

**Public Prosecutor**

AND

**Awang Ahamad Bin Awang Tengah (D1)**  
**Muhammad Azizan Fadhli Bin Abdul Rahim (D2)**

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**(High Court of Brunei Darussalam)**  
**(Criminal Appeal No. 29 of 2022)**

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Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.

**14<sup>th</sup> February 2023**

*Criminal law – Section 3A of Misuse of Drugs Act, Cap 27 read with Section 34 of the Penal Code – Bail – allowed – appeal by prosecution – dismissed*

DPP Syafina Abd Hadzid for Appellant/Public Prosecutor.

DC Ahmad Zakaria for the Defendants/Respondents.

**RULING**

**Hj Abdullah Soefri, JC:**

This is an appeal by the Prosecution against the decision of the Magistrate below for allowing bail to both Defendants (Respondents) who are charged jointly for an offence under section 3A of the Misuse of Drugs Act and read with section 34 of the Penal Code which carries the penalty of death.

The Appellant gave two grounds for their appeal, namely:-

- a) That the Senior Magistrate erred in law/principle in hearing the bail application for the second time in the Magistrate's Court without giving grounds for allowing so and subsequently for failing to find that there were no new facts or change in circumstance, and:
- b) That the Senior Magistrate erred in law/principle in granting bail to both Respondents considering the gravity of the offence and the strength of the Prosecution's case.

The Respondent in his reply to the first ground submits that the Appellant's submission that "*it does not matter the party addressing bail application*" is misconceived and it is trite position in law that bail application is normally done by the defendants who had been charged.

I will deal with the first ground first. Reading from the Notes of Proceedings, the Defendants never applied for bail or bail application was never addressed during their first appearance in Court. The first time that bail has been applied for was when the defence counsel appeared before the Senior Magistrate.

Having said that, the issue of material change of circumstance or new facts having come to light should not play any part when the application was heard and granted by the Senior Magistrate when she made the Ruling in allowing the Defendants to be released on bail as that is the first time bail application was made or bail application was ever addressed.

As to the 2<sup>nd</sup> ground, the Appellant submits that due to the gravity of the offence, even when their passports are impounded, it will not stop the Respondents from attempting to abscond via other illegal means, such as via mouse trail.

Appellant also submits the strength of the Prosecution's case amongst others that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents handed over to NCB officers drugs.

NCB officers also found empty transparent packets believed to be used for the storage of drugs for selling and digital weighing scale to weigh the drugs.

Both Respondents confessed in their ordinary and notice of warning statements that they knew the drugs were Methylamphetamine, belonging to them and for the purpose of trafficking and both Respondents also implicate one another in the offence.

There are witnesses who were initially arrested together with both Respondents at the house of incident and who implicated both Respondents to be in possession of and selling the drugs.

Appellant further submits that the Prosecution has a strong case against both Respondents.

The Appellant also submits that there are witnesses who were initially arrested together with the Respondents who implicated both Respondents in the offence and submits that there is a likelihood that the Respondents would interfere, directly or indirectly with the said witnesses if they are released on bail.

The Respondent relied on the judgment of *Haji Sadikin's* case and *Mohd Herman bin Abdullah* and other cases to negate the Prosecution's submissions as stated above.

The question before me now is whether the Prosecution has proved on the balance of probabilities to establish that bail should not be granted to the Defendant.

1. The 1<sup>st</sup> Respondent was released on bail and managed to raise his bail and the 2<sup>nd</sup> Respondent has failed to raise his bail and is remanded.
2. Bail conditions were set by the Senior Magistrate below and amongst the conditions is for their passports to be impounded.

When the 1<sup>st</sup> Respondent was free on bail, is there any evidence given by the Prosecution that he had tried to abscond via the mouse trail or others?

The answer is no.

3. Is there any evidence shown by the Appellant that the 1<sup>st</sup> Respondent or 2<sup>nd</sup> Respondent tampered with Prosecution witnesses or attempted to tamper with Prosecution witnesses either directly or indirectly?

No.

4. Is there any evidence to show that the Prosecution has given the list of Prosecution witnesses to both Defendants?

No.

5. Is there any evidence to show that the 1<sup>st</sup> Respondent has failed to report to NCB on weekly basis?

No.

6. Is there any evidence to show that the 1<sup>st</sup> Respondent has been arrested for the suspicion of any offence whilst on bail?

No.

From the above, there is no evidence adduced by the Appellant on the balance of probabilities to show that even with the gravity of the offence and also the strength of the case, that the Appellant's "*cause of justice will be perverted by his interference with witness or evidence*" and also no evidence to show that he might abscond and will not attend Court and there is no evidence to show that he is in breach of the conditions imposed by the Magistrate below.

Having said all the above, I therefore dismiss the Appellant's appeal against the Senior Magistrate's decision for allowing bail to both Respondents and the bail conditions imposed by the Magistrate below will remain.

**HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN**  
Judicial Commissioner