



**IN THE DISTRICT COURT OF NAURU**  
**CRIMINAL JURISDICTION**

Miscellaneous Case No. 17 of 2021

**BETWEEN:**            **THE REPUBLIC**

**AND:**                    **SF**

**Applicant**

**Respondent/Accused**

**EX-TEMPORE RULING ON BAIL**

*Prosecutor:*            *DPP Ronald Talasasa*  
*Defendant:*            *Mr. Ravunimasei Tagioakatini*  
*Hearing:*                *Saturday 15<sup>th</sup> May 2021*  
*Ruling:*                  *21<sup>st</sup> May 2021*

**Catchwords:**

- *Person arrested without a warrant by police but not yet charged — application for further remand is under the Bail Act;*
- *Considerations for bail involve an assessment of what is an acceptable risk.*
- *Section 5(1) and 6 of Child Protection and Welfare Act 2016 make the safety, well-being and interests of the child paramount — applied.*

**Name Suppression Order**

1. The accused is 12 years old and the victim in is also a child. Pursuant to section 55(b) of the Child Protection and Welfare Act, I prohibit the publication of their names or any information that might lead to their identities being revealed. The accused shall henceforth be referred to as SF.

**The application**

2. The Respondent was arrested without a warrant by police on Friday 14<sup>th</sup> of May at 7:56 p.m. and was kept in the office of the Domestic Violence Unit in recognition of his age. This application was made by way of motion pursuant to sections 12, 18 & 19 of the Bail Act 2018 as read with section 270(1) and (2)(a)(b)(e)(g)(h) of the Crimes Act 2016.
3. The motion sought:
  - (a) That the Respondent be further detained at the Nauru Correctional Services until **the conclusion of the case;**
  - (b) That Police investigators are given liberty to access the accused at the Nauru Correctional services and bring to the Police Station for interview or other investigations; and
  - (c) Such other orders as the Court may deem necessary.
4. The motion was supported by an affidavit sworn by Inspector Sareima Aremwa of the Nauru Police Force. Both were filed less than 24 hours from the time of the arrest.

5. After a bail determination, I bailed the accused child with orders for the prosecution to file charges by Friday 21<sup>st</sup> of May 2021 and said I will give my reasons later, hence this ruling.

### The Facts

6. The motion was supported by an affidavit of Inspector Sareima Aremwa stating amongst other things, that the accused was arrested at 7:56 pm on Friday 14<sup>th</sup> May 2021; that he was kept in the Domestic Violence Unit and not in the cell in his interest as a child; that he was accompanied throughout by his mother; that the Child Protection Unit was contacted on Saturday morning; that the accused has been taken care of by police officers in terms of his well-being and meals; that the accused was seen half naked and on top of a young girl with her underwear down to her thighs; that the victim's older sister saw this and reported it; that the victim was medically examined but the report was not ready at the time of the application; that the results of the medical examination will determine the charges to be laid against the accused; that the safety of both the victim and the accused are paramount because of their tender years; that there is a high risk of retaliation against the accused from relatives of the victim; that the case is very sensitive and there is high risk involved; and that there is a strong public interest and the need to protect the community thus they are seeking that the accused be further remanded in custody.
7. The DPP said that since the affidavit was prepared, the accused had been interviewed in the presence of his mother and after he had spoken to his counsel. This was confirmed by Mr. Tagivakatini.
8. The Director of Child Protection said that the child victim has been taken under their protection in a safe house.

### The Legal Background

9. In *R v Vito Denuga* NRDC Misc. Case No. 16 of 2021, I had set out the procedures and the sources of power for further remand of an adult accused arrested by police without a warrant but who has not been charged. This is a similar application but for a child and so I will repeat much of what I said in *R v Vito Denuga* with the necessary additional considerations.
10. The Criminal Procedure Act 1972(CPA) was quite clear. The power of arrest of a police officer without a warrant is set out in section 10 of the CPA.<sup>1</sup> Section 19 of the CPA is titled "**Disposal of person arrested by a police officer.**" That section clearly sets out what needs to be done to a person arrested without a warrant by a police officer—it requires the arresting officer, if he does not bail the accused, to bring him to a magistrate or to a police officer above the rank of sergeant.
11. Section 21 of the CPA was titled "**Detention of persons arrested without warrant,**" and required the police, if they have not bailed the accused, to take him before the magistrate to consider amongst other things, whether the accused should be admitted to bail or remanded.
12. The relevant provisions of sections 19 and 21 of the CPA state:  
*19 Disposal of person arrested by a police officer*

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<sup>1</sup> Now the power of arrest for offences under the Crimes Act 2016 are in section 270 of the same Act.

*A police officer making an arrest without a warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, bring or send the person arrested before a magistrate or before a police officer of or above the rank of sergeant*

....

**21 Detention of persons arrested without a warrant.**

*... but, where he has been taken before a police officer and not so released by that police officer, he shall be taken before a magistrate within twenty four hours after his arrest and the magistrate shall inquire into the case and decide whether or not he should be so released and, where any person is detained in custody, he shall be brought before the District Court as soon as possible."*

13. Sections 21 and 80-89 of the CPA dealt with bail and were repealed and replaced by the Bail Act 2018<sup>2</sup>. The provisions of section 21 of the CPA are now dealt with by several sections of the Bail Act. For example, section 12 of the Bail Act covers section 19 and part of section 21 of the CPA. Section 19 of the CPA is still extant.
14. The court's role in a section 21 CPA application was therefore to enquire into and determine whether the accused should be released on bail or remanded. The provisions that govern the determination of bail in an application such as this one for the accused to be remanded is Part 5 of the Bail Act, being sections 17 to 20.

**Is a person who has been arrested without warrant but not charged entitled to bail?**

15. Section 4(1) of the Bail Act provides that every accused has the right to be released on bail:

***Entitlement to Bail***

*(1) Subject to the provisions of this Act, every accused person has a right to be released on bail.*

16. An accused person and "person accused of an offence" is defined in section 3(1) of the Act as:

*3(1) In this Act:*

*'accused person' or 'person accused of an offence' means a person who has been arrested for, or charged with, an offence and –*

*(a) who is awaiting trial before the District Court;*

.....

*(f) who has applied for a writ of habeas corpus*

17. The use of the disjunctive "or" in the definition of accused in section 3 means that:
  - (a) someone who has been arrested for an offence is entitled to bail; and
  - (b) someone who has been charged is entitled to bail.
18. Section 3(1)(a) of the Bail Act above requires that the person must be awaiting trial before the District Court. When the police arrest someone reasonably suspected of committing an offence, they have formed the intention or we can infer that they formed the intention to charge him and bring him to the District and eventually be tried. A person being arrested is therefore awaiting trial before the District Court, just as much as a person who has been charged is awaiting trial before the court. Both have a right to be bailed.
19. A person who has been arrested and has not been brought before the court can be bailed under section 9 by the police or if can be released if there is insufficient evidence to

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<sup>2</sup> Section 34 of the Bail Act 2018.

charge.<sup>3</sup> The District Court also has the power to grant bail to an accused who has not been charged with an offence but who has been brought to court on an application for further remand.

20. If the police do not grant bail to an accused, section 12 of the Bail Act then requires them to bring the accused before a court within 24 hours of the arrest:-

***12 Procedure to be followed by police officers if bail not granted***

*If an accused person is refused bail by a police officer, the police officer who refused bail or another police officer of equal or superior rank shall, as soon as practicable, and in any event within 24 hours, bring the person before a court for a decision on bail by the court.<sup>4</sup>*

**Bail Determination by the Court**

21. Bail determination is governed by Part 5 (sections 17-20) of the Bail Act. The general provisions for granting bail are set out in section 17. Prosecutors seeking further remand and therefore opposing bail must address the matters set out in section 18(1) of the Act:

***18 Refusal of bail***

*(1) A person making submissions to a court against the presumption in favour of bail shall address the:*

- (a) likelihood of the accused person not surrendering to custody and not appearing in court;*
- (b) interests of the accused person; and*
- (c) public interest and the protection of the community.*

22. At the end of the bail determination, if the court refuses bail, section 18(4) states:

*If the court refuses bail, the court shall remand the accused person in custody to re-appear before that or another court for trial or review of bail within 14 days from the date of refusal or review.*

23. The District Court is a creature of statute so its powers must be spelt out in a statute. Section 18(4) is the power of the court to remand a person arrested by a police officer without a warrant and not yet charged.

**The Child Protection and Welfare Act 2016**

24. Section 18(1)(b) of the Bail Act requires the court to take account of the interests of the accused in determining whether he should be bailed. The accused here is a child of 12 years and 9 months and the CPWA has the following provisions that affect this application:

***5 Guiding Principles***

*(1) The core principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.*

.....

*(3) When interpreting or applying any provision of this Act, and when exercising any power, duty or function related to the protection of a child or the promotion of the welfare of children, all persons must act in accordance with the following principles:*

- (a) a child has a right to be protected from harm or risk of harm;*

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<sup>3</sup> Section 9(3) of the Bail Act.

<sup>4</sup> See also s. 10(b)

- (b) a child's family has the primary responsibility for the child's upbringing, protection and development;
- (c) the preferred way of ensuring a child's safety and wellbeing is through supporting the child's family;
- (d) if a child does not have a parent who is able and willing to protect the child, the Government is responsible for protecting the child;

.....

**6 Application of this Act in relation to other laws**

(1) Any law which relates to the rights of children, or which provides for processes relevant to dealing with children in any manner and in any context, must be read and applied subject to the provisions of this Act, and in the event of any inconsistency between the provisions of this Act and of any other law, the provisions of this Act must prevail.

25. A bail determination is an exercise of assessment of risks as there can be no certainty in future events as explained by Thomas JA of the Queensland Court of Appeal in **Williamson v DPP**<sup>5</sup>:

*"No grant of bail is risk-free. The grant of bail however is an important process in civilised societies which reject any general right of the executive to imprison a citizen upon mere allegation or without trial. It is a necessary part of such a system that some risks have to be taken in order to protect citizens in those respects. This does not depend on the so called presumption of innocence which has little relevance in an exercise which includes forming provisional assessments upon very limited material of the strength of the Crown case and of the defendant's character. Recognising that there is always some risk of misconduct when an accused person or for that matter any person, is free in society, one moves to consideration of the concept of unacceptable risk."* (emphasis mine)

**ANALYSIS**

26. From the facts I am satisfied that the arresting officer had reasonable grounds to suspect that the accused has committed an unlawful sexual act with a child contrary to some provision of Division 7.3 of the Crimes Act 2016 and would be justified in making an arrest without a warrant under s. 270(1)(a)(2)(a) of the Crimes Act.
27. I therefore find that the arrest, on its face, is legal and I can then determine whether the accused should be granted bail.
28. Sections 18-20 of the Bail Act deal with bail determinations by the court. Section 18(1)(a)-(c) sets out the matters that the court must address. The provisions of section 5 and section 6 of the Child Protection and Welfare Act quoted above when applied to a bail determination, makes the safety, well-being and interests of the child accused paramount.
29. The accused is less than 13 years old and is small and frail in stature. His physical, mental and moral maturity is likely to be far less developed than a child of 14 and much less than that of a 17 year old. Remanding the accused with other children whose ages, character and pre-dispositions are unknown poses an unacceptable risk to his physical, mental and moral well-being. There is the very real risk of bullying, sexual assault, and moral corruption to name a few threats. It is clearly in his best interest that he be not remanded.

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<sup>5</sup> [1999] QCA 356

30. The interest of the community, in section 18(1)(c) of the Bail Act is that children be protected from unacceptable risks and for the reasons given in the preceding paragraph, the accused child should be bailed.

**Conclusions**

31. For the reasons given, I had granted bail to the accused to live with his parents, in line with the requirements of the CPWA with strict bail conditions.

  
.....  
**Penijamini R Lomaloma**  
**Resident Magistrate**



The seal of the District Court of Nauru is circular. It features a central emblem with a map of Nauru and the text 'NAURU' above it. The outer ring of the seal contains the words 'DISTRICT COURT OF NAURU' and a small star at the bottom.