

TARASIO ROENA -v- REGINA

HIGH COURT OF SOLOMON ISLANDS
(Naqiolevu, J)

Criminal Case No.377 of 2006

Date of Hearing: 15th November 2006

Date of Ruling: 1st December 2006

For Accused: Mr P. Southey

For Crown: Mr R. Iomea

RULING

Naqiolevu J. The applicant is charged with two counts of Murder and two counts of Abduction of events which occurred on the 26th of May 2001 at Maraghova Village on the Guadalcanal Province. The applicant was arrested of the charge on the 15th of June 2006 and remanded in custody.

The applicant through his counsel seek bail on the following grounds:

- 1) The poor progress of the police investigation, and the likelihood of inordinate delay before trial.
- 2) The case against the applicant is not strong.
- 3) The applicant has two brothers in Honiara both of whom hold positions of responsibility. They can act as sureties, and the Applicant can reside with one of them or his niece.

In relation to the poor progress of the police investigation and the likelihood of the inordinate delay before trial. Counsel argue the offence occurred some five years ago and the applicant is the first of the 13 suspects to be arrested. No one else has been arrested despite the fact they are all natives of Guadalcanal and the progress of the investigation could only be described as very poor.

Counsel argue the fact the investigation "is still continuing" as relied by the police as a reason to remand the applicant in custody on the 15th of June 2006 is clear, yet not proper reasons to deny bail. **Refer to Ward CJ in Peter Hou-v-The Attorney General (1).**

¹ [1990] SILR, 88 at p 90-91

Counsel said given the persons alleged by the police to be the principle offenders are still at large, the fact the investigation is still continuing can only mean the applicant's trial is an inordinately long way off. Prospective delay is a matter which can be taken into account when deciding whether or not to grant bail. **See Havimei-v- Regina (2) at P2 Palmer CJ.**

Counsel further argue the strength of the prosecution case could only be categorized as not a strong one, when it principally relies on a single witness who has given differing accounts, and there are no admissions upon which the prosecution can rely. The prosecution case reveal the applicant is a lesser player, the principal offenders have yet to be arrested.

The applicant counsel maintain was interviewed at length on the 15th of June 2006, and gave a full account of what occurred on the day in question. He denied all allegations of wrongdoing. Moreover he explained at Q&A (17) that whatever small differences he had with the crown witness Henry Kennedy he has since reconciled with him, and he does not expect him to maintain the allegations against him.

Counsel argue on the likelihood of the applicant answering bail, there is no reason to believe the applicant will not answer bail given he is a native of Guadalcanal, Takoi Village.

He has two responsible brothers who can house him in Honiara and ensure his attendance in court by acting as his sureties. The applicant is 28 years old and married with two young children and has no prior conviction. There is no reason to believe he will commit further offence whilst on bail, and the risk of his interfering with witnesses is remote if he remains on conditional bail. The case counsel submit is analgous to **Havimei-v-Regina (3)** and the combination of circumstances amounts to exceptional circumstance. Counsel submit given the applicant can reside with his brothers in Honiara, and they will ensure his attendance at court and he is otherwise of good character and that he faces an inordinate delay before trial, he should be granted bail with conditions.

CROWN'S SUBMISSION

The crown in objecting to bail tendered a brief facts of the case. The facts outline the charges against the applicant.

The facts counsel for the crown said, reveal the applicant was seen by a witness accompanying the 12 suspect armed with various weapons. The

² [2005] SBHC, 26

³ Ibid

applicant was seen by a witness to have thrown rocks one at the victim and kicked him in the process, as he ran towards his house. The group then dragged the victim towards the road. The applicant was clearly identified by a witness. The victim was brutally executed by the group.

The crown relies on several witnesses. Counsel argue that there are no exceptional circumstances to grant bail. Counsel maintain there is sufficient evidence to indicate the involvement of the applicant with the 12 other suspects who are yet to be arrested. Investigation is still continuing given the rough weather on the weathercoast. Further Counsel submit, given the serious nature of the offence there is the possibility of the applicant absconding and ask the court to refuse bail.

Counsel for the applicant in response to the crown's submission said the murder occurred in 2001 and the crown cannot blame the weather. There is no basis for the applicant to abscond and no basis for making that assumption. The allegations against the applicant is not as serious as against the other suspects. Counsel submit he has written to his learned friend about the lengthy delay and, furthermore the weather cannot be blamed for the long delay as the weathercoast is not that far away.

Bail - MURDER

The courts in this jurisdiction have repeatedly held that bail in cases of Murder or Treason is rarely granted unless exceptional circumstances be demonstrated to the court. Section 106 of the Criminal Procedure CODE is clear on the law:

"where any person has been taken into custody without a warrant for an offence other than "murder or treason", the officer in charge of a police station to which such person should have been brought may in case and shall, if it does not appear practicable to bring such person before an appropriate magistrates court within 24 hours, after he has been so taken into custody, inquire into the case and unless the offence appear to the officers to be of a serious nature, release the person,"

In R-v-Kong Ming Khoo (Unrep) Criminal Case No unknown of 1991 (4) Ward CJ stated at Page 2. "Section 106 makes it clear, when the charge is murder or treason; it is only exceptionally that bail is granted. Mr. Young seeks to distinguish between good reason, special circumstances and exceptional circumstances. I am afraid I do not feel such distinctions apply in the case. The effect of section 106 is that bail in murder cases will only be granted in exceptional circumstances. However whilst that places a heavier burden on the defence, the same considerations apply as in any bail application. The court must consider them all but bear in mind that it is only in rare cases that bail will be granted".

Clearly in cases of "murder or treason" which are considered most serious under the laws in this jurisdiction. Bail will only be granted under exceptional circumstances. This places a heavy burden on the defence to demonstrate any exceptional circumstances that will enable this court to exercise the discretion in his favour.

However, what constitute exceptional circumstances would have to be considered in each circumstances, of the case. In the case of **Sisifiu-v-R** ⁽⁴⁾ **Palmer J**, as he then was said,

"No attempt however has been made in this jurisdiction to define or identify what these possible exceptional scenarios may be when bail may be considered in murder charges. Rather each case had been dealt with on a case by case basis".

The court is of the view that in order to determine whether there are exceptional circumstances in this case it must take into consideration the applicant's submission of the following:-

1. The poor progress of the investigation of the case. The offence occurred some 5 years ago and the applicant is the only one of the 12 suspects to have been arrested. It is clear that the prospect of this case proceeding to committal soon is remote, and let alone the trial commencing in the near future.
2. The strength of the crown's case is a matter of concern. It seems to me that there is no dispute that the applicant was present, his involvement is minimal and the evidence by the witness Henry Kennedy seem unreliable. Clearly it can't be said the case against the applicant is strong.
3. On the likelihood of the applicant absconding, there is no reason as to why he will abscond the trial. The applicant is married with two children and has no prior conviction. He has two brothers who are willing to be his sureties and ensure he appears at his trial.
4. There is clearly no reason to believe the applicant will commit any offence if granted bail and on the risk of interfering with witnesses, the court can set strict conditions to ensure there is no risk of interfering with the crown witness.

The court accept that the combination of the circumstances could amount to exceptional circumstances as clear in the authority of **Havimev-v-R** ⁽⁵⁾.

⁴ CRC 14 of 1991

⁵ [2005] SBHC 26

The court having taken all these factors into consideration and in the proper exercise of its discretion grant the applicant bail on the following strict conditions:

ORDER

1. **The applicant reside with his niece Jenny Piri at Vura 2.**
2. **He report to his nearest police station 3 days a week, Monday, Wednesday and Friday between the hours of 6.00am to 6.00pm**
3. **That he does not interfere with any crown witnesses and in particular he must not discuss any matter relating to this trial with his daughter.**
4. **That his two brothers namely 1. Joseph Piri, 2. Edward Piri provide sureties in the sum of \$500 each.**

THE COURT