



SUPREME COURT OF NAURU

[Appellant Jurisdiction]

Criminal Appeal No.8 of 2019

Between: **Jojo Agege**

Appellant

And: **The Republic**

Respondent

Before: Judge Rapi Vaai

APPEARANCES:

Appearing for the Appellant: V. Clodumar

Appearing for the Respondent: F.Lacanivalu

Date of Ruling: 25/5/2019

Date of Hearing: 24/5/2019

Ruling

1. The appellant Jojo Agege applies for bail pending determination of his appeal to this court. The prosecution opposes. Counsels for both parties have filed memoranda.

Background

2. By written judgment of the 16th April 2019 the Resident Magistrate found the appellant guilty of the crime of indecent acts. He was subsequently convicted and sentenced to 18 months imprisonment on the 6th May 2019.
3. The appellant appeals against conviction. Grounds of appeal are essentially focused on the findings and determinations by the Magistrate of the evidence

although the Notice of Appeal states that the appellant appeals against the decision on:

- (a) Conviction;
- (b) Question of mixed law and facts.

Factors to be considered

4. When considering a bail application pending the hearing of an appeal the court is required by section 17 (3) Bail Act 2018 to take into account;
 - (a) the likelihood of success in the appeal;
 - (b) the likely time before the appeal hearing, and
 - (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.

Likelihood of success

5. It is contended by the appellant that the appeal has a high likelihood of success.
6. Here it is not palpably obvious that the grounds particularized in the notice of appeal will be established and will necessarily be such as to lead to the quashing of the conviction. The appeal substantially criticised the determination by the Magistrate of the evidence.
Clearly it is undesirable for the court to comment on the issues arising in the pending appeal where much will turn on the evidence given at the trial.
The court may accept that the appellant has an arguable case on the merits intended to be advanced at the appeal but can still conclude that none of them points overwhelmingly to the ultimate success of the appeal.

Likely time before the Appeal hearing

7. The appellant contends that three to six months of the sentence may be served by the time the appeal is heard. Reasons for the delay are stated as:
 - (a) the likely time my appeal would be heard is the next session or the next of the presiding judge who is handling my application for bail, depending on whether all preparatory processes for the appeal have been completed, and
 - (b) the preparation of the transcripts of the proceedings in the District Court will possibly take more than 3 months if past experience in this regard is considered at a guide.

8. In my view the contention is exaggerated. The appeal file clearly indicates that except for the transcript of evidence, record of the proceedings in the District Court are all on file. The Registrar advised the transcript can be attended to immediately. He is mindful of section 50 of Supreme Court Act 2018 which requires the Registrar upon receipt of notice of appeal from the District Court to :
- (a) enter the appeal for hearing within 42 days of the notice of appeal being filed and record of the proceedings provided by the District Court; and
 - (b) serve on the parties a notice setting out the date and time of the hearing of the appeal.

With the record of proceeding available within a matter of weeks the appeal can be set for hearing within 2 months if the appellant moves expeditiously to complete the record.

It is also not true to contend that the judge who presides over the bail application should also hear the substantive appeal.

Interest of the accused

9. The appellant was a police officer prior to being charged. It is alleged and submitted as a factor to grant bail that the appellant has received threat from other inmates and his life and safety is therefore at risk in prison. The Superintendent of Operations at the Correction Centre has filed an affidavit in response to the allegation. The appellant has since the alleged threat been placed in the same section with the elderly and juvenile inmates and no compliant or threat has been received since then.

Discussion

10. The presumption in favour of the granting of bail is displaced where the applicant has been convicted and has appealed against the conviction. Section 4 (4) (e) Bail Act 2018.
11. Admission to bail pending appeal is unusual and is only to be granted in exceptional circumstances. That starting point is that the appellant has been found guilty and sentenced.

12. I accept that he has a young family to support; that he was employed prior to imprisonment; that he will not be a danger to the members of the public. The hardship experienced by his family and others commonly attend a sentence of imprisonment. It is not hardship of a kind that can justify admission to bail.

13. The principal concern in considering bail pending appeal has always been the overall interest of justice which required that the bail be granted only in exceptional circumstances.

The matters listed in section 17 (3) Bail Act are some of the matters the court takes into account, so that the court can go beyond and consider other matters which may amount to exceptional circumstances.

14. There are no exceptional circumstances.

Results

15. The application for bail pending appeal is dismissed.



Dated this 24th day of May 2019

A handwritten signature in blue ink, appearing to read "R. Vaai", is written above a horizontal line.

Judge R. Vaai