



LIEW SAY KOO

AND

PUBLIC PROSECUTOR

(High Court of Brunei Darussalam)
(Criminal Appeal No 35 of 2016)

Steven Chong, J.
3rd January 2017

Bail – Real risk defendant will abscond if bail granted – Appeal dismissed.

P. Roy Rajkumar a/I C.V Prabhakaran for the Appellant
DPP Hjh Suriana Binti Hj Radin for the Public Prosecutor/Respondent.

Cases cited:

Hj Sadikin bin Hj Ahmad v Public Prosecutor [2001] 1 JCBD 349.

Steven Chong, J.:

This is an appeal by the defendant against the Chief Magistrate's refusal to grant bail.

On 10 December 2016 in the Magistrate's Court the defendant pleaded not guilty to two counts: (1) corruptly giving a car to a police officer (Supt Khairur Rijal) as an inducement or reward for assisting him to repeatedly enter and exit Brunei Darussalam between 2011 to 2013 when he was a prohibited immigrant (having been deported after conviction in 2007 of causing death by a rash act not amounting to culpable homicide) in that Supt Khairur Rijal made applications to the Immigration Department stating that the defendant was needed to assist in police investigations contrary to section 6(b) of the Prevention of Corruption Act; and (2) abetment of the commission by Supt Khairur Rijal of obtaining a valuable thing without consideration from a person concerned with his official functions contrary to sections 109 and 165 of the Penal Code.



The Chief Magistrate refused bail pending trial. No reason was given for this decision.

Counsel for the defendant argues that bail should be granted because there is no reason to believe he will abscond. Although the defendant is Malaysian and lives in Miri, his wife and children reside in Brunei Darussalam. The defendant's company in Brunei Darussalam is run by his wife. Strict bail conditions such as a requirement to report to the Anti-Corruption Bureau and the surrender of the defendant's passport can be imposed.

Relying on a medical report from a psychiatric clinic in Kuching dated 26 October 2016 which states that the defendant suffers from "Anxiety Disorder with Impulse Control Disorder", counsel for the defendant contends that another reason for granting bail is that the defendant's "mental health condition" makes it "challenging" to obtain instructions from him in prison where he has been deprived of medication.

The Deputy Public Prosecutor opposes the grant of bail on the ground that there is a risk the defendant will abscond. The defendant challenged his extradition from Malaysia on legal technicalities twice. The prosecution has a strong case against the defendant on the charges. The evidence from the witnesses will prove the defendant was not required to assist in any police investigations whatsoever.

As to the defendant's "mental health condition" the Deputy Public Prosecutor says that the defendant was seen by a Senior Medical Officer from the Department of Psychiatry in RIPAS Hospital who opined in his report dated that 14 November 2016 that the defendant did not suffer from "any psychiatric disorder" and there was no need for "psychiatric intervention or follow up."

In addressing counsel for the defendant's contention that the defendant had been deprived of medication, the Deputy Public Prosecutor referred to sections 238 and 239 of the Prisons Rules:

Section 238 provides:

- "(1) The Medical Officer shall report to the Officer-in-Charge the case of any prisoner whose mind has been or appears likely to be injuriously affected, and give such written directions in the case as he may think proper.*
- (2) He shall report in writing the case of any prisoner appearing to be mentally disordered."*

Section 238 provides:



“The Medical Officer shall report in writing to the Officer-in-Charge the case of any prisoner to which he thinks it necessary on medical grounds to draw attention and shall make such recommendations as he deems needful for alteration of the discipline or treatment of the prisoner or for the supply of additional articles to the prisoner.”

These rules will ensure that the defendant receives any medical treatment the Medical Officer thinks necessary.

The relevant principles concerning the exercise of the discretion of the court to grant or refuse bail can be found in the decision of Roberts, C.J. in *Hj Sadikin bin Hj Ahmad v Public Prosecutor* [2001] 1 JCBD 349.

Considering the gravity of the offences, the strength of the prosecution case and the contested extradition from Malaysia, I think there is real risk the defendant will abscond if granted bail.

I therefore dismiss the appeal.

DATO PADUKA STEVEN CHONG
Judge, High Court

