

IN THE HIGH COURT OF SOLOMON ISLANDS**R -V- ALEX BARTLETT**

Criminal law- bail- presumption in favour-matters for the court's discretion- the type and seriousness of the charges leveled against the accused- the facts and strength of Crown case- the purpose of conditions- the appropriateness of conditions to prevent the risk of suborning witnesses.

Constitution s. 5(3)(b).

In this application the Crown alleges a real risk to witnesses if bail is granted. The facts appear from the judgment.

Held: (1) The purpose of conditions is to ensure attendance of accused persons at trial.

(2) The nature of the charges involve a combination of persons for the purpose of or participation in the acts giving rise to the offence with which the accused is charged, so that there is equally a real possibility that the Crown case is weakened by suborning any one of the particular witnesses relied upon by the Crown.

(3) There is evidence of real risk of suborning witnesses in this case and risk of intimidation.

(4) Releasing the Secretary-General of the Malaitan Eagle Force into the community in these circumstances must send a signal to all those potential witnesses that his position and influence remains unaffected and they consequently may see themselves at risk from the wider organizational MEF if not from Mr. Bartlett himself.

(5) The court is not satisfied the real demonstrated risk to witnesses has been allayed sufficient to allow bail.

Cases cited.

DPP v- Serratore (1995) 38 NSWLR 137

Application for Bail

Honiara: 10, 17 September 2004

K. Averde for applicant

R. Barry for the Crown

Brown J:

Presumption in favour of bail.

As Mr Averre says, the ultimate discretion whether to grant or refuse bail rests with this Court which should start with the presumption in favour. (Constitution S.5 (3) (b)).

Matters for the court to consider on the question of discretion.

The material matters which go to the exercise of my discretion whether to refuse bail are, Mr Averre says in this case; the potential for interference with witnesses; the nature of penalty if convicted by virtue of the type and seriousness of the offence, and the likelihood of appearance at trial. For reasons which he argued, Mr Bartlett's presumption for bail should not be displaced.

The law and practice relating to bail.

This Court has both the assistance of the Constitutional provision and the wealth of knowledge to be gleaned from common law cases when it comes to the exercise of its discretion. The right to seek bail has been a feature of the common law.

“Bail is a particular feature of the systems of law which derive their origins from the common law of England. It was not a feature usual to other legal systems, such as those of civil countries, although in recent times the influence of the privilege to seek bail has come to be felt in the municipal systems of non-common law States and in the international statements of basic civil rights.”

(Kirby P In *DPP v- Serratore* (1995) 38 NSWLR 137 at 142-143)

Justice Michael Kirby is a former President of our Court of Appeal.

Our Constitution, at S. 5 – (3) (b) says –

“No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say

(3) Any person who is arrested or detained –

(b) upon reasonable suspicion of having committed, or being about to commit a criminal offence under the law in force in Solomon Islands, and who is not released, shall be brought without undue delay before a Court; etc”.

Consequently the onus of satisfying me that circumstances are such in this case to displace the presumption in favour of bail rests on the prosecution now that the accused has been brought before this court to consider the question. But that onus should not be confused with the burden of proof on trial, but is rather the obligation on the Crown (concomitant with its obligation to the Court to act fairly) to illuminate the matters which, from the Crown in the public interest view, may militate against the grant of bail.

The type and seriousness of charges leveled against the accused.

What, then are the charges brought against this man?

- Charge 1 - Demanding money with menaces;
S.294 of the Penal Code.
(Penalty: Life Imprisonment).
- Charge 2 - False Pretences;
S.308 of the Penal Code.
(Penalty: 5 years imprisonment).
- Charge 3 - Attempting to procure others to commit offences
(Arson).
(Penalty: 14 years imprisonment).
- Charge 4 - Arson (at Independence Valley and White River,
Honiara).

S.319 of the Penal Code.

(Penalty: Life in Imprisonment).

Charge 5 - Possession of firearm and ammunition without a licence.

S.5 (2) Firearms & Ammunition Act.

(Penalty: 5 years imprisonment).

The facts alleged and on which the Crown case will be based on trial.

Exhibit 1, is a statement of facts prepared by the investigating officer Station Sergeant Perkins. I do not propose to write the detail of the various facts in the exhibit in these reasons (for they are in evidence before me) but those various facts relating to the 5 charges are most relevant to my consideration on the question of bail. If the Crown case is weak, a court may be more inclined to allow the presumption for bail.

I will, however, reiterate the police investigating officers reasons for urging this Court to refuse bail.

The Crown's reasons for the refusal of bail.

"1. Alex BARTLETT was the Secretary-General within the Supreme Command of the Malaitan Eagle Force (MEF) and as such was responsible for the coordination of logistics and management for the MEF. The MEF have a history of being involved in a raft of criminal activities which include: possession of firearms; importation and exportation of ammunition; extortion; corruption; fraud; violence; managing an unlawful society; murder and; intimidation.

2. There is a likelihood that Mr BARTLETT will interfere with witnesses:

(a) In August or September 2003, Barnabas BOE and Iro ABITA went to Mr BARTLETT's home at Lengakiki.

During this visit, Mr BARTLETT handed Barnabas BOE a bundle of cash. Mr BARTLETT then said to Mr BOE and Mr ABITA that they were not to mention Mr BARTLETT in anything that they had done. Further Mr BARTLETT said to Mr BOE and Mr ABITA that if RAMSI ever asked what his position in the MEF was, they were not to tell. Mr BOE and Mr ABITA counted the cash to be \$5,000.00.

- (b) On a Friday in December 2004, Mr ABITA and Chris BETIGA met Mr BARTLETT at the Hot Bread Shop at Kukum. They entered into a conversation and during this conversation Mr BARTLETT handed Mr BETIGA a bundle of cash. Mr BARTLETT stated to Mr ABITA and Mr BETIGA that they were not to tell RAMSI about the burning of the houses at Independence Valley. Mr BARTLETT further said that it was a "mouth shut" operation. Mr ABITA and Mr BETIGA counted the cash to be \$2,500.
- (c) On 12 July 2004 Roland TIMO was arrested and remanded in custody for a conspiracy to murder charge in which Mr Robert LEDI is the Chief witness. When Mr TIMO was remanded, the Magistrate stipulated that no relatives or 'wantoks' were to interfere with any of the witnesses. Mr TIMO and Mr BARTLETT are brothers. About 9:30 am on Thursday 15 July Mr BARTLETT further stated to Mr LEDI at the NPF Plaza. Mr BARTLETT questioned Mr LEDI as to his involvement in his brother's matter. Mr BARTLETT further stated to Mr LEDI that he should see him in his office to discuss the matter further.
- (d) A Human Source has revealed that Mr BARTLETT and others have threatened and/or paid witnesses so that they will not provide information about Mr BARTLETT or evidence against Mr BARTLETT to RAMSI. The Human Source is considered to be very reliable.

3. In 2000 Inspector Fred SAENI of the RSIP was investigating Mr BARTLETT in relation to the importation of ammunition into the Solomon Islands. Throughout this investigation Inspector SAENI received threats. Inspector SAENI was also advised by the Director of RSIP Investigations that his name was on a list of people to be murdered which was published and posted by the MEF.
4. On 26th June 2000 Mr BARTLETT was convicted by Honiara Magistrates Court for Concealment of Ammunition imported without licence into Solomon Islands but it is believed that the ethnic tensions may have halted these proceedings.
5. Australian authorities are currently investigating Mr BARTLETT for offences committed in Australia. It is alleged that on 28th October 1999 Mr BARTLETT did attempt to export a quantity of ammunition, being 12,000 x .22 bullets, 25 x 12 gauge shot gun cartridges and 500 x 12 gauge shot gun cartridges to the Solomon Islands in contravention of the Australian Customs Act.
6. The weight of the evidence against Mr BARTLETT is relatively strong.
7. Mr TIMO is to be charged together with Mr BARTLETT for False Pretences. Mr TIMO held a position in the Supreme Council of MEF and has also been charged with intimidation.
8. There are further charges expected to be laid against Mr BARTLETT.
9. There is a likelihood of more evidence against Mr BARTLETT being provide to RAMSI once Mr BARTLETT is remanded in custody.

Andrew PERKINS
Station Sergeant 11636
CTT Investigations

RAMSI'

Mr Averre addressed me at length about the strength of the Crown case. The accused denies the charges. He suggests that those witnesses against him are not of good character, include absconders and are not reliable. These are issues for the trial Judge. The reality at this point in time is that the prosecution facts show a cogent, strong case which if such evidence were to come to proof in the trial would probably result in conviction. The case is a strong one. The penalties include life imprisonment.

The accused's standing in the community supporting his claim to bail.

The accused is a Government Minister and Member of Parliament. He is of Malaitan descent and lives at Langakiki, Honiara with his wife and three children, aged 23, 18, and 15. He is an active church member. He will comply with any reasonable conditions the court may wish to impose were bail to be granted. He states he has no intention from hiding from the charges and will answer bail. He further says many of the offences are old they are brought in an attempt to discredit him and he wishes to clear his name at trial.

In so far as the police allege he has or may in future interfere with witnesses, he denies any interference, for he says there is nothing to suggest he would interfere with any witnesses.

The offer of a surety.

Surety presumes a source of property available to the Crown as a penalty where bail conditions are breached. It is difficult to assess on the information in the Reverend Nemuel Laufilu's affidavit whether he has assets available to meet any such penalty the court may seek to impose or whether he is pledging the credit of the church. These are relevant issues when the court needs to consider the worth of any such surety. This issue does not weigh on my discretion in this case, however but should be properly addressed as a matter of practice in

future for the concept of a surety as is bail, one introduced by adoption of laws.

The purpose of conditions to ensure attendance on trial.

Mr Averre also argued that particular conditions imposed will allay any risk that this Court may harbor over the possibility of interference with witnesses. Mr Barry for the Crown took issue with this approach, and was at pains to say that Mr Averre's argument was wrong. Mr Barry says the applicant is confusing two issues, whether or not to grant bail with the issue of appropriate conditions to impose. He illustrates his argument by suggesting if granted bail, no condition imposed can effectively prevent interference with witnesses (for if witnesses are tampered with and the Crown case fails as a result, this Court will not know in any event). The point is Mr Barry says, if I conclude there is a real risk of interference with witnesses in these very serious matters, the Court should not then enter upon a theoretical exercise in drawing conditions of bail sufficient to satisfy itself such risk is allayed, for the penalty for breach of bail conditions is no way equates to the penalty faced on conviction for arson for instance, life imprisonment.

For conditions go to the issue of attendance on trial. They cannot stop interference with witnesses. That is a logical inference from Mr. Barry's argument. So should the Court find a real risk of interference, then it is not proper for the Court to consider conditions. For surely the accused does not risk forfeiting any pledge or put his surety's at risk of forfeit were he to appear to answer his bail at trial, yet he may well have effectively suborned witnesses whilst free on bail. If that were to come to light, a accused cannot face a more serious charge in those circumstances, than the charge which carried with it, life imprisonment.

So conditions are no answer to mitigate a risk, if the Court should accept a real risk to witnesses exists. I accept this proposition.

The Nature of the Charges

Apart from the charge of possession, all charges have factual matters which reflect participating by others in the offence with which the applicant has been charged.

These charges do not relate to what may be categorized as one by a sole perpetrator. Clearly evidence of combination for the purpose of, or participation in the acts giving rise to the offence will involve those implicated on the facts given this Court (see exhibit 1) so that equally, there is a real possibility that the Crown case is weakened by suborning any one of the particular witnesses relied upon by the Crown. There are clearly many witnesses. Those implicated clearly fall within the *milieu* of the Malaita Eagle Force.

The evidence of risk to witnesses.

In his reasons, Sergeant Perkins recites a number of incidences where Mr Bartlett has approached persons concerned in these prosecutions. There was the payment to Mr Boe and Mr Abita of some \$5,000 coupled with Mr Bartlett's stated wish for them not to mention him in anything that they had done. There was the payment of \$2,500 to Mr Betiga at the Hot Bread shop, Kukum with the words stated to Mr Abita and Mr Betiga that the burning of houses was a "mouth shut" operation.

There was the approach by Mr Bartlett to Mr Ledi at the NPF Plaza despite the Magistrate's directive to relatives of Mr Timo not to interfere with witnesses, for Mr Ledi had been asked by Mr Bartlett of his involvement in Mr Timo's (a relative) matter. And there is a further allegation that Mr Bartlett and others (presumably acting in his interest) threatening and/or paid witnesses not to provide information about Mr Bartlett. In the face of this information, Mr. Bartlett's denials must be seen as self-serving and I cannot accept his sworn denials. There appears to be a real possibility witnesses may be suborned (for that is the purpose of such payments) and are at risk of intimidation from the accused by virtue of his position.

The Malaitan Eagle Force.

Mr Bartlett was the Secretary-General of the Supreme Command of the Malaita Eagle Force (MEF). It was a signatory organization to the Townsville Peace Agreement. It is a paramilitary organization. I am not aware of any prescription of the organization, but nevertheless, it is an organization not recognized by the Solomon Islands Constitution. Where a man of such position is found to be in possession of a shot gun after so much publicity and community pressure to hand in guns during various amnesty periods, it reflects to my mind, an attitude verging on contempt and disregards the community wish for a "gun free" Solomon Islands irrespective of supposed licences. Coupled with his acknowledged position of power in the organizational MEF, I do not accept that Mr Bartlett's sworn assertions not to approach witnesses can sufficiently reduce the risk to such witnesses, when the organizational MEF's, self interest in maintaining its Secretary-General's position of stature and power in these difficult times potentially conflicts so strongly with the Crown's interest, in a fair trial, free from intimidation and threats. It must be remembered the actions of those alleged to have burn some 20 houses were carried out at the behest of the accused whilst vested with power and authority as Secretary-General and not apparently under his immediate direction or control. As well, the charge of demanding with menaces was again carried out in the guise of lawful authority deriving from the organizational MEF.

Releasing the Secretary-General into the community in these circumstances must send a signal to all those potential witnesses, that his position and influence remains unaffected and they consequently may see themselves at risk from the wider organizational MEF, if not from Mr. Bartlett himself. I am consequently not satisfied the real demonstrated risk to witnesses has been allayed, sufficient for me to consider bail. Bail is refused.

The Public Solicitor represented the applicant.

The Director of Public Prosecutions appeared for the Crown.