

SUSAN TAMANA -v- REGINAM

High Court of Solomon Islands
(Muria, CJ.)
Criminal Case No. 15 of 1995

Hearing: 26 June 1995
Judgment (on bail application) : 26 June 1995

M.B. Samuel for Appellant
J. Faga for Respondent

MURIA CJ: This is an application by the appellant, Susan Tamana, for bail pending her appeal against the sentence of six months imprisonment imposed on her by the Magistrate's Court Central for the offences of Forgery.

The appellant was on 26 June 1995 found guilty by the Magistrate's Court of three counts of forgery. Following conviction, the appellant was sentenced to four months imprisonment on each of the first two counts, which sentences are to run concurrently and two months imprisonment on the third count, which sentence is to run consecutive to the sentences in the first two counts. She has filed a petition of appeal against the sentence of six months on the ground that the sentence is too severe. Pending the hearing of her appeal, the appellant now applies to be granted bail.

There is power in the High Court to grant bail but this power is discretionary as it can be shown by sections 106 (3) and 289 (1) of the Criminal Procedure Code:

"106 (1)
(2)"

(3) *Notwithstanding anything contained in sub-section (1), the High Court may in any case direct that any person be admitted to bail or that the bail required by a Magistrate's Court or police officer be reduced."*

and section 289 (1) reads:

"289 (1) *Where a convicted person presents or declares his intention of presenting a petition of appeal, the High Court or the court which convicted such person may, if in the circumstances of the case it thinks fit, order that he be released on bail, with or without sureties, or if such person is not*

released on bail shall, at the request of such person, order that the execution of the sentence or order against which the appeal is pending be suspended pending the determination of the appeal. If such order be made before the petition of appeal is presented and no petition is presented within the time allowed the order for bail or suspension shall forthwith be cancelled."

It must be pointed out, however, that the principles to be considered in an application for bail after conviction cannot be treated as the same as those in an application for bail before conviction. The presumption of innocence which is a guiding legal principle in criminal cases no longer exist after a person has been found guilty by a competent court. By the same note, the right of appeal does not revive that pre-conviction presumption of innocence. It will therefore be a case of exceptional circumstances which will justify the court in granting bail to a person who has been found guilty and convicted.

The position in this jurisdiction is that an application must show that there are matters which constitute exceptional circumstances before bail is allowed pending appeal. This has been succinctly pointed out in *INITO -v- R (1983) SILR 177* where the court re-iterated the inveterate practice of appellate courts in bail applications pending appeals. In *Inito's case*, the court pointed out the conditions to be satisfied before bail can be granted pending appeal. These are:

- (a) *there is a possibility that a sentence of imprisonment be set aside entirely; or*
- (b) *the sentence is likely to be served completely before the appeal is heard; or*
- (c) *there are exceptional reasons. This last criteria of exceptional reasons or exceptional circumstances must be those of the case and not of the applicant.*

In the present case, Counsel for the applicant solely based her application on the need of her client's child to be breast-fed. I accepted there is a need for the child, now ten months old, to be cared for including breast-feeding it. If that were to be "the circumstances of the case" as stipulated in section 289 (1) CPC, I would have no hesitation in agreeing with Counsel. Unfortunately, for the applicant, attending to family duties and problems do not constitute "circumstances of the case" so as to justify granting of bail pending appeal.

I further do not see the other criteria mentioned in *Inito's case* applying in this case as well. Hence I do not find that this is a case where Court's discretion can be exercised to grant bail pending appeal.

I wish to point out the concession made by Counsel for the respondent agreeing to the reason relied on by Counsel for the applicant is mis-conceived. Counsel are officers of the Court and must assist the Court by putting before the Court reasoned argument and not simply make concession which is contrary to legal principles and practice.

As I pointed out, the application is refused.

(Sir John Muria)
CHIEF JUSTICE