

MISI MATAMU -V- REGINA

HIGH COURT OF SOLOMON ISLANDS

Criminal Case No. 78 of 2010

Date of Hearing: 30th April 2010

Date of Ruling: 30th April 2010

For Application: Mrs Linda McSpetten

For Respondent: Mrs Rebecca Christensen

RULING

FAUKONA J:

This is an application for bail after the Crown Submitted that the accused be kept in Custody until the sentence is passed on 20th May 2010.

The accused was charged for two Criminal Offences. First for causing death by reckless or dangerous driving contrary to section 38 of the Traffic Act, Secondly for Endanger Safety of person traveling by vehicle contrary to Section 240 of the Penal Code.

Upon arraignment the accused enter a plea of guilty for the two offences. It is then his legal status is known as a prisoner.

A number of reasons for the application is raised by the defence counsel which will be analysed accordingly. On the other hand the crown has objected to such application and contended that the charges are serious which involved a fatal death, therefore, entirely extra-ordinary to grant bail in the circumstances.

In normal circumstances the accused is entitled to his right to be presumed innocent until proven otherwise; right to liberty to be tried

within reasonable time. See *Palmer CJ in Kelesiwesi -v- Regina*¹. That presumption has been taken away in the circumstance of this case after the prisoner pleaded guilty to the charges.

However, bail can be refused only on the basis of risk of offending, risk of flight, risk of administration of Justice and of cause risk of safety of the prisoner. Besides that there are range of factors that are relevant to be considered as well, such as seriousness of the offence, record of absconding, criminal history, etc.

The rational behind any application for bail is the question whether the prisoner will attend on the next adjournment date.

In this case both counsels agree that the charges are serious and having pleaded guilty to both, there is expectation that a custodial sentence is more appropriate.

Both counsels also agree that the risk of flight is low, as well as the risk of safety of the prisoner living in Honiara.

The defence counsel also submit that the prisoner is a former Police Officer serving with RAMSI based in Honiara right to the time of the incident. He comes from the family of Police Officers. His wife is a Police Officer. Clearly that indicate that the prisoner understands the rule of law and the processes in regards to bail and remand in custody; a knowledge he acquired during his time as a police officer.

If there is no risk at all, considering the entire circumstances, and the fact that there is no proof of the prisoner's criminal history and the fact that the prisoner is a former police officer, and the offences are committed not in his own country, it is normal for him to respect the process of administration of Justice in this country. The objection to the application for the prisoner to continue bail does not carry any weight.

Both counsels also agreed that a reconciliation process would surely eventuate after sentencing. Both inform the court that the Ministry concern is preparing to facilitate the occasion. A number of high officials representatives from the prisoners country will also attend. That idea is most favorable in Solomon Islands, and normally it involves the Government. This is basically to renew relationship and create harmony between the parties concern. For sure parties would already have knowledge about it, and prepare themselves for the occasion. The prisoner too has to prepare himself.

¹ Criminal Case No. 24 of 2004.

The defence counsel also raise that the prisoner will undergo Psychological consultation and examination before the sentence is passed. Whilst this is a good cause, it would appear that the consultation dates be freely attended by the prisoner without delay.

In all cases bail is a right guaranteed under the constitution, unless proven otherwise. It is not an automatic right. The court has the ultimate discretion to exercise in a particular circumstances. That discretionary power must be exercised with the reasonableness.

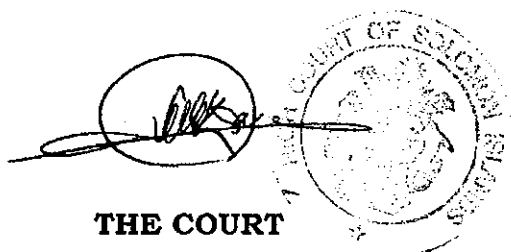
Clearly the court will consider bail if it can be demonstrated that there is no risk of reoffending, no risk of flight, no risk of administration of Justice, and no risk endangering the life of the prisoner living in Honiara. The court note that the circumstances of this case is different from other cases; in that the Government of Samoa had guaranteed bail for the prisoner, that the offences are serious and that the prisoner has pleaded guilty to the charges, and there is no risk likely to occur.

After balancing all the circumstances, as nature of the offences, plea of guilt, low risk expected, medical consultation by the prisoner which will be done in due course, the sentencing date which is 20 days from now, and the preparation for reconciliation, it is considered appropriate that the prisoner continue to bail. And I grant the application for bail with strict conditions.

ORDER

1. Current bail will continue with the following amendments:-
 - (a) Prisoner to reside in the Hotel where he is currently residing, and will advise the Clerk to the High Court of his move to other resident.
 - (b) That the prisoner surrender his passport to Court immediately.
 - (c) That the prisoner lives in Honiara until the date of sentence.
 - (d) That the prisoner attend on 20/5/2010 9:30 am for sentencing.

- (e) Should the prisoner breach any of the terms of bail, the Crown reserve the right to revoke the bail.

The image shows a handwritten signature in black ink, which is partially enclosed by a circular stamp. The stamp is the official seal of the Court of Session, Edinburgh, featuring a central emblem and the text 'THE COURT OF SESSION, EDINBURGH' around the perimeter. Below the signature and seal, the words 'THE COURT' are printed in a bold, sans-serif font.

THE COURT