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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

No Special  
Consideration

R. 32/84

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BETWEEN

PITIROI of  
59 Kenderdine Road,  
Papatoetoe, Automotive  
Engineers Assistant

APPLICANT

A N D

HER MAJESTY THE QUEEN

RESPONDENT

Hearing : 4th & 7th May 1984  
Counsel : A. Orme for Applicant  
P. Dacre for Respondent  
Minute : 7th May 1984

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ORAL MINUTE OF CHILWELL J.

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I first heard this application for bail on the 4th May. Unfortunately I was not aware that the file had arrived from the District Court. That deficiency was repaired. I have had the opportunity over the weekend of reading the depositions and examining the exhibits, including the statements of those of the accused persons who gave statements.

The application for bail is based principally on

the fact that it was considered desirable by certain Maori elders that the applicant ought to be kept in custody for a while so that he could ascertain for himself the seriousness of conduct of the type alleged against him and the serious consequences of being found guilty. For that reason no application for bail was pressed at the preliminary hearing. I now have an affidavit before me sworn by Mr. Henry Huru. Counsel for the applicant informs me that he is an elder who carries considerable weight in the Maori community and in particular in the area in which the applicant lives. The Court accepts that Mr. Huru is an influential elder of Maoridom and particularly influential in looking after the interests of young Maori people who either do, or are likely to, attract the attention of the police.

It appears from the affidavit of the applicant's father, from the two probation reports dated 14th November 1983 and 27th February 1984 and from what counsel for the applicant has told me, that this accused comes from a good family, has been given a good education and has had advantages in life which one would expect to flow from more affluent members of the community. Unfortunately, it appears, from Mr. Huru's affidavit, that the accused is manipulated by other young people. It is his opinion that his offending in the past has resulted from his association with these people. Mr. Huru takes the present view that, whereas earlier he was not prepared to associate himself with an application for bail, he is now prepared to do that. He has plainly kept in touch with the applicant who is in

custody. He assures the Court that the accused will obey his instructions concerning the manner of his behaviour and the people with whom he associates. He has made helpful suggestions that conditions of bail should include that he reside with his parents and that he should not have access to his motor car. Counsel for the applicant informs me that he would assist in implementing any further condition such as to observe any written directions given by Mr. Huru to the applicant.

If one were to apply the tests in Re Robinson (1854) 23 L.J. Q.B. 286 the Court would find it extremely difficult to grant bail. This is a grave crime. There is a real likelihood of conviction. The evidence for the prosecution is strong and, if convicted, the accused is liable to severe punishment. Those are the tests which are normally applied in deciding the question whether there is a risk that an accused will not appear at his trial. Having regard to this accused's background and to the affidavit of Mr. Huru, I do not consider that there is a risk of his failure to appear at the trial.

However, there is another test which has developed in modern times. That is, whether there is a risk of interference with the course of justice. The Crown opposition is based in part on that principle. I have been informed by counsel for the Crown that there have been threats made to the family of the girl complainant since the arrest of all the accused. The suspicion is that these threats originated with the applicant. There is no evidence

before the Court concerning those threats. Counsel for the applicant hotly denies any such threats having been made.

The motivation for the alleged offence was that the complainant, a girl of about 14 years of age, was said to have "narked" on one of the accused. That is a reference to passing on information to the police with regard to the conduct of that particular accused, who is not the accused the subject of this bail application. If one accepts the evidence given at depositions, it is plain that the girl was inveigled into accompanying the other accused, reasonably late at night, without her parents' consent. The complainant maintains that she received a threat from at least three of the accused that if she did not leave her bed and go out with them there would be serious consequences for her family, including a knife attack upon her father. That factual issue will no doubt be hotly denied at the trial and will be one of the issues for the jury to determine. Suffice it to say that there can be no doubt that the girl was taken by the group concerned to the back of a scout hall. There can be no doubt that there was some sexual approach to her by one of them. There can be no doubt that she was brutally beaten as is indicated by the photographs and the medical evidence. Part of the beating involved the use of a dog collar worn by one of the accused.

Counsel for the applicant has not sought to downplay the seriousness of the offence. He informs the Court that the applicant is most concerned at what happened, that he did

not know it was going to happen, that he did nothing more than slap the girl and that he certainly did not approve of the conduct of those who were with him. Unfortunately for him, and a matter for the jury, is the fact that he drove the car both to the scout hall and from it, leaving the girl very badly beaten and shocked, naked, with no attempt made to do anything to comfort her or inform anybody as to where she was.

I turn now to the issue of risk of interference with the course of justice. In the course of his affidavit Mr. Huru said, with regard to an earlier offence, that he had told the applicant that he would assist him on condition that he did not associate with certain people whom the deponent considered were liable to get him into further trouble :-

"4. AGAINST my instructions Pitiroi continued to associate with some more masterful people who in my opinion caused Pitiroi to be associated with further offences. For this reason, when he was charged with the offence for which he is now held in Custody, I said I would not support an application for bail immediately because I considered that there was an important lesson he had to learn.

5. I have since seen Pitiroi and I am now prepared to support an application for bail because I am now confident that Pitiroi will obey my instructions concerning the manner of his behaviour and the people with whom he associates. I would, however, ask that it be a condition of the bail that Pitiroi lives with his parents at 59 Kenderdine Road, Papateoetoe and that he report regularly to the Police Station at Otahuhu. I also ask that Michael Pitiroi not have access to his motor car during the period of the bail, because I am afraid that Michael is not strong enough to avoid being taken advantage of by more forceful people in a manner which is likely to get him into trouble."

I have no doubt in my mind that Mr. Huru would do his utmost to live up to the form of undertaking contained in his affidavit and I have no doubt that the parents would cooperate with him.

The problem appears to lie in the applicant's character. He got himself into the current situation arising out of a form of kicking out against people who carry out their obligation to society by giving information to the police. As I have said, that was the motivation for the alleged offence. One of the co-accused, a girl aged 15 against whom a prima facie case was not established, is being asked, and can be compelled, to give evidence for the Crown. She is clearly closely connected with the group. Given the applicant's character, as testified to by Mr. Huru, given the motivation for the alleged offence, I have come to the conclusion, on the balance of probability, that there is a risk of interference with the course of justice if this particular applicant is allowed bail. The application for bail is accordingly dismissed.

The Court expresses its sincere appreciation to Mr. Huru. It applauds him for the concerned steps he is taking. The Court regrets that in this instance it feels unable to act upon his recommendations.



7th May 1984.