



IN THE DISTRICT COURT OF NAURU

CRIMINAL JURISDICTION

Criminal Case No. 15-28 & 29 of 2018

THE REPUBLIC

-v-

QUN HUI MA

WONG KAM CHUEN

RULING ON VARIATION OF BAIL

*Before:* RM P. R. Lomaloma  
*For the Prosecution:* Filimoni Lacanivalu  
*For the Defendant:* Mr. V. Clodumar for Qun Hui Ma  
Mr. K. Tolenoa for Wong Kam Chuen  
*Hearing:* 13<sup>th</sup> November 2018  
*Ruling:* 13<sup>th</sup> November 2018

**Catchwords:** *Bail Act 2018; Section 17(2)—paramount consideration; section 18—matters to be addressed by prosecution if opposing bail.*

**Introduction**

1. The defendants were charged with one count of Unlawful Gaming: contrary to section 21(1) of the Gaming Act 2011. The offence carries a maximum sentence of 6 months imprisonment or \$10,000 fine. The applicants are married to each other. Mr. Wong Kam Chuen has pleaded guilty and the Court has found him guilty as charged. Qun Hui Ma pleaded not guilty and her trial was completed last week. Defence Counsel has submitted written submissions and the Prosecution have until 19<sup>th</sup> to file submissions, with judgment to be delivered on 26<sup>th</sup> November.
2. This is an application for variation of bail to allow the Applicants/defendants to travel to Brisbane, Queensland to attend their daughter's graduation from year 12. In support of the application, they have filed separate affidavits in support and instructed different pleaders.
3. Both have airline tickets to travel today, 13<sup>th</sup> November 2018 and return on 20 November, in time for the judgment.

**The Affidavit in Opposition**

4. The prosecution filed two affidavits in opposition in which they said:-

- (a) Qun Hui Ma was granted leave to travel overseas by this Court on 14<sup>th</sup> March and return on 14<sup>th</sup> May but she breached this condition. She was away for some time resulting in her having to forfeit cash bail.
- (b) Mr. Wong Kam Chuen had applied for leave to travel overseas but withdrew his application later. It transpired that he had obtained his passport from the Registry and travelled overseas without leave of the Court.

### The Law

5. Section 17(2) of the Bail Act states provides:-

- (2) *The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.*

6. Section 18 (1) then sets out the matters that the prosecution must address if they oppose bail.

#### **18 Refusal of bail**

(1) *A person making submissions to a court against the presumption in favour of bail shall address the:*

- (a) *likelihood of the accused person not surrendering to custody and not appearing in court;*
- (b) *interests of the accused person; and*
- (c) *public interest and the protection of the community.*

(2) *If a court decides to refuse bail, it shall give a written ruling on each of the criteria in subsection (1), dealing with the submission made on each one.*

7. Section 19 provides:

#### **19 Reasons for refusing bail**

(1) *An accused person shall be granted bail unless in the opinion of the police officer or the court, as the case may be:*

- (a) *the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;*
- (b) *the interests of the accused person will not be served through the granting of bail; or*
- (c) *granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.*

(2) *In forming the opinion required by subsection (1) a police officer or court shall have regard to all the relevant circumstances and in particular:*

(a) *in relation to the likelihood of surrender to custody:*

- (i) *the accused person's background and community ties (including residence, employment, family situation, previous criminal history);*

(ii) any previous failure by the person to surrender to custody or to observe bail conditions;

(iii) the circumstances, nature and seriousness of the offence;

(iv) the strength of the prosecution case;

(v) the severity of the likely penalty if the person is found guilty; or

(vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);

(b) in relation to the interests of the accused person:

(i) the length of time the person is likely to have to remain in custody before the case is heard;

(ii) the conditions of that custody;

(iii) the need for the person to obtain legal advice and to prepare a defence;

(iv) the need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependants);

(v) whether the person is a minor (in which case section 4 (5) applies); or

(vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;

(c) in relation to the public interest and the protection of the community:

(i) any previous failure by the accused person to surrender to custody or to observe bail conditions;

(ii) the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person; or

(iii) the likelihood of the accused person committing an arrestable offence while on bail.

8. The Court has considered the defendant's wish to be at their daughter's graduation from High School. It is an important occasion for all of them, it is a unique occasion but how does it weigh with the arguments against their going?
9. The maximum fine for the offence is \$10,000 and 6 months imprisonment or both. The combined maximum fines for both is \$20,000 for husband and wife. The husband has already pleaded guilty and Ms. Qun Hui Ma's trial is complete. The Court delivered a no case to answer ruling in which it found that the defendants had a case to answer and that the gambling is unlawful. The combination of these factors, together with the past behavior of each of these defendants who breached bail conditions are strong reasons for dismissing this application.
10. They have each shown a deliberate decision to breach the bail conditions imposed by this Court. Conditions of bail are to be honoured and those who breach them cannot come to the Court and promise that they will honour it this time. The couple are facing a large combined fine and there

is no guarantee that they will return. Assertions by Counsel in this matter are not enough. The previous counsel of Mr. Wong Kam Chuen had obtained his passport and given it to him to allow him to travel overseas. He had applied for leave to travel, which means he knew he could not travel without leave of the Court. He had withdrawn this application and travelled out of the country without leave of the Court.

11. If the Court were to grant either of these applications, it would set bad precedent. The court needs, for the public interest and the interest of justice that defendants be deterred from breaching bail conditions lightly.
12. For the reasons given, the applications are dismissed.

  
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**Penijamini R. Lomaloma**  
Resident Magistrate

The seal of the District Court of Nauru is circular, featuring a central emblem with a shield and a crown, surrounded by the text "DISTRICT COURT OF NAURU" and "NAURO".