



IN THE DISTRICT COURT OF NAURU

Criminal Jurisdiction

Criminal Case No. 09/2022

CAMLUC BORBEN SCOTTY

-v-

THE REPUBLIC OF NAURU

*Before: RM. Neil Rupasinghe
Prosecutor: Ms Francis Puleiwai
Defence: Mr Thomson Lee
Date of Ruling: 1ST August 2022*

Catchwords: Entitlement, Determination and Refusal of Bail (Sec:4;17,18 and 19, of Bail Act); Article 5(3) of the Constitution, Consideration of bail in a Case of Dangerous Driving Occasioning Death(Sec:67A of Motor Traffic Act 2014).

The Facts:

1. On 27th April 2022, the suspect was arrested by the police for allegedly Dangerous Driving, Occasioning the Death of J.K.Depoudou, and he was produced before the court on 28th April. The court ordered further detention until 5th May 2022 for the conclusion of the investigation.
2. The suspect was formally charged on 5th May 2022 and Ordered to remand. The Public Legal Defender sought additional time to file a formal bail application submitted on 25th May 2022. And On 8th June Prosecution filed its reply objecting to granting bail.

3. The court ordered both parties to tender written submissions supporting their stance. Accordingly, the defence and the prosecution filed their written submissions on 7th June 2022 and 26th June 2022, respectively.
4. The court noted that the bail application is based on Sections 4,17 and 18 of the Bail act, specifically the Entitlement to bail, General provisions for bail determination and Refusal of Bail. The prosecution mentioned sections 4,13,18, and 19 of the Bail Act and case law authorities as the legal base for their objection.
5. In supporting their bail application, the accused counsel had mentioned in his submission that the accused has the opportunity and privilege of "treat him as innocent till proven guilty". Further, he added that the Accused has been spending a considerable amount of time in remand, which is almost three months by now, with no evidence of resisting arrest or evading the police and no absconding bail record tendered before the court. Further accused had mentioned that he is the family s sole breadwinner, and there is no prima facie evidence to conclude that the alleged incident would cause a public outcry, demonstration or unrest.
6. For the benefit of accused, public interest and the victim's family are still mourning; the prosecution sought the accused to be remanded until the conclusion of the trial. Since Nauru is a small and closely knitted community, names of witnesses are available in disclosures that there is a high likelihood of interference with prosecution witnesses. Mainly due to fact of impossibility of avoiding witnesses in public spaces or church if the accused is granted bail.
7. The prosecution had mentioned since there were eyewitnesses at the occurrence of the incident, a medical report evidencing the extent of the injury suffered by the victim, they have a strong case and charges are severe, which would result in 10 years imprisonment if convicted.
8. After considering the submissions by both the parties, this court concludes **that the central issue before this court** to resolve is;
 - A) Whether or not the prosecution had sufficiently managed to rebut the presumption for granting bail in the current case.

The Legal Background:

9. Section 4(1) of the Bail Act provides that there is a presumption of granting bail, and every accused has the right to be released on bail: section 4 has provided as follows;

"Entitlement to Bail

- (1) *Subject to the provisions of this act, every accused person has a right to be released on bail.*
- (2) *A court may grant bail to an accused person charged with an offence in accordance with the provisions of this act.*
- (3) ***The presumption in favour of the granting of bail to an accused person under subsection (1) may be rebutted by a prosecutor or any other person, where the interests of justice so requires."***

Bail Determination:

10. Sections 17 to 20 of the Bail Act are governing provisions for Bail determination. The general requirements for granting bail have been set out in section 17. Accordingly, the primary consideration in deciding granting bail is the likelihood of the accused person appearing in court to answer the charges against them.
11. Therefore this court thinks the accused has no burden to establish that there is no suspicion in his attendance at the trial, but the prosecution has to prove otherwise. In this matter, the Prosecutors seeking further remand must address the issues set out in section 18(1) of the Act: Which could be reproduced as follows;

"Sec:18 Refusal of Bail

- (1) A person making submissions to a court against the presumption in favour of bail shall address the:*
- (a) likelihood of the accused person not surrendering to custody and not appearing in court;*
 - (b) interests of the accused person; and*
 - (c) public interest and the protection of the community."*

12. The bail determination of the first offending accused involves assessing future risks of absconding based on assumptions. Unless bail is granted at the first instance, the available evidence would be presented at the hearing and considered by the bench. It is impossible to predict the future behaviour of accused persons whom the court or prosecution have no records of absconding of bail. Therefore it is evident that the bail determination of the first offender would permanently be attached to a risk of absconding.
13. It is persuasive the findings by Palmer CJ in the *Kwaiga's case (Kwaiga v Reginam* [2004] SBHC 93; HC-CRC 333 of 2004 (9th August 2004), which was delt at the high court of Solomon islands Due to the similarities of law applicable in Nauru and Solomon islands, where his Lordship stated:

*"In considering Bail, the court is involved in a risk assessment. This entails assessing how **much risk society should bear on one hand by granting bail and how much the accused should bear on the other by being remanded in custody or on conditional bail.** If the risks are high such that society should not be exposed to that risk, then bail normally would be refused and the accused made to bear that risk by having his presumption of innocence and liberty curtailed even in the absence of a lawful conviction in a court of law.*

*This risk assessment however is not as easy as it sounds because it entails a prediction of future behaviour, requiring the balancing of and measurement of what the defendant is likely to do in the future, which cannot be a 100% accurate. Further, much of that prediction is measured by what had happened in the past, which can be quite unreliable and prejudicial against the accused. In many instances as well, much of what is relied on by the prosecution is based on his interpretation of what the police had said had happened. **It is important, therefore that the courts do not lose sight of the purpose and requirements of bail and what it entails. It is not what the police says which dictates whether bail should or should not be granted. It is the balancing of the risk assessment by the court after hearing both sides which determines at the end of the day which way the discretion of the court will fall.**" (emphasis added)*

14. This court recognises the court's duty to resolve the conflict between the personal rights of the accused and society's rights, which mentions as public interest. However, the law is specific and mere words are insufficient unless the prosecution presents an acceptable justification for objection to bail. Therefore, the presumption would remain in favour of the accused.
15. The court notes that the prosecution had relied on public interest and the protection of the community, which are sections 18(1) (c) and 19 (2)(c) of the Bail Act 2018. the prosecution indicated that the investigation had concluded, confirming that the witness statements were recorded and evidence collected. Hence this court sees no chance of interference with the criminal investigation, which is more crucial. The witness will have to testify their statement before the court.
16. Similarly, when considering the alleged offence, dangerous driving occasioning death is based on omission or extreme negligence but not connected to a person's intentional act or conduct. Therefore without adequately scrutinising the evidence, it is impossible to conclude that the accused was at fault and would be convicted or subject to 10 years imprisonment. What is essential for an objection to granting bail is to prove or establish the reasonable doubt that the accused would not return to court to answer, and the prosecution must support its stance with sufficient materials.

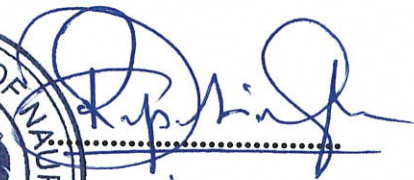
17. The prosecution has mentioned that there is more probability of interference with the witness due to the small and closely knitted community. This court would not agree to this suggestion as it is a geological fact that no one has the power to change. Still, once the legal proceedings commenced, it is expected that all the members of the society would not take the law into their own hands despite the prescribed result as the law would take the lead. This attitude is typical in every country, and society does not bear any relevance to its geological extent.
18. The rule of law matters, and everyone, including members of the victims' families, is subject to follow the law. Therefore, if the suggestion is correct, every person or most of the persons under criminal proceedings at Nauru has to be kept in remand as the potentiality is there to interfere due to its small Knitty community structure. Hence these courts disagree.
19. This court agrees with the prosecution's suggestion that there is a chance of causing disorder if the accused is granted bail at the mourning time of the victim's family or during the heat of the incident. But by now, it is almost three months from the date of the incident, sufficient for the parties to become peaceful emotionally. Therefore this court considers that any chance of future conflict would be possible to address or prevent with the strict bail conditions, which prescribe minimal interactions between the accused and members of the victim's family.

Conclusions

20. This court would like to mention that what matters in any bail application is to ensure the proceedings' smooth functioning and society's safety. Therefore, remanding is not a punishment other than a precaution to guarantee the said criminal proceedings as the community's well-being.
21. After considering the facts tendered, the interests accused and the interests of the community. Accordingly, for the reasons given above, this court concludes that the presumption for granting bail has not been rebutted. Therefore this court **grants bail to the accused subject to below mentioned conditions;**
- a) The Accused is to be released on bail on his recognisance of \$500.
 - b) To provide the surety of \$1000, he/she must be the accused's family member.
 - c) The accused should not change his residential addresses without the court's approval.

- d) The accused will not contact or attempt to contact the members of the victim's family, who will not witness this case by any means or in any manner whatsoever unless they approach him.
- e) The accused should not approach, contact or speak to any prosecution witnesses.
- f) The accused must surrender his passport if any or should not apply for a new travel document, and the accused travelling out of the country is prohibited.
- g) The accused is to report to Nauru Police Station every 1st Friday from 8 am to 6 pm.
- h) The accused is not to re-offend at all times while out on bail. The accused is to present in court when required or ordered to do so.




Neil Rupasinghe
Resident Magistrate