

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

**CR MISC. 5/2021
CR NO's 114-115/2021
112-113/2021
110-111/2021
108-109/2021**

POLICE

v

**PHILIP WALTER MONTGOMERY STRICKLAND
RUTRIL MATAMARU ENOKA
TAMARI TEREMOANA KAIVANANGA
TIPINE TAMA TETAVA**

Hearing date: 12 March 2021

Counsel: Ms A Maxwell-Scott and Ms M Okotai for the Crown
Mr N George for defendant (114-115/2021)
Ms L Rokoika for defendant (112-113/2021)
Mr M Short for defendants (108-109/2021; 110-111/2021)

Decision: 12 March 2021

**DECISION OF HUGH WILLIAMS, CJ
(re. Bail)**

[4:39:26]

[1] On 5 February 2021, applications for bail were dealt with by me in relation to the four persons currently charged with money laundering and selling or supplying cannabis.

[2] In the judgment issued that day the then state of the prosecution was reviewed. It was noted that matters were still at a relatively early stage with much disclosure still to be adhered. There was comment about the ineffectuality of any bail conditions that might be imposed should bail be allowed.

[3] The conclusion at the end was that no case for bail had been made out in respect of any of the four accused. There was just cause to remand them in custody but the promise was made that the question of bail would be reviewed during the current sessions of the High Court. And today comprehensive submissions have been made on behalf of the Crown and on behalf of each of the four accused concerning bail.

[4] There have been significant changes since the matter was dealt with on 5 February 2021, principally by the filing of CRs 202 to 205/2021 filed today alleging additional selling or supplying of cannabis for the purpose of dealing against each of the four accused. Those charges are supplementary to the charges originally laid, which also included money laundering, but the significant difference is that each of the new informations alleges ongoing offending on the part of each of the four accused between 24 December 2019 and 8 February 2021.

[5] Ms Maxwell-Scott, leading counsel for the Crown, accepts that the latter date is incorrect as all four have been in custody since arrested on 28 January 2021 and the informations will therefore need to be amended in that regard. But nonetheless it is a significant change to the nature of the prosecution that these four additional informations have been laid, essentially alleging ongoing offending by the four accused since their being originally interviewed by the police in December 2019.

[6] In approaching the question of bail it is correct, as Mr George submitted at the earlier hearing, that Article 65(1)(F) of the Constitution provides that all persons charged with an offence have the right to reasonable bail except for just cause. In New Zealand the criteria applying to a grant of bail have been codified by the Bail Act 2000 and it is accepted in the Cook Islands that the criteria set out in the Bail Act are relevant to bail issues in this country.

[7] In ss 9 to 13 of the Act Bail 2000 the matters listed include:

- (a) The likelihood that a person granted bail will fail to appear. In this case and in the present circumstances, that is not a significant factor given that exit from the Cook Islands is severely limited by the COVID pandemic.

- (b) The second criterion is that the persons granted bail may interfere with witnesses. In this case that is a factor of some significance, but not overwhelming significance, in that most of the witnesses the Crown will call at trial are either police officers, institutional officers or bank officials, producing text messages and banking records for the most part, and accordingly the chances of interference with those witnesses are slight. However Ms Maxwell-Scott says that the Crown also intends to call some civilian witnesses who were persons who are alleged to have purchased cannabis from one or other of the accused. The capacity for interference with those witnesses is obviously a matter which needs to be borne in mind.
- (c) The third New Zealand criterion is the likelihood of offending on bail. That is the major factor, and alteration, in considering the question of bail since 5 February 2021 because of the laying of these additional charges which, on their face and as yet untested, suggest that all four accused continued or is alleged to have continued to offend in ways similar to that prior to their interview in December 2019, in fact after that interview and for about a year onwards from that point.
- (d) The next criterion is the nature of the offences. This is the first time that accused persons have been charged with money laundering in the Cook Islands. It is an exceptionally serious offence with a maximum punishment on conviction of 20 years imprisonment and the Court needs to be mindful of the seriousness of the offence.
- (e) The next criterion is the strength of the evidence and the probability of conviction. In that regard, each of the accused is entitled to the presumption of innocence and it is important that a remand in custody, if that eventuates, should not put undue pressure on the accused to plead guilty to offences, so as simply to bring the matters to an end, or that any period of any remand in custody should not be the equivalent of the jail term. There are of course ways in which following conviction, if jail is imposed, as is highly likely on conviction on the money

laundering charges, that the period in custody on remand can be taken into account, but nonetheless it is a serious issue to be considered in the balancing exercise as to whether bail should be granted.

[8] The next matter is the seriousness of the maximum offence that has been dealt with.

[9] The other issues relate to character, previous history and previous convictions of the defence. A significant part of the submissions made in support of the bail applications today has consisted in the tendering of testimonials by various members of the accused family, members of the community, employers and the like in support of a submission that bail should be granted.

[10] The testimonials read much as if convictions have been entered into and the Court was involved in sentencing. Even in that arena testimonials have a limited part to play, but in connection with the question as to whether bail should be granted, they have almost no relevance. It is accepted that an automatic consequence of a remand in custody is that such an order will occasion considerable hardship to families, children, partners and other members of the family, and that a remand in custody will also bring about significant financial hardship to the families and others involved with the accused. That is most unfortunate but it is an inevitable consequence if a remand in custody is what is to follow.

[11] The other issue in the Bail Act and a matter of significant concern in relation to the current applications is the time which must elapse before the accused's guilt or innocence can be determined at trial. At this early stage of the matter it is impossible to make more than an educated guess as to how long a trial might take – whether there will be one trial or two – and the nature of the evidence in the sense of whether all issues are contested or whether there is a measure of agreement in the submission of, say, the banking records and the text messages, with the intent behind them still being at large.

[12] Whatever that situation turns out to be, the trial or trials are likely to occupy several weeks of the jury and the court's time. That concern is exacerbated in the current situation when jury trials have not been possible in the Cook Islands for some 15 months or so, a backlog has of course built up in that time and although measures are in place to try to overcome that backlog, on any reading of the situation in respect of these four accused it will be a number of months, perhaps a significant number of months, before their trial can be heard. That is a matter of major importance as far as the current applications are concerned.

[13] Turning to the individual cases, Mr George for Mr Strickland put before the Court, as did other counsel, a significant number of letters of support for his client – now his only client in this matter – testifying to the support he derives from and contributes to the community and emphasising the family and financial hardship that stems from Mr Strickland's remand in custody – now 44 days in duration. Mr Strickland also has medical concerns which require treatment, although no doubt he has been receiving those whilst in custody.

[14] In the Crown's submission, Mr Strickland is the hub of the alleged conspiracies to launder money in this matter. The evidence of the text messages so far disclosed is highly persuasive and he too, like the others, has now been charged with further offending following the initial police interview.

[15] On that face of it, Mr Strickland although the evidence is not yet tested, is alleged by the police to have continued to offend following the police intervention and interview in ways almost identical to that in which it is alleged to have preceded the police involvement.

[16] In terms of the Bail Act criteria, there is therefore a considerable concern that if granted bail he may continue to offend in a way which mirrors the offending alleged against him to date.

[17] Mr George made other submissions including relating to the foundation for the charges and the fact that as yet disclosure is incomplete. He submitted that this matter has received sufficient publicity in the Cook Islands, that were Mr Strickland to be

granted bail, members of the community would be “guarantors of his good behaviour” and his not offending further.

[18] Turning to Mr Kaivananga, Ms Rokoika, too, submitted a number of testimonials and letters in support. She made the point that of the witness statements disclosed to date, one by Mr Kaivananga’s nephew would appear on its face to go some way to undermining the charge of selling or supplying cannabis. She says that her client is not identified in the other material so far disclosed. She relies on her client’s lack of previous convictions.

[19] As far as Mr Enoka is concerned, Mr Short, too, put in his submissions the significant effect on Mr Enoka’s family, financially and in terms of relationships, and he too drew attention to that client’s lack of previous convictions.

[20] A similar class of submissions were made by Mr Short on behalf of Mr Tama. His family too is suffering significant hardship in terms of their relationships and their financial position.

[21] All counsel submitted that were bail to be granted that conditions could be imposed which would go far to satisfying the criteria set out in the Bail Act. But against that, there must be doubt as to the effectiveness of any conditions that could be imposed in a small community such as Rarotonga and there must be doubts too as to the practicality of those conditions in terms of the four accuseds’ employment requirements and the like.

[22] It is difficult to see how the authorities could police any non-contact or non-association clause and observations were made in the 5 February 2021 judgment as to the difficulties that might accrue should the bail conditions involve the removal of cell phones or the like.

[23] The three criteria which are most significant in this case are the seriousness of the offence and the almost inevitable jail sentence which will follow should conviction on money laundering occur; the amount of time that must pass before a trial can be organised, and the question of whether the accused might offend again if granted bail.

[24] In reality those three criteria render down to two, the question of delay before trial, if remand in custody is to follow and the question of whether there is possibly a propensity to continue to offend while on bail.

[25] The second of those is the governing criterion in this case. As things currently stand it appears that all four accused were taxed with offending throughout 2019 which forms the basis of the original set of informations in an interview occurring in December 2019.

[26] On the face of the latest informations, however untested they may be at the moment, it would appear that the police have information and data available to them which suggests that all four accused offended in similar ways in 2020 and into the beginning of 2021 as they are alleged to have offended throughout 2019.


[27] That is a major concern and of itself is sufficient to decline all four applications for bail, notwithstanding the hardship that that decision will wreak on the accuseds' families, partners and their associates.

[28] There is however the last criterion namely the amount of time which must elapse before a trial can take place. Disclosure in relation to the original set of informations remains incomplete and disclosure in respect of the most recent informations has barely started.

[29] Counsel are entitled to receive such disclosure as rapidly as possible and given the opportunity to analyse the same. It is only then that a reasoned estimate will be able to be made of the possible duration of the trial or trials and the amount of time that must elapse before those trial or trials can be heard.

[30] In those circumstances, because I am here for another fortnight, what is intended is to decline the applications for bail at the present time, but review the positions in a fortnight's time, have a look at the position of disclosure, delay, duration and all those issues before the current sessions end.

[31] If too much delay, unreasonable delay, a delay which is roughly equivalent to a possible jail term, appears to be inevitable, then at that point that will strengthen the four accused cases for bail. But at the present time, the possibility of their continuing offending following the police interview some 15 months ago is the militating factor which leads to the declining of all four applications for bail at this point.



Hugh Williams, CJ