



IN THE SUPREME COURT OF NAURU
AT YAREN DISTRICT
CRIMINAL JURISDICTION

Criminal Case No. 21 of 2018

BETWEEN

JA and RS

Applicants

And:

The Republic

Respondent

Before: Khan, J
Date of Hearing: 12 December 2018
Date of Judgement: 14 December 2018

Case may be cited as: JA & RS v The Republic

CATCHWORDS:

Bail application under Bail Act 2108(the Act) – Where the offenders are minors – Consideration of the Act – Rights of persons seeking bail – Circumstances in which bail may be refused – Matters that the court is required to take into consideration in the determination of bail application.

APPEARANCES:

Counsel for the Applicants: S Valenitabua
Counsel for the Respondent: F Lacanivalu

RULING

INTRODUCTION

1. JA is 17 years old and was born on 6 November 2001. He is from the Boe District and lives with his parents. RS is 15 years old and was born on 11 April 2003 and is from Aiwo District and also lives with his parents.

2. Both JA and RS (juveniles) and are charged with one count of aggravated robbery contrary to s.159 of the Crimes Act 2016.
3. RS is also charge with one count of unlawful possession of marijuana contrary to s.6(a) of the Illicit Drugs Control Act 2004.
4. They appeared before the District Court on 7 December 2018 and the charges were transferred to this Court and in the meantime, they were remanded in custody to appear in this Court on 10 December 2018. On 10 December 2018 the prosecution indicated that it will seek further remand in custody and their counsel Mr Valenitabua sought time to file an application for bail.

BAIL APPLICATION

5. The application was heard on 12 December 2018. Up to the time of hearing of this application the prosecution had not provided any disclosure documents to the defence.

PROSECUTIONS CASE

6. The prosecution's case is that on 4 December 2018 at night the Taiwan Embassy (Embassy) was broken into and entry was gained through the ceiling. When the police attended the scene, they observed that a ladder was used to climb up to the Embassy and the plywood covering a side window was broken and the three alarms installed in the Embassy were damaged by the forceful entry.
7. After gaining entry a sum of \$72,176 AUD being monies allocated to the Republic of Nauru was stolen together with a sum of \$6,300 AUD and a sum of \$1,500 US belonging to one of the Embassy employees.
8. The police recovered a crowbar, a chisel, a knife and a flashlight from the scene
9. The video surveillance camera shows 2 persons but their faces were covered and both wore long sleeved clothing. The images shown on the video camera do not identify any of the offenders.
10. In the affidavit of Snr Constable Dabwadauw filed by the prosecution the exact time of the break-in is not stated, but between 12 midnight to 3 am one of the prosecution's witnesses saw 4 persons riding two motor bikes heading towards Boe Infants School and he later saw 4 people at Boe Infants School walking towards him and he recognized RS.
11. In the early hours of 4 December 2018 another prosecution witness saw RS at the Civic Centre which is very close to the Embassy.
12. On 6 December 2018 a search warrant was executed at the residences of JA and RS. At RS's house, green leaves believed to be cannabis was found and outside JA's house monies in the sum of \$16,900 in cash was found.
13. Both the juveniles were later arrested by the police and were interviewed and they denied committing the offence.

RELEVANT LEGISLATION

14. In May 2018 the Bail Act 2018 (the Act) was enacted which clearly sets out the rights of an accused person seeking bail, circumstances in which bail may be refused and matters that a court is required to take into consideration in the determination of the bail applications.

ENTITLEMENT TO BAIL

15. Section 4 states that every accused person has a right to bail unless it is not in the interest of justice for bail to be granted; and further there is presumption in favour of the accused person being granted bail, and if bail is opposed that presumption has to be rebutted.¹ The presumption is displaced if an accused person is charged with murder, treason or contempt of court or has previously breached a bail undertaking.²
16. Both the offenders are minors and s.4(5) provides in very strong mandatory terms that they are entitled to bail unless they have previous convictions or breached bail undertakings previously or the offence in question is a serious one. In this case both juveniles are first offenders so the only thing against them is that the offence is a serious one.
17. Mr Valenitabua stated that the charge against the juveniles is not correct as it is not a case of aggravated robbery but a case of burglary and that the charge should be dismissed and the juveniles should be set free. I wish to state that at this stage of the proceedings I am not deciding on the correctness or otherwise of the charge but determining the bail application and under the Criminal Procedure Act 1972 the prosecution can amend the charges at any stage of the proceedings before the judgment is delivered³.
18. Whether the appropriate charge is burglary or aggravated burglary the fact remains that it is a serious charge which carries a term of imprisonment of 10 and 12 years respectively and being first offenders and minors they would be entitled to bail except for the fact they are charged with a serious offence.

BAIL DETERMINATION

19. In deciding whether to grant bail a Court has to take into account the amount of time the accused persons will spend in custody before trial⁴; and the primary consideration in deciding whether bail should be granted is the likelihood of the accused persons appearing in court.⁵

REFUSING BAIL

¹ S.4(3) of the Act

² S.4(a) and (b) of the Act

³ S.191 of Criminal Procedure Act 1972

⁴ S.17(1) of the Act

⁵ S.17(2) of the Act

20. If the Court is of the opinion that bail ought to be refused then it is required to take into consideration inter alia the following:
- a) The circumstances, the nature and seriousness of the offence;
 - b) The strength of the prosecution case; and
 - c) The severity of the likely penalty if a person is found guilty.⁶

STRENGTH OF THE CASE

21. The evidence against both juveniles is circumstantial. Mr Valenitabua submits that the case against them is weak and Mr Lacanivalu accepts that there is no direct evidence against them but submits that the circumstantial evidence against them is quite strong. I accept that there is very strong circumstantial evidence against both juveniles.
22. In terms of penalties the courts generally make every effort to keep minors who are first offenders out of prison but at the end of the day the court will have to take into consideration the prevalence of this kind of offence and impose an appropriate penalty taking into account the public interest and the protection of the community at large.

INVESTIGATION

23. Mr Lacanivalu conceded that if the investigation was completed then he would not have objected to bail. When he was asked as to advise the stage the investigation is at, he said that the investigation is almost completed and the police have certain leads to arrest 3 other suspects and their information is that those suspects are minors as well.
24. He further submitted that the release of the juveniles would jeopardize the arrest of the suspects at large and may hinder the police investigations.
25. When bail is refused the case cannot be adjourned for more than 14 days except with the consent of the accused⁷ and further adjournment for a period not exceeding 48 hours **shall be to a court available to deal with the case** (emphasis added).⁸ The adjournment of 14 days is consistent with s.154 of the Criminal Procedure Act 1972. The courts will be on legal vacation from today and will resume sittings in the New Year on 14 January 2019 so if the juveniles are remanded in custody there will not be a Court available to deal with the matter within 14 days of the remand.
26. I note that this was a very well planned and executed burglary. The 3 alarms installed in the Embassy were disarmed and the suspects wore masks and long clothing to conceal their identity.

CONCLUSION

⁶ S.19(2) of the Act

⁷ S.14(2) of the Act

⁸ S.14(2)(b) of the Act

27. I have given the matter a lot of consideration and I think that public interest and the community interests at large demands that I remand the juveniles in custody until 21 December 2018 to enable the police to complete their investigations and arrest the other suspects who are at large. I order that this matter be adjourned to 21 December 2018 before the Registrar and I further order that both juveniles are to be released on bail upon them entering into bail undertaking in their own recognizances in the sum of \$1,000 with their respective mothers to be their surety in their own recognizances in the sum of \$1,000 each. I make the following other conditions:

- a) Both juveniles are to live at their houses in Boe and Aiwo Districts;
- b) They are to remain indoors between the hours of 6pm and 6am and are only allowed to attend hospital for medical treatment. If they need medical treatment then they are to advise the police after the treatment.
- c) They are surrender their passports into Court and they are not allowed to leave Nauru without the leave of the Court;
- d) They are not to interfere with the prosecution witnesses.

DATED this 14 day of December 2018



Mohammed Shafiullah Khan
Judge

