

**ZULHAIRUL SHAH BIN MOHAMED AHAIL
SITI NUR HAFIZAH BINTI ABU BAKAR**

AND

PUBLIC PROSECUTOR

**(High Court of Brunei Darussalam)
(Criminal Motion No. 25 of 2023)**

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC
25th May, 2024.

***Headnote:** Bail application – leave to appeal out of time – application granted – defendants not deemed flights risk*

Applicants represented by Ms. Juanita Jemat (M/S Fathan & Co).
PO Hj Atiyyah Azzahra POKLSDSLJ Awg Hj Abas for the Public Prosecutor/Respondent.

Statutes:

Children and Young Person Act, CAP 219
Compulsory Education Act CAP 211

RULING

Muhammed Faisal, JC:

I. INTRODUCTION

The Applicants are seeking leave to appeal out of time against the decision of the Intermediate Court to revoke their bail on the 17th April 2023. Although this an application for leave to appeal out of time, submission on the merits of bail were also heard. Thus, this hearing is a hearing of both application for leave to appeal as well as for bail itself, subject to the former application being allowed.

II. BACKGROUND

Currently, the Applicants, husband and wife, are facing 11 charges altogether, for offence under the Children and Young Person Act, CAP 219 (CYPA) and the Compulsory Education Act CAP 211.

The Applicants were initially granted bail under strict conditions that included a prohibition on contacting prosecution witnesses, specifically their children, Azam and Zafira, who are key witnesses and victims in the case against them. Despite this, the Applicants repeatedly contacted their children at school. They engaged in activities such as meeting the children, handing over money, and attempting to get their attention by holding up signs from their car. This behavior was in direct violation of the bail conditions explicitly set to prevent any influence on the witnesses.

During the bail revocation hearing, the Applicants denied making direct contact with their children, offering the explanation that they only handed money to another student who then passed it to Azam and Zafira. However, the Respondent presented this contact as a serious breach, arguing that such interactions, even if brief, could manipulate the children's emotions and potentially affect their testimony. The Intermediate Court Judge, after extensively questioning the Applicants and considering their inconsistent explanations, found these actions and denials unconvincing. Consequently, the judge ruled that the breach was significant enough to warrant the revocation of bail, emphasising the potential risk of tampering with key prosecution witnesses.

The Applicants have thus been remanded since before the commencement of trial, which was on the 19th of June 2023.

III. THE APPEAL

Applicants has to show that;

- They have a good and acceptable reason for delay
- The appeal has a reasonable chance of success

Reasons for delay in appeal

Briefly, it was submitted that the delay in securing counsel had a knock on affect onto the delay in filing the appeal. Due to the Applicants being remanded in prison, family members were only able to secure counsel for the Applicants two months later. When counsels were retained, the focus was on trial preparation and the trial itself, which continued until November 2023, delaying the filing of the notice of motion.

As a note, the trial stands adjourned until the 27th May 2024.

Chances of success

The Applicant cited several reasons that there is a reasonable chance of success at appeal.

Firstly, the Applicants contacted their children out of natural parental instincts after being separated for nearly a year. The contact was minimal and there was no opportunity to tamper with evidence.

Secondly, the Intermediate Court Judge was not fully informed about all relevant circumstances, including the emotional and situational context of the contact with their children.

Thirdly, the Applicants have no previous convictions, have not absconded, and have complied with all other bail conditions. Furthermore, the prosecution's case, particularly regarding the alleged harm to the children, is not strong and lacks direct evidence.

Finally, there is the lack of risk posed by the Applicants in terms of absconding or committing further offenses.

IV. OBJECTIONS TO BAIL

A person who wishes to appeal to the High Court shall give his notice of appeal within 14 days from the date of which the judgment, sentence or order being passed. (Section 272(1) of Criminal Procedure Code, Chapter 7).

The Respondent based their objections upon on the severity of the charges under the Children and Young Persons Act, including neglect that led to the death of a three-year-old child. They further highlight the risk of the Applicants absconding due to the severe penalties they face.

In contrast to the Applicant, the Respondent argues that in actual fact it was the Applicants who were lying to the court about their contact with their children, rather than the Judge not being fully informed about all the relevant circumstances. This dishonesty undermines the Applicants' credibility and suggests they might continue to deceive the court and breach conditions if granted bail.

The Applicants' repeated contact with their children is construed as tampering with witnesses; this contact could influence the children's testimony, making them more likely to give evidence favorable to the Applicants.

Respondents also listed down evidence of abuse and neglect as well as that of educational neglect.

By keeping the Applicant in remand, this will ensure that that the victims and witnesses are protected from the Applicants.

V. CONCLUSION

Upon careful consideration of the submissions from both parties, I find that while the Applicants did indeed breach the bail conditions by contacting their children, this breach, though serious, does not automatically render them a flight risk. The actions of the Applicants, motivated by parental instinct and occurring under limited circumstances, do not suggest an intention to abscond or to avoid the jurisdiction of this court. In fact, their behavior indicates a strong attachment to their children, which is inconsistent with the notion of abandoning them by fleeing.

Furthermore, it is my belief that the continued remand of the Applicants does not serve the public interest. The Applicants have shown an understanding of the consequences of their actions and have expressed their commitment to adhering strictly to bail conditions in the future. They have no prior convictions, have complied with all other bail conditions, and there is no compelling evidence to suggest that they would tamper with witnesses if released on bail under stricter supervision.

I recognize that the Applicants' presence during the upcoming stages of the trial is crucial. Granting bail with enhanced conditions will allow them to participate actively in their defense while ensuring they adhere to all bail conditions and not tamper with prosecution witnesses. Such conditions might include regular reporting to a designated authority and restricted movement within a specified area.

In light of these considerations, I find that the Applicants have learned their lesson and that the risk of further breaches can be mitigated with appropriately stringent bail conditions. Therefore, while the Intermediate Court Judge was correct in revoking bail based on the breach, I now allow leave to appeal out of time and also grant the Applicants' application for bail, with the previous terms and conditions to apply, subject to any further conditions applied for by the Respondent and agreed by this court.

VI. ORDER

Leave to appeal out of time is hereby granted. Appeal against revocation of bail is granted. Applicants to be released on bail on previous terms and conditions subject to any other further conditions to be imposed by this court.

MUHAMMED FAISAL BIN PDJLD KoI (B) DSP HJ KEFLI
Judicial Commissioner