



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 9 OF 2022

BETWEEN

SHALICO AGEGE

APPLICANT

AND

THE REPUBLIC

RESPONDENT

Before:

Khan, J

Date of hearing:

1 November 2022

Date of ruling:

2 November 2022

Case to be referred to as: *Agege v The Republic*

CATCHWORDS: Bail application where accused has been in custody for a period of 61 days awaiting trial of the charges – Where the trial is unlikely to commence within 3 months – Whether bail should be granted.

APPEARANCES:

Counsel for the Applicant:

A Lekenaua and T Tannang

Counsels for the Respondent:

F Puleiwai

RULING

INTRODUCTION

1. The applicant is charged with one count of causing harm to a police officer contrary to s.77 of the Crimes Act 2016, and one count of dangerous driving and one count of

failing to furnish breath sample contrary to ss.72(1) and 67 of the Motor Traffic Act 2014 respectively.

2. The alleged incident took place on 26 August 2022 and upon prosecution's application the applicant was detained in custody pursuant to the provisions of Article 5(3) of the Constitution to allow the police to complete their investigations. He was detained in custody on 27 August 2022 until 31 August 2022 when he was formally charged and was remanded in custody as bail could not be granted for the charge relating to count one, as provided for in s.4A of the Bail (Amendment) Act 2020 (the Amended Act).
3. The applicant has spent a total of 65 days in custody which includes 4 days of detention before he was formally charged.
4. Under s.4B of the Amended Act the applicant cannot be granted bail unless he is able to establish exceptional circumstances.

THE APPLICATION

5. The applicant is 21 years old, is single and lives with his widowed mother together with his other younger siblings.
6. The applicant has been employed by the Department of Civil Aviation since 2019 and he supports his mother and other siblings.
7. As the applicant has been remanded in custody his mother was in contact with his employer and was able to seek leave of absence from work.
8. The bail application is being opposed by the prosecution for the reasons that the applicant has not established exceptional circumstances and that 3 months has not as yet expired since his remand in custody.

CONSIDERATION


9. I stated in *Scotty v The Republic*¹ at [27] that "work commitments" may constitute exceptional circumstances and in this case the applicant has been gainfully employed and his mother has been able to seek his leave of absence from work.
10. Under s.4B(5) of the Amended Act an accused person is entitled to bail if his trial has not commenced within 3 months of the date on which the information or charge was filed in Court without the need to prove exceptional circumstances.

¹ [2022] NRSC 6, Miscellaneous Cause No. 51 of 2021 (15 February 2022) (Khan, ACJ)

11. With my present Court listings, it is not possible to set this matter for trial within 3 months and in the circumstances, I grant bail to the applicant on the following conditions:

- 1) He is to enter into bail in the sum of \$1,000.00 in his own recognizance with his mother Bermina Agege to be his surety for like sum;
- 2) That he is to report to Nauru Police Station on every Saturday between 6am to 6pm.

DATED this 2nd day of November, 2022


Mohammed Shafiullah Khan
Acting Chief Justice

