

IN THE DISTRICT COURT OF NAURU  
(Criminal Jurisdiction)

CRIMINAL CASE NO. 12 of 2016

BETWEEN:

**THE REPUBLIC OF NAURU**  
Complainant

AND:

**FADHEL ABBAS AL MANHAL**  
Defendant

*Mr. David Tonganivalu Director Public Prosecutions for the Republic*

*Mr. Sevualoni Valenitabua Director Legal Aid for the defendant*

*Date of hearing: 6<sup>th</sup> May 2016*  
*Date of Submissions: 11<sup>th</sup> and 12<sup>th</sup> May 2016*  
*Date of Ruling: 13<sup>th</sup> May 2016*

## Ruling

1. The defendant is charged with 1 count of threats to sabotage contrary to section 53C (1) (a) (b) (ii) of the Criminal Code 1899. The particulars of the offence as charged reads:

*"Fadhel Abbas Al Manhal on the 5 May 2016 at Fly Camp at Top site in Nauru did make a threat to Lorina Dongorbir by threatening to damage a public facility namely to bomb and set fire to the Tank Farm near Buada District and intended that the threat will be carried out and will cause major disruption to the use of services by the public"<sup>1</sup>*

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<sup>1</sup> Particulars of the offence charged as filed with the court on 5 May 2016

2. Section 53C (1)(a)(b)(ii) of the Criminal Code 1899 reads:

*"Any person who:*

- (a) Makes to another person a threat to damage public facility by committing a property offence; and*
- (b) Intends that person to fear that the threat will be carried out and will cause:  
(ii) Major disruption to the use of services by the Public*

*is guilty of an offence and is liable to 15 years imprisonment."*<sup>2</sup>

3. The maximum penalty for this offence is 15 years imprisonment. The District Court therefore has no jurisdiction to deal with this matter. This means a preliminary inquiry will have to be conducted into this matter and if the District Court finds that there is a prima-facie case against the defendant, then the court will have to commit the defendant to stand trial before the court.

#### **THE CASE FOR THE PROSECUTION**

4. The prosecution relies on the affidavit of Sergeant Thubalkain Dabuae filed with the court on 11 May 2016 to oppose bail being granted to the defendant. Sergeant Dabuae said in his affidavit that on the 5<sup>th</sup> May 2016 the police received a phone call from a person called Lorina Dongobir reporting that a threat was made by a refugee about the bombing of the petrol tank farm and other public facilities on the Island.<sup>3</sup> The nature of the threats alleged to have been made by the defendant were in the form of words spoken to the effect of

*"You Nauruans better get ready because we just finish having meeting and we planning to bomb and fire up everyone on the Island"*<sup>4</sup>

5. The prosecution also allege that the conversation between the defendant and Ms. Dongobir continued as follows:

*"I said: how you gonno do it?*

*He said: first thing is petrol tanking or petrol browser*

*I said: where was that place?*

*He said: the place up Buada where car tanker go make petrol*

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<sup>2</sup> Section 53C(1)(a)and(b)(ii) of the Criminal Code 1899

<sup>3</sup> Paragraph 3 Affidavit of Sergeant Thubalkain Dabuae filed with the court on the 10<sup>th</sup> May 2016

<sup>4</sup> Paragraph 2 statement of Lorina Dongobir dated 5 May 2016 attached to the affidavit of Sergeant Dabuae filed with the court on the 10<sup>th</sup> May 2016

*I said: why you guys want to blow us?  
He said: because we don't like this country and your  
Government stopping us because Nauruan people want to eat  
from our money"*<sup>5</sup>

6. The prosecution also allege that when told by Ms. Dongorbir that she was going to contact the police, the defendant said:

*"you can tell the police but you won't know when it going to happen not just me but I have other friends"*<sup>6</sup>

7. At its highest in terms of the nature of the evidence and the circumstances under which the offence is alleged to have been committed by the defendant is that as is described in paragraphs 5, 6 and 7 of this ruling.
8. Sergeant Dabuae also said in his affidavit that on Monday 9<sup>th</sup> May 2016 the police discovered a break in at the Central Police Station whereby a fence was cut and window broken and only the defendant's phone was taken despite monies, camera and other items that was secured in the Criminal Investigation Unit room.<sup>7</sup>
9. Sergeant Dabuae in noting that there is a serious breach of security of exhibits at the police station also said that since only the defendant's phone was missing they find this to be a serious risk to this case.<sup>8</sup>

#### **THE CASE FOR THE DEFENDANT**

10. The defendant in his affidavit filed with the court on the 12 May 2016 denied making the threats as alleged.<sup>9</sup> The defendant also said in his affidavit that he knows Ms. Dongorbir and that she is the girlfriend of a Pakistani National who also lives at Fly Camp with the Pakistani National and that Ms. Dongorbir is a drunk, is always drunk and can be drunk for 24 hours in a day at a time<sup>10</sup> and urged the court and the police not to take what she said seriously<sup>11</sup>

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<sup>5</sup> Paragraph 3 statement of Lorina Dongorbir dated 5<sup>th</sup> May 2016 attached to affidavit of Sergeant Dabuae filed with the court on the 10<sup>th</sup> May 2016.

<sup>6</sup> Paragraph 4 statement of Lorina Dongorbiir dated 5<sup>th</sup> may 2016 attached to the affidavit of Sergeant Dabuae filed with the court on the 10<sup>th</sup> May 2016

<sup>7</sup> Paragraph 12 Affidavit of Sergeant Dabuae filed with the court on 10<sup>th</sup> May 2016

<sup>8</sup> Paragraph 13 of the Affidavit of Sergeant Dabuae filed with the court on the 10<sup>th</sup> May 2016

<sup>9</sup> Paragraph 11 of the Affidavit of the defendant filed with the court on the 12 May 2016.

<sup>10</sup> Paragraph 12 of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016.

<sup>11</sup> Paragraph 12 of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

11. The defendant in his affidavit also said that concerns that being a security officer for Tango Security and tasked with the responsibility of securing the places is baseless and that he is not a risk to anyone<sup>12</sup> and that he has nothing to do with the break in at the Nauru Police Station exhibit room where his phone was stolen because at that time he was remanded in custody at the Nauru Correctional Services.<sup>13</sup>

#### **ASSESSMENT OF THE PROSECUTION CASE**

12. The case as presented to the court at this stage of the proceedings is that of the word of Ms. Dongorbir against the denial by the defendant. In addition to this the submission by the prosecution that the fact that only the defendant's phone was stolen from the police exhibit room when there was money and other valuable items in the police exhibit room is to open to several interpretations, one of which is that, may be the thief's attention was only attracted to the phone and not the other items or it is just a possibility that it is just a coincidence. The fact remains that the defendant was remanded at the Nauru correctional services at the time his phone is said to have been stolen from the Nauru Police station exhibit room. As properly pointed out by Mr. Valenitabua, it is ridiculous to attach the serious breach in security at the police station to the defendant just because his phone was missing.

#### **MATTERS TO TAKE INTO ACCOUNT WHEN EXERCISING THE COURTS DISCRETION TO GRANT OR REFUSE BAIL.**

13. Muria CJ in Regina v Piopiko<sup>14</sup> in brief pointed out the various considerations appropriate for bail<sup>15</sup> and that they are:

*"(a) Whether the applicant will abscond bail; (b) the nature of the allegation or the seriousness of the alleged offence; (c) the nature of the evidence to be adduced against the defendant; (d) whether the applicant will interfere with prosecution witnesses and*

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<sup>12</sup> Paragraph 17 of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>13</sup> Paragraph 18 of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>14</sup> [2003]SBHC 97; HC-CRC 101 of 2002 (5 May 2003)

investigation; (e) the possibility of repetition of offence; (f) surety and (g) delay."<sup>16</sup>

14. Muria CJ further said:

*"I accept that the considerations referred by counsel are important and the Court before exercising its discretion as to whether or not to grant bail must take them into account when dealing with a bail application. But each of those considerations does not stand alone. Rather each factor is considered in conjunction with others, so as to enable the court hearing the application to properly determine whether bail is appropriate in a given case bearing in mind the circumstances surrounding the case. An accused may very well attend trial, if granted bail, he may also present the risk of interfering with prosecution witnesses and investigation, especially where accused and witnesses come from the same locality"*<sup>17</sup>

15. In this case now before me the only issue raised by the prosecution is the with regards to the seriousness with which the police attached to the alleged threat made by the defendant to Ms. Dongorbir. As deposed to in the affidavit of Sergeant Dongorbir, some schools in Nauru had to be closed for half day because of the threats and that the allegation against the defendant is serious and that the community need to be protected.

#### **SUBMISSIONS BY THE DEFENDANT**

16. It is submitted for the defendant that he is presumed innocent until he either plead guilty to the charge against him or found guilty by the court.<sup>18</sup> The offence with which the defendant is charged although it carries a maximum penalty of 15 years imprisonment is still a bail able offence within the meaning of section 80(1) of the Criminal Procedure Act 1972. But this is not the only issue that the court has to look at.

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<sup>16</sup> Regina v Piopiko [2003] SBHC 97; HC-CRC 101 of 2002 (5 May 2003) at page 1.

<sup>17</sup> Piopiko v Regina [2003] SBHC 97 at page 2

<sup>18</sup> Paragraph 21(a) of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

17. It is also submitted by the defendant that the nature of the allegation against him is weak,<sup>19</sup> and that the allegation was made by a Nauruan woman who was and is a known drunk at the Fly Camp.<sup>20</sup> It is also submitted on behalf of the defendant that there is no other witness statement disclosed to him or to the defence to incriminate him apart from that one statement of Ms. Lorina Dongorbir.<sup>21</sup> Arguably there is merit in this aspect of the defence submission, but I point out that these are issues of the credibility of witnesses and the overall strength of the case in terms of whose version is to be accepted, and as such, these are matters that should be left to be properly with at trial. And in a case such as this where it's her word against his word, the court at a bail hearing must not lose sight of its duty to determine whether or not the defendant should be released on bail and to avoid prematurely conducting a trial during a bail hearing. The strength of the prosecution case must be assessed on a case by case basis as and when it is presented to the court.
18. It is also submitted for the defendant that no charge has been filed against him and that he is not aware of the offence that he is being charged with and this is despite being held in custody for more than 7 days after his arrest, he is still not being charged.<sup>22</sup>
19. This aspect of the submission by the defendant contradicts the contents of paragraph 5 of his affidavit where he acknowledged that the contents of the affidavit of Sergeant Dabuae were read to him. Attached to the contents of Sergeant Dabuae's affidavit is the statement of Ms. Lorina Dongobir outlining the allegations which formed the basis for the charge against him. In addition to this, the charge against him was filed with the court on the 6<sup>th</sup> May 2016.<sup>23</sup> And his remand in custody was made pursuant to an order of the District Court dated 6<sup>th</sup> day of May 2016 and signed, sealed and perfected on the same day.<sup>24</sup> This aspect of the assertion and submission by the defendant contradicts the court record and documents. I am bound by the court record of the proceedings and orders of the court. I reject this aspect of the assertion and submission by the defendant as being

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<sup>19</sup> Paragraph 21(b) of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>20</sup> Paragraph 21(b) of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>21</sup> Paragraph 21(c) of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>22</sup> Paragraph 21(d) of the affidavit of the defendant filed with the court on the 12<sup>th</sup> May 2016

<sup>23</sup> Charge filed with District Court on 6<sup>th</sup> May 2016 in Criminal Case No. 12 of 2016

<sup>24</sup> Remand Warrant of Committal for Safe Custody signed sealed and perfected by the District Court on 6<sup>th</sup> May 2016

against the weight of the evidence that is available to the court and is before the court.

20. It is also submitted by the defendant that he has lost his job because of being remanded due to the allegations made against him and that he has a daughter who lives in Iraq and he usually send her money from his earnings from his job in Nauru. Though difficult it is a consequential effect of the fact of his being charged with a serious offence and his remand in custody was as a result of the due process as provided for in the Criminal Procedure Act 1972.

21. What I am now left with at this stage of the proceedings, is a case of his word against the word of the only one witness for the prosecution at this stage of the proceedings to determine whether or not the defendant should be granted bail. The onus is on the prosecution to prove to this court on the balance of probabilities that the defendant should be refused bail. The charge in itself is serious and its seriousness is reflected in the maximum penalty which the law provides for this offence and that is 15 years imprisonment.

22. The effect of the alleged threats made by the defendant, which formed the basis of the charge filed against him, could in my view be summed up as he is being accused of allegedly threatening and making serious threats to the Nation and its people Nauruans and Non-Nauruans. These are allegations against him and they remain allegations against him at this stage of the proceedings. But in terms of its possible effect on the community this is where I am of the view that what His Lordship Chief Justice Sir Albert Palmer aptly described in *Kwaiga v R* amongst other things when his Lordship said:

*"In considering bail, the court is involved in a risk assessment. This entails assessing how much risk society should bear on one hand by granting bail and how much the accused should bear on the other by being remanded in custody or on conditional bail. If the risks are high such that society should not be exposed to that risk, then bail normally would be refused and the accused made to bear that risk by having his presumption of innocence and liberty curtailed even in the absence of a lawful conviction in a court of law:"*<sup>25</sup>

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<sup>25</sup> *Kwaiga v Reginam* [2004]SBHC 93; HC-CRC 333 of 2004 (9 August 2004) at page 2

23. After having considered the submissions and for the reasons given in this ruling, I am satisfied that the prosecution has discharged the onus to satisfy me on the balance of probabilities that the defendant should be denied bail on the grounds of public interest and protection against such threats being made real or perceived. The defendant in the circumstances of this case should bear that risk by having his presumption of innocence and liberty curtailed, even without lawful conviction. Bail is refused. The defendant has a right to appeal this decision to the Supreme Court within 14 days.

Dated this 13<sup>th</sup> day of May 2016

  
Erma Garo  
Resident Magistrate  
District Court of  
Nauru, Yaren  
Nauru, Yaren