

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY



No. M.201/86

4/7

BETWEEN

HOHAPATA

779

Applicant

**NOT  
RECOMMENDED**

A N D THE QUEEN

Respondent

In Chambers: 28 May 1986

Counsel: W.H. McMenamin for Applicant  
M.N. Zarafeh for Respondent

Judgment: 28 May 1986

---

ORAL JUDGMENT OF HOLLAND, J.

---

This application for bail was originally heard by me on 22 May. I adjourned it to today to enable evidence to be called. I was troubled. The applicant is charged with four charges of rape, one of unlawfully taking a motor vehicle and one of burglary. He was originally refused bail. He was then granted bail in the District Court for a period of some two to three months pending the taking of depositions. He was arrested during the period of that bail for failing to report and not surprisingly he was then refused bail again. At a later stage in March he was again granted bail for 14 days and then he was refused bail. He has now been committed for trial and a fixtures meeting will be held on 6 June when his date of trial will be fixed.

I was troubled because these decisions had been made by different District Court Judges and I was concerned that different standards might have been applied. I am quite satisfied that that is not the case. I have now heard that on the occasion in

March when the applicant was granted bail for the second time after having been arrested for failing to report he had come to some form of arrangement with the detective in charge of the case seeking a fortnight to visit his de facto wife whom he claimed had given birth to his child in Hastings and that he wished to see this child and to arrange for his de facto wife and child to be transferred to Christchurch. He undertook to the detective that on the completion of that fortnight he would plead guilty to the charges. He returned to Christchurch a fortnight later, changed his solicitor and indicated a plea of not guilty. That was undoubtedly still his right but enquiries were made by the police as to the birth of his child by his de facto wife and those enquiries have failed to ascertain any such birth. Apparently his sister gave birth to a child at about that time in Christchurch, but there appears to be more than considerable doubt as to whether in fact his de facto gave birth to a child to him at all. Not surprisingly the police again opposed bail. On the occasion in March when bail was granted by the Court there was no opposition by the police. It is not surprising that in those circumstances bail was allowed for a man who had indicated an indication of pleading not guilty to the Court. A fortnight later the situation was different. The police opposed bail and the Court had to decide whether it was appropriate to allow bail or not.

The Court must balance the presumption of innocence in favour of an accused person and his right to liberty as against the risk to the public of reoffending and intimidation of witnesses. In a rape trial the risk of intimidation of witnesses is considerable. In addition, the charge is a serious one and the

penalty is considerable. I am not for one moment saying that every person charged with rape should be refused bail. Each case must be considered on its own facts. The original responsibility for the decision is in the District Court Judge, and nothing has been presented to me to indicate that that decision was not made properly.

Certainly there were four alleged failures to report on the original bail but only one appears to have been accounted for when the appellant was being interviewed in relation to a drink driving offence. Bail is a privilege and if failure to report does not lead quite frequently to a revocation of bail then the Courts will have to be more restricted in granting bail to offenders. No explanation has been offered of the other three occasions and it is clear from the notes on the information that it was because of the failing to report that primarily this man was refused bail.

Counsel for the Crown had offered to tender evidence relating to genuine fears of intimidation in this case. I declined to allow that to be done. It seemed to me to be undesirable in the case of a defended hearing. Had I been inclined to differ with the District Court Judge's decision I would have first heard evidence as to intimidation, but it has not been necessary. The application for bail is refused

*A D Healey*