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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CRI 2007-092-001343

2069

UNDER	the Bail Act 2000
IN THE MATTER OF	an application for grant of bail
BETWEEN	NATHAN WAKA PAUL HEMANA Applicant
AND	POLICE Respondent

Hearing: 28 August 2007

Appearances: S J Bonnar for Applicant
K E Latimer for Respondent

Judgment: 28 August 2007

**JUDGMENT OF COOPER J
ON BAIL APPLICATION**

Solicitors:
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[1] Nathan Waka Paul Hemana applies for bail. He faces charges that he possessed methamphetamine for supply, unlawfully possessed a firearm, and of threatening to kill and resisting the police. The person who he allegedly threatened to kill was the police officer whom he resisted whilst the officer was attempting to arrest him.

[2] According to the summary of facts there was a prolonged struggle between the arresting officer and the accused, during which the accused attempted to open a bag that was attached to the motor cycle he had been riding when apprehended. A passing member of the public witnessed the struggle and stopped to assist the constable. Together they restrained the accused until further assistance arrived.

[3] Attached to the motor bike was a black satchel. Inside this satchel was a grip seal bag which contained 18.9 grams of methamphetamine. Also located was the sum of \$6,622. The black satchel further contained a 9mm Browning pistol. The pistol had a magazine containing 9mm ammunition with a bullet already loaded into the breach.

[4] The present application is advanced as one which would involve the electronic monitoring system. The previous application was declined by Harrison J although that application was not advanced on the present basis.

[5] In his judgment of 29 June 2007, Harrison J expressed the view that the Crown case was a strong one. He described as implausible an affidavit that had been filed, sworn by one Kelly Stewart, in which Mr Stewart had accepted responsibility for legal custody and possession of the contents of the bag attached to the motor cycle, including the methamphetamine, the cash and the pistol. Harrison J thought also that if convicted at trial the accused would likely face a term of imprisonment of at least six years' duration. That was a factor which, when taken in conjunction with the accused's criminal history, satisfied the Judge that there were real risks of flight and re-offending whilst on bail. He described the accused's previous convictions as numerous, although relatively minor. Nevertheless, there was a history of failing to answer Court bail and of breaching community work.

[6] Insofar as the former was concerned, reference was made to failures to answer bail on 28 October 2004, 17 June 2005 and 21 June of that year. The breaches of sentences of community work occurred on 25 January and 5 September 2005.

[7] Harrison J concluded that the risks of failure to answer bail and of offending while on bail could not be satisfactorily alleviated despite strict terms of bail. They included a proffered surety equivalent to the value of the accused's partner's motor vehicle in the sum of \$13,000. Mr Bonnar in advancing the present application for bail submits that the fact that it is now an electronic monitoring proposal should make the difference and satisfactorily reduce the risks of failure to appear and of offending on bail. He refers in addition to the health of the accused's father. He suffers from heart disease and emphysema. According to Mr Hemana's affidavit he does not have much time left.

[8] Mr Bonnar submitted that one of the major motivating factors for the accused is to be granted bail so he could care for and spend time with his father and relieve pressures that will otherwise fall upon his sister and family. Mr Bonnar further submits that the accused's father's state of health and the accused's expressed desire to look after him are additional factors which should alleviate any concern the Court might have as to the risks of non appearance or offending while on bail.

[9] Conditions are proposed which would require him to reside at an address which is suitable for the electronic monitoring regime. The conditions would require the imposition of that regime at the address, reporting if considered necessary, surrender of his passport and the imposition of a cash security or surety which is now available in a sum up to \$50,000. There would then be conditions requiring non-association.

[10] The Crown remains opposed to the grant of bail. Ms Latimer refers to the possibility of removal of the electronic monitoring device after which, although an alarm would be activated in the control centre, the accused would then be at large. She refers to the accused's history, including apparent drug use whilst on remand. In that respect there is mention in the report prepared for the electronic bail monitoring

proposal that whilst on remand in Mt Eden Prison the accused has been identified as a drug user and has been found to have used drugs on two occasions. He has also been found in possession of a cell phone whilst in prison.

[11] Ms Latimer submits in the circumstances the Court could not be confident that conditions of bail would be complied with, nor that there would be no further offending if the accused was released on bail.

[12] In my view the Crown's stance is justified. The accused has 31 previous convictions including obstructing the police, disorderly behaviour, and fighting in public which may be seen as being part of the pattern which lies behind the present offending. In addition, however, there are four charges of failing to answer District Court bail and two of breach of community work. He has committed 11 offences whilst released on bail on previous occasions.

[13] Although the trial date is not until 4 February 2008 and a refusal of bail would result in him having spent a little over 12 months in custody on remand, it cannot be said here, that if convicted, the period on remand would exceed the effective length of a sentence that might be served on conviction. The charges which are currently faced are serious. Not only do they involve a reasonably significant amount of methamphetamine, but they involve also the worrying aspect of his being found in possession of a loaded pistol and on the Crown account of the case, whilst resisting arrest, making attempts to get at that pistol perhaps for the purpose of continuing to resist his arrest.

[14] Given the circumstances and the strength of the Crown case I am not prepared to reach a decision different to that of Harrison J notwithstanding that the present application is advanced as one for electronic monitoring.

[15] The application is declined.