



IN THE SUPREME COURT OF NAURU
AT YAREN
[CRIMINAL APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. 5 of 2021

BETWEEN

LOCKLEY DENUGA

Applicant

AND

THE REPUBLIC

Respondent

Before:	Khan, ACJ
Date of Hearing:	12 May 2023
Ex Tempore Ruling:	12 May 2023
Date of Reasons for Ruling:	18 May 2023

Case to be referred to as: *Denuga v Republic*

CATCHWORDS: Application for variation of bail pending appeal to travel to Samoa to visit sick mother-in-law.

APPEARANCES:

Counsel for the Applicant:	R Tom
Counsel for the Respondent:	S Shah

RULING

INTRODUCTION

1. The applicant was charged with one count of causing harm to a police officer and one count of obstructing police officer and was found guilty on 13 August 2021 and

sentenced to a term of 13 months imprisonment on 23 September 2021. He filed an application for bail pending appeal on 10 November 2021 and I granted him bail pending appeal on 14 December 2021.

2. The applicant is still on bail and his appeal has not been heard as the transcript of the proceedings has not been prepared to date.
3. The applicant was 65 years old when he was sentenced and he is now 67 years old. He is married with 7 children and he is a citizen of the Republic of Nauru.
4. The applicant's mother-in-law lives in Samoa and she is 85 years old and was admitted to Tupua Tamasese Meaole Hospital on 1 May 2023 suffering from ruptured appendicular mass and abscess. According to the medical report dated 5 May 2023 the mother-in-law is very sick and is in critical condition.

APPLICATION FOR VARIATION OF BAIL

5. On 5 May 2023 the applicant filed an application for variation of bail to be allowed to visit his mother-in-law in Samoa with his wife.
6. The application was opposed by the Republic and time was given to them to file their response and written submissions and the matter was adjourned to 11 May 2023 for hearing.
7. The applicant's wife left for Samoa to be with her mother.
8. I heard the application on 11 May 2023 and gave ex tempore ruling and varied the bail conditions and allowed the applicant to visit his mother-in-law. I now give reasons for my ruling.
9. Const. John Tsiode filed an affidavit on behalf of the Republic and opposed bail. He stated that he has perused the medical report dated 5 May 2023 and was also in contact with the hospital in Samoa and was informed by the nurse manager of the surgical ward that the applicant's mother-in-law is in very critical condition. He stated that he sympathized with the applicant but was of the view that there is no need for him to be present with his wife in Samoa. He further stated that the applicant stands convicted for the 2 offences in the District Court and that if the application is granted it would open flood gates for others to make similar applications.

CONSIDERATION

10. Mr Shah concedes that the Court has powers to vary the bail conditions as provided for in s.31(5) and (7) of the Bail Act 2018. S.31(5) and (7) states as follows:
 - (5) A Court which has power to review a bail condition, or to hear a fresh application under s.15(1), may, if not satisfied that there are special facts or circumstances that justify a review, or making of a fresh application, refuse to hear the review or application.

(7) The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.

11. The Bail Act 2018 allows an accused person to make any number of fresh applications if there is change in circumstances, and the effect of the 2 subsections is that it allows the court to review bail conditions if: "*there are special facts and circumstances* (s.31(5)) and "*to vary the bail conditions*" (s.31(7)), if the court deems it appropriate. The accused has been waiting for the hearing of his appeal since 23 September 2021 and the delay in hearing of the appeal has been caused because the transcript of the proceedings in the District Court has not been prepared, and of course without it he would not be able to proceed with his appeal.
12. In the circumstances it would be unfair to deprive the applicant to visit his sick mother-in-law who is in a very critical condition. Therefore, the application for variation is granted and the applicant is released on fresh bail in the sum of \$1,000.00 in his own recognizance with his son and daughter, namely, Abeth-Lincoln Denuga and Mashah Denuga respectively to be his sureties for like sum. He is allowed to travel to Samoa and should return by 26 June 2023, failing which the sureties shall forfeit a sum of \$1,000.00 each to the Republic.

DATED this 18th day of May 2023


Mohammed Shafiullah Khan*
Acting Chief Justice

