

IN THE SUPREME COURT OF TONGA

CRIMINAL JURISDICTION

NUKU'ALOFA REGISTRY

CR 52/2020

BETWEEN : REX

- Prosecution

AND : 'ANISI KULUFEINGA BLOOMFIELD

- Accused

BEFORE HON. JUSTICE NIU

Counsel : Ms. L. Macomber for the Crown.

Mr V. Mo'ale for the accused.

Hearing : of application for bail on 14 July 2020

Ruling : 15 July 2020

RULING ON BAIL

- [1] The accused was on bail at the time that I made my ruling in this Court to dismiss his application for habeas corpus on 9 June 2020, and I ordered that he be committed to be returned to Fiji to be tried on both the two offences of which he has been charged there.
- [2] That bail necessarily ended as of the date of that order because the order of committal meant committal to custody. However the Crown did not take the accused into custody and the accused continued to make his weekly reporting to the Central Police Station as before.
- [3] In the following week, the Crown raised the matter with me and I indicated that I did not think that I still had jurisdiction to decide it.
- [4] In the following week, the Crown made submissions in writing that I still had jurisdiction until an appeal against my ruling was filed with the Court of Appeal and that the accused be refused bail because he had failed to report to the police several times. To date no appeal has been filed as yet.

11/07/20
Niu,
Leave #
Scan +
upload
Date
J
21/07

- [5] A chamber direction hearing was held on 7 July 2020 when both counsel agreed that a hearing be held on 13 July 2020 to decide whether or not bail be granted to the accused, and that the accused file by 9 July 2020, an affidavit supported by medical certificates as to the reasons for his failure to comply with the reporting condition of his bail.
- [6] The accused failed to do that and at the hearing on 13 July 2020, Mr. Mo'ale for the accused asked for further time to prepare the required affidavit. Ms. Macomber opposed the request and I was concerned that the accused had not even attended the hearing or offered any medical certificate for his absence. I therefore directed that the accused personally attend the following morning to give evidence about his failure to report, or if medically unwell, to forward a medical certificate instead.
- [7] Yesterday morning, the accused attended together with Mr. Mo'ale and he produced medical certificates which confirmed that he was sick on 4 of the 6 days he had not reported to the police. The other 2 days on which he did not report were the 24th April 2020 and 1st May 2020 when he attended this Court for the hearing of his application for habeas corpus. Mr. Mo'ale told me that the accused assumed that he did not have to report because he was attending the Court instead.
- [8] Ms. Macomber submitted that there was no excuse for the accused not to report to the police on the days he was attending the Court hearings. She says that the accused had ample time to attend and report then come to Court.
- [9] I would say that the accused ought to have forwarded the medical certificates to the police station when he was unable to attend either at the time and day he was due to report or as soon thereafter as possible.
- [10] Ms. Macomber also says that the accused had failed to sign his bail when it was granted by this Court on 5 March 2020, and that he also failed to sign the extensions of his bail each time this Court extended it.
- [11] She submits that because of the failures of the accused to comply with the conditions of his bail, he ought to be refused bail.
- [12] Mr. Mo'ale submits that the accused did comply with all the 6 conditions of his bail and that he only failed twice on his 7th condition, namely, to report to the police due to his understanding of that condition. He also submits that it is not required that the accused has to sign his bail form. He says that the accused properly complied with the orders of this Court dated 5 March 2020 which granted him bail and which contained the 7 conditions of his bail.

Recognizance

- [13] The conditions of bail of the accused granted on 5 March 2020 included (no.1) a condition that "he enters into his own recognizance in the sum of \$2,000". When that order was made, it did not effect the entry of the accused into his own recognizance for \$2,000. What the order required was that the accused "enters" into the recognizance form contained in the schedule to the Bail Act. And the accused did that on the same day when and his wife and his daughter all signed the recognizance in the Court Office, and which I also signed after they had all signed.
- [14] But Ms. Macomber is correct in saying that the accused did not sign any extension of his bail thereafter because there is not one extension of bail contained in the Court file. Mr. Mo'ale says that the Act does not require that extensions of bail be signed by the accused.
- [15] The Act may not expressly say so, but the provisions contained in the form of recognizance shown in the Schedule require that the date when the accused next attends in Court is to be shown in it. When that date is reached and the bail is extended, there must be another form with the next date of attendance shown and which must also be signed by the accused. That ensures that the accused is aware of his next date of attendance by signing his name; he thereby cannot deny that he was aware when he was next required to attend.
- [16] I am therefore of the view that every grant of bail and extension of bail must be in writing and must be signed by the accused and that a copy thereof be given to the accused.

Failure to sign extensions

- [17] I do not think that the accused should be blamed, let alone penalised, for failing to sign the extensions of his bail. If his own counsel frankly says that an accused person already on bail does not need to sign the bail extension, how can the accused be held to have unlawfully failed to sign his bail extensions? No evidence was given or shown that the accused was informed to sign his bail extensions but that he disregarded or refused to sign them.
- [18] It is for the Court staff, and the prosecution, to follow up with the accused and require him to sign the extensions, or to draw the Court's attention to it to order the accused to do so. But no such request was made about this matter until today.

Failure to report on Court days

- [19] It so happened that on two days, 24th April 2020 and 1st May 2020, the accused was required to report to the police station, but on those 2 days the

Court held the hearing of the application of the accused for habeas corpus, and the accused did not report to the police station on those 2 days at all. Has the accused thereby breached the condition of his bail?

- [20] I do not think so, at least on the first court day, and the reason is this. When the hearing date and time of 10 am 24th April 2020 was agreed upon with both counsel on 25 March 2020, the bail of the accused was also impliedly agreed to be extended to that time and date. That meant that the bail of the accused was to end at 10 am on that day, 25 March 2020. He no longer needed to report by 11 am that day because he no longer had any bail after 10 am.
- [21] He therefore had not breached his bail by failing to report because he no longer had any bail to have breached by failing to report before 11 am.
- [22] On that same day, 24 April 2020, it was agreed by both counsel, and I directed, that the hearing be adjourned to be continued at 3:00 pm on 1 May 2020, and impliedly, the bail of the accused was also extended to that time and date. And although the bail was still valid at between 9:00 am and 11:00 am when he was required to report to the police station on that day, it was ending at 3:00 pm that day in any event when he would then attend in Court as had been required of him expressly to do. He did just that by attending in Court at that hour. I do not think that he had breached the condition of his bail by failing to report to the police station in the morning of that day so long as he duly attended the Court that same day as he had undertaken to do. Had he not attended the Court on that day he would then have breached his bail, not because he failed to report but because he failed to attend in Court at the set time and date.
- [23] I am also mindful that police did not at any time inform this Court that the accused had failed to report on any of the 6 days that it recorded that the accused had failed to report. They just continued to record his reportings in the subsequent weeks as if there had been no breach – especially in respect of these two Court hearing days. No warning was recorded as having made or given to the accused not to fail to report.

Reporting requirement

- [24] I am also mindful that before this matter came to this Court in March this year, the accused had been required to report **daily** to the police from at least January 2020. And that when bail was agreed before me, it was agreed that the reporting be only done once a week. To the accused, that was seven times less onerous than having to report daily as before. He therefore readily agreed to it. Now Mr. Mo'ale has asked that the reporting requirement be omitted altogether because the accused has more than shown that he would

not abscond or breach any term of his bail and that he is not a flight risk. Furthermore, he said that the present border lockdown in force just does not give any person wishing to leave the country any chance to do so, without very heavy scrutiny and deliberation. I agree but that there be some.

Health of the accused

- [25] I am also mindful of the health of the accused, and the need for constant care by his physician. The several medical certificates produced show only some of his ailments – the ones which occurred on the reporting days. I am sure it is an unnecessary worry and it is not helpful to his condition that he is required to report to the police once in every week.

Right to bail

- [26] I am also mindful that every person has a right to bail which may only be withheld in circumstances provided for in the Bail Act. The accused is a person who has been arrested and who has been charged with a criminal offence, and S.4 (1) of the Act provides that such person **shall be granted bail** unless the Court is satisfied that

- “(i) there are substantial grounds for believing that, if released on bail (whether or not subject to conditions) he will.
 - (a) fail to surrender to custody;
 - (b) commits an offence while on bail; or
 - (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (ii) he should be kept in custody for his own protection or welfare;
- (iii) the case has been adjourned for inquiries which it would be impracticable to make unless the defendant is kept in custody;
- (iv) he is already in custody pursuant to a sentence of a court; or
- (v) he has already been released on bail in connection with the present proceedings and has been arrested pursuant to section 9 of this Act.”

- [27] None of those grounds have been argued to apply to refuse the grant of bail to the accused.

- [28] This Court has the jurisdiction to grant bail. S.2 of the Act defines Court to include a Magistrate or Judge. And S.10 (3) of the Extradition Act provides that on any application (for habeas corpus made by an accused) the

Supreme Court may, **without prejudice to any other jurisdiction of the Court**, order the person committed (by the Magistrates Court) to be discharged from custody (if any of the 3 grounds listed thereunder was satisfied).

Conclusion

- [29] Having therefore considered the foregoing matters, I find I am not convinced that the accused has breached the conditions of his bail, or that he has breached them substantially to warrant refusal of bail to him. On the contrary, I am convinced that he should not only be granted bail but that the requirement for reporting to the police station be reduced to every 14 days instead.

Orders

- [30] Accordingly, I order that the accused is granted bail on the same terms and conditions which were granted to him on 5 March 2020 but that the last condition no. 7 is to read:

"7. The applicant is to report to the Nuku'alofa Central Police Station between 9:00 am and 11:00 am on every alternate Friday commencing on Friday 24 July 2020."

- [31] I also order that the accused and his two sureties shall sign the recognizance which shall state "that the accused shall attend at such sittings that this Court or the Court of Appeal shall direct and duly conveyed to him."

NUKU'ALOFA: 15 July 2020.



[Handwritten Signature]
Niu J
J U D G E