



**IN THE SUPREME COURT OF NAURU**

**AT YAREN**

**[CRIMINAL JURISDICTION]**

**Criminal Case no 13 of 2017**

**REPUBLIC**

**and**

**BOBSON BILL, MICHAEL JORDAN  
and FRISCO DAGIAGO**

**Before: Crulci J**

**Prosecution: L. Tambukuro**

**Defence: V. Clodumar**

**Date of Hearing: 15 August 2017**

**Date of Ruling: 16 August 2017**

**CATCHWORDS**

***CRIME*** Application for bail – change in circumstances – material and significant - section 80 of the Criminal Procedure Act 1972 and section 80A of the Criminal Procedure (Amendment) Act 2016 – Application Refused

## RULING

1. The defendants are charged with an offence of Aggravated Burglary contrary to 161(1) of the *Crimes Act 2016*; and an offence of Deprivation of Liberty, contrary to section 88(1) of the *Crimes Act 2016* ("the Act). The maximum penalty for each offence is 12 years imprisonment and 7 years imprisonment respectively.
2. The facts as briefly set out to the Court on the 21 July 2017 and again on 15 August 2017 are:
  - a) On the 1 July 2017 at around 10:45 pm the victim, who is a Chinese national, closed her restaurant;
  - b) Upon reaching home at approx. 11:00 pm as she was getting out of her car she was assaulted, grabbed from behind and placed on the backseat floor of another vehicle parked next to her;
  - c) The faces of those who attacked her were covered but she could see their skin colour and build;
  - d) She recognized the vehicle into which she was placed as she had seen it previously;
  - e) The attackers demanded money and she told them that all her money was in her handbag;
  - f) The victim's mouth was duct-taped and her face covered;
  - g) Two of the attackers took her keys from her handbag and searched her house whilst she was detained in the vehicle;
  - h) The vehicle she was in, drove off and she was driven around and dropped off near the power station;
  - i) The victim was threatened with further harm if she reported the matter to Police;
  - j) She called for help and was assisted by a security guard;
  - k) Stolen from her were two mobile phones (iPhone 6 556 7066 and Nokia 558 4439), a brief case, gold necklace, ring and cash;
  - l) A witness saw the defendant Michael Jordan and another near the Block at Location where the victim lives at the material time driving a vehicle similar to that described by the victim;
  - m) Another witness who was approached by the victim for assistance confronted Michael Jordan who admitted to him that he and the other defendants were involved, as they knew the victim's husband was off the island;
  - n) The defendants made no comment in interview but have provided affidavits to the Court in support of their Bail applications, Michael Jordan denies confessing to having committed the offences, and all the

defendants tell the Court of the deleterious impact the remand is having on their families;

- o) The defendant Frisco Dagiago and the victim live at Location;
- p) Since the arrest and remand of the defendants the iPhone 6 reported stolen by the victim was recovered from the partner of the defendant Dagagio.

3. Counsel for the defendants make application to this Court for bail in accordance with section 80 of the *Criminal Procedure Act* 1972 and section 80A of the *Criminal Procedure (Amendment) Act* 2016

**80 Bail In Certain Cases**

(1) Subject to the provisions of section 21 of this act, where any person, other than a person accused of murder or treason, is arrested and detained without warrant by a police officer or attends and is brought before the District Court and is prepared at any time while in the custody of the police officer or at any stage in the proceedings before the Court to give bail, he may in the discretion of the police officer or the Court be admitted to bail with or without a surety or sureties.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(3) Notwithstanding anything contained in subsection (1) of this section, a judge of the Supreme Court may in any case direct that any person be admitted to bail with or without sureties or that bail required by the District Court or a police officer be reduced or any requirement as to sureties be varied.

**80A Considerations for bail**

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 person in custody 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;

(d) the protection of the person from the public; and

(e) the public interest and the protection of the community.

4. The matter was previously before Judge Khan on the 21 July 2017<sup>1</sup> and bail was refused on the basis of the strength of the circumstantial evidence, the recent prevalence of robberies, the protection of the Chinese community and the public at large.
5. Counsel for the defendants informs the Court that Bobson Bill has been remanded since 8 July 2017; Michael Jordan since 9 July 2017; and Frisco Dagagio since 10 July 2017.
6. The defendant Frisco has previous convictions: one for which he served four years for robbery of a Chinese man, and at the time of that sentence he was serving a sentence of one year for entering a dwelling house with intent.<sup>2</sup>
7. Defence counsel argues that the change in circumstance is that the hardship experienced by the families of the defendants has increased; and that it is irregular in this jurisdiction for defendants to be remanded for this length of time for such an offence.
8. The plight of the families of the defendants have deteriorated over the last three and a half weeks with them finding it very difficult to make ends meet and look after the young children. Defence counsel asks the Court to reconsider the risk assessment of the society's interests and safety versus the accused's right to bail.
9. Prosecution counsel submits there are continuing police investigations into allegations that these defendants and others currently on remand are part of a group or '*Bazoom Squad*'.
10. That there is no change in circumstance for the defendants, and that their family circumstances were made clear to the Court on the 21 July 2017., and without a significant or substantial change in circumstance there is no merit in the application for bail. Furthermore since the last application for bail the victim's phone was found to be in the possession of one of the defendants' partners, and this strengthens the prosecution case.

## CONSIDERATIONS

11. The Court has carefully considered all the matters placed before it and also the matters placed before Judge Khan. Whilst the Court understands that the children of the defendants' are the innocent parties in this matter, the Court does not consider that there has been a significant or substantial change in

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<sup>1</sup> *Republic v Bill* [2017] NRSC 60

<sup>2</sup> *Republic v Aliklik* [2008] NRSC 15


circumstance of the defendants. Although the families may consider the length of time that the defendants have been on remand to be a long time, in fact it is around five weeks.

12. On 21 July 2017 the Court considered that having considered the requirements of section 80A to be met in relation to the strength of the prosecution case; the circumstances, nature and seriousness of the charges; the likelihood that Frisco Dagagio would commit offences if bailed; and the public interest and protection of the community, that the defendants be denied bail and remanded in custody.

13. There is nothing before me to indicate that three weeks since the making of that bail application, there has been a significant, material or substantial change in circumstances.

14. The application is refused.

15. The defendants are remanded in custody to appear before the Chief Justice on the 30 August 2017 at 10:00 a.m.



The seal of the Supreme Court of Western Australia is circular, featuring a central sunburst emblem. The text "THE SEAL OF THE SUPREME COURT" is inscribed around the perimeter. Below the seal, a horizontal line is drawn across the page.

Judge Jane E Cruick

Dated this 16 day of August 2017