

Dizebit bin Atak

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 44 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC
7th January 2021

*Criminal Law – Refusal of Bail by Magistrate – Appeal – no local ties – real risk of absconding –
appeal dismissed*

Case referred to:

PP vs Yang Yin (2015) SGHC 3(2015) 2 SLR 78

Mr Oh Hung Zheng of Messrs CCW and Partnership for the Appellant.
DPP Hjh Rozaimah binti Hj Abd Rahman for Respondent/Public Prosecutor.

RULING

Hj Abdullah Soefri, JC:

On 9th December 2020, the Magistrate Court rejected the Appellant's bail application. The Appellant filed the petition on the appeal for his bail on 15th December 2020.

The Appellant is facing a charge under section 381 of the Penal Code and he initially pleaded guilty to the said charge on the 17th November 2020. On 19th November 2020, the Appellant through his counsel indicated to the court this his client would like to retract his guilty plea. The application was heard and on 9th December 2020, the Magistrate below allowed the application, and his guilty plea was retracted and his application for bail was denied on the same date before the same Magistrate.

Before me, the Appellant filed in the petition on the appeal for his bail which was denied by the court below. The Appellant has been in remand since 17th November 2020 and this matter has been fixed for hearing on 15th March 2021 to 18th March 2021.

The Appellant's grounds for appeal for bail are as follows:

1. The Defendant is not a flight risk,

2. Defendant's brother is working and residing in Brunei even though the Defendant's wife and children are not within the jurisdiction.

Although he has no family roots in Brunei this will not necessarily prohibit him from being admitted to bail (*PP vs Yang Yin* (2015) SGHC 3(2015) 2 SLR 78).

Appellant submitted that other factors will far outweigh the consideration that he has no family roots in Brunei.

3. It would be extremely difficult, if not impossible, for the Appellant to take desperate measures in absconding and leaving the country as his passport and identity card have been impounded. Further, it is submitted that it would be extremely difficult, if not impossible for the Appellant to flee the country due to the travel restrictions in place between borders of both Brunei Darussalam and Malaysia, for example.
4. Appellant is still getting paid by his employer.
5. Accommodation will be provided to the Defendant by his employer if he is released on bail.
6. Offence under section 381 of the Penal Code is not serious and not so grave as to be denied bail.
7. No evidence suggesting that the Defendant would interfere with the Prosecution's witness.
8. Defendant has no previous conviction.
9. The Defendant was cooperative with the police.
10. There is no evidence that the Defendant would commit other offence while on bail.
11. The court below recognized that he has a defence and in the judgment, he had raised a defence that he had no intention to commit thief.
12. There are two local sureties who are prepared to act as bailors for the Appellant.

The Respondent in her submission submits as follows;

1. The Defendant has no local ties.
2. There is the risk of Appellant absconding and risk of him fleeing the country through whichever means as he has no local ties.
3. Case is serious and it is not only a simple theft but a case of a grave breach of trust.

Having had perused all the submissions, I agree with the Magistrate's ruling that the offence is a serious offence which is allegedly committed by a person who has a senior position in the establishment as the manager of guest services and the two main duties are (1) looking into the general cleanliness of the palace and (2) to move items following the instruction from the Crown Prince and family.

I agree with the Magistrate below that there is a risk of absconding on the grounds that (1) there is no local ties and (2) that he knows now that he will be facing imprisonment and not fine. There is a real risk of the Defendant absconding through whichever means.

Based on this I am satisfied that the Magistrate was right to refuse bail and I dismiss the Appellant's appeal.

Appellant to be remanded.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner