



IN THE SUPREME COURT OF NAURU
AT YAREN
CRIMINAL JURISDICTION

Criminal Case No. 10 of 2020

BETWEEN

Republic

V

Martin Atsime

Before: Khan, J
Date of Hearing: 5 June 2020
Date of Ruling: 10 June 2020

Case may be cited as: *Republic v Atsime*

CATCHWORDS: Bail application – Where accused charged with attempted murder – Where the primary consideration in determination of bail is whether the accused will appear in Court to answer the charge –The Court is required to take into account the time accused will have spent in custody before trial.

APPEARANCES:

Counsel for the Republic: R Talasasa (DPP)
Counsel for the Accused: F Akubor

RULING

INTRODUCTION

1. The accused is charged with one count of attempted murder contrary to ss.35 and 55 of the Crimes Act 2016. The particulars of the offence states that the accused on 12 May 2020 attempted to murder Genius Amwano by stabbing or cutting him with a broken bottle.

2. The accused was charged and produced before the District Court on 14 May 2020 and the case was transferred to this Court. The accused was remanded in custody to appear before this Court on 19 May 2020.

BAIL APPLICATION

3. On 19 May 2020 an application for bail was filed on behalf of the accused by the Public Legal Defender's Office. In support of the application affidavits were filed by the accused and his mother.
4. The accused is 19 years old. He is a first offender. He is not formally employed but supports his parents and other siblings by fishing. The accused has 10 other siblings and he is the seventh child.

CIRCUMSTANCES OF OFFENDING

5. The accused and the complainant (16-year-old male) and others were celebrating at a birthday party and started consuming alcohol at around 1am and continued to drink until about 5am. They drank 5 bottles of vodka and the accused is alleged to have stabbed the complainant at around 6am.
6. At the time of the offending both the accused and the complainant were drunk.
7. On 2 June 2020 prior to the hearing of this application the Director of Public Prosecutions sought an adjournment to ascertain as to whether the accused and the complainant's families have reconciled as he was concerned about the safety of the accused as well the complainant. He subsequently advised the Court that the families have reconciled but he was still opposed to bail because of the seriousness of the offence. He filed an affidavit of Sgt Dan Botelanga in opposing bail.

RELEVANT LEGISLATION

8. S.4(1) of the Bail Act 2018 (the Act) provides that every accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted.
9. S.4(3) of the Act provides that there is a presumption in favour of bail being granted to the accused person but the person opposing the bail may seek to rebut that presumption.
10. The DPP in opposing the bail relied on s.19(2)(a)(iii), (iv) and (v) which states:
s.19(2)(a)(iii) The circumstances, nature and seriousness of the offence;
s.19(2)(a)(iv) The strength of the prosecution case;
s.19(2)(a)(v) The severity of the likely penalty if the accused is found guilty.
11. From the material filed in Court by way of depositions it is clear that the prosecution case is very strong as there are eye witnesses to the incident. The DPP concedes that both the complainant and the accused were intoxicated at the time of the offence.

GENERAL PROVISIONS FOR BAIL CONSIDERATION

12. In deciding whether to grant bail to an accused person, the Court is required to take into account the length of time the accused will spend in custody before trial – s.17 of the Act. At this stage it is hard to say as to when a trial date will become available.
13. The primary consideration in deciding whether to grant bail to the accused, is whether he will appear in Court to answer the charges laid against him – s.17(1) of the Act. The accused is a first offender and he comes from a very good family and he has the support of both his parents.
14. I understand that the accused was due to take his Holy Communion at Arubo Church in Ewa District before this offence and I believe that he can still do so after he is released from custody.

CONCLUSION

15. I am satisfied that this is a proper case where bail ought to be granted. The accused is released on bail on the following conditions:
 - 1) He is to enter into bail in his own recognisance in the sum of \$500 with his mother to be a surety also in the sum of \$500 in her own recognisance.
 - 2) He is to reside with his mother at Yaren District.
 - 3) He is to report to Nauru Police Station once a week on Mondays between the hours 6am to 6pm.
 - 4) He is not to depart Nauru without leave of the Court.

DATED this 10 day of June 2020



Mohammed Shafiullah Khan
Judge

