

RULING

INTRODUCTION

1. The first and second applicants are jointly charged with two counts. On the first count the first applicant is charged with causing harm to a police officer, whilst on the second count the second applicant is charged with assisting escape from lawful custody.
2. Count one carries a sentence of 20 years imprisonment of which at least one-third has to be served without parole or probation; whilst count two carries a sentence of 7 years imprisonment – within the jurisdiction of the District Court (see Section 5 of the Criminal Procedure Act 1972 (CPA 1972)).
3. The applicants were charged for the above offences in the District Court on or about 29 July 2022 and the learned Magistrate, Mr Rupasinghe on 12 August 2022 transferred the charges to this Court under s.162 of CPA 1972 and stated that the two matters were beyond the jurisdiction of the District Court. However, as stated above, count one was within the jurisdiction of the District Court and as such the learned Magistrate was entitled to and could have considered his bail application, but decided not to do so and instead transferred the matter to this Court.
4. The alleged offences took place on or about 24 July 2022 and both accused surrendered to the police on or about 25 July 2022. On or about 26 July 2022, an application was made by the Director of Public Prosecutions for further detention of the applicants under Article 5(3) of the Constitution to allow the police to complete their investigations. They were detained until 29 July 2022 when they were formally charged. Both accused have spent a total of 52 days in custody which includes the detention period.
5. Under s.4 of the Bail Act 2018 the second applicant was entitled to bail and that presumption could be rebutted by the prosecution where the interests of justice so required (see s.4(3) of Bail (Amendment) Act 2020 (Amended Act 2020)).
6. Insofar as the first applicant is concerned he was bound by the provisions of s.4B of the Amended Act 2020 as he is charged with assaulting a police officer and is required to establish exceptional circumstances before bail can be granted.

SECOND APPLICANT'S BAIL APPLICATION

7. I shall first deal with the second applicant's application. He is 20 years old and a first offender and lived with his mother in Boe District.
8. His counsel, Mr Lee, submits that the primary consideration in considering his bail application is whether he will appear in Court. Mr Shah in opposing the bail submits that

the accused is charged with a serious offence and his mother as proposed surety does not have control over his actions.

9. This accused surrendered into police custody when he was not obliged to do so and that in itself suggests that he has regard for law and order and should be granted bail on conditions which I will discuss later.


FIRST APPLICANT'S APPLICATION

10. The first applicant is 21 years old, he is single and unemployed.
11. Under the Amended Act 2020, he has to establish exceptional circumstances. In *Scotty v the Republic*¹ I had stated at [27] that "work commitments" may constitute exceptional circumstances but in this matter the applicant is unemployed.
12. S.4B(3) of the Amended Act 2020 where persons like the accused are remanded in custody the Court is required to direct parties for the trial to be conducted expeditiously. The disclosure was filed on 7 September 2022 and given my present Court listings it is unlikely that a date will be assigned in the next few months as we are giving priority to the sexual offences cases where bail cannot be granted and therefore this trial will not commence within 3 months as provided in s.4B(5) of the Amended Act 2020).
13. In *Scotty v The Republic* I granted bail to the accused who had spent 60 days in custody and I stated at [28] as follows:
- [28] The Minister in his speech had stated that appropriate amendments were going to be made to expedite trials, but no such amendments have been made to date. Under s.4B(5) of the Act the applicant is entitled to be granted bail without the need to establish "exceptional circumstances" if the trial has not commenced within 3 months (90 days) and he has already spent 60 days in custody and there being no Magistrate on the Island as of now; and even with the appointment of the second Resident Magistrate who is yet to arrive, and it is not known as to when he will arrive, and further delay being compounded by Covid 19 pandemic it is unlikely that his trial will commence in the next 30 days.*
14. Given that this trial is unlikely to be completed in the next few months, I grant bail to the first applicant on the following conditions:
- a) He is granted bail in his recognisance in the sum of \$1,000.00 which Febiana Togran as surety for like sum;
 - b) He is to reside with Febiana Togran at Meneng District and not change his address without leave of the Court;
 - c) He is to report to Nauru Police Station every Friday between 6am to 6pm.
15. The second applicant is also granted bail on the following conditions:

¹ [2022] NRSC 6, Miscellaneous Cause No. 51 of 2021 (15 February 2022) (Khan ACJ)

- a) Bail in the sum of \$1,000.00 in his own recognisance with Dora Grundler as surety for like sum;
- b) He is to reside with Dora Grundler in Boe District;
- c) He is to report to Nauru Police Station on every Friday between 6am to 6pm.

DATED this 16 day of September 2022


Mohammed Shafiullah Khan
Acting Chief Justice

