

IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

M 90/96

IN THE MATTER of the Crimes Act 1961

A N D

IN THE MATTER of an application for bail

BETWEEN

HARRIS

Applicant

A N D

NEW ZEALAND POLICE

Respondent

AP 40/96

BETWEEN

LUM

Applicant

A N D

NEW ZEALAND POLICE

Respondent

Hearing: 9 September 1996

Counsel: K Bailey for Harris
C White for Lum
P Smith for Crown

Judgment: 9 September 1996

ORAL JUDGMENT OF ROBERTSON J

Solicitors
Crown Solicitor, Whangarei

Robert John Harris and Matthew Harris Lum have appealed against a refusal to grant them bail. They are each charged with a number of offences under both the Misuse of Drugs Act and the Arms Act.

It appears that the prosecution will be able to establish a major drug cultivating business occurring earlier in the year in Northland. The substantial issue is whether either or both of these men are actively or knowingly involved. When I say major cannabis growing operation, that is something of an under-statement. On the evidence presently available it appears that it may be the largest haul there has been. I have no doubt but that unless there are special circumstances relating to offenders, it is not in the public interest to grant bail in a circumstance such as this where there is a major commercial operation and with firearms involved and those convicted will inevitably face lengthy prison terms.

I note that one of the learned District Court Judges in dealing with the matter made the comment which has not surprisingly been seized upon, that this is not the case where there is concern that any one of these defendants would not answer any bail. I think with respect to the learned Judge that with this type of operation with these overtones, the likelihood of not answering bail must be high. I understand he was probably meaning that there was nothing

specific which would suggest non appearance. However the very apprehension on this sort of activity experience shows is likely to lead to problems about the answering of bail or endeavouring to seeking a better complexion on the evidence before trial.

But that is not the critical issue. The critical issue is whether there is a realistic prospect that either or both of these men can be tied into the offending and will go to prison.

At the moment the "king hit" as the prosecution see the matter is some video material. Mr White accepts that his client appears on the video. He realistically acknowledges that if the videos are evidence the difficulty of explanation becomes fairly high. He submits that there has not yet been an opportunity to investigate whether any reasonable challenge can be made to their admissibility.

I have no problem with his request that if I am not minded to grant bail the appropriate course is rather than refusing the appeal, to adjourn the matter on the basis that it may be brought on if the evidential situation changes.

There is in the case of Mr Lum, a further aspect and that was specifically dealt with when bail was before a second District Court Judge last week.

There was apparently a tragic accident involving the lives of two teenagers. The driver of the vehicle is being charged. I can understand the human pressure in dealing with this sort of tragic situation.

I am however of the view that as against the seriousness of the offending and as it can be established that Mr Lum is involved, the grant of bail is not the appropriate way of dealing with that matter apart from perhaps for some specific incident where attendance is required and cannot be arranged under the legislation which applies to penal institutions. I am not unmindful of the position of remand people (as opposed to sentenced prisoners) but I begin from the premise that it is the prison authorities who have the obligation in the first place if a person is properly incarcerated, to ensure they are available as and when both justice and humanity require it. I do not close the door to the possibility of specific instances of bail if that should arise.

Having placed that caveat on the situation, it appears to me that it would be contrary to the public interest to grant bail to Mr Lum.

The position of Mr Harris is that I have heard evidence from Detective Sergeant Moetara. He is the officer in charge of the case. His evidence is that although Mr Harris does not appear on the video in a visual form, his voice is there. He says that although he had never met Mr Harris in his life

before he spoke to him for about 3½ hours the day that he was apprehended, he is certain that the voice which he heard when he spoke with this person was the same voice as is on these video tapes. They include incriminating footage of the cannabis growing operation as well as more normal family activities like visiting the zoo and horse-riding. Apparently Mr Harris is on a video tape horse-riding.

Mr Bailey is of course correct that a special warning will have to be given to a jury with regard to this sort of lay identification of a voice. Mr Moetara does not claim any expertise and has no particular experience.

But the position at the moment (and with respect to Mr Bailey, the position at trial) will be that the jury will hear and see Mr Moetara. They will be warned on the way in which mistakes can be made. But if there is no other evidence in a situation which cries out for evidence, neither this Court nor a jury has to enter into a mode which is unrelated to reality.

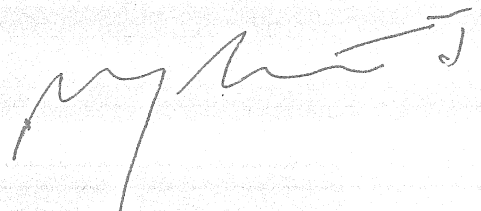
There is clear evidence and surrounding circumstances which suggest that the identification of Mr Harris is not just a person drawn at random whose voice it is suggested is there. Mr Moetara was questioned about the voice being that of his son Joel. Mr Moetara as with all his evidence, in a calm,

moderate and reasonable way, responded negatively to the challenge that it could have been Joel's voice and not his father.

The question of what other evidence may become available or how a particular trier of fact will determine a matter I cannot and need not now determine. But the position is now that there is evidence of a particularly serious criminal activity with overtones and connotations contrary to the public interest. Experience would indicate that a failure to answer bail is a real possibility. There is uncontradicted and uncontroverted evidence which confirms this man's involvement.

In those circumstances I am unable to see how an appellate Court can say that the exercise of discretion in the District Court was wrong. On that basis I have no jurisdiction to allow the appeal.

I understand of course the importance of time in a case such as this. Counsel at the moment anticipate a deposition hearing on 20 September. I can see no reason why the position of Mr Harris should not be protected. If there is some major alteration or the time frames are altered in a substantial way in the case of Mr Harris as with Mr Lum, rather than refusing this appeal I adjourn the matter to be brought on if there is a change of circumstances.

A handwritten signature in black ink, appearing to be 'M. J. Harris', is written at the bottom right of the page.