



**IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No. 28 of 2025

BETWEEN: THE REPUBLIC
PROSECUTION

AND:
Zenos Hiram
ACCUSED

BEFORE: Keteca J

Date of Hearing: 16th March 2026

Date of Ruling: 30th March 2026

Catchwords: Application for bail under the Bail Act 2018. (the Act)

Appearances:

Counsel for the Prosecution: S. Shah

Counsel for the Accused: M. Degei

RULING

BACKGROUND

1. The accused is charged with one count of Attempted Murder contrary to Section 55A (b) of the Crimes Act 2016. On 03rd March 26, the accused filed this application and he relies on his own affidavit.
2. The accused deposes that his trial is fixed for 02nd – 05th November 26; some nine months away. He adds that his trial ‘should be fixed within three months from the date “ he was arrested.

3. He concludes that it is his right and is entitled to be released on bail as the prosecution does not have any evidence that rebuts the presumption of bail.

Response by the Prosecution.

4. Constable Rhudy Tokaibure deposes that there is a strong case against the accused as there were several witnesses that saw the accused stab the complainant on his upper torso and stomach area. The same witnesses took the knife away from the accused.
5. Other people at the scene then took the complainant to hospital.
6. The accused is not entitled to bail as claimed by him and the expiration of the three months in remand 'does not automatically entitle the applicant to bail.'
7. The accused is charged with a serious offence and there is a high likelihood of the accused interfering with the complainant.
8. Mr Shah argues that Section 4(5) of the Act provides that an accused may apply on 'any grounds or reasons **other than exceptional circumstances.**' It is not mandatory that an accused will be released on bail because the trial has not commenced within 3 months of the date the information was filed in court. The bail application needs to be based on '*any grounds or reasons.*' The accused has not relied on any such 'grounds or reasons.' Counsel adds, as amplified in the affidavit of Constable Rhudy Tokaibure, that the charge of attempted murder under Section 55A of the Crimes Act 2016 is a serious offence. Counsel concludes that the trial being listed for November 2026 is not unreasonable delay.

CONSIDERATION

Entitlement to Bail

9. Section 4 of the Act provides:
 - (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 requires.
10. Section 4B (1) of the Act provides:
 - (1) Subject to subsection (2), a court shall not grant bail, except in exceptional circumstances:
 - (a) On an application of a person charged with any of the following offences:
 - (i) Attempt to murder;
 - (ii) Manslaughter;
 - (iii) Causing harm to a police officer;

- (iv) Intimidating or threatening a police officer in the execution of the police officer's duties; or
 - (v) Contempt of court under the Administration of Justice Act; or
 - (b) Where an accused person is incapacitated by intoxication, injury or use of drugs or is otherwise in danger of physical injury, self-harm or in need of protection.
- (2) Subsection (1) shall not apply to an accused person who has been previously convicted by a court for one or more of the offences in subsection (1).

11. Section 4B (5) provides:

'An accused person, who is remanded in custody under this Section, may apply for bail on any grounds or reasons, *other than exceptional circumstances under subsection (1)*, where the trial for the offence he or she is charged with has not commenced within 3 months of the date on which the information or charge was filed in court.

12. The present application is not particularised. It is based on a broad brush over Sections 4, and 13-17 of the Act.

13. I note that that the right to be released on bail under Section 4(1) of the Act is not absolute. It is subject to the provisions of the Act. Under Section 4(3) of the Act, the presumption in favour of the granting of bail to an accused person may be rebutted by a prosecutor or any other person. This rebuttal is relevant '*where the interests of justice so require.*'

14. Section 4B (5) was considered by Fatiaki CJ in *Republic v Agege* [2021] NRSC 13; Criminal Case 23 of 2020 (5 March 2021). His Honour said-

'Subsection (5) is clearly an exception to the restrictive provisions in subsection (1) in its recognition that bail may be applied for "...on any (other) grounds or reasons..." if certain pre-conditions are met. This phrase is a reference to the later provisions of the Bail Act including ss.13, 17, 18 and 19 which deals with the grounds and factors that the court must consider and rule on in an ordinary bail application.

In my view subsection (5) provides an additional stand-alone ground for the grant of bail where it says:

"...where the trial of the offence he or she is charged with has not commenced within 3 months of the date on which the Information or charge was filed in court."

(hereafter referred to as the "3-month rule").

He added-

The cumulative "pre-conditions" in subsection (5) are:

- (a) The existence and the date(s) of filing of any charge or Information in court;*
- (b) The expiry of 3 months since the filing of the charge or Information;*
- (c) The fact that a trial of the charge or Information had not yet "commenced" at the date when the 3 months elapsed; and*
- (d) The existence of an application for bail supported by affidavit(s).*

15. In the present case, the pre-conditions (a) –(c) are fulfilled. **The affidavits need better particulars.**

Bail Determination

16. On the general provisions for bail determination, Section 17 of the Act provides:

- (1) When deciding whether to grant bail to an accused person, a police officer or court, as the case may be, shall take into account the time the person may have to spend in custody before trial if bail is not granted.
- (2) The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.

17. Section 18 of the Act provides:

- (1) A person making submissions to a court against the presumption of bail shall address the:
 - (a) the 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*.

18. On the affidavits of the Applicant needing better particulars, I note that the accused is unemployed. His residential address has not been disclosed in his affidavit. **Where will he reside if released on bail?** He has not deposed as to who can be his sureties nor has he said that he will not interfere with the complainant and the witnesses. In the absence of these details, I am persuaded that the accused has not fulfilled the 'primary consideration' that he will appear in court to answer the charges laid against him.

19. I also consider Section 19 of the Act on 'Reasons for Refusing bail.' On Section 19(1)(a), I have already found that based on the materials before me, the accused person is unlikely to surrender to custody and appear in court to answer the charges in the present case. In arriving at this finding, I have considered the following under Section 19:

- i. His unemployment status, unknown residential address, absence of community ties, no information on his family situation - *Section 19 (2)(a)(i)*;
- ii. The circumstances and seriousness of the offence- the offending here involved the alleged stabbing of the complainant by the accused using of a 20cm long knife. The stabbing was witnessed by those that were in the drinking group. The medical report annexed to the affidavit of Constable Rhudy Tokaibure has the Doctor stating in his 'Summary and Conclusions- *'This is a critical case with stab wound to the abdomen & chest. The CT report revealed the knife penetrated through the abdomen with bleeding into the abdomen but fortunately the bleeding stopped. Surgery will reveal if any injuries done to the internal organs.'* - *Section 19(2)(a)(iii)*;
- iii. The strength of the prosecution case- there were witnesses to the stabbing. The witnesses took the knife away from the accused- paragraph 7 of Constable Rhudy Tokaibure's affidavit- *Section 19 (2)(a) (iv)*;
- iv. The severity of the prescribed penalty of life imprisonment if the accused is found guilty- *Section 19(2)(a) (v)*.

20. On *the interests of the accused*, under Section 19(2)(b), I have considered:
- i. The length of time the accused will remain in custody is approximately 8 months. The investigations in this case are complete. The depositions were served in November last year. The matter has been set down for trial. I find that a period of 8 months in remand before the trial in November is not unreasonable delay for a serious offence as attempted murder under Section 55A of the Crimes Act 2016- *Section 19(2)(b)(i)*;
 - ii. The conditions of that custody- there is no evidence submitted by the applicant that there is overcrowding or the conditions of the Nauru Corrections Centre are below international standards- *Section 19(2)(b)(ii)*;
 - iii. The need for the accused person to obtain legal advice and to prepare his defence- There is no evidence before me that the accused being in remand, prevents him from being visited by or giving instructions to his legal counsel. It is common knowledge that it takes less than 20 minutes to reach the Corrections Centre from any part of Nauru within its internal waters- *Section 19(2)(b)(iii)*;
21. In relation to the *public interest and the protection of the community* under Section 19(2)(c), I have considered:
- i. The likelihood of the accused interfering with witnesses- there are no proposed sureties in the present application. There is no fixed address for the accused. He is unemployed and there is no evidence that he has any skills where he may quickly find employment if released on bail. There is the likelihood that the accused will interfere with witnesses in this case- *Section 19(2)(c)(ii)*;
 - ii. The likelihood of the accused committing an arrestable offence while on bail. An unemployed accused with no fixed address or community support are usually susceptible to mischief when idle. This accused is no exception. As stated above, the offence of attempted murder is a very serious offence with the hefty penalty of life imprisonment. The community need to be protected from persons alleged to have yielded to violent and aggressive impulses- *Section 19(2)(c)(iii)*.
22. In considering all the above, I conclude that this is not a case where the accused should be released on bail based on Section 4B (5) of the Act.

CONSIDERATION.

23. The bail application by the accused is dismissed.
24. The matter will be called before the Registrar on 13th April, 2026 at 10am for the extension of his remand.

DATED this 30th day of March 2026

Kiniviliame T. Keteci

Judge

