



IN THE SUPREME COURT OF NAURU  
AT YAREN APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1 OF 2021

BETWEEN

THE REPUBLIC

Prosecution

AND

JONATHAN GADEANANG

Defendant

Before: Khan, ACJ  
Date of Hearing: 10 February 2022  
Date of Ruling: 15 February 2022

Case may be referred to as: *Republic v Gadeanang*

CATCHWORDS: Application for bail pending appeal – Section 17(3) of the Bail At 2018 –  
Whether bail pending appeal should be granted.

APPEARANCES:

Counsel for the Prosecution: V Clodumar  
Counsels for the Defendant: S Shah

### RULING

#### INTRODUCTION

1. On 4 May 2021 the appellant was sentenced to a term of 34 months imprisonment for the offences of theft, escape from lawful custody and obstructing public official.
2. The appellant filed an appeal against both the conviction and sentence on 4 June 2021.
3. On 25 June 2021 the appellant filed an application for bail pending appeal. This application was heard by me on 6 October 2021 and I delivered a ruling on 14 October 2021 dismissing the application and stated that even if the appeal were to be heard by March 2022 the appellant will still have 2 years sentence left to be served.

4. There was delay in the preparation of the transcript and the Book of Documents could not be prepared until 13 December 2021 when I issued the following directions:
  - 1) Appellant to file and serve written submissions by 29 December 2021;
  - 2) Respondent to file written submissions within 14 days thereafter;
  - 3) Appellant to reply within 7 days thereafter if any;
  - 4) Hearing date 26 January 2022 for hearing of the appeal.

#### LEGAL VACATION

5. On 17 December 2021 the Court went in recess for legal vacation until 28 January 2022 and because of the legal vacation, Mr Clodumar was not able to file written submissions by 29 December 2021 and as such the appeal could not be heard on 26 January 2022.

#### FRESH BAIL APPLICATION

6. On 25 January 2022 Mr Clodumar filed fresh application seeking bail pending appeal.
7. This application is opposed by the Republic on the basis that there are no merits in the grounds of appeal against the conviction and that the sentence of 34 months imprisonment for the three offences is appropriate and is neither harsh nor excessive as claimed by Mr Clodumar on behalf of the appellant.
8. In considering the bail application, I am required to consider the three matters set out in s.17(3) of the Bail Act 2018 (the Act) which are:
  - a) The likelihood of success in the appeal;
  - b) The likely time before the appeal hearing; and
  - c) The proportion of the original sentence which will have been served by the applicant when the appeal is heard.
9. In *Kepae v Republic*<sup>1</sup> I had stated that all three matters set out in s.17(3) have to be met before bail pending appeal can be granted.
10. Mr Clodumar has placed emphasis on the defence of alibi and stated that despite giving notice of alibi the police did not carry out their investigations in accordance with the guidelines set in *R v Dube*<sup>2</sup> where I stated at [25] as follows:

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<sup>1</sup> [2019] NRSC 37; Criminal Appeal No. 14 of 2019 (20 September 2019)

<sup>2</sup> [2019] NRSC 3; Criminal Case no. 4 of 2017 (22 February 2019)

[25] Considering what happened in this case I think it is important that I shall issue a guideline for investigation of alibi. When an alibi is raised by an accused then it ought to be investigated within a reasonable time, and in my view 4 to 6 weeks is more than reasonable to enable the police to carry out the investigations. Once the investigation is completed its result should be communicated in writing to the accused or his lawyer if he is represented and all the witnesses' statement is to be disclosed to the defence.

#### CONSIDERATION

11. The Magistrate granted an adjournment to allow the police to investigate the alibi raised by the defendant and obtain statements of witnesses but no statements were taken and therefore the statements could not be disclosed to the defence in accordance with the guideline in *R v Dube*.
12. On the issue of alibi itself, the appellant has likelihood of success. We have backlog of cases and we will be giving priority to sexual offences cases under Part 7 of the Crimes Act 2016 where the accused persons have been remanded in custody pending trial.

#### CONCLUSION

13. By the time this appeal is heard, the appellant would have served a significant part of his sentence and therefore bail pending appeal is granted. The appellant shall enter into bail in his own recognizance in the sum of \$500 to attend court when advised to do so.

DATED this 15 day of February 2022



Mohammed Shafiullah Khan  
Acting Chief Justice

