

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

**JP APPEAL 4/13
(CR 19/13)**

IN THE MATTER of section 83 of the Criminal Procedure
Act 1980-81

AND

IN THE MATTER of an Appeal against refusal to grant bail

AND

IN THE MATTER of an Appeal against a decision of a
Justice of the Peace, section 76 of the
Judicature Act 1980-81

BETWEEN **POARU TATIRA** self employed of
Amuri, Aitutaki

Appellant

AND

THE CROWN

Respondent

Hearing: 18 July 2013

Counsel: Mr N George for the Appellant (with the Appellant present)
Ms M Henry for the Respondent

Judgment: 18 July 2013

JUDGMENT OF HUGH WILLIAMS J

[FTR 13:13:10]

[1] On 13 June 2013 two Justices of the Peace remanded the Appellant, Poaru Tatira, in custody on the charge he faces of raping a named complainant on 1 June 2013 on Aitutaki. Mr Tatira has appealed against the Order remanding him in custody. As it turns out the appeal can be allowed by consent on the terms set out later in this Judgment and this Judgment is provided in order that the Justices of the Peace can understand why their decision on the remand is being, however technically, overturned.

[2] It is clear that Mr Tatira, charged with the serious offence which he faces and on which the maximum punishment is 14 years imprisonment, is bailable only at discretion under s 83 of the Criminal Procedure Act.

[3] The Justices of the Peace helpfully dictated brief reasons for the remand being in custody referring to a Victim Impact Report furnished to them by the Crown and saying “With regards to Article 64 of the Constitution as indicated by defence counsel, the right of the Defendant to live freely or enjoy life to the fullest also applies to the victim as the victim has the right to live life and enjoy life to the fullest as well.”

[4] The reference to the Victims of Offences Act 1999 and the Victim Impact Report is referenced to s 10 of that Act, a thoughtful provision which reads:

“On an application for bail in respect of a charge of rape or other sexual offence or other serious assault or injury, the prosecutor shall convey to the Judge or Justice any fears held by the victim about the release on bail of the alleged offender.”

[5] Probably unsurprisingly the Victim Impact Statement given to the Police by the woman concerned in this matter expressed fears for her safety should the Defendant be allowed bail on Aitutaki and expressed concerns around the circumstances of the offence and the possibility of approach to her or to other Crown witnesses by the Accused, especially given that he resides within a short distance of her residence.

[6] In the Justice of the Peace Court Ms Henry for the Police had drawn attention to s 8 of the Bail Act 2000 (NZ). In that Court some Defence comment was made as to the Police adopting the provisions appearing in s 8 but as they are no more than a consolidation of the factors commonly referred to in Courts in a number of jurisdictions in considering bail applications, nothing untoward comes from the reference to s 8. In fact it is a helpful compendium of the sorts of issues which customarily impact bail decisions.

[7] In relation to this matter, the most relevant issues under s 8 are the possibility of the Accused’s flight, the seriousness of the offence and the possibility of interference with witnesses, especially of the Complainant. The possibility of flight can be taken care of by an order that the Appellant surrender any passport to the Police and not apply for another during the currency of this matter.

[8] The possibility of his interference with Police or the witnesses and the complainant has to be balanced against the fact that he is entitled to the presumption of innocence and Article 64 of the Constitution also assists him although Article 64(2)

recognises that “every person has duties to others” and so Article 64 applies, as the Justices of the Peace said, equally to the Appellant and to the Complainant.

[9] Another factor and, in this case probably the governing factor in relation to this matter is that this prosecution is at an early stage and, unfortunately, given the number of criminal files awaiting hearing in Rarotonga, it is likely to be a considerable number of months before the matter can be finalised. For a person in the Appellant’s position it would simply not be right for him to remain in custody for a lengthy period until his trial can be heard, especially when set against the presumption of innocence.

[10] As, therefore, suggested during the hearing of the Appeal and in discussion between Bench and bar a formula was put forward which would enable the Appellant to regain his liberty but would severely limit or would result in his not being able to return to Aitutaki to live but would enable him both to prepare his defence and, however remotely, to continue the lagoon cruise and kite-boarding business which he appears to be operating. In light of that, in formal terms the Appeal will be allowed and the Appellant will be admitted to bail on the following conditions:

- (a) any passport he holds is to be surrendered to the Court and he is not to apply for another until after this matter has concluded.
- (b) Mr Tatira is to remain living on Rarotonga and is not to return to Aitutaki except in the circumstances later outlined.
- (c) He is not to make contact, directly or indirectly, with the Complainant. To make it perfectly clear, in his presence, that includes the fact that he is not to telephone her and he is not to telephone other persons to contact her.
- (d) As far as Crown witnesses are concerned, a list of the Crown’s proposed witnesses has been given to Mr George. Should he wish to interview any of those witnesses he is to give prior notice to the Crown.
- (e) Although almost certainly unnecessary, Mr Tatira is to surrender to the Police any firearm or replica which he owns or possesses. That is said to be almost certainly unnecessary because the Police have advised Ms

Henry that no such weapon or replica was discovered on execution of a search warrant.

- (f) The next condition is to assist Mr Tatira earn a living. Mr Tatira owns a mobile phone. His business is currently being looked after by a Mr Snowball and others with whom he associates on Aitutaki. Mr Tatira is of course, to be enabled to conduct his business in order to support himself and meet his expenses but he needs to do that remotely. That means he can only do it by telephone and a condition of his bail will be that if demanded by the Police or the Crown, he is to make copies of his telephone accounts available in order that the numbers of the persons he calls can be checked.
- (g) The next condition relates to Mr Tatira's ability to prepare his defence. Despite the earlier condition about him not returning to Aitutaki, he is to be able to do so provided he complies with the following conditions:
1. On any such visits, he is to be accompanied by his counsel.
 2. Mr George is to advise the Crown and the Police at least 48 hours beforehand of the dates and times of the expected departure and return.
 3. Mr George advises that such visits are likely to include overnight stays by counsel at Rino's Motel on Aitutaki. He initially asked that Mr Tatira be able to stay overnight at his own home but given the nearness of his home to that of the Complainant, that application is disallowed. Mr Tatira, on any of these visits, is to be accommodated at Rino's Motel or with Mr Snowball, his employee. It would not be right to make Mr George in effect Mr Tatira's warden during these visits and the Aitutaki Police have advised Ms Henry that they had insufficient manpower for their officers to be in sight but out of earshot of Mr Tatira whilst interviewing witnesses on Aitutaki. No condition can therefore be imposed on Mr George that Mr Tatira remains with him throughout the period of his visit but Mr George is an officer of the Court and

an upright citizen and no doubt, if he comes to know that Mr Tatira proposes to breach the terms of his bail, he will, as citizens must, inform the Police of that proposed breach of the law.

- (h) There will also be a condition that Mr Tatira does not consume alcohol during the period he is on bail.

[11] The final matter relates to suppression of name. Currently, as part of the decision of the Justices of the Peace in this matter, Mr Tatira has the advantage of an order suppressing his name. The name of the Complainant is of course suppressed as a matter of course.

[12] Ms Henry, without forewarning Mr George, applied for the order for suppression of Mr Tatira's name to be revoked. Given that Mr Tatira will be spending virtually all his time on Rarotonga until trial it may be appropriate for the Order suppressing his name to be revoked, but given the unheralded nature of the application it will be adjourned to be dealt with during the criminal callover on 24 July 2013 in this Court.

A handwritten signature in black ink, appearing to read 'Hugh Williams, J', written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J