

**MOHD ZURIMI BIN HJ JUNAIDI**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Motion No. 28 of 2018)**

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Before: Burrell P, Seagroatt and Lunn JJ A.  
**21<sup>st</sup> November 2018**

Appellant in person  
DPP Raihan Nabilah binti Haji Ahmad Ghazali for Respondent

**Seagroatt, JA.:**

#### **Decision**

This is an application for bail by the defendant who appeared before Judge Faisal in the Intermediate Court on the 21<sup>st</sup> May 2018 with a co-defendant. He had been remanded in custody on an earlier occasion, bail having then been revoked. He pleaded not guilty to one charge of house trespass (s.451). He was remanded in custody.

He had also appeared in the Magistrate Court in respect of two thefts of a motor vehicle.

On the 4<sup>th</sup> June 2018 when he next appeared before Judge Faisal the trial date for both defendants was fixed for 19<sup>th</sup> to 24<sup>th</sup> November 2018 and both were further remanded in custody. It is against that refusal of bail that he seeks to appeal.

The appellant is not a man of good character. He has previous convictions in 2014 involving theft from a building and simple theft for which he received a total sentence of 2 years.

The applicant prays in aid his financial obligations for the support and education of his children, and for his family as a whole. The respondent's opposition is based essentially on the risk of committing further offences whilst on bail in view of the alleged commission of an offence of house trespass on the 17<sup>th</sup> February 2018 after having been granted bail on the 14<sup>th</sup> November 2017.

The essential chronology which is relevant to the application was not provided to the court by the Public Prosecutor until 1<sup>st</sup> November 2018 following the court's request. It is still incomplete. The picture apparently is as follows:

On the 9<sup>th</sup> November 2017 he appeared before Senior Magistrate Lailatul Zubaidah on two charges of theft [s.379] of motor vehicles which were committed on the 6<sup>th</sup>/7<sup>th</sup> November 2017.

He was remanded in custody until 14<sup>th</sup> November when he pleaded not guilty to both charges. He was granted bail on condition that he did not commit any offence whilst on bail and reported to Sengkurong Police Station once a month.

On the 4<sup>th</sup> April 2018 he was arrested on suspicion of having committed an offence of theft from a building [s.380] on 17<sup>th</sup> February 2018.

On the 5<sup>th</sup> April 2018 he had been brought before the Chief Magistrate when he was charged with an offence of theft in a building [s.380] and was remanded to a police station for investigations.

He was brought before Magistrate Noor Amalina in respect of the apparent breach of bail conditions, and his bail was revoked, on the 7<sup>th</sup> April 2018.

He was again before the Chief Magistrate on the 12<sup>th</sup> April 2018, when the matter was further adjourned. He was remanded to Jerudong Prison.

The prosecution applied for a further adjournment on the 26<sup>th</sup> April, which was granted. The defendant was further remanded in custody.

Apparently his trial on the two offences of thefts of motor vehicles had commenced on the 31<sup>st</sup> March 2018, a matter which the Public Prosecutor failed to tell the court until the 7<sup>th</sup> November 2018.

That trial proceeded at a slow, leisurely pace in fits and starts until the evidence was concluded on the 17<sup>th</sup> July, well over three months after its commencement. It is difficult to see how such length could be justified.

After the conclusion of the evidence there was about a ten day gap for the prosecution's submissions. This was too indulgent but Miss Raihan has been unable to provide us with an explanation as she did not have her papers with her.

Further formalities delayed the conclusion of the trial until late July 2018. The judgment was expected in middle to late August but in fact was delivered on Saturday 10<sup>th</sup> November 2018.

The result was the conviction of this applicant of two offences of theft of a motor vehicle by Magistrate Noor Amalina for which she imposed consecutive sentences of 18 months imprisonment totaling 3 years. His co-accused for his one offence of theft of a motor vehicle was sentenced to 18 months imprisonment.

As a consequence the application for bail falls by the wayside whatever the result of the pending trial before Judge Faisal.

In the meantime a series of court appearances took place initially in relation to the s.380 charge which on 10<sup>th</sup> May was withdrawn and a new charge under s.451 was substituted and he then had a co-defendant.

The prosecution applied for the case to be remitted to the Intermediate Court which was granted. The defendant was further remanded in custody.

He then came before Judge Faisal on the 21<sup>st</sup> May when he entered formal pleas of not guilty.

The last hearing before this application before us was on the 4<sup>th</sup> June 2018 when Judge Faisal made the order fixing the date of trial.

He has therefore been in custody since 4<sup>th</sup> April 2018, a period of 7 months. The trial listed for 19<sup>th</sup> November 2018 is in respect of 2 charges (including a s.451 offence). Initially there was no information concerning the original charges under s.379 to which he pleaded not guilty nearly 1 year ago. The prosecution had been asked to provide comprehensive information to enable this court to see the complete picture, on two occasions. Because of its failure it has been necessary for this court to search files to try and complete the chronology.

The application for bail in reality covers both the refusal at the Magistrates Court in respect of the theft charges and at the Intermediate Court in respect of the alleged offence of house trespass committed whilst on bail for the theft charges in relation to motor vehicles.

The application has been overtaken by the fact that he is now serving a sentence of 3 years imprisonment but in any event we can see no grounds and no change of circumstances to interfere with the discretion of either court in refusing bail.

However we find it necessary to express our concern at the presentation of this case by the prosecution and its failure to respond to requests by the court for a proper and helpful detailed chronology. It is not for the court to try to glean and piece together information from other sources so as to complete the jigsaw. The prosecution not only has a duty to the court to provide a full history, but, also to defendants, the vast majority of whom are unrepresented.

Nonetheless the application is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**