ireland Law Commission's Consultation Paper "*Bail in Criminal Proceedings*" paragraph 3.25:

> *"The jurisdiction of the High Court to grant bail falls within the inherent jurisdiction of the Court and the procedures to be followed are found in Order 79 of the Rules of the Court of Judicature (NI) 1980. The High Court does not act as an appellate court in relation to refusals of bail, but ……. persons who are refused bail by the Magistrates' Court or the Crown Court can apply for bail afresh in the High Court, although the High Court will normally refuse to entertain an application which should properly be brought to the Crown Court. The jurisdiction of the High Court to grant bail ceases once a person has been sentenced."*.

In ***Chaos –v- Kingdom of Spain*** [2010] NIQB 68, the Northern Ireland Divisional Court considered certain aspects of the jurisdiction of the High Court in bail matters. The court noted that the inherent power of the High Court to grant bail had arisen for consideration in ***R –v- Home Secretary, ex parte Sezek*** [2002] 1 WLR 348. The context was that of an application for judicial review, overlaid by the exercise of the detention powers conferred on the Secretary of State by the Immigration Act 1971. The Court of Appeal had to confront the question of whether the High Court had any inherent jurisdiction to grant bail, in circumstances where Parliament had specifically empowered the Secretary of State to detain the subject. Delivering the judgment of the Court of Appeal, Peter Gibson LJ stated:

> *"16. We own to having some doubts as to whether there is room for an inherent jurisdiction to grant bail in relation to a civil appeal in judicial review proceedings when Parliament has given the Secretary of State the power to detain and the substance of the complaint is the exercise of that power. But in the light of the authorities we accept that*

> *the High Court has the power in judicial review proceedings to make ancillary orders temporarily releasing an applicant from detention and that on an appeal in those proceedings this court by virtue of section 15(3) of the 1981 Act can make the like order. In our judgment this court is exercising an original jurisdiction and it is not judicially reviewing the decision by the Secretary of State.*"

The ability of the High Court to exercise inherent jurisdiction in a variety of respects and contexts is not confined to bail matters: see ***Ewing v Times Newspapers*** [2010] NIQB 65, paragraph [11]. Moreover, this capacity is not shared by courts of inferior jurisdiction. Thus, in determining issues relating to bail, neither the Magistrates' Court nor the Crown Court may have resort to any inherent powers: the jurisdiction of each of these tribunals is purely statutory in nature.

[8] The origins of the inherent jurisdiction of the High Court to grant bail are traceable to its common law power to review the legality of the detention of the citizen through the medium of *habeas corpus* proceedings. In Criminal Procedure in Northern Ireland (Valentine and Hart) it is stated, at paragraph 5.04:

> "*The High Court has inherited the original and inherent jurisdiction of the Court of Queen's Bench to hear an application for bail, which should only be invoked if the Magistrates' Court has refused bail …*"

The origins and antecedents of bail serve to expose its essential character. It is suggested in the 1948 edition of Archbold Criminal Pleadings that the High Court exercises the bail powers of the former Court of King's Bench. These were common law powers. Originally, they were exercised by a Writ of *habeas corpus*. This practice evolved and, according to the text:

> "*An application for bail in felony or misdemeanor where the party is in custody shall be in the first instance by summons before a judge at chambers for a Writ of habeas corpus, or to show cause why the Defendant should not be admitted to bail either before the judge at chambers or before a justice of the peace, in such an amounts as the judge may direct*".

As appears from the following passage, the application for a Writ of *habeas corpus* was overtaken by the simpler mechanism of applying by summons to a judge in chambers to show cause why the prisoner should not be admitted to bail before a justice of the peace. In this way, the order of the High Court, made in the exercise of its inherent jurisdiction, became a pre-requisite to the admission to bail of the prisoner by a justice of the peace. This inherent jurisdiction is properly viewed as an aspect of the traditional supervisory powers of the High Court.

[9] It is evident from the 37th and 38th Editions of Archbold, published in 1969 and 1973 respectively, that the power of the High Court to grant bail in England and Wales has recently differed from that exercisable by the High Court in Northern Ireland. It is clear that, since the 1940s, the differences are mainly attributable to statutory intervention. In the aforementioned texts, the emphasis is on statutory, rather than inherent, jurisdiction. Since the 1940s, in England and Wales there have been successive statutory provisions regulating the jurisdiction of the High Court in the sphere of bail which were not replicated in Northern Ireland. The first notable statutory provision of this character is Section 37 of the Criminal Justice Act 1948, which regulated extensively the jurisdiction of the High Court to grant bail to a person pursuing an appeal from a court of summary jurisdiction to a Court of Quarter Sessions **or** seeking to appeal by case stated from either of the last-mentioned courts to the High Court **or** applying to the High Court for an Order of Certiorari quashing the decision of a court of summary jurisdiction. Section 48 further specifically empowered the High Court to determine the terms of a recognizance, with or without sureties. Section 37(4) provided that rules of court could be made under Section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 relating to recognizances, sureties, the enforcement thereof and recommittal. Notably, the opening words of Section 37(1) were:

> "*Without prejudice to the powers vested before the commencement of this Act in any court to admit or direct the admission of a person to bail …*".

Thus Section 37(1) did not purport to reduce or extinguish any such pre-existing powers to grant bail, including any inherent jurisdiction possessed by the High Court. However, its effect was clearly to transform at least part of the pre-existing inherent jurisdiction to statutory regulation. I refer to, but do not dilate upon, subsequent statutory developments in England and Wales which may be traced through the Criminal Justice Act 1967 (Section 22 especially), the Bail Act 1976 and the Criminal Justice Act 2003 (Part 2).

[10] In ***G v Secretary of State for the Home Department*** [2004] EWCA Civ 265, Pill LJ stated, *obiter* (at p. 274):

> "*The usual meaning of bail, whether in ordinary language or in statute (for example, Bail Act 1976 and Magistrates Court Act 1980, section 128) is the temporary release of a person pending a further decision of a court (or administrative body).*"

More recently, the English Court of Appeal has pronounced on the essential character of bail. In ***Stellato –v- Ministry of Defence*** [2010] EWCA. Civ 1435, in a somewhat unusual matrix, the Divisional Court dismissed the Appellant's application for judicial review based on his contention that his release from prison on licence, rather than unconditionally, had been unlawful. The Court of Appeal allowed his appeal and, acknowledging the possibility of a further appeal to the

House of Lords, made an order containing two terms in particular. The first stayed the court's judgment and implementation thereof for a finite period. The second granted bail to the Appellant on certain conditions. The Appellant breached the conditions, with the result that the Court of Appeal ordered his arrest and detention. The House of Lords subsequently dismissed the Secretary of State's appeal. The Appellant then pursued a claim for damages for false imprisonment and breach of his rights under Article 5 ECHR, mainly in respect of events and detentions which occurred at earlier stages of the process. His claim succeeded and the Ministry appealed to the Court of Appeal. One of the issues which arose concerned the order of the previously constituted Court of Appeal for the Appellant's arrest and detention for breach of bail conditions. Giving the judgment of the court, Stanley Burnton LJ stated:

> "[23] … *I consider that the answer is to be found in the nature of a grant of bail.* ***In principle, a grant of bail is not an order for the detention of the person to whom it is granted. To the contrary, it is a grant of liberty to someone who would otherwise be detained.*** *The legal justification for his detention is to be found elsewhere: in the case of a person suspected of crime, in the powers of arrest of a constable under a warrant … or without a warrant … and powers to remand pending trial or further hearing …*".

His Lordship then considered the issue of bail conditions and the breach thereof:

> "[24] … *If the person granted bail does not comply with the conditions of his bail, he is liable to be returned to custody.* ***If so, the legal authority for his detention is not the grant of bail, or his breach of the conditions of his bail, but the authority for his detention apart from the order for bail. All that his breach of the conditions of his bail does is to disentitle him to bail***".

[My emphasis].

In a later passage in his judgment, his Lordship reiterated (in terms) that the grant of bail is the antithesis of authority to detain: see paragraph [31].

[11] The emphasis on bail having the effect of liberating a person who would otherwise be detained is also detectable in the 37th Edition of Archbold (published in 1973 and, thus, prior to the inception of the Bail Act 1976), which stated:

> "*Bail are sureties taken by a person duly authorised, for the appearance of an accused person at certain day and place, to answer and be justified by law… The condition of the recognizance, as respects the sureties, is performed by the appearance of the accused person, though he stands mute…*

The defendant is placed in the custody of his bail; who may re-seize him if they have reason to suppose that he is about to fly, and may bring him before a justice, who will commit him in discharge of the bail".

Certain provisions of the Criminal Justice (Northern Ireland) Order 2003 ("*the 2003 Order*") also provide some enlightenment. In particular, Article 4 establishes the concept of a duty to surrender to custody. It provides:

"***Surrender to custody***

4. *– (1) A person released on bail shall be under a duty to surrender to custody.*

(2) In this Part –
'surrender to custody' means, in relation to a person released on bail, surrendering himself (according to the requirements of the grant of bail) –

(a) into the custody of the court at the time and place for the time being appointed for him to do so; or

(b) at the police station and at the time appointed for him to do so."

By virtue of Article 5, an offence is committed where a released person fails without reasonable cause to surrender to custody. Article 5 states:

"5. *– (1) If a person who has been released on bail fails without reasonable cause to surrender to custody, he shall be guilty of an offence.*

(2) If a person who –

(a) has been released on bail, and

(b) has, with reasonable cause, failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable, he shall be guilty of an offence.

(3) A person guilty of an offence under paragraph (1) or (2) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both."

By Article 6, the court is empowered to issue a warrant for the arrest of the released person. Interestingly, Article 6(3) permits an *anticipatory* arrest by the police of a released person, in specified circumstances. Where this occurs, Article 6(6)(a) gives statutory effect to two of the well established grounds for either refusing or revoking bail viz:

> "*(i) is not likely to surrender to custody, or*
>
> *(ii) has broken or is likely to break any condition of his bail …*".

[12] In my opinion, all of these provisions are founded on the unexpressed premise that where a court grants bail, the accused, in the great majority of cases, is liberated from custody. The provisions of Part II of the 2003 Order also place in sharp focus the distinction between the concepts of bail and recognizance. Whereas a person released on bail is under a personal statutory obligation to surrender to custody, on pain of prosecution and punishment for commission of a criminal offence, the obligations undertaken by a surety in the execution of a recognizance are more properly viewed as an undertaking, or guarantee, belonging to the realm of civil law. Where a breach occurs, the sanction is the forfeiture of a monetary bond, in whole or in part. This may be contrasted with the commission of a criminal offence. In this respect, the recent amendment of the Magistrates' Courts (Northern Ireland) Order 1981 is noteworthy. The newly inserted Article 138(2A) provides:

> "*If, in the case of a recognizance a condition of which is that an accused appears before a magistrates' court, the accused fails to appear in accordance with the condition, the court shall-*
>
> *(a) order the estreat of the recognizance; and*
>
> *(b) direct the issue of a summons to any surety for that person requiring the surety to appear before a court of summary jurisdiction on a date specified in the summons to show cause why he should not pay the sum in which he is bound;*
>
> *and on that date the court may proceed in the absence of any surety if it is satisfied that he has been served with the summons.*"

It is also relevant to consider the related reforms effected by the Magistrates' Courts (Amendment No. 2) Rules (NI) 2009, which inserted, by substitution, into the Magistrates' Courts (Northern Ireland) Rules 1984 new provisions relating to the service of summonses. Rule 11 now provides that the summons for an offence being prosecuted by the PPS is to be served by the PSNI, whereas, in the case of Article

138(2A), it is *the court* which issues the summons and this may be served by way of post by a member of the NI Court Service. Thus the process for estreating a recognizance is essentially of a civil character.

The ECHR

[13] Article 5 ECHR provides, in material part:

> *"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law …*
>
> > *(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so …*
>
> *3. Everyone arrested or detained in accordance with the provisions of Paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."*

The subject matter of Article 5 may be described as the permissible deprivation of liberty, in derogation from the citizen's right to liberty and security of person. Article 5(3) is clearly designed to make provision for the liberation of those who would otherwise be detained. I have found nothing in the Strasbourg jurisprudence which really bites on the questions raised at an earlier stage of this ruling. The existing jurisprudence is concerned with questions relating to, for example, the illegitimacy of absolute prohibitions on the grant of bail and mandatory detention on remand: see ***Caballero –v- United Kingdom*** [2000] 30 EHRR 643 and ***Ilijkov –v- Bulgaria*** [Application No. 33977/96], paragraph [84]. In ***Allen –v- United Kingdom*** [Application No. 18837/06], the European Court made certain pronouncements of some profundity. The court emphasized, in a context which concerned the compatibility with Article 5 of certain domestic bail decision making procedures:

> "[46] *The court cannot but stress the importance of what was at stake for the Applicant, namely her right to liberty*".

The court then recalled what it had said in ***Garcia Alva –v- Germany*** [Application No. 23541/94]:

> "*In view of the dramatic impact of deprivation of liberty on the fundamental rights of the person concerned, proceedings conducted under Article 5(4) of the Convention should in principle also meet, to the largest extent possible under the circumstances of an ongoing investigation, the basic requirements of a fair trial, such as the right to an adversarial procedure*".

In paragraph [47], the court reiterated "*the fundamental importance of the right to liberty in issue*".

Conclusion

[14] The matrix relating to the present application for bail has two particular elements. The first is that the Applicant has availed of his statutory entitlement to apply for bail and, having done so unsuccessfully, is now invoking the inherent jurisdiction of the High Court. The second is that if he invokes the jurisdiction of this court successfully (or if he were to have been successful at first instance) the grant of bail will not liberate (or would not have liberated) him. This failure to secure his liberty is unrelated to any factor such as the unavailability of a surety or recognizance ordered by the court or inability to comply with bail conditions prescribed in the court's order. Rather, the continued detention of the Applicant in custody will be directly attributable to the consideration that he has been lawfully deprived of his liberty by due process of law in a different context and forum and, come what may, will remain detained. I understand this to be a not uncommon matrix in bail applications listed before both the Magistrates' Court and the High Court and that, in some cases, the applicant for bail is a *sentenced* prisoner.

[15] In the ECHR jurisprudence, it has been held consistently that the grounds upon which bail may be refused include the risks of flight, interference with the course of justice, the commission of further offences or threatening public order. District Judges, Crown Court Judges and High Court Judges give effect to these principles daily in bail decisions. These considerations serve to highlight one of the prominent features of bail judicial decision making, namely the factor of immediacy, or currency. In contested cases, the court is required to adjudicate upon a series of issues which relate to the matrix prevailing at the particular time. In performing this function, the court makes a series of evaluative and predictive judgments. With the passage of time, the matrix is liable to undergo evolution and significant alteration. This is the first consideration which exposes as intrinsically undesirable the grant of bail in a case of the present *genre*. In short, a decision in favour of granting bail in a case where the decision may not have any practical effect for some considerable time is manifestly undesirable as its currency will become gradually eroded and it will become increasingly detached from the material facts and realities.

[16] It seems equally undesirable that bail applications of the present fragmented, detached type should be heard and determined in the kind of vacuum which seems

to prevail in existing practice. There are obvious benefits to the court if the accused person is required to apply for bail in respect of all of the offences with which he is charged. This will result in the court being seised of the entire picture and being infinitely better informed in consequence. If, in future cases, any court finds itself invited to determine one of these detached, isolated applications for bail it may wish to consider adjourning the application, to enable a composite request for bail, encompassing all charges, to be assembled and pursued. This would be an unobjectionable exercise of the court's power to adjourn any proceedings for good reason. One cannot readily conceive of any sustainable objection to this course in the generality of cases. I acknowledge that there is one discrete category of case where logistical difficulties may arise, namely where the accused finds himself appearing before Magistrates' Courts in different divisions. If an accused person refuses to co-operate with the court's preferred course of action, it may well be appropriate, in the exercise of what is a discretionary power, to dismiss the application on the basis that the court cannot properly formulate a bail order which is likely to become progressively inappropriate, uninformed and irrelevant.

[17] Finally, there is the question of principle discussed above. I consider that, fundamentally, there is an inextricable link between bail and liberty. If effect is given to the adjustment to existing practice discussed above, this will address the fundamental objection that a court should not exercise its discretionary power to grant bail in circumstances where this will not operate to confer liberty on the accused person concerned, immediately or in the foreseeable short term. It seems to me that the refusal of bail applications of the present kind by any court will not contravene Article 5(3) ECHR, not least because the facility exists for pursuing a fresh subsequent application in altered circumstances. Clearly, such an application could be brought in circumstances where the earlier charge/s is/are discontinued or dismissed. Alternatively, an accused person who has persisted in pursuing a bail application of the present variety, without success, may subsequently acknowledge the wisdom of mounting a fresh, composite application. It is also appropriate to lay some emphasis on the nature of the jurisdiction exercised by the High Court in bail matters, which is inherent in nature. This jurisdiction evolved historically in recognition of the hallowed right to liberty of the citizen and, in its original incarnation, involved applying for a Writ of *habeas corpus*. It seems to me that to entertain applications for bail of the present sort is far removed from the nature and purpose of this jurisdiction. This gives rise to the conclusion that, as a general rule, bail applications to the High Court of this kind may be viewed as an improper invocation of this court's jurisdiction and, as such, are vulnerable to dismissal *in limine* as well as on their merits, being a misuse of this court's process.

Disposal

[18] Giving effect to the above reasoning, I dismiss this application for bail. In my view, the present application is a paradigm example of an improper invocation of the inherent jurisdiction of the High Court and, hence, a misuse of the process of this court.

[19] Practitioners will be alert to the impending publication of the Northern Ireland Law Commission's Report to Government on the law and practice of bail in Northern Ireland [the projected date is April 2012]. One trusts that the Northern Ireland Assembly will enact a new, comprehensive Bail Act speedily thereafter and, further, that this will address specifically the issues raised in this judgment. One possible legislative solution is to require that every application for bail be of a composite nature, encompassing the totality of the charges preferred against the bail applicant. Furthermore, consideration might be given to legislating to the effect that a bail order which is not perfected/implemented within a short finite period (for example, one week) automatically lapses.