

**MOE PIRANGI**

v

**POLICE**

Date of Zoom hearing: 11 and 12 October 2021

Appearances: N George for appellant  
J Epati for police

Judgment: 12 October 2021

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**ORAL JUDGMENT OF HUGH WILLIAMS, CJ  
(re. Bail)**

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[11:51:00]

[1] At the present time Mr Pirangi, the defendant, faces one charge of rape on 14 August this year at Arorangi. But, during the first stage of this hearing on 11 October, the Court was informed that some 11 additional charges are being laid and they may be followed by others, all of a sexual nature and all against children as is the present information.

[2] When Mr Pirangi initially appeared before the Justice of the Peace, there was an agreed remand in custody for a fortnight so as not to impinge on the police investigation of the matter. But since that time there have been two applications to the Justices of the Peace for bail. Both were declined and as a result Mr George has brought this appeal against those two decisions.

[3] The earlier appearance before the Justice of the Peace was on 2 September 2021 before the Senior JP. In her decision she canvassed some of the issues raised by Crown Counsel and by Mr George, but at that point declined bail.

[4] The principal decision against which the appeal is brought was that of Justice of the Peace, Ms Newnham, on 16 September 2021. In that decision the Justice of the Peace recounted the application for bail, summarised the submissions made on behalf of the police in their strong opposition to bail and in particular canvassed the submissions concerning the seriousness of the offence and the strength of the Crown's case.

[5] Crown Counsel is recorded as having drawn the Court's attention to s 10 of the Victims of Offences Act 1999 which requires the concerns of victims in cases of alleged sexual offending to be taken into account in relation to bail. The Justice of the Peace, after recording the submissions, said that there were no new arguments provided as to why bail should be approved. She drew attention to the serious nature of the charges and the fact that the victim was a minor, recorded the examples of previous cases where bail was granted and the distinctions between those cases and the present, and the concern of the family plus the ongoing investigation.

[6] It is unfortunate that some aspects of the Crown's submissions were picked up by the local newspaper and although it was correct in recording the Crown submission that "this defendant seems to be a serial paedophile targeting young females", the nature of the reporting gave the impression that the conditionality of submissions made by the Crown had not been picked up, because the headline reads: "Bail denied for accused 'serial' paedophile."

[7] That is unfortunate when the Crown's submissions were only that Mr Pirangi "seems" to be a serial paedophile and even that may have enlarged on the single offence which was then before the Court and which currently is the only offence for consideration on appeal.

[8] In Article 65(1)(f) of the Constitution it is mandated that bail should be allowed to all accused unless there is "just cause" for denying bail. So the invariable starting point for considerations of bail is that any accused charged with any offence or offences is entitled to bail unless there is "just cause" for his or her detention in custody on remand. The Criminal Procedure Act 1980-81 in s 83 sets out the circumstances in which bail is to be granted as of right or at the discretion of the Court and, under s 83(5), where the offences are serious, as this one undoubtedly is, bail is not available as a right but simply as a matter of discretion.

[9] That said, the invariable starting point for consideration of bail for any accused charged with any offence is that they are entitled to bail unless there is “just cause” to the contrary.

[10] Further, it is also important to give full weight to the presumption of innocence which applies again to any accused charged with any offence. So, when accused persons appear in Court, they are deemed to be innocent until such time as they are proved to be guilty, and no matter what serious charge they may face they are entitled to bail unless there is “just cause” for their detention in custody on remand.

[11] The principal just cause advanced by Ms Epati in her submissions in this case is under s 10 of the Victims of Offences Act. She rightly draws attention to the significant worries that the complainant and her family have, backed up by psychological investigation, and as to the concerns that the complainant has should Mr Pirangi be granted bail. He knows the family – they live in reasonably close proximity – he has worked at the school the complainant attends, he is a taxi driver and it is not difficult to understand that the complainant and her family are seriously concerned at the possibility that they may encounter him, or he them, should he be granted bail and be at large in the community.

[12] Those are justifiable concerns and matters which weigh heavily in the consideration as to whether there is just cause for Mr Pirangi’s continued remand in custody.

[13] The Crown in full and helpful submissions draws attention to the fact that the charges all relate to children, and most relate to the same complainant or the same family, although it may be that charges may emerge concerning other children.

[14] The Crown draws attention to the seriousness of the offence and the likely lengthy prison term which will be imposed should Mr Pirangi be convicted, something which is not denied, and they say the Crown has a strong case which ought to be taken into account in considering this appeal.

[15] It may well be that the Crown has a strong case, and it may turn out to be the case that the other offences similarly have strong evidence to back them up, but those circumstances need to be set against the Constitutional position, and the position under s 83(5) and be

balanced against the requirement under s 10 to give due weight to the views of the complainant and the family and others involved.

[16] During discussions between Bench and Bar on the two days of hearing, the question if Mr Pirangi's taxi licence came under scrutiny and Ms Epati, overnight between the two hearings, very helpfully provided a memorandum concerning the licencing of taxi cab services in the Cook Islands under the Transport Licencing Act 1967.

[17] The position appears to be that Mr Pirangi's current taxi licence expired earlier this year but there is an application for its renewal, as yet undetermined. Mr George advised on 12 October that overnight Mr Pirangi had surrendered his interest in the taxi licence to his partner – the taxi cab being operated in partnership – and had quitted all participation in owning or running the taxi.

[18] That is a signal feature which makes the question of just cause rather clearer than it might otherwise have been, because obviously were Mr Pirangi able to continue to drive his, or any other, taxi in Rarotonga, it is a service which needs to be available 24 hours a day, seven days a week, and could involve travel to any part of the Island, including passages backwards and forwards around the complainant's home.

[19] As discussed on the second day of the hearing, the concerns of the complainant and her family are real and understandable and need to be given due weight under s 10 of the Victims of Offences Act. A measure to meet those concerns was suggested to Mr George and accepted by the defendant, that is that, were the appeal to be allowed and bail granted, Mr Pirangi be made subject to a daytime curfew to ensure that he remains on his property throughout the period of the day when the complainant and her family might reasonably be expected to be out and about, attending school and attending to other domestic matters. That should go some considerable distance towards minimising or overcoming the complainant's concerns and the chances of a meeting between the two.

[20] Coming back to the fact that this is an appeal against the refusal of bail, the view taken is that the appeal should be allowed in that it appears from the decision of the Justice of the Peace that overmuch reliance was placed on the lack of new arguments for bail and the history of previous cases. As noted, it is not a question of new arguments having to be put forward

to justify bail or its refusal. Accused persons are entitled to bail under the Constitution unless there is just cause for a remand in custody provided that the concerns of the victims under the Victims of Offences Act can be adequately taken into account. So the judgment appears not to have complied with Mr Pirangi's Constitutional and statutory rights.

[21] The appeal will therefore be allowed. Mr Pirangi will be admitted to bail. It will be on the condition, first, that he is in no way involved in the operation of any taxi licence, whether the one he has previously operated in partnership, or any other taxi licence.

[22] Secondly, there will be a condition that he surrenders his passport to the Registrar and does not apply for another.

[23] Thirdly, there is to be no contact, direct or indirect, by any means whatsoever between Mr Pirangi and the complainant and the members of her family, all of whom he knows.

[24] And fourthly, Mr Pirangi is to be subject to a daytime curfew, such that he is to be required to be at his property continuously between the hours of 7am and 7pm, seven days a week, and that he be available to the police should they call at the property in order to check compliance with that bail condition.

[25] There remains the question of the delay between today's hearing and the trial. The Crown has advised that it intends to seek priority for this trial when jury trials are able to resume in Rarotonga. It is unfortunate that, because of the changes in Covid-19 restrictions, the two weeks of jury trials set down for the beginning of September were unable to take place. And, even now, nobody can be certain that there will be jury trials in Rarotonga for the weeks of 15 and 22 November, the next scheduled dates.

[26] That will become clearer following a criminal callover towards the end of this month and the Government's review of the Covid-19 travel restrictions in early November.

[27] However, in terms of this appeal, bail will be granted on the conditions set out above with the situation to be reviewed once the possibility of trial in November becomes clearer, and at that point also consideration can be given to whether bail remains justified, especially in that. By that stage it appears that Mr Pirangi is likely to be facing a number of additional

charges, all of a sexual nature and all concerning children and young persons. At that point the strength of the Crown case can be reassessed and, of necessity under s 10, the question of continuing bail will also need to be reassessed. For the moment however, the appeal is allowed, Mr Pirangi is admitted to bail on the conditions outlined.

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

**Hugh Williams, CJ**