IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

1/11

R.230/91
R.233/91
R.234/91

HIGH PRIORITY

THE QUEEN

2073

v

CHAPMAN

RATA

AND

DAVIES

Hearing: 15 October 1991

Decision: 15 October 1991

Counsel: Anna Johns for Applicants Rata and Davies
Christopher Harder for Applicant Chapman
Gregory Hollister-Jones for Crown

ORAL DECISION OF THOMAS J ON BAIL APPLICATIONS

I have before me three applications for bail. Each of the three accused is charged with aggravated robbery. Mr Rata and Mr Chapman are charged as co-offenders. I propose to deal with all three applications together.

First, I refer to Mr Davies. It is alleged that Mr Davies, together with an associate, robbed an Armourguard security guard hitting him over the head with an iron bar. The guard's cashbox was taken from him. In addition to the iron bar which was used to strike the guard, the two men were armed with a sawn-off shotgun. They also, it is alleged, used a stolen vehicle.

There is evidence associating Mr Davies with the offence. A paper bag containing a filled roll was found in the stolen vehicle and it had Mr Davies' fingerprints on it. It is said that the roll was purchased two hours before the robbery. Furthermore, two weeks prior to the robbery, Mr Davies allegedly approached a third person and asked him if he had a firearm which, it is claimed, he indicated he intended to use in a robbery. Two other persons claim to have seen Mr Davies in the stolen vehicle prior to the robbery and then to have seen him again and spoken to him after the robbery. It is alleged that he then admitted his involvement in the offence. Finally, shortly after the robbery Mr Davies is said to have purchased a car and paid $600.00 in cash for it.

On behalf of Mr Davies, Ms Johns stated that the accused in fact denies any involvement in the robbery. She pointed out that no-one saw him at the scene of the crime.

Mr Davies is 20 years old and has no previous convictions. He lives with his parents, and I am advised by counsel that they are of good character.

Next, I turn to Mr Rata and Mr Chapman. Mr Rata is alleged to have been involved in an armed bank robbery. He is said to have been the driver of the get-away vehicle used at the time the bank was robbed. His associates who entered the bank were masked and presented a firearm at the alarmed occupants. An independent witness is said to be able to identify Mr Rata as the driver of the get-away car.

Ms Johns, acting for Mr Rata, pointed out that Mr Rata has not admitted that he was involved in the alleged crime. The Crown's case will largely depend on the witness who identifies Mr Rata as the driver.

If granted bail, Mr Rata proposes to reside with his parents out of the Auckland area where the offence occurred. His father is a Maori elder and warden and is prepared, together with his wife, to be a surety for his son. Mr Rata has no previous convictions.

Mr Chapman is charged in respect of the same offence. It is alleged by the Crown that one of the persons involved in the robbery purchased the firearm which was used from Mr Chapman a few days previously. Immediately after the robbery the offenders are said to have returned to an address in Otara, and Mr Chapman is alleged to have been present at that address. The prosecution claims that the proceeds of the robbery were then split between those who were actually involved at the bank and Mr Chapman. It is also claimed that Mr Chapman made a "partial admission" relating to the purchase of the firearm.

In a videotaped interview, Mr Chapman made aggressive statements in respect of two persons, one of whom will be involved in the trial as a witness for the prosecution. The Police fear that this witness might be approached and intimidated if bail is granted.

Mr Harder, for Mr Chapman, contended that the case against Mr Chapman is a "weak one", and that his client faces the prospect, if bail is not granted, of being held in custody for a long time before the trial takes place. He strongly argued that bail could be granted on strict conditions. Mr Harder called as a witness a Mrs Potts who, together with her husband, is prepared to be a surety for Mr Chapman if bail is granted. In addition, Mr and Mrs Potts are able to arrange, through their son, work for Mr Chapman.

Mrs Potts, in giving evidence, was an impressive woman. She spoke of Mr Chapman's association with her husband's sawmilling business. She had close knowledge of Mr

Chapman. She described him as a hardworking person, and related how he quickly became the foreman of her husband's business, supervising a staff of some 30 persons. Mr Chapman left the employment of Mr Potts in late 1989 or early 1990 but Mr and Mrs Potts kept in touch with Mr Chapman and his family. They saw him on two occasions, and Mrs Potts was able to report that he had established his own logging gang. Mr Chapman is 29 years of age.

The principles which are to guide a Judge in exercising his or her discretion when deciding whether or not to grant bail are well-established, and are set out in such cases as Hubbard v Police [1986] 2 NZLR 738 and Police v Simeon [1990] 2 NZLR 116. A number of factors are relevant, but I wish to take a moment to consider one particular aspect.

A primary consideration in determining whether to grant bail is the nature and seriousness of the offence. Mr Hollister-Jones emphasised this aspect. To my mind, this factor assumes particular significance if the offence is one involving serious violence such as the charges under consideration. In such circumstances the Court may be circumspect, to the point of reluctance, in granting bail. The public interest is then paramount.

Notwithstanding Robertson J's observations in Police v Simeon, counsel continue to press the argument that the accused is entitled to the benefit of the presumption of innocence unless it can be shown that there is a risk that he or she is likely to interfere with a witness, or that there is a risk that they may abscond while on bail, or that some other risk of a similar kind is present. The necessary implication is that it is inconsistent with the presumption of innocence to refuse bail on the sole or principal ground that the alleged offence is one involving serious violence. The argument, to my mind,

disregards what has always been recognised as a primary consideration, the nature and seriousness of the offence. Aggravated robbery is of itself a violent crime and with the use of firearms or weapons can be extremely grave. Depending always on the circumstances, a Judge may conclude that it is in itself a decisive factor in refusing bail.

I acknowledge that on hearing an application for bail it is frequently difficult to assess the strength of the evidence. However, particularly in the case of crimes of violence, that does not mean that the nature and seriousness of the alleged offence is to be disregarded or accorded less weight than is appropriate.

Adopting this attitude does not mean that the presumption of innocence is set at nought. The guilt or innocence of the accused is not, of course, prejudged and it remains a critical factor in the consideration of any application for bail. But the Courts adopt a realistic approach whereby, notwithstanding the presumption of innocence, the accused may be refused bail if it is in the public interest to do so. It can be fairly said that the presumption of innocence does not prevail in most cases in which bail is in fact refused. The in-road into this cardinal principle has to be accepted in the public interest.

Consequently, it would be remiss for the Courts in cases such as the present to disregard the public's concern about crimes of violence. The incidence of crimes being committed by an accused while on bail in respect of another offence involving violence has been thoroughly documented. I refer to the report by Lash and Luketina, Offending While on Bail, (1990), Department of Justice. That study purports to show that a lower proportion of violent offences are committed while accused are on bail than for offending generally. In the sample which was

studied, one half of the offences committed while the perpetrator was on bail were property offences. Of the violent offences, however, and excluding the category identified as "less serious assaults", by far the greatest number were aggravated robberies.

Irrespective of the figures, there can be no doubt about the public's concern. The commission of an offence involving violence while the accused is on bail is justifiably regarded more seriously than the repetition of property offences. As is to be expected, widespread media attention is focused on any serious offending by a bailed person which follows the commission of a serious violent offence.

While, as suggested in Lash and Luketina's Report, some of the public comment may be ill-informed, in exercising his or her discretion a Judge is, in my view, entitled to have regard to the widespread public apprehension that persons on bail for violent offences may re-offend. It is not necessary that the Judge be persuaded that there is a risk or likelihood of the accused re-offending while on bail. Where, therefore, the alleged offence involves serious violence and sufficient evidence is proffered by the prosecution to support the charge, the Judge may properly decline to grant bail on that basis. Other recognised considerations, of course, will continue to be relevant, and will still need to be considered in what is essentially a balancing exercising. What I wish to stress, however, is that the fact the offence is one involving serious violence may be properly a dominant consideration in the appropriate circumstances.

I should interpolate that I do not agree with Mr Hollister-Jones's submission that I should have regard to the fact that there is currently a spate of aggravated robberies in the locality in which these crimes are alleged to have taken place. That cannot be relevant.

Bail, or the refusal of bail, is not a means of deterring criminal conduct. It is a quite different matter, however, to have regard to the known apprehension of the public relating to re-offending by violent offenders while on bail.

In respect of Mr Davies, therefore, I propose to refuse bail. It seems to me that the Crown have a relatively strong case against Mr Davies. The crime committed was a particularly violent one in which a sawn-off shotgun was used and a man was hit over the head with an iron bar.

I also propose to refuse bail in respect of Mr Rata. This was again a serious aggravated robbery. It was an armed hold-up. Mr Rata's alleged role was that of the get-away driver, which is an active role. He was allegedly identified by one independent witness as the person who was driving the car. Again I consider that the seriousness of the charge is such that bail ought to be refused.

I have more difficulty in deciding whether or not to grant bail to Mr Chapman. It is a case in which it is difficult, if not impossible, to assess the strength of the case which the Crown propose to adduce against him at this stage. Furthermore, the evidence of Mrs Potts who, with her husband, is prepared to be a surety for Mr Chapman and to ensure that he has a job pending the trial, was persuasive evidence as to why bail might be granted. One must also have regard to the fact that Mr Chapman was not involved in the actual robbery at the bank. On the prosecution case, he will be involved as a party.

I was, therefore, at first inclined to think that this might be a case where, notwithstanding the serious nature of the charge, the accused could be granted bail on the strict terms which were suggested by Mr Harder. I am,

however, apprehensive about the statements which are said to have been made by Mr Chapman to the Police which have led the Crown to fear that there is a risk he could interfere with, and even intimidate, an important Crown witness. Mr Hollister-Jones read the statements to me and I share the Crown's unease. The statements may, as Mr Harder submitted, be mere expressions of bravado, but that is a risk that I am not prepared to take. In the context of a crime involving serious violence, therefore, I propose to decline bail.

In deference to Mr Harder, I accept that if, after the deposition hearing or the Crown's briefs of evidence are at hand, the case against Mr Chapman should appear to be as weak as Mr Harder claims, a further application could be in order. Of course, the statements which Mr Chapman made to the Police may still prove to be an obstacle to granting bail. Nevertheless, I reserve the right for Mr Chapman to renew his application for bail following the taking of depositions or the Crown's briefs of evidence becoming available to the defence.

Solicitors:

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