



IN THE SUPREME COURT OF NAURU

**AT YAREN
[CRIMINAL JURISDICTION]**

Criminal Case No.13/2020

BETWEEN

Republic

V

John-One Dowedia

Before: Rapi Vaai, J

APPEARANCES:

Counsel for the Prosecution: S. Serukai
Counsel for the Defendant: R. Tagivakatini

Date of Hearing: 08/07/2020
Date of Ruling: 13/07/2020

Case may be cited as: *Republic v John-One Dowedia*

RULING

Introduction

1. The accused was arrested on the 4th June 2020 at about 8am after he allegedly, struck and wounded the victim with a cane-knife, causing injury, which measured 20cm x 10cm x 7cm to the victim's forearm. Both the ulnar nerve and artery were found to be cuffed. One strike was delivered.

2. He was remanded in custody. He is charged with attempted murder. He is seeking bail – pursuant to section 4 (1) and (3) Bail Act 2018. His bail application is opposed by the police.
3. In support of the bail application, the brother of the accused, a security officer, and with whom the accused was living, filed an affidavit offering surety, ensuring that the accused will not reoffend if released on bail and abiding with any other orders of the court.
4. In opposing bail the police emphasised the public interest and protection of the community. If granted bail the police is of the view it will in terms of section 19 (c) Bail Act 2018, make the protection of the community more difficult.
5. It was also contended that the police has a very strong case against the accused, the strike with knife was aimed at the victim's head but was fended off by the victim's forearm, there were young school children who witnessed the incident, and the maximum penalty for attempted murder is life imprisonment.

Entitlement to Bail

6. Pursuant to section 4 (3) of the Bail Act 2018, there is a presumption which favour the granting of bail. Since the police is opposing bail the burden is on the police to rebut the presumption. In doing so, the police shall, pursuant to section 18 (1) of the Bail Act address:
 - (a) The likelihood of the accused person not surrendering to custody and not appearing in court;
 - (b) The interests of the accused person and
 - (c) Public interest and the protection of the community.

Interests of the accused person and likelihood of not appearing.

7. Understandably the police did not pursue these two issues prescribed under sections (a) and (b) of section 18 (1).

The accused has a permanent place of abode; he lives and resides with his brother who has offered himself as surety and has deposed in his supporting affidavit to several undertakings including abiding with any additional ones which the court may wish to impose.
8. Although the accused and the victim reside in the same district, there does not appear to be any tension of backlash from the victim's family. According to the police officer's affidavit the victim and accused have been friends since childhood.
9. It has also been recognised in other bail application rulings that it is virtually impossible to skip bail in Nauru.

Public interest and the protection of the community

10. It was contended that the accused showed total disregard of the members of the public, particularly young school children when he aggressively attacked the victim with the knife. It was also suggested he may be deemed to be mentally unstable and may therefore require mental assessment.
11. But the accused has been in police custody for more than a month and no steps were taken to assess the accused if the police were serious about their contention. Secondly the conduct of the accused in the alleged assault of the victim is not conduct contemplated by section 18 (1). There is nothing before the court which suggests that the accused has a propensity to behave in similar fashion in the past. It is quite obvious from the materials before the court that the alleged incident is the first occasion the accused has been charged with a criminal offence.
12. As to the strength of the police case, if the accused did strike the victim as alleged, the police undoubtedly have a strong case of causing serious bodily injury but he is charged with attempted murder which requires the police to prove intent to murder. There is absolutely nothing in the materials to show intent. After the strike there is nothing in the material to suggest he attempted to deliver a second one, if indeed the strike was aimed at the head to achieve his intent.

Result

- (1) Application for bail is granted.
- (2) Bail is granted on the following condition:
 - (i) Surrender travel documents to the Registrar of the court.
 - (ii) Not to apply or obtain travel documents without leave of the court.
 - (iii) Not to offend while on bail
 - (iv) Not to interfere with police witness
 - (v) Joba Dowedia the brother to be surety in the sum of \$500
 - (vi) To report to Nauru police every Friday before 5pm.
 - (vii) To attend to court on the 20th July and every other day as ordered.



Judge Rapi Vaai

