



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

**Criminal Case No. 16 of 2025**

**BETWEEN: THE REPUBLIC**

**PROSECUTION/RESPONDENT**

**AND:**

**MESHACH AKUBOR**

**ACCUSED/APPLICANT**

**BEFORE: Keteca J**

**Date of Submissions: 16<sup>th</sup> February 2026**

**Date of Ruling: 20<sup>th</sup> February 2026**

**Catchwords: Exceptional Circumstances, Bail Act 2018**

**Appearances:**

**Counsel for the Prosecution: A. Driu**

**Counsel for the Accused: S. Hazelman**

**RULING**

**BACKGROUND**

1. The accused (Applicant) is charged with the following offences:
  - i. Count 1- 'Obstructing a Public Official' contrary to Section 242 (a) and (b) of the Crimes Act 2016 (the Act);
  - ii. Count 2- Causing Harm to a Police Officer' contrary to 77 (a)(b)(c) & (d) and (ii) of the Act;
  - iii. Count 3- 'Risking Harm with Intent to Commit Offence' contrary to Section 84 (1) (a) (b) (i) (c) & (d) (ii) of the Act; and
  - iv. Count 4- 'Risking Harm with intent to Avoid Apprehension' contrary to Section 84 (1) (a) (b) (ii) (c) & (d) (ii) of the Act.

2. On 09<sup>th</sup> February, the Applicant filed a Motion seeking bail. It is noteworthy that the Motion does not state the legal basis for the application. Somehow, there is no mention of the Bail Act 2018 at all.
3. The application relies on the affidavits of the accused and his wife.

### **THE APPLICATION**

4. The Applicant deposes as follows:
  - i. He is 41 years old and married with 5 children. His oldest child is 15 and the youngest, 1 year old. He is a landscaper at Meneng Hotel and on approved leave which expired on 02<sup>nd</sup> Feb 26.
  - ii. He is the primary income earner for his household and his wife is a teller clerk with RONPHOS. He is the primary care giver to his children on weekends. His wife's shift work will make it impossible for her to look after their children.
5. The Applicants' wife, Bethel Akubor deposes as follows:
  - i. She does alternate shift work from 7am- 7pm, Monday to Sunday with RONPHOS. Her income is not sufficient to meet the financial needs of her family. Her husband's flexible work hours allow him to look after the children when she's at work. When she does night shift work, her husband is the sole care giver for the children.
  - ii. Her family will face serious financial hardship if her husband is kept in remand.
6. In her written submissions, Ms Hazelman refers to Section 4B(1)(a)(iii) of the Bail Act 2018 on the ground of 'exceptional circumstances.'
7. Counsel refers to the following cases:
  - i. R v Agege [2021] NRSC 16; and
  - ii. Hiram v Republic (Criminal Case No. 13 of 2025) and submits that the cumulative effect of the circumstances faced by the Applicant and his family will render his continued pre-trial detention, unjust.
8. Counsel concludes that the above amount to 'exceptional circumstances' and bail should be granted.
9. In the alternative, Counsel submits that under Section 4B (5) of the Bail Act 2018, if the trial is not commenced within 3 months, then bail should be granted.

### **RESPONSE BY THE STATE**

10. The DPP objects to bail being granted and relies on the affidavit of Police Sergeant Alice Fritz. Sergeant Fritz deposes that:
  - i. The report on this matter was through the accused's wife seeking police assistance at 2.30 am on 29<sup>th</sup> November 25 because the accused was being a

nuisance in their home. Police officers attended to the scene. What transpired at the scene resulted in the charges being laid against the accused.

- ii. The 'family hardship and loss of employment' are the usual consequences of the remand of a sole breadwinner- the accused is not a sole breadwinner as his wife is also employed.
- iii. If the trial has not commenced within 3 months, the Applicant is 'at liberty to apply for bail without establishing exceptional circumstances.'
- iv. No exceptional circumstances have been demonstrated here.

11. The DPP refers to the following cases:

- i. Prima Temaki v R Criminal Case No. 21/2020; and
- ii. R v John-Fij Agege & Ors, Criminal Case No.23 of 2020- where Fatiaki CJ considered the words- 'exceptional circumstances.'

12. Counsel concludes that there are no exceptional circumstance shown here to warrant the granting of bail.

## CONSIDERATION

13. Firstly, I remind Defence Counsels that bail applications need a legal basis. This is to be reflected in the Notice of Motion for Bail.

14. I dealt with the question of 'exceptional circumstances' under Section 4B of the Bail Act 2018, in **R v Zenos Hiram**- Criminal Case No. 13 of 2025, delivered on 19<sup>th</sup> Dec 2025. In that case, I said-

'11. *What amounts to an exceptional circumstance under Section 4B of the Act? The Bail Act 2018 does not provide any guidance as to what constitutes 'exceptional circumstance' for the purposes of Section 4B of the Act. Guidance must be sought from case law. In **Roberts v The Queen** [2021] VSCA 28, an offender who had been incarcerated for 20 years had his appeal against conviction allowed and a new trial ordered. At paragraphs [4], [5] & [6], the Court noted:*

4. *'The appellant now appeals from the decision refusing him bail. The decision to grant or refuse bail being discretionary, the appellant accepts that appellate intervention would only be warranted if he could show that the judge had made a specific error or else that it was not reasonably open to the judge in the circumstances of the case to refuse the application.*

5. *As to specific error, the appellant submits that the judge misconstrued the applicable provisions and, as a result, gave undue prominence to the seriousness of the charges, the strength of the prosecution case and the likely sentence the appellant would face if convicted. By so doing, it was said, the judge effectively made it impossible for the appellant to obtain a grant of bail.*

6. *As to the complaint of unreasonableness, the appellant submitted that the only conclusion reasonably open was that these were **exceptional circumstances** which justified a grant of bail. Specific reliance was placed on:*

· *the 'delay' of more than 20 years between the appellant's arrest and his likely retrial;*

- the 'considerable personal hardship' which he has endured while in custody;
- the absence of any factors indicating that the appellant presents an unacceptable risk in any of the ways contemplated by the Bail Act;
- the fact that his convictions were quashed because police misconduct had 'so corrupted the fairness of [his] trial as to poison it to its root'; and
- the existence of strong community support for the appellant, and the availability of a substantial surety.

12. At paragraphs [9] & [10] the Court said:

9. 'A review of bail decisions in 'exceptional circumstances' cases reveals certain types of circumstances which recur as justifications for bail in such cases: **unreasonable delay before trial; unacceptable adverse impacts of continued pre-trial incarceration (whether on the accused person or on his/her dependants); and the likelihood that time spent on remand will exceed any term of imprisonment which would be imposed in the event of conviction.** What these different kinds of circumstances appear to have in common is that they are capable of **rendering continued pre-trial incarceration unjust, notwithstanding the statutory prohibition on bail which otherwise applies.**

10. The informing principle seems to be clear: if continued incarceration before trial would be productive of injustice, then a grant of bail may be justified (subject always to the separate question of 'unacceptable risk'). The bail decision maker is thus looking to the future, considering the likely consequences of the continued incarceration of the applicant for bail. Past events may be relevant to that consideration, as in the cases concerning pre-trial delay, **but what justifies bail is the need to prevent or mitigate future injustice.**

15. In the present case, the Applicant has been in remand for 2 months. After 3 months, he can make a fresh application under the relevant provision of the Bail Act 2018.

16. The materials before me do not establish any 'special circumstances' that would render the continued pre-trial incarceration of the accused, unjust.

## CONCLUSION

17. The application for bail is dismissed.

18. The matter is listed for trial on .... August 2026.

19. The accused is further remanded.

DATED this 20<sup>th</sup> day of February 2026.

  
Kiniviliame T. Keteca

Judge

