



SUPREME COURT OF NAURU

[Criminal Jurisdiction]

Criminal Case No.13 of 2019

Between: **Republic**

Complainant

And: **Obadiah Dabwido**

Defendant

Before: **Judge Rapi Vaai**

APPEARANCES:

Appearing for the Complainant: S Serukai

Appearing for the Defendant: S.Valenitabua

Date of Hearing: 11th October, 2019

Date of Ruling: 14th October, 2019

Ruling

1. The accused, a 17 year old youth, who has been in custody since the 4th September 2019, is seeking bail. The application is opposed by the police on the grounds:
 - (i) that the applicant has previous convictions,
 - (ii) that the applicant has other pending matters in the District Court,
 - (iii) that the applicant has breached bail conditions,
 - (iv) that there is evidence that there is likelihood the applicant reoffending

(v) that there is likelihood of the accused interfering with the complainants.

2. Two information laid against the accused alleged:

(i) that on the 31st day August 2019 at Aiwo District unlawfully entered the dwelling house of Why-Julie Agir at night; and

(ii) that on the 31st day of August 2019 at Aiwo District indecently assaulted a young child under the age of 16 years.

3. He has denied the charges. He together with his father have filed affidavits in support of the bail application. In response the police filed an affidavit by the complainant to the burglary charge (and mother of young girl in the indecent assault charge) and affidavit by a police officer

Applicant by the Accused

4. In his supplementary affidavit the accused deposed that he was asleep somewhere else on the night of the alleged incident and his sister can verify it. He expressed in his affidavit where he was.
5. His travel documents are with the court and he has been complying with the bail conditions imposed on a previous isolated incident.
There is therefore no risk of absconding bail.
6. Counsel submitted that if crime of burglary was committed at 6am as alleged in the information then the offence of burglary cannot be sustained.
7. More importantly pursuant to section 4(3) of the Bail Act (the Act) which emphasized a presumption in favour of the granting of bail which the prosecution in opposing bail must seek to rebut.
8. In respect of section 4(3), the accused says it does not apply to him. It can only apply to him if the police is correct in its objection that he has breached a bail condition, and the only breach the police is alleging is the allegations of burglary and of indecent assault currently filed against him.

9. If the presumption to grant him bail is displaced the accused submitted that pursuant to section 18 (1) of the Act he should be granted bail since:

- (i) there is no likelihood he will not appear,
- (ii) it is in his interests to be granted bail
- (iii) protection of the community and public interest will not be at jeopardy if he is released on bail.

Opposition by the police

10. In opposing bail the police filed two affidavits one by a police officer and one by the complainant to the burglary charge and mother of the 6 year old complainant in the indecent assault charge.

11. It is contended that the accused

- (i) is unlikely to surrender to custody and to answer to the charges laid;
- (ii) bail will not serve the interest of the accused; or
- (iii) the public interests would be endangered.

Opposition by the prosecution follow the requirements of section 19 of the Act.

12. Thrust of the police opposition was based on the interests of the public.

13. It was contended that with his previous convictions, breach of bail conditions and at least three pending trials for similar offending the accused is likely to reoffend and would accordingly endanger public interest or make difficult the protection of the community

14. The mother of the six year old complainant deposed in her affidavit that her daughter as a result of the accused's offending is scared to go outside to play. Bail should be denied for the safety of her children and others.

15. In relation to the presumption in favour of the grant of bail, counsel submitted that presumption has been displaced when the accused breached his bail condition by committing the present offence. One of the bail conditions imposed was that the accused shall not re-offend.

Discussion

16. If there are previous convictions of the accused the affidavit filed by the police did not state what they were and for over what period of time. In response to questions from the court, counsel responded that the previous convictions and pending trials were for similar offending. It transpired however that the sexual allegation is the first of its nature against the accused.
17. The police insist that the current criminal allegations against the accused tantamounts to either re-offending or a breach of bail condition. Both offences are denied by the accused. He has put forward a defense of alibi which if accepted or creates a reasonable doubt would exonerate him.
It would be contrary to logic to treat the current allegations as re-offending as it would tantamount to convicting him now at this stage before the substantive hearing.
18. The presumption in favour of the grant of bail has therefore not been displaced.
19. The principal source of the court's power of refusal of bail is section 19. The main grounds for refusal of bail are set out in the police opposition grounds referred to in paragraph 11 above. Those grounds are:
 - (i) the accused is unlikely to surrender to custody and appear in court to answer the charges:
 - (ii) the interests of the accused person will not be served; or
 - (iii) granting bail would endanger the public interest.

Unlikely to surrender to custody and to appear in Court

20. Obviously the police did not vigorously pursue this ground. Unless he absconds overseas, there is nowhere to hide effectively on Nauru. He has no means to pay for travel. His travel documents have been surrendered to the court and has complied with bail conditions.

As to the strength of the prosecution case on both charges, the court is unable to assess as there is, other than the very brief general affidavit of the mother, no other material for the court to assess the strength of the prosecution case.

Interests of the Accused

21. The accused is 17 years. His father who is in full employment has deposed to be the surety and undertaken to have the accused stay with him, and to ensure the accused does not go near the place of the alleged incident.
22. The police officer deposed in affidavit, and counsel also contended that the trial can be conducted soon as it involves a child, so that the accused will be in custody for a relatively short period of time. The accused has been in custody for over 1 month and the police have yet to complete filing of all relevant documentations before a trial date can be set. Trial is likely to be next year.

Public Interest

23. As mentioned earlier the thrust of the police objection is the protection of the public in particular the six year old complainant.
24. Firstly it is contended that there is a risk of the accused re-offending. The submission is anchored on the previous convictions a pending trials of the accused.
25. But there is no evidence or information to suggest that he re-offended or failed to comply with bail conditions during the previous occasions when he was granted bail. Counsel for the accused quite correctly submitted, relying on the Queensland Court of Appeal decision in *John Reginald Williamson v. DPP*¹, that no grant of bail is risk free. There is always a risk of misconduct when an accused person or for that matter any person, is free in society. So the court moves on the consideration of unacceptable risk which cannot be identified from the information available to the court.
26. *“The grant of bail is an important process in civilized societies which reject any general right of the executive to imprison a citizen upon mere allegation or*

¹ Appeal No 7123 of 1999 (27/8/99) Unreported Court of Appeal Supreme Court of Queensland

without trial. It is a necessary part of such a system that some risks have to be taken in order to protect citizens in those respects.” John Reginald Williamson v. DPP².

27. For a 17 year old accused, the risk can be minimized or addressed by imposing conditions as to residence, reporting to police, and supervision at night time.
28. Protection of the six year old complainant was advanced by counsel for police with passion. Counsel told the court that she has lots of passion for young girls, the victims of sexual offending, she emphasized the need to protect young girls; the fact that the complainant was 6 years old justified refusal of bail.
29. When her views were sought on the principles stated in the Queensland Court of Appeal decision cited by counsel for the accused, she promptly replied it did not apply and was irrelevant because the victim there was not a young girl.
30. The court inquired of counsel, whether different rules as to bail apply to offences involving young girls and the accused’s be treated differently she promptly replied yes.
When asked if she has authority for her response, she responded she was involved in a number of cases involving children.
31. Unfortunately her passion, dominated good sense and compromised her court manners and duties as a prosecutor and as officer of the court.
She interjected when the judge was making remark.
32. Bail applications are determined in accordance with the provisions of the Bail Act and legal authorities. Personal passion play no part. Authorities as counsel knows are not her personal experiences but legal authorities as counsel ought to know.

Results

The accused is released on the following bail conditions;

1. He lives and reside at NPC Aiwo District with his father.

² Supra at paragraph 21

2. He will stay away from the complainant's home and shall not contact or attempt to contact the complainants in any form whatsoever.
3. His father Clinton Dabwido shall be his surety in the sum of \$300.
4. His passport shall remain in custody of the court.
5. Not to re-offend while on bail.
6. Will attend court as ordered.
7. Will report to the Police before 4pm every Friday.
8. Unless accompanied by his father or any other adult relative nominated by his father the accused shall remain at his father's home between hours of 8pm till 7am the next morning.

DATED THIS 14TH DAY OF OCTOBER, 2019



M. Vaai

Judge R. Vaai