

URIEL DERAMO BUARAFI -V- REGINAM

High Court of Solomon Islands
(Palmer J.)

Criminal Case No. 200 of 2002

Bail Application Hearing: 23rd August 2002

Ruling: 23rd August 2002

I. Kako (Jnr.) for the Applicant
R. Talasasa and S. Balea for the Crown

Palmer J: Uriel Deramo Buarafi was charged on or about 2nd August 2002 with the murder of Kevin O'Brien and has been remanded in custody since. He was arraigned at the Magistrate's Court on 9th August 2002 and a short form of Preliminary Inquiry ("PI") was conducted. A plea of not guilty was entered and he was committed for trial before this court. It seems according to the Court File that an *Information* pursuant to section 233 of the Criminal Procedure Code is yet to be filed by the Director of Public Prosecutions in respect of this case. If that is so, it is important that this be done before the case can be listed for trial.

The principles of bail application in murder cases have been expounded in this jurisdiction in numerous cases already. These include the cases of **R. v. Philip Tahea and Others HC-CRC 14 of 1995 judgment delivered 29th January 1996**, **Karawaisi Taisia v. DPP HC-CRC 266 of 2001 judgment delivered 9th October 2001**, **Regina v. Kong Ming Khoo HC-CRC 15 of 1991**, **R. v. Alwin Paul HC-CRC 27 of 1997** and several others. In each case, the court pointed out that whilst there are common principles to be taken into account, each case nevertheless has to be taken on their own facts.

Bail in murder cases can only be granted by the High Court (section 106(1) and (3) of the Criminal Procedure Code). The Police or the Magistrates Court cannot grant bail in respect of persons charged with murder. The reason is obvious murder is a serious crime. Bail therefore is not an automatic right. The High Court has to base the exercise of its discretion on all relevant factors before it.

Some of those factors include:

- (a) the nature of the accusation,
- (b) the nature of the evidence supporting the accusation,
- (c) the severity of the punishment which conviction would entail,
- (d) the likelihood of further offences being committed whilst accused is on bail,
- (e) tampering with witnesses,
- (f) delay in the trial date,
- (g) sureties, and
- (h) possibility of accused absconding whilst on bail.

The list is not exhaustive but these are some factors the court can take into account when considering bail. In **Karawaisi Taisia v. Reginam** (ibid) his Lordship Kabui J. provided a useful summary of certain murder cases in which the High Court had granted bail.

Mr. Kako for the Applicant submits that this case falls within those exceptional cases on the following grounds. He submits there is no evidence to suggest that the accused would commit any offence whilst on bail, secondly, there is no evidence to suggest that witnesses will be tampered with, thirdly, there is strong possibility that the case will be delayed, fourthly, there is no possibility of the accused absconding whilst on bail, fifthly, there are at least two persons who are prepared to act as sureties for him and sixthly, he had surrendered himself to Police as a sign of goodwill and sincerity on his part.

Mr. Talasasa on the other hand, submits that whilst the accused did eventually surrender himself to Police that was not the case initially. Police efforts and attempts were not successful due to the fact that the accused deliberately sought to evade arrest. He also pointed out that those who had offered to act as sureties cannot guarantee the attendance of the accused at the trial date, in the light of the prevailing law and order situation in the country should the accused decide to abscond again. He pointed out that there were attempts at the beginning by one of the persons (who was a police officer) offering to provide surety in this application but was not even successful. Learned Counsel also pointed out that Prosecution have completed all investigations and that the case more or less is ready for trial, at the earliest within two weeks. He also pointed out that there is no guarantee that the witnesses to this case will not be interfered with or intimidated before trial. Mr. Talasasa submitted that court should refuse bail.

I have taken time to consider carefully the grounds and objections raised by learned Counsels. The starting point is that murder is a serious crime. Bail therefore is to be granted only in exceptional circumstances. Secondly, the nature of the evidence against the accused in this case is in the form of direct evidence. The evidence against him comes from workers who were at the scene of the crime with him, who knew him as one of their co-workers and who gave statements, which directly implicate him. The incident occurred in broad daylight at around 7.30 am on a Monday 11th February 2002. Thirdly, the punishment if a conviction is entered is in the form of a mandatory sentence of life imprisonment.

On the question whether there is likelihood of further offences being committed, I note there is no evidence to that effect, but there is also no guarantee that the accused will not re-offend in particular in matters pertaining to his case. There has also been submission by learned Counsel Kako that there is no evidence to suggest that the accused had interfered with prosecution witnesses. Again whilst that is noted, there is no guarantee that the accused when on bail will not interfere. I take note of the submissions of Mr. Talasasa that in the present climate, where law and order and security in the city has still not returned to pre-tension levels, that possibility cannot be ignored or taken for granted. Mr. Talasasa gave example of the security provided at his office where even in the presence of police officers they were harassed by a group of men. Whilst that is not directly relevant to the circumstances of this case, it does go to show that the present climate on policing and law and order is such that the scale should be tipped in favour of remanding the accused in custody.

On the issue of possible delay in the hearing of this case, the concerns expressed are not necessarily correct. The courts have always been open and available to deal with any case that is listed including cases that may be required to be listed on priority basis. I take note of Mr. Talasasa's submissions

that the Prosecution has completed its investigations and is more or less ready for trial. I see no impediment in having this case considered for listing on a priority basis.

There are other safety concerns expressed by learned Counsel regarding the remand of the accused in custody. Unfortunately, there is no evidence to suggest that that is so. The Officer Commanding Rove Central Prison or the Controller of Prisons have not been summoned to give evidence to the fact that the safety of those in remand are being compromised.

Learned Counsel Kako sought to impress upon this court the circumstances in which the accused was eventually taken into the custody of the Police. He pointed out that the fact the accused surrendered himself to Police rather than be arrested should be viewed in his favour. Again whilst that is noted, together with the fact that he cooperated with Police that should be balanced with the fact that the accused did evade Police for close to six months. Further, there had been clear attempts by Police to have the accused arrested but were unsuccessful. The surrender by the accused to Police should also be balanced with the fact that the law has a long arm and that perhaps the accused realized eventually, that he cannot keep running away from the law. The failure or inability of Police to arrest the accused any earlier is a matter, which the Police alone can answer in the discharge of their duties and responsibilities. There may or may not be justifiable reasons for the delay in having the accused arrested.

On the issue of sureties, whilst the submission of Mr. Kako is noted, that two persons have offered to act as sureties for him, it must be borne in mind that those two persons only became involved after the accused made the decision to surrender himself to Police. I note one of them was a Police Officer who eventually succeeded it seems in convincing him to surrender to Police. Unfortunately that does indicate on the other hand, that the accused could have been apprehended at a much earlier date. It is obvious that arrest of this accused was dictated to by the accused himself. It would also appear therefore that if the accused refused to cooperate, his sureties would also not be able to guarantee his attendance on the trial date. As long as he refused, no one, not even the Police were able to arrest him. His surrender to Police therefore cannot be over-emphasised.

The question of arrest of the accused or any accused for that matter is not to be determined by the accused himself. It is a duty imposed upon the Police in the exercise of their professional judgment to perform. It does appear that there are some cases, which Police may place priority over compared to others. That is a matter within the discretion of the Police to determine. What is important to bear in mind however is that this does not prevent the Police from apprehending this accused or any other accused for the crimes that they have been alleged to have committed.

Taking all factors into account, I am not satisfied bail should be granted in this case.

THE COURT