



IN THE SUPREME COURT OF NAURU

AT YAREN

CRIMINAL JURISDICTION

Criminal Case No.17 of 2020

BETWEEN:

REPUBLIC

V

OSINTAI TANNANG

BEFORE:

Chief Justice F. Jitoko

APPEARANCES:

Counsel for Prosecution:

S. Serukai (Office of DPP)

Counsel for Defendant:

F. Ribauw (Pleader)

Date of Hearing:

1st September, 2020

Date of Ruling:

1st September, 2020

Case may be cited as: *Republic v Tannang*

RULING

1. The accused is charged with the offence of attempted rape contrary to section 34 and 105 (1) (a) (b) (i) and (ii) of the Crimes Act 2016. The victim is 17 years old.
2. The accused is presently being held in custody pending the hearing of the case. He is applying for bail pursuant to section 4 (1) of the Bail Act 2018. Bail is opposed by the prosecutions.

Right to Bail

3. The entitlement to bail of an accused person is a right recognised and protected by section 4 of the Bail Act 2018 and in turn premised on Article 5 of the Constitution that protects the fundamental rights of the citizens to personal liberty. There are exceptions to the presumption in favour of granting of bail as set out under section 4 (4) of the Bail Act.
4. The law provides the Court with policy guidelines to assist it in deciding whether to grant bail. This is set out in Section 17 of the Act which states:

“17. General Provisions for bail determination

- (1) When deciding whether to grant bail to an accused person, a police officer or court, as the case may be, shall take into account the time the person may have to spend in custody before trial if bail is not granted.*
- (2) The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.*
- (3) When a court is considering the granting of bail to a person who has appealed against conviction or sentence, the court shall take into account:
 - (a) the likelihood of success in the appeal;*
 - (b) the likely time before the appeal hearing; and*
 - (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.**

Accused Submission

5. Counsel for the accused submitted that the accused has, been in remand for 14 days since his arrest. He is employed as a Security Officer at Camp 2 Topside. He has a young family with daughters of 1 and 4 years old and while they are away in Kiribati with their mother and cannot travel to Nauru because of COVID-19 restrictions, he continues to send the family money for their upkeep. He also earns extra income for the family from fishing.

6. The primary consideration in deciding whether bail should be granted is the likelihood of the accused person appearing in Court to answer the charges laid against him or her, as set out under section 17 (2) of the Act. In this regard, the accused makes the undertaking that he will surrender his passport and any other travel documents to ensure that he stays on the island and appears in court to answer the charges against him. He is also willing to abide with any prohibitions and conditions that the Court may deemed necessary to impose.
7. If he is not granted bail, the accused will most likely lose his job at the Security Company and that he would not be able to support his family in these difficult times.

Prosecution Submission

8. Prosecution relied in opposing the bail application to the affidavit of Senior Constable Kitty Biang which sets out the particulars of the offence, emphasising that the accused is 34 years old; the victim is 17 years and 17 years younger. The accused had attempted to rape the Victim and it was only the fact that the victim had put up a very strong struggle and kicking the accused that she was able to be free and escaped.
9. Counsel also referred to section 19 (2) (a) (iii) (iv) and (v) of the Act in support of its submission for bail to be refused. These provisions stipulates that the Court should take into consideration in determining whether to grant bail or not, the following:
 - (a) Circumstances, nature and seriousness of the offence.
 - (b) The strength of the prosecution's case; and
 - (c) The severity of the likely penalty if the person is found guilty.

The prosecutions did not make submissions on the presumption in favour of bail set out under section 18 of the Act.

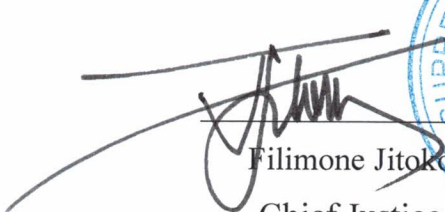
Court's Consideration


10. I have carefully considered the submission of both counsels in this application. The Court has weighted the seriousness of the offence, and acknowledge the maximum sentence if the accused is found guilty, together with the public interest and protection of the community.

11. On the other hand, the presumption of innocence of the accused is also a countervailing consideration to the prosecution arguments. The primary consideration by the Court at section 17 (2) of the likelihood of the accused appears in Court to answer to the charges is relevant. Taking into consideration of these factors and the interest of the accused person including his employment and the welfare of his young family, I will grant bail to the accused with conditions.

ORDER

12. Bail is granted with the following conditions:
- (1) The accused to provide a surety in the sum of \$200.
 - (2) The accused is to remain resident at his present abode room 8, Location.
 - (3) The accused is to stay away from the victim and her residence at all times.
 - (4) That the accused shall not interfere or speak to any witnesses or likely witnesses named by the prosecution.
 - (5) The accused to surrender his passport or any travel documents in his possession to the Court.
 - (6) The accused is prohibited from consumption of liquor of any kind, until the disposal of the Case.
 - (7) The accused shall not commit any offence whilst on bail.
 - (8) The accused shall report to the Nauru Police Station once a week between 8am to 6pm every Friday.
 - (9) The accused undertakes to report to the Court, whenever he is required to do so.
13. Matter is adjourned before the Registrar for the next mention date.


Filimone Jitoko
Chief Justice



The seal of the Supreme Court of Nauru is circular, featuring the text 'SUPREME COURT OF NAURU' around the perimeter. In the center, there is a coat of arms with a banner below it that reads 'GODS WILL GUIDE US'. The seal is stamped in blue ink.