



IN THE SUPREME COURT OF NAURU

**AT YAREN
CRIMINAL JURISDICTION**

Criminal Case No.09 of 2020
Criminal Case No.08 of 2020

BETWEEN

Republic

V

Yemer Agigo

And

John Agege

Before: Rapi Vaai, J

APPEARANCES:

Counsel for the Prosecution:

DPP

Counsel for the Defendant

R. Tagivakatini

Date of Hearing:

8th May 2020

Date of Submissions:

8th May 2020

Date of Ruling:

14th May 2020

Case may be cited as: *Republic v Yemer Agigo and John Agege*

RULING

Introduction

1. This ruling will deal with the two applications for bail, one filed by the accused John Agege and one by Yemer Agigo. Each was charged separately with two counts of attempted murder.

2. Accused Agigo is charged:

Count 1

That on 2nd May 2020 he intentionally engaged in conduct, attempted to cause the death of another, namely Valisha Akubor.

Count 2

That on 2nd May 2020 he intentionally engaged in conduct, attempted to cause the death of another, namely Robert Agir.

3. John Agege is charged:

Count 1

On the 2nd May 2020 he intentionally engaged in conduct, attempted to cause the death of another, namely Pedagrin Itaia.

Count2

On the 2nd May 2020, he intentionally engaged in conduct, attempted to cause the death of another, namely Abanamo Adam.

4. I granted bail after hearing submissions on Friday afternoon 8th May 2020. The following constitute my reasons for so doing.

Arrest without warrant

5. On the 3rd May 2020 the police searched for the two accused to arrest them. The mother of Agigo took Agigo to the police on Monday the 4th May. He was arrested. The mother of Agege told the police she will take Agege to the police on Monday 4th May. Police arrested Agege at his home on the morning of the 4th May.

Both accused were then taken before the Magistrate the same day and were remanded to the 6th May.

6. On the 6th May the police filed charges of attempted murder which prompted the Magistrate to remand the accuseds to the 7th May and proceedings transferred proceedings to the Supreme Court.

7. Director of Public Prosecutions (DPP) submitted that Section 270 Crimes Act 2016 authorises the police to arrest the accused without warrants and before the police commences investigation of a complaint. In particular he cited section 270(2)(e) which specifically permits the police to arrest a suspect to assist the police in obtaining evidence relating to the offence.
8. The contention by the DPP confirms submissions by defence counsel that it is the practice of Nauru police to arrest a suspect before the commencement of police investigations; it also pointedly explains why the police always seek several adjournments before the information and depositions are filed and served after the arrest of accused. It also seems to be the logic of the contention that upon the laying of the complaint the two accused automatically became the suspects and were therefore the target of immediate arrest to assist the police to obtain evidence to justify their arrest, as well as the filing of information against them.
9. Section 270(2)(e) does not authorise a police officer to arrest without a warrant any person against whom a complaint is laid simply upon and immediately following the laying of a complaint. Reasonable steps should be taken to verify that the complaint is not spiteful, not personal, is reasonable and implicates the suspect. The section certainly cannot justify the police to arrest without a warrant a suspect to assist the police to gather evidence to prosecute himself or herself. A suspect cannot be forced to break his silence.
10. Article 5(1)(c) of the Constitution dictates that it is incumbent upon the police to establish suspicion based on reasonable grounds that the suspect has committed or about to commit the offence. Reasonable grounds can only be brought about by making inquiries after the complaint is laid. It would be destructive and incongruous to the spirit of article 5(1)(c) if the police pursuant to Section 270(2) were to arrest a suspect without a warrant immediately after a complaint is laid.
11. The so called practice by the police to arrest an accused immediately upon the lodging of a complaint, if it is a practice, is unconstitutional and is unlawful. The unlawful arrest is not saved by Subsection 2 of Section 270 Crimes Act 2016.

Public Interest

12. Against the accused Agigo, the police contended that Agigo is currently on bail on another criminal charge and he has breached his bail condition by his implication in this offence.
13. It is also alleged by the police that the accused evaded the police when the police attempted to arrest him for this matter.
14. The allegation of evading the police is disputed by the accused and his mother. The mother deposed in her affidavit that she received a telephone call from the police requesting her to take her son the accused, to the police the next day. She did. Agigo has not breached bail condition. Neither did he evade police.
15. I am not satisfied the public safety is at risk. The accusation of criminal offending in the District Court is still pending. There is no breach of bail condition.
16. The same allegations and ground are advanced for denying bail against the accused Agege. For the same reason the Court is not persuaded that public safety is at risk by this accused.
17. The risk or failure to appear in Court in Nauru is very minimal. For the accused Agigo, his passport is in the custody of the Court Registrar; for the accused Agege, his passport has expired. Both accuseds are undoubtedly aware of the consequences if they fail to appear.

Strength of Police Case.

18. The only indication to the Court of the circumstances which led to the arrest of the two accused and culminating in the four counts of attempted murder is contained in one sentence in the affidavit of Sergeant Kirsty Karl. At paragraph 10 of her affidavit relating to accused Agigo she states;

“That the safety of the victim is paramount, as he had not taken the break up in the relationship well which resulted in him kicking the victims motorbike in this related case.”

19. It was also apparent from submissions of counsel, the DPP, that the incident from which the charges against Agigo arose was a domestic dispute.
20. But there are four counts of attempted murder; two counts against each accused. Perhaps the police investigations were far from completion when the affidavits were filed on the 8th May.
21. In any event the material before the court does not reveal a strong police case against the two accused.

Result

22. The two accused are granted bail on conditions already relayed to the accuseds.

Maei

Judge Rapi Vaai

