

JOHN ROSS-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Naqiolevu, J)

Criminal Appeal Case No: 39 of 2006

Date of Hearing: 17th April 2006

Date of Judgment: 12th May 2006

For Applicant: Mr. Anders

For Respondent: Mr. Thorpe

RULING

APPLICATION FOR BAIL

Naqiolevu J. The applicant seek bail following the charge of two counts of Attempted Murder contrary to Section 215 of the Penal Code. The offences are alleged to have been committed on the 24th of October 2004. The applicant was arrested and charged on the 4th of December 2004.

APPLICANT'S SUBMISSION

The applicant though his counsel raised several relevant considerations on the questions of bail, and in this regard he cited **Kabui J in Tasia-v-DPP⁽¹⁾** where his honour said,

"the test to be applied is whether or not the accused will appear in court on the trial date, factors such as the nature of the allegations against the accused, the nature of the evidence supporting the accusation the seriousness of the penalty that may result upon conviction and the availability of sureties".

1. Learned Counsel in support of the application submit that the risk of absconding is slight, given he has not fled since the investigation and he co-operated with the investigators. He has two guarantors available, he will assist in the reporting conditions and he has nothing to contradict his sworn statements, that he has every intention of answering his bail.

¹ CRC 226 of 2001

2. In relation to the issue of the nature of the evidence to be adduced, the crown is heavily reliant on persons of suspect credibility.
3. The applicant is not at risk of re offending, he is a family man with responsibilities he wish to fulfill. He has no prior conviction, and of the only charge he faced he was acquitted of the charge.
4. The trial is scheduled to commence in October 2006 and the applicant will have spent some 20 months if he is to remain in custody. The delay is due to no fault of the applicant and there is no guarantee that the trial will proceed as listed.
5. The applicant is married with two adopted children and his family responsibilities are considerable. He has always been a central figure in supporting the family.
6. The health and general welfare of the applicant as established by the medical report is relevant, and relates to various symptoms of chronic and chest pains and depression.
7. The applicant as deposed in his affidavit has no intention of contacting witnesses and there is no need for him to come into contact with these witnesses.
8. The applicant must have the ability to prepare his defence, and his ability to do that is important given the difficulty in contacting persons without telephone or postal services

CROWN'S OBJECTION

The crown objects to bail and filed several affidavits in support of the objections:

Mr. Thorp ask the court to consider the following:

9. The seriousness of the offence, the Attempted Murder and the Conspiracy to Murder and the penalty are quite severe.
10. The exceptional circumstances which must be shown given the nature of the offence.
11. Applicant may interfere with witnesses given the serious nature of the offences.

12. The offence is a direct attack on the government and the fundamental right to the law and a serious attack on the society.
13. Evidence if accepted, accused involved in the export of firearms into the country.
14. The use of firearm at a moving vehicle is clearly dangerous.
15. The Segregation of the prisoner is no longer an issue.
16. Applicant is suffering from some medical illness and will be involved in some surgery soon.
17. Mr. Thorp submit the court must take into account the seriousness of the offence and should reject the application.

FACTORS FOR CONSIDERATION IN BAIL APPLICATION

Bail is a right which is guaranteed under the provision of the Constitution and the Criminal Procedures Code. The court however in considering questions of bail must take several factors into consideration before exercising the discretion to grant bail. The considerations are:-

- a. **Where the applicant will abscond on bail.**
 - b. **The nature and the seriousness of the offence.**
 - c. **The evidence to be adduced.**
 - d. **The severity of the punishment.**
 - e. **The possible interference with witnesses.**
 - f. **The possible commission of further offence.**
 - g. **The length of delay in the hearing of the case.**
 - h. **The family needs of the applicant.**
18. Clearly in considering whether to grant bail to an applicant the court must determine the likelihood of the applicant absconding. In R-v-Kong Ming Koo Ward CJ said ⁽²⁾ "**The principal consideration in all bail applications is whether the accused will attend his trial**".
 19. The seriousness of the offence need to be considered. The use of firearms on a moving vehicle is extremely dangerous. The crown ask the court to consider that the charge of Attempted Murder and Conspiracy to Murder are of serious nature.

² CRC 15 of 1999

20. The severity of the punishment if the applicant is convicted, is a term of life imprisonment. The severity of the sentence would certainly have an impact on whether a person held on bail attend the hearing of the trial. **WARD CJ⁽³⁾ in R-V-Kong Ming Koo**, said at P3, "**I must also bear in mind that the nature of the offence and the penalty if convicted raise a prima facie risk the accused may try to avoid trial**".
21. The likelihood of the applicant interfering with witnesses and police investigation. In **R-v-Perfilli⁽⁴⁾ PALMER PJ** as he then was, said at P3 "**Although I am not satisfied that if the applicant is released on bail he will not abscond there are other factors this court is entitled to consider. One of these and the main one raised by Prosecution is the possibility of tempering with evidence and interfering with prosecutions witnesses and investigations**".
22. The question of the possibility of further offence being committed is equally important. In **R-v-Kong Ming Khoo⁽⁵⁾ Ward CJ**, said, "**Some crimes are not likely to be repeated pending trial and in those cases there may be no objection to bail, but some are and house-breaking particularly is a crime which will very probably be repeated if a prisoner is released on bail**".
23. The court in relation to delay must always consider this as an important factor in deciding whether to exercise the discretion to grant bail.

In the case of **R-v-Perfilli⁽⁶⁾ Palmer J**, stated, "**The question of delay in bringing an accused person to trial is a relevant factor to be taken into account in considering bail applications. I feel it is particularly important that the liberty of an accused person must be borne in mind in order to minimize any delay in bringing an accused person to trial**".

In my view however this must be weighed along with the nature of the allegations and the amount of time that is reasonably required to investigate and present the matter properly and fairly, as well as fully, to a court, see **Goldsbrough J in Kwaimani v Regina⁽⁷⁾**.

³ Ibid

⁴ Criminal Case 30 of 1992

⁵ Ibid

⁶ Ibid

⁷ CRC No 32 of 1992

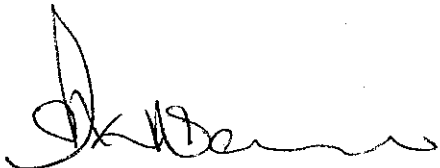
24. The family needs of an applicant is important in the exercise of the power to grant bail. It must be shown that the applicant's wife and children urgently need him at home as if he is not released something drastic may happen to them. PALMER J as he then was put it succinctly when he said in the case of R-v-Philip Tagea, Amos Teikagei and Damaris Teikagei ⁽⁸⁾ **"It has not been shown that his wife and children urgently need him, that if he is not released on bail that something drastic will happen to them"**.

The court is of the view that while the applicant's responsibilities and support for his family are important, however does not consider that something drastic will happen to them if he is not released on bail.

The court having carefully considered the nature of the allegations against the applicant, the seriousness of the offence and the severity of the penalty. The possibility of the repetition of the offence, the risk of interference with witnesses, and the applicant has access to firearms and indeed the matter involves the importation of firearms into the country.

The court having taken these factors into consideration is of the view that it has not been sufficiently persuaded to exercise the discretion in favour of granting bail to the applicant.

Bail is therefore refused.



THE COURT

⁸ CRC No 14 of 1995