

**POLICE**

v

**TEINA NGAMETUATOE**

Date of Zoom hearing: 29 October 2021

Appearances: J Crawford for police.  
G Pitt permitted to appear for Mr Ngametuatuae on this one occasion,  
there being no appearance by counsel.

Oral Judgment: 29 October 2021

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**ORAL JUDGMENT OF HUGH WILLIAMS, CJ  
(re. Bail)**

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[12:08:09]

[1] The accused, Mr Ngametuatoe is currently charged with four offences – assault on a child; indecent assault on the same child; rape of the same child; and sexual intercourse with that child when she was under his care and protection. All the offences are alleged to have occurred on Mangaia and to have taken place between 2005 and 2007. The complainant is the accused’s stepdaughter.

[2] He originally applied for bail to permit him to return to Mangaia which was opposed by the Crown largely because of the risk of interference with Crown witnesses – apparently 17 Crown witnesses reside on the island – plus lack of police resources to manage any bail conditions and the risk of him failing to appear. However he provided a bail address in Rarotonga, later changed, and agreed not to return to Mangaia and as a result he was bailed on the following conditions:

- a) That he reside at an approved address (since changed) on Rarotonga;
- b) That he not leave Rarotonga without permission of the High Court;
- c) That he provide his passport and not apply for another;
- d) That he was not to be around any children under 16 unless accompanied by another adult; and
- e) That there was to be no contact with Crown witnesses.

[3] Mr Pitt has asked on Mr Ngametuatoe's behalf that the bar on the accused returning to Mangaia be removed, largely on the basis that Mr Ngametuatoe is unable to continue with his occupation as a farmer and a fisherman on the island and as a result is suffering financial hardship to the extent that he is unable to afford to retain counsel to represent him when his trial on these serious offences is allocated a fixture.

[4] Mr Pitt suggested that Mr Ngametuatoe, far from contacting Crown witnesses, has in fact had a number of letters from persons on the Crown witness list supporting the accused. He attempts to rebut the suggestion that the bail conditions will be unable to be checked by referring to some contact he says he has had with the Deputy Police Commissioner who said police will supervise the conditions if required.

[5] Mr Pitt has offered a personal guarantee of Mr Ngametuatoe's reappearance in due course and has offered to stake him for the fare to do that.

[6] Mr Pitt makes the point that there is no "ongoing" offending despite what he says the Crown alleges. The alleged offending was some years into the past and the complainant is now, he says, residing in Australia.

[7] It must be acknowledged that there will be considerable difficulties in policing the bail conditions if Mr Ngametuatoe is permitted to return to Mangaia. It has a small population. Everyone knows everyone else, and the chances of Mr Ngametuatoe not encountering those on the Crown witness list must be slight in those circumstances. Nonetheless in terms of

Art 65(1)(f) of the Constitution and s 83 of the Criminal Procedure Act 1908-1 the starting point must be that bail should be granted to any accused unless there is just cause for their detention in custody and that the Court should impose terms and conditions on any grant of bail which will ensure that the accused complies with his or her obligations to the Court including, of course, appearance for the trial in due course. They also need to have a reasonable opportunity both to fund the expenses of counsel and to retain counsel.

[8] As an aside on that point Mr Ngametuaotae would be well advised to actively seek to retain a lawyer to act on his behalf given that these are serious offences and that, should he be convicted in due course, it would appear that a term of imprisonment is almost inevitable.

[9] Reverting to the question of bail however, whilst it may be extremely difficult to police the conditions of bail it does seem that there is just cause for permitting Mr Ngametuaotae to return to Mangaia. The existing condition that he not contact Crown witnesses appears to be, on Mr Pitt's information, breached by some of the Crown witnesses themselves and indeed it is impractical to suggest that, back on Mangaia, he will not encounter Crown witnesses or that, if he remains on Rarotonga, they may contact him.

[10] The condition as to non-contact with children under the age of 16, again may be difficult to police, but in the circumstances of these alleged offences it is not unreasonable that such a condition be re-imposed.

[11] On that basis the grant of bail to Mr Ngametuaotae is varied and he is admitted to bail on the conditions:

- a) That he reside at an approved address on Mangaia, the address to be advised to the police in Mangaia forthwith, assuming they do not already know it;
- b) That he not leave the Cook Islands without permission of the High Court;
- c) The condition concerning his passport is to remain;


- d) The condition concerning children is to be varied to read: not to be in the presence of any children under the age of 16 years unless another adult (other than his wife/partner) is present;
- e) That the condition as to no contact with Crown witnesses is to remain in place in the sense that Mr Ngametuatoe is not to initiate such contact, though recognising that non-compliance by Crown witnesses may render that impossible of performance.

[12] On that basis however the terms of bail are varied as just announced.

[13] There will be another Criminal callover in about a month. Should Mr Ngametuatoe have instructed counsel by then, counsel may appear but Mr Ngametuatoe need not. If he has not instructed counsel by then he will need to appear at the next Criminal callover on a date and time to be advised by the Registrar to the accused directly or via the police and also advise Mr Pitt so that he can arrange Mr Ngametuatoe's return to Rarotonga.

[14] The application for variation of bail is granted on those terms.

[15] The complainant's name is to remain suppressed, though it is probably already known on Mangaia, but there is no basis for continuing the suppression of the accused's name – which is different from the complainant's – and the order for suppression is accordingly revoked.



**Hugh Williams, CJ**