

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered:	17/5/04
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2003 No. 88

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE) JUDICIAL REVIEW

**IN THE MATTER OF AN APPLICATION BY FRANCIS MACKIN FOR
LEAVE TO APPLY FOR JUDICIAL REVIEW OF DECISION OF THE
DIRECTOR OF PUBLIC PROSECUTIONS AND DECISION OF THE
POLICE SERVICE OF NORTHERN IRELAND**

GIRVAN J

[1] The applicant was arrested on 22 March 2003 and charged on 24 March 2003 with the offences of possession of an explosive substance with intent to endanger life or cause serious injury and possession of firearms and ammunition with intent thereof to endanger life or cause serious injury. Both offences were scheduled offences pursuant to schedule 9 of the Terrorism Act 2000. Following the charging of the applicant he was brought before Belfast Magistrates' Court on 25 March 2003 and remanded in custody.

[2] On 22 March 2003 following a search carried out by police at 37A Essex Street, Belfast a quantity of munitions was found. The applicant with another man was found inside those premises and was arrested under Section 41 of the Terrorism Act 2000. In the course of interviews he remained silent and did not respond to questions put to him, it was established by other means that he was a bar manager of the adjoining premises and the applicant held a key for the premises in which the munitions were found which was used by him to store materials in connection with the bar business.

[3] The applicant was entitled to apply forthwith to the High Court for bail. He did not do so at that stage and his solicitors decided to enter in to fairly protracted correspondence with the Department of the Director of Public prosecutions the purpose of which seems to have been to gather information as to the nature of the Crown's objections to bail and seeking

disclosure of statements from persons “the content of which would assist” the applicant (see the solicitor’s letter of 7 April 2003 which appears to have been intended to establish the principle of a Crown duty of disclosure in respect of documents that might assist the applicant in the bail application). Now for the correspondence passed backwards and forwards and meanwhile the applicant remained in custody. He remained in custody until a bail application was in fact successfully made on 22 May 2003 in the absence of any of the documentation which the applicant’s solicitor was seeking and the correspondence in which they claimed they needed to see an interest of justice before proceeding with a bail application.

[4] The application had a simple expeditious (and cost effective) mechanism for seeking disclosure of documents if disclosure was necessary in the interests of justice and the documents were being improperly or unfairly withheld by the DPP. He could and should have pursued a bail application and made his case for disclosure of the documents at that stage if the disclosure was necessary. As matters turned out disclosure proved to be unnecessary. Bail was granted in the absence of documents and indeed in the bail application no argument was presented to the bail court that disclosure of such documents should be made.

[5] If the intention of this application was to establish some general principles it was misconceived and unnecessary. I find it hard to understand how or why legal aid for this unnecessary application was granted. Not merely was the delay engendered by the unnecessary correspondence wasteful of time and legal costs. It actually prejudiced the applicant who would presumably have been granted bail earlier if the solicitors had not decided to pursue the course which they did. Those granting legal aid and those providing opinions to the legal aid authorities to justify the granting of legal aid owe a responsibility to ensure that public resources are not wasted. In relation to taxation of costs in this case my comments should be brought to the attention of the Taxing Master in case they are of any relevance in relation to the taxation of costs.