

DANNY KENNEDY-v-REGINA

HIGH COURT OF SOLOMON ISLANDS
(Mwanosalua, J.)

Criminal Case No. 393 of 2006

Hearing: 4 October 2006
Ruling: 20 October 2006

D. Evans for the Applicant
R. Talasasa DPP for the Respondent

RULING

Mwanosalua, J: This is an application for bail pending appeal. The Applicant is Danny Kennedy. He was convicted of willfully and unlawfully casting away a boat, contrary to section 323(a) of the Penal Code by the Magistrates' Court at Gizo on 14 August 2006. He was later sentenced to two years imprisonment on 28 September 2006. He now applies to this Court for bail pending appeal against his conviction and sentence.

The owner of the boat is Hans Mergozzi. The boat is nineteen feet long and driven by a sing 100hp Yamaha engine. On 20 August 2005, Hans Mergozzi went to Fatboys Restaurant. He arrived there about 10pm. He tied up the boat to the jetty and went into the restaurant. Fatboys Restaurant is a liquor licensed premise built over the sea a Babanga Island. The Applicant was also at the Restaurant that night. The Applicant came out from the restaurant and walked to the jetty. He casted away the boat from the jetty and it floated out to the sea for about fifty metres. Allan Rodo saw the boat floating away and brought it back to the jetty about ten minutes later.

The Applicant brought his application for bail pending appeal under section 290(1) of the Criminal Procedure Code Section 290(1) is in these terms:

"where a convicted person presents or declares his intention of presenting a petition of appeal, the High Court or the Court which convicted such a person may, if in the circumstances of the case it thinks fit, order that he be released on bail, with or without Sureties, or if such person is not released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order is made before the petition of appeal is presented and no petition is presented within the time allowed, the order for bail or suspension shall forthwith be cancelled."

The Applicant is of previous good character. He was sentenced to serve two years in prison. With one-third discount on this sentence, the Applicant will be due for release in around March 2007. There is usually a long delay in the hearing of appeal cases from the Western District Magistrates' Court in Gizo. An example of this is *Joros Lasi-v-Regina*.¹ The accused in that was convicted and sentenced on 28 July 2004 and the appeal was heard by this court on 4 October 2006. The Applicant may well serve his sentence before his appeal is heard. His advocate told this court that the Applicant's appeal against sentence may be successful. That may well be so. The Applicant was on bail before his conviction. There is no evidence to show that he would abscond if he were to be granted bail. He is a Solomon Islands Citizen. He has a business in Gizo and a members and Minister of the Western Provincial Government.

The Applicant had declared his intention to present a petition of appeal soon after his conviction and had sought bail from the court which convicted him. The Learned Magistrate who presided over his case told him that he had no jurisdiction to hear his application for bail. That was wrong in view of section 290(1) above.

This court will exercise its discretion to grant bail to the Applicant subject to the conditions that he first deposits his passport and five thousand dollars cash with the Magistrates' Court in Gizo before he is released from the Gizo Prison. Further, he is to appeal within fourteen days from the dates of this ruling. The fourteen days period limited for appeal is enlarged. I order accordingly.

Francis Mwanosalua
Puisne Judge

¹ *Joros Lasi-v-Regina HC. CRC No. 20 of 2006*