

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

In the matter of the Bail Act, 1994

And

**In the matter of an application by Yasin Abu Bakr
to be granted bail**

Between

YASIN ABU BAKR

Applicant

And

THE STATE

Respondent

Before the Honourable Justice P. Moosai

APPEARANCES:

*Mr. T. Guerra S.C. and Mrs. P. Elder S.C. and Mr. R. Mason for the Applicant
Mr. D. Mendes S.C. and Ms. D. Seetahal for the State*

JUDGMENT

The Applicant was on 19th January, 2006 committed to stand trial for the following offences:

1. Communicating a statement having a seditious intention, contrary to section 4 of the Sedition Act, Chapter 11: 04, the maximum penalty for which on conviction on indictment is a fine of \$20,000

- and imprisonment for five years.
2. Incitement to demand the property of Noble Khan, with menaces or by force, with intent to steal, contrary to the common law, the maximum penalty for which is five years.
 3. Incitement to demand the property of members of the Muslim community, with menaces or by force, with intent to steal, contrary to common law, the maximum penalty for which is five years.
 4. Endeavouring to provoke persons to commit a breach of peace, contrary to section 5 of the Criminal Offences Act, Chapter 11: 01, the maximum penalty for which is two years.
 5. Knowingly promoting the commission of a terrorist act, contrary to section 14 of the Anti-Terrorism Act, No. 26 of 2005, the maximum penalty for which is imprisonment for 25 years.

The Applicant was initially charged with the first four offences listed above. On his application on 10th November, 2005 for bail with respect to the said four offences, the Chief Magistrate denied bail on the ground that there were grounds to believe that the Applicant would fail to surrender to custody or would commit an offence while out on bail.

By letter dated the said 10th November, 2005, the Applicant, through his then Attorney, Mr. Wayne Sturge, made an application for bail in the High Court. The following day, 11th November, 2005, the Applicant was jointly charged with Tahir Ali and Oluyemi Abdul Basit for: (i) possession of a prohibited weapon, namely a hand grenade; (ii) possession of a firearm, to wit a rifle; (iii) possession of 569 rounds of ammunition. In his written reasons dated the 11th of November, 2005, Mr. Justice Volney rejected an application for bail by the Applicant. Volney J. at pages 2 and 3 stated:

"It is a matter of public knowledge that the Applicant is the religious leader of the Jamaat al Muslimeen with its Headquarters and Mosque situated in the St James district of the city of Port-of-Spain. It is also a

well documented fact that the Applicant and many of his then, if not present followers, attempted a coup d'etat against the duly elected government of Trinidad and Tobago on July 27, 1990 and were once found to be the beneficiaries of amnesty for this conduct. Among those so benefiting was one Enyahoma El also call Lance Small who was at the time documented to have been a ranking member of the Jamaat al Muslimeen. Enyahoma El was recently convicted in the United States of America with possession of 60 AK-47 Mac sub-machine guns in stream for importation into Trinidad and Tobago. It is in this setting and a sermon given at the Mosque in the glare of the electronic and print media that the Applicant is charged with offences of sedition, incitement and demanding by menaces the payment of the Quranic zakaat.... Having considered all these matters in their entirety, and in particular the grounds canvassed both in fact and in law for and against the admission to bail, it is my judgment that the State has satisfied me that there is just cause for the denial of bail to the Applicant which in the circumstances of this application is on balance the only reasonable exercise of my discretion. I accordingly order that Yasin Abu Bakr be kept in custody pending the determination of judicial proceedings in relation to the subject charges."

On 29th of November, 2005, the Applicant, through his Attorney Mrs. Pamela Elder SC, furnished Volney J. with a tape recording of the speech made by the Applicant on 4th November, 2005, contending that the availability of the tape constituted a new circumstance warranting reconsideration of the question of bail. However by this time, the charge of knowingly promoting the commission of a terrorist act had been preferred against the Applicant. Volney J., on 6th December, 2005 formed the view that no new substantive matter had arisen which warranted a reconsideration of his decision to refuse bail.

On 19th January, 2006 the Applicant was committed to stand trial on the said five offences listed above. Once again, the Chief Magistrate refused bail for the following

reasons:

1. If the Accused is admitted to bail, he will abscond or fail to submit to the jurisdiction.
2. The likelihood of the Applicant committing other offences if admitted to bail.
3. The seriousness of the offences.
4. The strength of the prosecution's case.

On 20th January 2006, when the instant application for bail came before me, the State disclosed its intention to discontinue proceedings against the Applicant with respect to the three charges preferred on 11th November, 2005 for possession of a prohibited weapon, possession of a firearm and possession of ammunition.

On the issue of whether I should consider afresh the question of bail, I am of the view that the committal of the Applicant to stand trial on the said five charges, which said committal proceedings included the expert testimony of an Islamic scholar called by the Defence on the interpretation of the Applicant's speech on the tape.(which said tape really is the core of the evidence against the Applicant), coupled with the discontinuation of the three charges of possession under the Firearms Act against the Applicant, constitute a change in circumstances sufficient for me to consider afresh the question of bail: See **Blackstone's Criminal Practice 2005, para D 5. 37.**

It might be helpful at this stage to set out some of enshrined rights provisions of the Constitution.

“4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour religion or sex, the following fundamental human rights and freedoms, namely –

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;
- (h) freedom of conscience and religion belief and observance;
- (i) freedom of thought and expression;

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not –

- (a) authorise or effect the arbitrary detention, imprisonment or exile of any person;
- (b) impose or authorise the imposition of cruel and unusual treatment or punishment;
- (c) deprive a person who has been arrested or detained –
 - (i) of the right to be informed promptly and with sufficient particularity of the reason for the arrest or detention;
 - (ii) of the right to retain and instruct without delay a legal adviser of his own choice and to hold communication with him;
 - (iii) of the right to be brought promptly before an appropriate judicial authority;
 - (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;

- (d) authorise a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;
- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (f) deprive a person charged with a criminal offence of the right –
 - (i) to be presumed innocent until proved guilty according to law, but this shall not invalidate a law by reason only that the law imposes on any such person the burden of proving particular facts;
 - (ii) to a fair and public hearing by an independent and impartial tribunal; or
 - (iii) to reasonable bail without just cause;
- (g) deprive a person of the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak English; or
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”

Section 6 (2) and (3) of the Bail Act, so far as is relevant, provides as follows:

“6. (2) Where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment, it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

- (a) where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would-
 - (i) fail to surrender to custody;
 - (ii) commit an offence while on bail; or
 - (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
.....
- (f) where he is charged with an offence alleged to have been committed while he was released on bail;

(3) In the exercise of its discretion under subsection (2)

(a) the Court shall consider the following:

- (a) the nature and seriousness of the offence or default and the probable method of dealing with the defendant for it;
- (b) the character, antecedents, associations and social ties of the defendant;
- (c) the defendant's record with respect to the fulfilment of his obligations under previous grants of bail in criminal proceedings;

(d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having failed to surrender to custody; and

(e) any other factor which appears to be relevant.”

The conjoint effect of the constitutional and statutory provisions is that an accused person has a right to bail subject to the imposition by Parliament in the Bail Act of what it perceived to be reasonable restrictions for safeguarding the public interest. Under section 6 (2) (a) of the Bail Act, it shall be within the discretion of the Court to deny bail where the Court is satisfied that there are substantial grounds for believing that the defendant, if released on bail would -- (i) fail to surrender to custody; (ii) commit an offence while on bail; (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

In the exercise of its discretion under section 6 (2) (a), the Court is mandated by virtue of section 6 (3) to consider the following: (a) the nature and seriousness of the offences or default and the probable method of dealing with the defendant for it; (b) the character, antecedents, associations and social ties of the defendant; (c) the defendant's record with respect to the fulfilment of his obligations under previous grants of bail in criminal proceedings; (d) the strength of the evidence of his having committed the offence or having failed to surrender to custody; and (e) any other factor which appears to be relevant.

It is clear that the factors set out in section 6 (3) are factors to be taken into consideration in determining whether, in all the circumstances, the Court is satisfied that there are substantial grounds for the beliefs set out at section 6(2) (a) (i), (ii) and (iii): **Hurnam v The State [2005] UK PC 49 where at para 15, Lord Bingham of Cornhill stated:**

"It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail. The Board cannot, however, accept criticism made of the earlier decisions in **Labonne (JV)** and **Deelchand**. The judgment in **Rangasamy** does not adequately recognise the general right to liberty enshrined in section 5 (3) of the Constitution and reflected in section 3 of the 1999 [Bail] Act. It seeks to reinstate, in part at least, the rule deliberately discarded in the 1999 Act. It puts an onus on the detainee where it should be on the party seeking to deprive him of his liberty. It elides the general right to be released on bail and the right to be released if not brought to trial within a reasonable time, which are both important rights but distinct and different rights. **The seriousness of the offences and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of this paragraph, provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.**" [Emphasis Added]

It is also clear that the onus of proof is on the prosecution and the standard of proof is on a balance of probabilities: **R v Governor of Canterbury Prison, ex parte Craig [1991] 1 QB 195**.

In my consideration of the issue under section 6 (2) (a) (ii) as to whether there are substantial grounds for believing that the Applicant, if released on bail, would commit an offence while on bail, I note the following:

(a). The nature and seriousness of the offences.

These are serious offences which because they target the Muslim community, can have a destabilising effect on the country. Generally, and without undertaking an over-elaborate dissection of the evidence, the nature of the offences is that the Applicant has called upon members of his group, the Jamaat al Muslimeen, to declare war on all other Muslims in Trinidad and Tobago who are not part of his group for the purpose of the collection of the zakaat, whether by lawful or unlawful means.

(b). The alleged commission of offences while out on bail.

At the time of the Applicant's Eid sermon on 4th November, 2005, the Applicant was out on bail for the offence of conspiracy to murder. So the Applicant is alleged to have committed these offences while he was released on bail for another offence.

In **R v Crown Court at Harrow** [2003] 1 WLR 2756, AT 2778, Hooper L.J. thought that this was likely to be a factor of considerable importance:

“The fact that the new offences appears to have been committed whilst on bail is likely to be a factor of **considerable importance** against the defendant when deciding whether there are substantial grounds for believing that, if released, he would commit a further offence while on bail.” (Emphasis added)

The Bail Act emphasises the importance of this factor by including at 6 (2) (f) a provision which permits the Court, in the exercise of its discretion, to deny bail to a person charged with an offence alleged to have been committed while he was released on bail.

(c). The character, antecedents, associations and social ties of the defendant.

The Applicant is the religious leader of the Jamaat al Muslimeen. Further the Applicant

is the self-confessed leader of the coup d'etat of July 27, 1990, whereby an attempt was made by the Jamaat al Muslimeen to take over the government of Trinidad and Tobago by unconstitutional means. Further, as set out in Mr Mendes' written submissions: "During the course of the coup, lives were taken and the Prime Minister was shot. The Prime Minister along with Members of Parliament and ordinary citizens were held hostage in the Read House and at the national television station and the central police headquarters in Port-of-Spain was attacked and destroyed by fire. The Applicant has therefore demonstrated himself as being capable of committing crimes of the most serious nature which could have had the effect no less of undermining the Constitution and democratic institutions."

The Applicant is also an associate of Enyahoma El, who at the time of the coup, was documented as being a ranking member of the Jamaat al Muslimeen. The said Enyahoma El, in the Applicant's previous bail applications in which Mrs. Elder was not involved, was considered by the State, without demurrer by the Applicant's Attorney, as being the group's second-in-command. In any event it is not disputed that Enyahoma El is a member of the Jamaat al Muslimeen. Enyahoma El was recently extradited to the United States of America and in 2005, convicted of the offence of possession of 60 AK-47 rifles and 10 Mac sub-machine guns. The evidence revealed that Enyahoma El was seeking to import the said weapons into Trinidad and Tobago. This offence was committed in or about May 2001.

On Thursday 10th November, 2005, six days after the Applicant delivered his address, and at a time when the Applicant was in custody, police officers allegedly discovered the arms and ammunition the subject matter of the three charges which have now been discontinued against the Applicant. The said items were found in a building on the south-eastern side of the compound of the Jamaat al Muslimeen, the contention being that a person or persons associated with the group would undoubtedly be responsible for placing them there. Additionally the two persons who now stand charged for these offences are both alleged to be members of the Jamaat al Muslimeen. In the light of that, the Applicant's declaration of a real war becomes even more ominous.

(d) The strength of the prosecution's case.

The prosecution will be relying to a large extent on the direct evidence contained in the tape recording of the Applicant's address. For the purposes of considering an application for bail, where a detailed assessment of the evidence is not necessary, the prosecution's evidence appears to be strong.

(e) The Applicant's record with respect to the fulfilment of its obligations under previous grants of bail in criminal proceedings.

The Applicant is 64 years old and has four wives in Trinidad and Tobago. The Applicant is also the father of 15 children, two of whom are at present at English universities. His youngest child is three years old. The Applicant has fulfilled his previous obligations by appearing on all occasions in the conspiracy to murder proceedings. The Applicant has also been permitted to leave the country during the course of the conspiracy to murder proceedings and has faithfully returned to attend his trial. Whilst generally an individual facing a long term of imprisonment may have a powerful incentive to flee, in the circumstances of this case where the Applicant has social ties to this country, and where he has a good track record for meeting his previous obligations for bail, inclusive of leaving the country and returning, I am of the view that the Applicant may not be a flight risk.

CONCLUSION

Having considered the submissions of Attorneys, and taking into consideration all the circumstances, I am of the view that the State has not satisfied me to the requisite

standard that there are substantial grounds for believing that the Applicant, if released on bail, would fail to surrender to custody: See section 6 (2) (a) (i). However I am of the view that the State has satisfied me on a balance of probabilities that there are substantial grounds for believing that the Applicant, if released on bail, would commit an offence while on bail: See section 6 (2) (a) (ii). In the exercise of my discretion the Court rejects the application for bail of the Applicant for the reasons stated.

DATED 30th day of January, 2006.

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PRAKASH MOOSAI
JUDGE