

IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)

CRIMINAL CASE NO. 15 of 2016

BETWEEN:

THE REPUBLIC OF NAURU  
Complainant

AND:

MUJTABA SERAJAMADANE  
Defendant

*Mr. Filimoi Lacanivalu office of the Public Prosecutions for the defendant*

*Mr. Ravunimase Tangivakatini for the defendant*

*Date of Hearing: 10<sup>th</sup>, 18, 25<sup>th</sup> May 2016*

*Date of Ruling: 30<sup>th</sup> May 2016*

## Ruling

### INTRODUCTION

1. The defendant is charged with 1 count of attempted suicide contrary to section 312 of the Criminal Code 1899 and 1 Count of threats to kill contrary to section 359 of the Criminal Code 1899.
2. The particulars of the offence for the charge of attempted suicide read:  
  
"Mojjaba Serajhamadane on the 7<sup>th</sup> May 2016 at Nauru attempted to kill himself"<sup>1</sup>
3. The particulars of the offence charged for the offence of threats to kill contrary to section 359(1)(b) of the Criminal Code 1899 read:

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<sup>1</sup> Particulars of the offence as charged in the charge filed with the District Court on the 10<sup>th</sup> May 2016

"Mojjaba Serajhandane on the 7<sup>th</sup> May 2016 at Nauru threatened to kill Afsaneh Khademi with intent to hinder the said Afsaneh Khademi from doing any act which she is lawfully entitled to do, that is, to prevent him from setting himself on fire"<sup>2</sup>

4. The prosecution applied for the defendant to be remanded in custody until the circumstances change. The prosecution in applying for remand relies on the matters deposed to in the affidavit of Police Constable Christopher Amwano filed with the court on the 11<sup>th</sup> May 2016. Constable Amwano said that on 7<sup>th</sup> May 2016 at approximately 7pm he was in the company of two other officers when they received a report regarding a refugee, who wanted to burn himself.<sup>3</sup> Upon receiving the report they then made their way to Nibok District and one refugee lady directed him and his colleagues to the house that the defendant was in<sup>4</sup> and upon arrival at the said house, he was met by another male refugee who told him to go inside.<sup>5</sup> Constable Amwano stated that as soon as he went inside, there was a strong smell of petrol and he saw the defendant on the far end of the room crying with a lighter in his right hand and shouting "Don't you come any closer or I will burn myself."<sup>6</sup> Constable Amwano said that he and Constable Deireregea tried to calm the defendant and each time they took a step forward, he would yell out and threatened to ignite the lighter in his hand.<sup>7</sup> Constable Amwano also stated that it took about nearly half an hour to calm the defendant to a stage where they were able to wash off all the petrol on him and change his clothes and later accompanied him to the police station where he was to meet with his case manager.<sup>8</sup>
  
5. The wife of the defendant also made a statement to the police. In her statement to the police she said that, on the 7<sup>th</sup> May 2016 she was at home eating. Her friend Ms. Zorherh and her brother Mr. Hamed went by to her place and they were talking when the defendant came outside of the house and he was carrying ten litre container and it had petrol in it and that's when he started shouting out loud.<sup>9</sup>

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<sup>2</sup> Particulars of the offence as charged filed with the District Court on the 10<sup>th</sup> May 2016

<sup>3</sup> Paragraph 3 and 4 of the affidavit of Constable Christopher Aremwa filed with the Court on 11<sup>th</sup> May 2016

<sup>4</sup> Paragraph 6 of the affidavit of constable Christopher Aremwa filed with the Court on 11<sup>th</sup> May 2016

<sup>5</sup> Paragraph 7 of the affidavit of Constable Christopher Aremwa filed with the Court on 11<sup>th</sup> May 2016

<sup>6</sup> Paragraph 8 of the affidavit of Constable Christopher Aremwa filed with the Court on 11<sup>th</sup> May 2016

<sup>7</sup> Paragraph 9 of the affidavit of Constable Christopher Aremwa filed with the Court on 11<sup>th</sup> May 2016

<sup>8</sup> Paragraph 10 of the affidavit of Constable Christopher Aremwas filed with the Court on 11<sup>th</sup> May 2016

<sup>9</sup> Paragraph 1 statement of Mrs Afsaneh Khademi dated 8<sup>th</sup> May 2016

6. Mrs. Afsaneh Khademi said that the defendant said he was tired of everything and that he had been on the Island for three years and that he would like to see his son who is still back in Iran and his situation now is unbearable and at the same time he was saying all of this he was also pouring the petrol on him and that he had a lighter in his hand.<sup>10</sup> Mrs. Khademi then told her son to call the police and the ambulance and the next thing she knew her brother and her friend came out with wet blankets and when she ran into the house the defendant went up to her and grabbed her shoulders and told her he's tired of life and everything else and he then grabbed her thighs and she too got petrol on her person. The defendant told his wife's brother not to go any closer or he will ignite the lighter he was holding.<sup>11</sup> He then loosened his grip on her and she ran out of the house.
7. The prosecution applies for further remand of the defendant under section 21 of the Criminal Procedure Act 1972. It is my view that section 21 of the Criminal Procedure Act 1972 cannot be applied at this stage of the proceedings. The reason for this is that the defendant is now before the District Court, and Section 21 of the Criminal Procedure Act 1972 cannot be used by the District Court to further remand the defendant. Section 21 in my view is limited to the situation where a defendant is arrested and detained by the police and the police are not able to bring such a defendant before the District Court within 24 hours. The reference to Magistrate in Section 21 of the Criminal Procedure Act 1972 does not necessarily mean the District Court. As Resident Magistrate I preside over matters alone exercising the jurisdiction of the District Court. The section that governs the exercise of the District Court's discretion on whether or not to remand a defendant in custody or release him on bail is section 80 (1) of the Criminal Procedure Act 1972. This application made by prosecution for further remand pursuant to section 21 of the Criminal Procedure Act 1972 is therefore misconceived.
8. Section 80(1) and (2) of the Criminal Procedure Act 1972 governs the issue of whether or not bail should be granted to the defendant. Section 80 (A) of the Criminal Procedure (Amendment) Act 2016 set out the factors which the court should take into account when deciding the issue of whether

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<sup>10</sup> Paragraph 2 statement of Mrs. Afsaneh Khademi dated 8 May 2016

<sup>11</sup> Paragraph 3 of the statement of Mrs. Afsaneh Khadmi dated 8 May 2016

or a defendant should be remanded in custody or released on bail. Section 80(A) of the Criminal Procedure (Amendment) Act 2016 is titled considerations for bail and it reads:

*"A person charged with an offence is entitled to bail, either conditionally or unconditionally, and the Court in considering whether to grant bail or remand a defendant will take into consideration the following:*

- (a) the strength of the prosecution's case;*
- (b) the circumstances, nature and seriousness of the charge;*
- (c) the likelihood that the person may continue to commit offences if granted bail; and*
- (d) the public interest and protection of the community"<sup>12</sup>*

#### **STRENGTH OF THE PROSECUTION CASE**

9. In terms of the strength of the prosecution case it is fair to say that the prosecution case against the defendant at this stage is a fairly strong case. This is in respect of the charge of attempted suicide.

#### **THE CIRCUMSTANCES, NATURE AND SERIOUSNESS OF THE CASE AGAINST THE DEFENDANT**

10. In terms of the circumstances and nature of the alleged offending, from the statements gathered it is reasonable to conclude that the offence alleged to be committed by the defendant is more as a result of his view of his circumstances and would in my view require the assistance of his case manager with Connect Settlement Services to help him and guide him. I have received a letter from Mr. David Keegan the Executive Manager for Connect Settlement Services a non-government organization working in Nauru explaining that the role of Connect Settlement Services is to provide community integration and settlement services to refugees living in the Nauru Community and that this includes providing emotional support, community education, employment skills, English Language development and community participation activities. However though serious in Nature this is still

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<sup>12</sup> Section 80(A) of the Criminal Procedure (Amendment) Act 2016

a bail able offence. And I have to take this into account with the other factors.

**THE LIKELIHOOD THAT DEFENDANT MAY CONTINUE TO COMMIT OFFENCES IF RELEASED ON BAIL**

11. The prosecution has submitted that the police have been on Code Red on a few occasions due to information received by Police intelligence Unit of self-harm offences by refugees together with threats of disrupting public facilities. This aspect of the submission by the prosecution must be distinguished in that there is nothing to show any relation between the alleged commission of the offence by the defendant and those other information received by the police intelligence. The circumstances of the defendant must be viewed on its own.
12. In terms of possible re-offending, the report from Dr. Smith is clear that there is no a sign or symptoms or evidence suggestive of any psychiatric disorders. He is also stated to Dr. Smith that he has clearly stated to him that he has no more intention to self-immolate.

**THE PROTECTION OF THE PERSON FROM THE PUBLIC**

13. I am grateful to Dr. Toolia Smith for the detailed report he has provided to this court regarding the mental health status of the defendant. Dr. Smith's report is that there is no psychiatric diagnosis and that his actions are not applicable or pertaining to the Mentally -Disordered Persons (Amendment) Act 2016. Dr. Toolia further recommended that proper and adequate treatment for his other ailment is required and that his case manager has to arrange for this with IHMS settlement clinic. Also in his Report Dr. Smith said that the defendant has frustration and anger related to his current situation in Nauru, which lead to his actions of self-harm that he committed three weeks ago. But that the defendant clearly stated that he has no more intention to self-immolate or do such acts or behaviors of self-harm. In my view in light of the report of Dr. Smith, defendant therefore cannot be said to be in need of being protected from the public.

**THE PUBLIC INTEREST AND THE PROTECTION OF THE COMMUNITY**

14. The prosecution submits that the nature of the allegations against the defendant is serious and cause unnecessary concern within the community<sup>13</sup>. Further submitting that there is a real likelihood that the defendant will repeat the same offence and as such is a danger to himself and his family if released on bail.<sup>14</sup> The prosecution also submits that the entire community needs to be protected from the respondent who can disturb the peace in his attempt to self-harm.<sup>15</sup>
15. Dr. Toolia Smith in his report said that the defendant clearly stated that he has no more intention to self-harm. On the issue of Public interest I am of the view that it would also be in the public interest if the defendant is allowed to be given the community integration and settlement services, and emotional support provided to refugees by Connect Settlement Services.
16. The report from Dr. Smith is clear in that the defendant has no signs or symptoms or evidence suggestive of any psychiatric disorders. And the defendant himself had also made it clear in his conversation with Dr. Smith that he has no more intention to self-harm.
17. I have also received a letter from Mr. David Keegan the executive manager for Connect settlement services that if released he will be provided with accommodation at Fly Camp where he will reside and be away from his wife and child whom he was alleged to have put at risk of harm.
18. His wife at this stage of the prosecution case is a prosecution witness and I have also been informed that she intends to withdraw her complaint against her husband and that the Director of Public prosecutions is yet to make a decision on that matter. Until such time that I am informed of the Director of Public Prosecutions position on the wife's proposal to withdraw her complaint against the defendant, I must treat her as a prosecution witness. There is no suggestion that the wife's intention to withdraw the complaint against the defendant is at the instigation or the making of the defendant. No explanation has been given to the court by the prosecution for the wife's reason for approaching the prosecution seeking to withdraw her

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<sup>13</sup> Paragraph 14 of the affidavit of Constable Christopher Amwano dated 11<sup>th</sup> May 2016

<sup>14</sup> Paragraph 15 of the Affidavit of Constable Christopher Amwano dated 11 May 2016

<sup>15</sup> Paragraph 15 of the Affidavit of Constable Christopher Amwano dated 11 May 2016

complaint against the defendant. It is not for me to conjecture the information so far presented to find that the wife's intention to withdraw the complaint against the defendant is as a result of the instigation by the defendant or any influence from the defendant.

19. Mr. Tangivakatini has submitted that the defendant has support from his family especially his wife and his friends and the members of the Connect Settlement Services. Mr. Chaldean Atto a Nauruan friend and work colleague of the defendant has offered to act as surety for the defendant.

20. Taking into account the matters as discussed I find that the prosecution has failed to satisfy me on the balance of probabilities that the defendant should be further remanded in custody. The defendant is released on bail subject to the following conditions:

- i) He is to enter into his own bail recognizance in the principal sum of \$50.00.
- ii) Mr. Chaldean Atto is to enter into a surety sum in the principal sum of \$200.00.
- iii) He is to reside at Fly Camp or any other place directed by Connect Settlement Services for him to reside.
- iv) He is to be on a curfew from 6:00pm to 6:00am.
- v) He is not to enter Nibok Camp or go within 50 meters radius of where his wife and child are living at Nibok Camp.
- vi) He is not to communicate with Mrs. Afsaneh Khademi anywhere, at any time and by any means whatsoever.
- vii) He is to appear before the court for a further mention of this matter on the 13<sup>th</sup> July 2016 and as and whenever required to do so by the Court.

Dated this 30<sup>th</sup> day of May 2016

Handwritten signature

Emma Gard  
Resident Magistrate

