



**International Criminal Tribunal for Rwanda  
Tribunal Pénal International pour le Rwanda**

**BEFORE A BENCH OF THE APPEALS CHAMBER**

**Before:** Judge Lal Chand VOHRAH, Presiding  
Judge Rafael NIETO-NAVIA  
Judge Fausto POCAR

**Registrar:** Mr. Adama DIENG

**Decision of:** 13 June 2001

**Joseph KANYABASHI**  
*(Applicant)*

v.

**THE PROSECUTOR**  
*(Respondent)*

*Case No. ICTR-96-15-A*

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**DECISION**

**(ON APPLICATION FOR LEAVE TO APPEAL FILED UNDER RULE 65(D) OF THE  
RULES OF PROCEDURE AND EVIDENCE)**

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**Counsels for the Appellant**

Mr. Michel MARCHAND  
Mr. Michel BOYER

**Counsels for the Prosecution**

Mr. Japhet Daniel MONO  
Mr. Ibukunolu A. BABAJIDE  
Mr. Manuel BOUWKNECHT

**THE BENCH** of the Appeals Chamber of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (“the Bench” and “the Tribunal” respectively);

**BEING SEIZED OF** the “*Demande aux fins d’autorisation de déposer un pourvoi en appel*” (“the Motion”) filed on 28 February 2001 by the accused Joseph KANYABASHI (“the Applicant”) under Sub-Rule 65 (D) of the Rules of Procedure and Evidence (“the Rules”);

**NOTING** the “Decision on the Defence Motion for the Provisional Release of the Accused” issued on 21 February 2001 by Trial Chamber II (“the Impugned Decision”), dismissing the “*Requête pour mise en liberté provisoire*”, filed by the Applicant on 12 December 2000, on the grounds that:

- (1) as the Tribunal is a sovereign body distinct from the International Criminal Tribunal for the former Yugoslavia (“the ICTY”), with a jurisdiction *ratione materiae* and a jurisdiction *ratione temporis* that are distinct, contrary to the Applicant’s request, the Tribunal does not have to apply Sub-Rule 65 (B) of the Rules of Procedure and Evidence of the ICTY;
- (2) the Applicant failed to prove the existence of exceptional circumstances justifying his provisional release before trial; in particular, the length of the proceedings and general complexity and accordingly the length of the Applicant’s detention remain within acceptable limits and in addition are in accordance with the interests of justice;
- (3) the date of the Applicant’s trial is “set for 14 May 2001”<sup>1</sup> and to grant him provisional release might cause delays for both him and other accused in the case;

**NOTING** that the Applicant argues in the Motion *inter alia* that:

- (1) the Trial Chamber erred in applying Rule 65(D) of the Rules as its terms, in particular, the requirement to show “exceptional circumstances” contravene both the Statute of the Tribunal and recognized international human rights norms;
- (2) the requirement to show exceptional circumstances also contravenes the general rule that provisional detention should be an exception to the general rule guaranteeing liberty of the person;

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<sup>1</sup> Impugned Decision, para. 14.

- (3) the Appeals Chamber should consider the requirement to show exceptional circumstances as being “non peremptory” and the Trial Chamber should only have considered criteria 2 – 4 as set out in paragraph 6 of the Impugned Decision;
- (4) nevertheless, he had proven that there were exceptional circumstances justifying an order for his provisional release, including the fact that he has been held in pre-trial detention for over five years;
- (5) the requirement to show exceptional circumstances must be read in light of the Prosecutor’s obligation to act diligently;
- (6) granting his provisional release, even during the trial, will not prejudice either him or the other accused with whom his trial is joined and he is prepared to abide by any conditions governing his release which the Trial Chamber finds it appropriate to impose;

**NOTING** that the Prosecution has failed to file a response to the Motion;

**CONSIDERING** that in view of the time which has lapsed since the filing of the Motion, it is appropriate for the Bench to proceed to consider its merits despite the absence of any submissions filed by the Prosecution;

**CONSIDERING** that Rule 65(B) of the Rules provides that provisional release may only be ordered by a Trial Chamber “in exceptional circumstances, after hearing the host country and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person”;

**CONSIDERING** that Rule 65(D) of the Rules provides *inter alia* that decisions on provisional release “shall be subject to appeal in cases where leave is granted by a bench of three Judges of the Appeals Chamber, upon good cause being shown”;

**CONSIDERING** that although the long pre-trial detention the Applicant has served may, if attributable to the Tribunal, entail the need for a reparation for a violation of fundamental human rights,<sup>2</sup> it does not constitute *per se* good cause for release;

**CONSIDERING ALSO** that the Applicant has failed to establish *prima facie* that the Trial Chamber erred in its assessment of the conditions for ordering the provisional release of the Applicant and that consequently the Impugned Decision should be vacated;

**FINDING** that the Applicant has failed to show good cause such that the Bench should grant leave to appeal;

**FOR THESE REASONS**

**DISMISSES** the Motion.

Done in English and French, the English text being authoritative.

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Judge Lal Chand Vohrah,  
Presiding Judge

Dated this 13<sup>th</sup> day of June 2001  
At The Hague, The Netherlands

**[Seal of the Tribunal]**

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<sup>2</sup> *Barayagwiza v. Le Procureur*, Case no. ICTR-97-20-AR72, Decision (Prosecutor's Request for Review or Reconsideration), 31 March 2000, para.74; *Semanza v. Le Procureur*, Case no. ICTR-97-20-A, Decision, 31 May 2000, para.125.