IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION) **CR MISC. 5/2021**

POLICE

v

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

Date of hearing: 26 March 2021

Appearances: Ms A Maxwell-Scott and Ms M Okotai for the police
Mr N George for all defendants

Judgment: 26 March 2021

ORAL JUDGMENT OF HUGH WILLIAMS, CJ
(re. Bail)

[9:51:14]

[1] Having given at least two judgments in relation to these bail matters previously which have canvassed the criteria and the issues which are relevant to whether or not bail should be granted. I do not intend to repeat myself but what will happen is that I am prepared to grant bail to all four of the accused on the strictest of conditions. But, as will appear in a moment, it will need the collaboration of Crown and defence counsel to determine the precise wording of some of the various conditions.

[2] The conditions will include a surrender of the passports by all four and with a bar on them applying for any further passport.

[3] The second condition will be that they do not leave Rarotonga without the consent of the High Court. So that will keep them on this island and will mean they cannot move to any of the other islands.

[4] They need to provide the police with their residential addresses and immediately advise if there is anything other than a temporary change in that address.

[5] Although a curfew may be of limited assistance to ensure there is no re-offending while on bail, the terms of the curfew need to be tailored to the individual circumstances of the accused. For instance, is the curfew to apply seven days a week or only during the week, the working week? Should it be 7pm to 7am when that as Mr Short has just indicated may prevent them continuing with any employment? So the actual hours of the curfew need to be worked out between counsel and the Crown.

[6] There needs to be an order for non-association by any accused with any of the others and that non-association has to be by any means direct or indirect and should also extend to the non-institutional witnesses in the case. By non-institutional is meant that because there is no realistic chance of them interfering with police officers, they do not need protection, and probably the bank officials who are likely to be witnesses also do not need the protection of a non-association clause. If the bank officials are to be included in the non-association then that may unreasonably affect the accused's' normal way of life. So it is for counsel again to work out the ambit of the non-association clause.

[7] Ms Maxwell-Scott has advised that although most of the witnesses currently contemplated to be called are institutional in the sense I have just described, there are some lay witnesses. So the non-association clause needs to extend to any non-institutional witness, the names of which are advised by Crown or the police to defence counsel.

[8] Although, again it is of limited utility in the circumstances, there needs to be a reporting clause for each of the accused. What I have in mind is twice per week but I am also conscious of the fact that there are police operational issues there which often lead to police to say once a week is enough or twice a week is not enough. So if the police can advise in that regard, we can limit or extend the reporting requirement.

[9] Again, counsel need to collaborate so that the reporting times for each of the accused are individual in the sense that there can be no chance of them running across one another when they come to the police station to fulfil their reporting requirements. So some kind of regime needs to be worked out.

[10] The mobile phone question is a difficult one, for the reasons counsel and I have discussed. There are problems in simply saying that the accused persons may have mobile phones but need to surrender recordings of their calls and the like on request because as I have said, if there is a chance of further offending, and that is one of the Crown's main concerns, legitimately so in this case, then to require the accused to volunteer the use they made of their mobile phones cuts across the privilege against self-incrimination. So there are difficulties involved in that regard.

[11] Having regard to that the bail conditions need to include one that says they are not to own, possess or use a mobile phone as a condition of their bail.

[12] Again as discussed with counsel, if something like an emergency arises then they will have to find a way around that by use of a landline or something of the sort.

[13] There needs of course too, because of the way this matter is likely to develop, the files need regular review. So there will be a condition that each accused present themselves at the next criminal callover on a date and time to be advised by the Registrar.

[14] As to the possibility of employers, member of the family and the like effectively acting as guarantors, that is conceptually wrong because it involves the employers or members of the family putting themselves at risk in the event of breach by the defendants of the bail terms. But if the retention of the accused in custody is bringing such significant consequences for families and employers, which is not difficult to understand, they have a vested interest in ensuring that the accused fully comply with the terms of the bail and if they do not then those persons are encouraged to report them to the police, and if they find themselves back in custody, that is their own fault. But, beyond that, there is no workable and fair way in which employers and family members can be expected to act as guarantors of the defendants' compliance with the orders for bail.

[15] Now all those conditions are based not just on the constitution but on the serious concerns the Crown has about the possibility of reoffending while on bail and the delays which may occur these matters can go to trial, whenever the trial or trials ultimately turn out to be.

[16] The matter needs to be kept under close review. Responsible counsel should be prepared to make concessions where appropriate and the granting of the bail to the accused is not in any way influenced by the threat that proper concessions will not ensue in due course.

[17] Now, as is obvious, the finalising of the terms on which the accused will be granted bail is a matter that counsel need to discuss between themselves and needs approval. So what I am inviting counsel to do is to collaborate as soon as they can to try and sort out, within the broad conditions that I have outlined, how the bail bonds for each of the accused can be phrased and then once there has been agreement – possibly another hearing but let us hope not – once there is agreement the form of the bail bond can be submitted to me for approval. And once approved the accused can be granted bail. But they are to remain in custody until such time as the approved conditions have been agreed to and the usual bail bond then prepared and signed.

Hugh Williams, CJ