

REGINA -v- KONG MING KHOO

High Court of Solomon Islands

(Ward C.J.)

Criminal Case No. of 1991

Hearing: 26 March 1991

Judgement: 27 March 1991

F. Mwanosalua DPP, for Prosecution

G. Young for the Applicant

WARD CJ: The applicant has been charged with murder and, in accordance with the provisions of section 106 of the Criminal Procedure Code, has been remanded in custody. He now applies to this Court under section 106(3) to be admitted to bail.

The terms of section 106 make it clear that the onus is on the defence in a murder case to demonstrate this is an appropriate case for bail.

The allegation is that the applicant commissioned his co-accused to hire a man to kill the victim. The prosecution case includes evidence of payment of a substantial sum of money and of a list of seven people who were to be subject to attack. One of those on the list was the deceased, another has been the subject of an arson attack arranged, the prosecution allege, by the same people.

The prosecution object to the grant of bail on a number of grounds: that the charges are extremely grave and the penalty severe, the evidence against the accused is strong and depends both on accomplices and independent evidence, the accused may interfere with witnesses or destroy evidence particularly documentary evidence and that he is better in custody for his own safety.

The defence point out that the accused is in an unusual position. He has substantial business interests which demand his personal attention and

will equally ensure he does not attempt to leave the jurisdiction. They explain that, because of the ramifications of the case as a whole, there is no possibility of instructing any lawyer at present in Solomon Islands. He will need to instruct lawyers from outside and the preparation of his defence will be seriously hampered or even impossible if he remains in custody. The applicant has also produced evidence of his medical condition.

I can dispose of some of these matters immediately.

Of the prosecution points, I do not accept the concern for Mr Khoo's safety is a relevant matter. In some cases it may be a good ground for refusing bail but I accept in this case Mr Khoo is capable of deciding that matter himself.

Of the defence submissions, I am unimpressed with the medical aspect. Mr Young does not labour the point but simply adds it as one facet of the whole picture. I do not feel it affects the position at all. The applicant's medical problems described in the reports present no difficulty if the prison authority are made aware of them and I hope and assume they will ensure they are properly covered.

What are the factors the court must take into account when considering bail?

The first is that section 106 makes it clear, when the charge is murder or treason, it is only exceptionally that bail is granted. Mr Young seeks to distinguish between good reason, special circumstances and exceptional circumstances. I am afraid I do not feel such distinctions apply in this case. The effect of Section 106 is that bail in murder cases will only be granted in exceptional circumstances. However, whilst that places a heavier burden on the defence, the same considerations apply as in any bail application. The court must consider them all but bear in mind that the effect of section 106 in a case involving a charge of murder or treason means it is only in rare cases that bail will be granted.

The principal consideration in all bail applications is whether the accused will attend his trial. I must also bear in mind that the nature of the offence and the penalty if convicted raise a prima facie risk the accused may try to avoid the trial. The accused here offers to submit to various conditions that I accept make it likely that he will attend.

However, even if the likelihood is that the accused will attend his trial, the Court is entitled to consider other factors such as the nature of the evidence to be adduced, the possibility of a repetition of the offence or of further offences and the likelihood of interference with the investigation.

The nature of the allegation against Mr Khoo suggests, if it is true, that he is a man who may well take steps to influence the investigation and the trial.

I have considered all the matters raised by the defence and I accept the force of many of the submissions raised by Mr Young. However, I am not satisfied they establish exceptional circumstances sufficient for me to grant bail. The application is refused.

Having ruled in this way I do make certain additional observations:

1. In order to alleviate the problem of preparation of the defence, I shall direct that the Public Solicitor act for Mr Khoo either as his representative in the trial or as a locally based agent for an overseas lawyer. The Public Solicitor is to decide who is to act but I direct it must be either Mr Muria or Mr Radclyffe. If for any professional reasons both these officers are unable to take the case, the Public Solicitor must report that fact to the Court.
2. The prison authorities must ensure that the accused is accorded all the rights of an unconvicted prisoner in relation to contact with his lawyer, visits from relatives and, where and if it is possible, access to a telephone for urgent business contact subject to his agreeing to meet the costs and to a prison officer being within earshot of the accused during the call.

- 3 The prisoner is to have access to all medicines he needs subject to approval of a doctor.

(F.G.R. Ward)
CHIEF JUSTICE