

NZLR

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

16/7

R.130/93

IN THE MATTER of an appeal against  
a District Court Judge's  
refusal to grant bail

NOT  
RECOMMENDED

1022

BETWEEN:

FISO

Appellant

A N D:

THE POLICE

Respondent

Chambers Hearing: 1 June 1993

Oral Judgment: 1 June 1993

Counsel: P M Phillips for appellant  
D S Morris for respondent

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[ORAL] JUDGMENT OF HENRY J

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This is an appeal against a refusal to allow bail. The appellant faces a charge in the District Court at Otahuhu, under s.194(b) of the Crimes Act 1961, for assault on a female. He was initially remanded in custody on 3 May and again on 7 May and it is against the refusal of bail on that latter occasion that this appeal is brought.

Appellant has one previous conviction for assault, in October 1988, for which he received a sentence of community service. He is also awaiting trial on a further charge of assault on the same

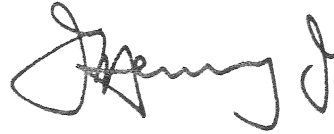
complainant, that allegedly committed in March of this year and in respect of which there is to be a trial on 6 July.

In refusing bail the Judge was swayed by the fact that this present offence occurred whilst the appellant was on bail awaiting trial on an identical offence. The Judge was aware that the complainant supports appellant being released on bail. I can readily understand the concern of the Judge and the repetition of this offending whilst on bail cannot in any circumstance be countenanced. However it is of considerable concern that the hearing of this charge will not be until August, although the Judge has indicated that the bail issue can be reconsidered when the earlier charge is disposed of on 6 July. The summary of facts discloses an offence which, although serious, is not in a category which it would appear would result in a substantial term of imprisonment being imposed. Appellant has already been in custody for just on one month, and a further one month or possibly two months in custody will mean he would have effectively served probably the type of sentence which is the maximum likely to be imposed upon him.

For those reasons and those reasons alone I think the interests of justice do require the appeal to be allowed and that he be granted bail. It will, however, be on the following strict terms to ensure that there is no opportunity of re-offending :

1. Bail will be allowed in his own recognisance of \$1000 with two sureties of \$1000 each.
2. He is to reside at Taitimu Drive, Manurewa.
3. A curfew to be observed between the hours of 9 p.m. and 7 a.m.

4. To report to the Police Station at Manurewa between the hours of 3 p.m. and 7 p.m. each Monday Wednesday and Friday.
5. To surrender any passport and not to apply for another.
6. Not to communicate with the complainant, either directly or indirectly.

A handwritten signature in black ink, appearing to be 'Henry J.', written in a cursive style.