

EDDILY IRO'OTA -V- REGINAM

High Court of Solomon Islands  
(Palmer CJ.)

Criminal Case Number 104 of 2004

Hearing: 4<sup>th</sup> May 2004

Judgment: 5<sup>th</sup> May 2004

*L Kershaw for the Applicant*

*R Barry for the Respondent*

**Palmer CJ.:** The Applicant Eddily Iro'ota has been charged with one count of murder contrary to section 200 of the Penal Code and one count of assault causing grievous harm contrary to section 226 of the Penal Code. Both offences related to the terrible chain of events/incidents which occurred on the afternoon and evening of Sunday 26<sup>th</sup> November 2000 resulting in the assault and grievous bodily harm being caused to Colin Hagi (Jnr) ("**Hagi**") whilst being kept in the Police Cells at the Central Police Station and the shooting and killing of Samani Ramo also known as Willie Ramo ("**the Deceased**") whilst being kept in the Prison Cells at the Central Prison at Rove.

Hagi and the Deceased had purportedly been taken in as prime suspects in the burning down of the Placemakers Building opposite the Central Market. The Deceased had purportedly been arrested in Malaita on the said date (26<sup>th</sup> November 2000) and brought over to Honiara apparently on a chartered afternoon flight arranged for that specific purpose arriving in Honiara on or about 1655 hrs. On arrival he was met at the Airport by members of the Malaita Eagles Force including this Applicant. He was then transported to the Central Prison and purportedly handed over to the Prison Officers on duty at the Prison for remand. He was taken and kept in the Female Wing of the Prison.

Hagi had also been arrested in Honiara on or about 4.00 p.m. that same day and taken initially to Central Prison, but later taken to Central Police Station and purportedly remanded in the cells there. Later that evening at about 7.00 p.m. this Applicant with others arrived at the cells and interrogated him. He was then seriously assaulted by them.

The Applicant and others then made their way to Central Prison at Rove. The Applicant was identified by the Officer on duty at the Armoury Boom Gate as he drove past in his vehicle. His vehicle was seen driving right up to the entrance of the Prison Gate behind another vehicle driven by the principal suspect (**hereinafter referred to as "P1"**) who had been identified as the person who had shot the Deceased.

The Prosecution alleges that the Applicant was one of the persons seen by the Prison Officer ("D1") who had opened the gate to allow P1 and others, about six of them, three were armed, and had been present together when the Deceased was shot. This crucial evidence which prosecution seeks to rely on is based on circumstantial evidence. It appears that D1 was not able to identify or recognize if this Applicant was one of those others who were present at the fatal killing of the Deceased.

**Reasons for opposing bail:**

Four reasons are given for opposing bail. (i) Seriousness of the offences; (ii) that the Applicant has failed to demonstrate that there are exceptional circumstances in his case which warrant the granting of bail; (iii) that the Applicant is considered a flight risk; and (iv) that many of the witnesses who are members of the Royal Solomon Islands Police Force fear he may attempt to exert influence over them because of his former position as Inspector of Police.

**Summary of Defence reasons for bail:**

(1) Ms. Kershaw submits that there is no likelihood of absconding if Applicant is released on bail. He has strong community ties, is of mature age, and had resided in Honiara for some 22 years. He is married with five children. He has no reason to abscond whilst waiting for his case to be determined. (2) If granted bail he is able to provide an independent surety. (3) Has connections with family and friends in the community who can assist in ensuring he does not abscond. (4) The evidence against him on murder is circumstantial, though he concedes that the evidence against him on grievous harm is much stronger. (5) As a police officer he appreciates the importance of not interfering with witnesses and gives assurance that he will comply with any conditions which may be imposed.

**The relevant legal principles:**

An accused is prima facie entitled to bail – sections 5(3)(a) and 10(2)(a) of the Constitution, section 106(1) of the Criminal Procedure Code (cap. 7); **R. v. Perfil**<sup>1</sup>. Bail however is discretionary and not to be unreasonably withheld – **John Mae Jino & John Gwali Ta'ari v. R.**<sup>2</sup>. In a charge for murder, bail is rarely considered save where exceptional circumstances are shown.

The onus is always on prosecution to show that substantial grounds exist for believing that the accused would fail to surrender to custody, commit further offences or interfere with the course of justice or witnesses – see **Wells Street Magistrates Court; Ex parte Albanese**<sup>3</sup>.

**Consideration of Issues:**

The charge of murder is the most serious offence under our Penal Code apart from treason. Hence unless exceptional circumstances are shown, rarely is bail granted by this court. If a conviction is entered a mandatory sentence of life imprisonment is imposed. An offence of grievous harm is classed as a felony carrying a maximum sentence of fourteen years if convicted. On either counts, it cannot be denied the offences for which this Applicant has been charged with are serious. This naturally raises the stakes on the possibility of absconding.

On the issue of strength of the Prosecution's case against the Applicant on the murder charge, the evidence does directly place the Applicant as going in the same direction and being with P1 at the time of commission of murder. He was seen driving in to the prison gate behind P1. D1, who opened the gate at gunpoint, described seeing at least 7 men including P1; three of whom were carrying firearms. He also saw three vehicles parked outside; a hilux, a red pick up truck and a grey car. This is consistent with the account of the police officer

<sup>1</sup> HCSI-CRC 30-92 (unreported) per Muria ACJ at p.3

<sup>2</sup> HCSI-CRC 72-99 (unreported) at p. 1

<sup>3</sup> (1982) 74 Cr App R. 180; [1981] 3 All E.R. 769 per Ralph Gibson J. at p. 187

on duty at the Armoury Gate who had seen the Applicant driving in a car behind P1. The persons whom D1 saw at the gate were those who had come out of the vehicles. Three men who had rifles waited at the gate, the other three accompanied their leader P1 to the Female wing of the Prison where the Deceased was and shot. Those same persons then got back into their vehicles and drove off. Again this is consistent with the statement of the officer in the Armoury that shortly after the shooting had taken place he saw the same vehicle that the Applicant had driven and the other vehicle in which P1 was seen driving, drive out. Prosecution's case is that the Applicant was one of or among those 7 or so persons that D1 had seen. There is circumstantial evidence which if accepted by the court would place this Applicant within the definition of a "Principal" as defined under section 21 of the Penal Code - see paragraph (c), that of an aider and abettor. It cannot be said that the evidence of complicity with P1 throughout is lacking, weak or insufficient. The Prosecution case at this stage must be taken at its highest. Questions of credibility, weight, inconsistency etc., including the notice of alibi given, must wait until trial for determination.

As regards the charge of grievous harm against this Applicant, the evidence is even stronger and consists of direct eye witness accounts including that of the victim himself. This also raises the stakes on the probable outcome of the charge. When these are balanced against the question of likelihood of absconding, the stakes naturally are raised.

The circumstances in which both offences have been committed are extremely serious, *a fortiori*, where the Applicant has been a high ranking officer, that of Inspector in the Royal Solomon Islands Police Force; a position which cannot by any standards be taken lightly. If convicted of those offences, this Applicant must expect a deterrent sentence being imposed.

#### **Interference with the course of justice or witnesses:**

Most of the witnesses in the charge of murder and grievous harm will be police or prison officers, co-workers and former colleagues of this Applicant. When the nature of the offences are held up against the question of possibility of interference with the course of justice or witnesses, it is my respectful view that the stakes are also raised especially when the offences as alleged were committed in the presence of those witnesses. Some it appears have been greatly troubled, even to the extent of being traumatized by what had happened. Some did display great courage in the face of danger and threat to their own lives. Due to the closeness of that relationship or former relationship with this Applicant and manner and way those offences had been committed, I accept that some of those police and prison officers who will be giving evidence against this Applicant will be very vulnerable to any perceived threats even if no such threat had been intended. Subject of-course to the determination of the issues at trial, those witnesses have seen what this Applicant, despite holding the rank of an Inspector in the Police Force is capable of achieving or doing. To suggest that the offences were committed at a time when law and order had broken down and therefore should not be adversely construed against this Applicant, in my respectful view is unacceptable, more so for an officer of the rank this Applicant had attained. There were also other police and prison officers who were doing the best they could in some of the most trying and difficult circumstances any police or prison officer could have been exposed to, to ensure that the course of justice according to the rule of law was being carried out.

**Conclusion:**

I have carefully considered the matters aptly raised before me by Ms. Kershaw, regarding the personal circumstances of this Applicant, his antecedents, that he is married with children, his service in the Police Force, that he has no previous records of criminal convictions, the surety(s) offered, his family and community ties and assurances of support, and possible fixed address if released on bail, and balanced these with the issue of absconding, commission of further offences and possible interference with the course of justice or witnesses. Unfortunately these are outweighed by the matters already adverted to in this judgment.

I note the Applicant is now awaiting trial after committal to this court. With the completion of a second court room suitable for criminal trials expected within three or so weeks and the appointment of another Puisne Judge, this case with others that have already been committed should be able to have a trial date given to them by the Registrar of High Court. Some delay must be expected, but I am not satisfied it can be described even at this point of time as unreasonable.

**Decision:**

Application for bail must be denied. The order for remand by the Magistrate's Court on committal to this Court remains until trial or further order of this court.

**THE COURT**