

**BRITISH VIRGIN ISLANDS
THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

BVIHCV2021/0023

BETWEEN

DEVON BEDFORD

-v-

THE DIRECTOR OF PUBLIC PROSECUTIONS

Appearances:

Mr. Stephen Daniels for the Applicant, Devon Bedford

Mr. Kristian Johnson Senior Crown Counsel for the Director of Public Prosecutions.

2021: February 5, 10, 12, 19;
March 16

Criminal Law – Criminal Procedure – Bail – Refusal of Bail by the Magistrate – Whether the High Court is to simply review magistrate's exercise of discretion or whether fresh consideration of Bail by the High Court – Whether in all bail hearings previous convictions operate against the defendant – Whether in particular circumstances of case, flight risk arising from seriousness of offence and likely penalty mitigated by family, social and other ties to the community.

This is an application for bail by the Applicant, Devon Bedford after he was refused bail by the Senior Magistrate. The applicant is charged with two summary offences, namely possession of a controlled substance with intent to supply and possession simpliciter. Bail was refused by the magistrate on the ground that, having regards to the seriousness of the offence, the strength of the case against the Defendant and the likely penalty on a conviction that he may face, that the Defendant poses a flight risk. On a reconsideration before the High Court, it was argued that sufficient regard was not given to family, social and other ties and whether appropriate conditions could not operate in this case to reduce the risk to an acceptable risk. It was also argued he was being discriminated against on the basis that others persons who had been charged with similar offences had been granted bail on conditions.

Held:

1. This not being a review of the magistrate's decision, but being a fresh consideration of the matter, bail is granted on established principles, on the basis that the family, social and other ties to the community may in certain cases and does in this case, operate to mitigate the flight risk rendering it not an unacceptable risk having regards to the conditions which can be imposed.
2. The fact that other persons charged with similar offences were granted bail does not give rise to any presumption that any other person charged with the same offence will not be remanded without bail. The question of bail must be considered with regards the particular offence charged and the character and circumstances of the offences.
3. Previous convictions may not in all cases support an inference that it escalates the flight risk of the defendant. There ought to be a judicial examination of such convictions related to their vintage and relevance to the present matter.

Applied: *Hurnam v The State of Mauritius* [2006] 3 LRC 206; *Thelston Brookes v The Attorney General and The Commissioner of Police* Criminal Case No. 89 of 2006 Anguilla (unreported); *Sefilyan v Armenia* (App. No. 22491/08) - [2012] ECHR 22491/08

Considered: *Noordally -v- Attorney General* [1987] LRC (Const) 599; *R (on the application of Iqbal) v Crown Court at Canterbury* [2020] All ER (D) 103 (Mar);

DECISION

- [1] **RAMDHANI J. (Ag.)** This is an application for Bail dated the 2nd February 2021, following a decision of the Senior Magistrate made on the 29th January 2021, to refuse bail to the applicant, Devon Bedford, who was charged with two offences including a drug trafficking offence. On considering the matter, this court, on the 19th February 2021, giving reasons orally, granted the applicant bail on the conditions. The Court indicated that a written decision would follow which would detail those reasons. This satisfies that indication.

The Objections to the Grant of Bail – The Magistrate’s Reasons for Refusal

- [2] Before this Court, the evidential basis of the allegations grounding the two charges was contained in an affidavit dated the 5th day of February 2021 and sworn to by the Richard Francis, Detective Sergeant No. 251 of the Royal Virgin Islands Police Force.
- [3] The Prosecution, represented by Mr. Johnson, maintained the very objections which had been taken before the magistrate. Crown Counsel contended that the Applicant had been arrested in the night on the 4th January 2021, after a police chase during what appeared to be a drug bust, and that the drugs found in his vehicle that very night had a street value of over US\$25 million. The strong inference was that the Applicant was connected to a major drug organization and that he had access to assets. The seriousness of the offence, the likely penalty and strength of the evidence meant that the Applicant presented a flight risk and further that if released, having regards to the nature of the offence charged with, he was likely to interfere with the investigations.
- [4] The prosecution pointed the court to the previous convictions of the Applicant which he stated as being three but the record which was later submitted shows 4 relevant previous convictions – two of which were for minor drug offences related to marijuana – two in 2008 for aggravated burglary and possession of an unlicensed firearm for which he got 3 years and 2 years to run concurrently. He pleaded guilty to all these offences.
- [5] Mr. Daniels who appeared for the Applicant effectively submitted that the refusal of bail was unreasonable having regards to the strong family and social ties which the Applicant had with his community and the BVI. He also effectively submitted that the reasons given by the prosecution – significant penalty and part of drug organization with access to significant funds - could not have reasonably led anyone to conclude that the Applicant was such a flight risk that bail should be denied. He further argued that other persons who had been arrested allegedly with

larger quantities of cocaine had been sent on bail recently and that it was unfair and constitutionally wrong for the court to treat his client differently.

[6] The Senior Magistrate had a bail hearing before that Court, accepted the first limb of the prosecution's objections and refused bail. Indeed, Her Honour considered that having regards to the strength of the prosecution's case, the significant term of imprisonment, which was likely to follow a conviction, and that the applicant did indeed appear to be connected to a large drug organization with access to considerable funds, that he was likely to flee and not attend his trial. Her Honour considered that no conditions could be imposed which would obviate these risks as the borders of the BVI were porous and the retention of travel documents meant nothing in that context. Her Honour did have regard to his 'strong' connections to the jurisdiction but even these did not swing the scales in favour of the applicant.

[7] In deciding on an adjourned date, the Senior Magistrate stated:

"The matter is a new one and Mr. Johnson did not indicate how much time he needed but he indicated that the analyst would be a here a date in April so I think it is fair to put it to May. I don't need him to be coming back and forth to me on these matters.'

[8] This was a startling order. This will be returned to later.

[9] During this hearing, following an enquiry by the Court, both parties submitted that on this application under CPR Part 58, the Court was to consider whether the Senior Magistrate was reasonable. Mr. Johnson submitted that the Court had no power to embark on a fresh enquiry on the issue of bail. Mr. Daniels differed and submitted that whilst the task began with a consideration of the magistrate's exercise of discretion, the High Court was duty bound to consider the matter afresh and even substitute its own views for that of the magistrate. Mr. Johnson asked the Court to consider **Huey Gowdie v R** [2012] JMCA Crim 56.

[10] The court's own view on this is that section 60 of the Magistrate's Code of Procedure makes it rather clear that the High Court is not reviewing the magistrate's decision but is embarking on a fresh consideration of the matter. If support for this view is needed, this Court finds that in the case of **Thelston Brookes v The Attorney General and The Commissioner of Police** Criminal Case No. 89 of 2006 Anguilla (unreported), where a similar provision in the Anguillan laws was considered. There, the learned Judge there effectively proceeded to examine matter afresh without any express reference to the reasonableness or otherwise of the magistrate's exercise of discretion.

[11] This being the case, I now turn to consider the principles which are to guide this court on any application for bail.

The Principles Applicable to the Grant of Bail

[12] The common law right to bail is now enshrined in the fundamental and constitutional right to liberty found in section 15 of the British Virgin Islands Constitution. This relevant portion provides.

15. (1) Every person has the right to liberty and security of the person.

(2) No person shall be deprived of his or her personal liberty, save as may be authorised by law in any of the following cases—

(a) ...

(b) ...

(c) upon reasonable suspicion of that person having committed or of being about to commit a criminal offence under any law;

(d) ...

(e) ...

(f) ...

(g) ...

(3) ...

(4) ...

(5) Any person who is arrested or detained—

(a) for the purpose of bringing him or her before a court in execution of the order of a court; or

(b) upon reasonable suspicion of his or her having committed or being about to commit a criminal offence under any law,

and who is not released, within the period prescribed by law, shall be brought promptly before a court.

(6) If any person arrested or detained as mentioned in subsection (5)(b) is not charged within the period or extended period prescribed by law, then, without prejudice to any further proceedings, he or she shall be released either unconditionally or on reasonable conditions, including such conditions as are reasonably necessary to ensure that he or she appears later for trial or for proceedings preliminary to trial.

(7) ...

[13] The right to liberty contained in the BVI Constitution is substantially the same as the equivalent provisions found in other Commonwealth Constitutions and the European Convention for the Protection of Human Rights. Courts throughout the common law world, in analyzing the relevant provisions in the context of bail has made it clear that "that the right to personal liberty, although not absolute, is a right

which is at the heart of all political systems that purport to abide by the rule of law and protects the individual against arbitrary detention" per Lord Bingham of Cornhill in **Hurnam v The State of Mauritius** [2006] 3 LRC 206.

- [14] This Constitutional permission to interfere with liberty to impose pre-trial detention requires a careful and affirmative exercise by a judicial officer as the starting point is always that the person charged with an offence is presumptively entitled to bail.
- [15] Having regards to that other presumption, that of innocence, a refusal of bail in any given case where a court is satisfied that having regards to the circumstances of the particular case and the defendant, other public interests overbalances the Constitutional scale and requires such an interference with liberty.
- [16] The jurisprudential and common sense underpinnings of this interference with liberty in relation to persons charged with criminal offences and not yet convicted, is perhaps best articulated by Lord Bingham of Cornhill in **Hurnam**, where his Lordship stated:

"In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is, of course, to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences.

[17] This passage identifies the broad opposing factors which a court must have regard to when is considering whether to interfere with the right to liberty and the presumption of innocence. As far as the latter is concerned, being charged with an offence cannot ever mean that bail may be refused simply on the basis of punishment, or because, having regards to the strength of the case, it appears inevitable to the tribunal that the defendant is likely to go to jail. These thoughts can never be that if he is likely to be imprisoned why not imprison him now? See **Noordally -v- Attorney General** [1987] LRC (Const) 599.

[18] It is accepted that a person charged with an offence must be allowed on bail, unless a court is satisfied that there is an unacceptable risk that a defendant may (a) abscond, that is, not turn up for this trial; (b) interfere with the witnesses or the investigations; (c) commit other offences whilst on bail, (d) may fail to preserve public order. Bail may also be refused where it is necessary to protect the defendant.

Burden, Standard of Proof and Other Matters

[19] It is antithetical to the right to liberty when there is a perception that it is for the defendant to make an application in the magistrate's court for bail. There is a presumption of bail, therefore a defendant is entitled to be at liberty unless it is shown that there are good reasons why bail should be refused. Thus, not only is the burden of proof on the prosecution to prove that there are good and sufficient reasons to ground a refusal of bail, but it should be standard practice that magistrates will not do or say anything that gives any impression that it is for the defendant to make an application for bail as though he is already remanded and it is for him to prove why he should be released.

[20] This obligation on the magistrate on whether the Defendant should be allowed out on bail continues throughout the proceedings where a defendant is remanded. On

each occasion the matter is called, the court should on its own initiative reconsider its decision to remand the defendant and make a note of it.

- [21] A magistrate court should rarely grant or be slow to grant long adjournments to the prosecutor to facilitate further investigations or the completion of such investigations. A court should be ever ready to interrogate such applications and press the prosecutor to ensure that all investigatory matters are concluded in the shortest possible time.
- [22] The standard of proof requires that the court must be satisfied that it is more likely than not that there is an unacceptable risk that one or more of the grounds exists. The court must make this finding.
- [23] Even where the prosecution does not object, there is an obligation on the court to consider the question of bail. There is no presumption that if there is no objection to bail being granted or that station bail was granted and complied with that a court is obliged to grant bail. The grant or refusal is a judicial exercise of discretion and the obligation is on the court. See **R (on the application of Iqbal) v Crown Court at Canterbury** [2020] All ER (D) 103 (Mar)
- [24] As a general matter, the prosecutor as an officer of the court has a duty to ensure that objection to bail are made in good faith. He has an obligation to ensure that he takes full instructions from the police investigators and is prepared to state any and all grounds of objections. Where the police has indicated, or the prosecutor has determined that the Defendant poses a flight risk or any other risk, the prosecutor ought to interrogate this aspect so that he is prepared to present cogent and clear reasons to the court. Grounds such as the interference with witnesses or the investigations, and possibly committing further offences if released should not be simply thrown at the court unless there should be some evidential basis for such objections to be raised.

[25] A prosecutor may also seek to ensure that the police's investigations verifies in advance, the residence of the Defendant, his occupation and his familial ties so that he may be better placed to refute or correct such matters when they are raised by the Defendant at the upcoming bail hearing.

[26] In this case, two grounds have been raised by the prosecution as noted earlier. One relates to the risk of flight and the other relates to the risk that the defendant will interfere with the investigations if released.

Ground No. 1 - Unacceptable Risk that the Defendant will not turn up for his Trial

[27] The court must be satisfied that the defendant presents an unacceptable flight risk.

[28] The cases indicate that considering whether someone would present a flight risk, it is important to consider the seriousness of the offence, the evidence supporting the charges and the likely punishment which could follow a conviction. Additionally, the court should also consider whether there are matters related to the particular defendant or the circumstances of the particular case which may also indicate a flight risk and those things which may negate such a finding.

[29] In this case, the Applicant, Devon Bedford, a 32 years-old man living at Harrigan's Estate, British Virgin Islands was arrested just after 4 a.m. on the morning of the 28th January 2021 at Whelks Point. He was shortly after charged with two drug offences the more serious a drug trafficking offence carrying a maximum penalty of 10 years imprisonment with a minimum of five years.

[30] The Police case against him recited by the prosecutor at the Bar table before the Senior Magistrate and now repeated in the affidavit of Detective Sergeant No. 251 Richard Francis is contained in paragraphs following.

- [31] At around 4 a.m. on the morning of the 19th January 2021, police officers on patrol spotted a go-fast boat without running lights, heading to a dock near to some condominiums in the vicinity of Brandywine Bay, Tortola.
- [32] The officers observed a white Kia Sportage Rental Jeep bearing registration number, RT 4794, with a sign 'MR Rentals' on the rear glass, and a red Suzuki Grand Vitara Rental Jeep, heading into the junction leading to Brandywine Bay Restaurant. Both vehicles stopped in an area leading to the dock where the vessel was docked. With the aid of Force issued Night Vision Goggles, officers observed persons offloading items from the vessel and walking off the dock with those items. Both vehicles departed with speed from the area in which they were parked. Officers pursued both vehicles and followed them into an area in the vicinity of 'Duck n' Dive Bar'.
- [33] The Officers attempted to approach the white Kia Rental Jeep when it drove out and sped away from the area. The police gave chase and cornered the vehicle near the old Pussers' Restaurant. The driver tried to reverse out and collided with the police vehicle. The driver then came out of the vehicle, jumped on the hood of the police vehicle and ran off into the bushes. With the lights of the police vehicles, officers say that they were able to see and recognize the driver as the Applicant. This Applicant was accosted by the officers in that area.
- [34] Armed police attended the scene and the vehicle was searched and five parcels of substance suspected to be cocaine was discovered. It was later weighed and found to be approximately 253 kilograms. The street value is estimated to be over US\$25 million. He was charged and taken the magistrate court on the 29th January 2021.
- [35] The prosecution are saying that having regards to the seriousness of the offence, the strength of the evidence, the circumstances of the commission of the offences which led to an inference that he was connected to a large underworld drug

organization with access to considerable assets, on the grounds that he presented a flight risk and that he might interfere with the investigation.

[36] I have considered the seriousness of the offences with which the applicant is charged. There are two charges, the first is possession with an intent to supply - this is a drug trafficking offence. The other is an alternative charge of simple possession. The substantive offence carries a maximum of 10 years imprisonment with a minimum of 5 years. The alternative charges carries a maximum of three years. If convicted of the substantive offence, having regards to the circumstances of this case, this applicant is likely to receive a substantial sentence.

[37] The evidence also appears to be strong. The witnesses are police officers who said what they saw. They saw a go-fast boat pull to shore and two vehicles pulling up at the dock. Men began offloading packages and placing them in the vehicles. When they realized they were spotted, the drivers sped off in the respective vehicles leading the police on a chase. The police cornered one of those vehicles and the driver who they police claimed they recognized to be this Applicant exited and jumped on the hood of the police vehicle to escape the police. He ran off into the bushes. This Applicant was apprehended by officers in that area. The packages containing the substances believed to be cocaine were found right there and then in the vehicle. This is very strong evidence.

[38] I have considered the street value of the drugs, and the circumstances of the alleged offences and agree that these do indicate that there is an underlying criminal organization at work shipping drugs into the BVI employing go-fast boats and having persons meet those boats to collect drugs.

[39] All these matters indicate that there is a risk of flight. But that is not the test.

[40] The seriousness of the offence and the penalty which the offence might attract are not sufficient by themselves to deny bail. The fact that person is charged with a

serious offence which carries a severe penalty does not give rise to any presumption that bail should be denied as this would be contrary to the fundamental right to liberty and the presumption of innocence. Speaking of these issues in the context of murder, the Board in **Hurnam** held:

“A presumption that in cases of murder there would have to be compelling reasons to justify bail did not adequately recognise the general right to liberty enshrined in s 5(3) of the Constitution and reflected in s 3 of the 1999 Act. It would put an onus on the detainee, where it should be on the party seeking to deprive him of his liberty. It elided the general right to be released on bail and the right to be released if not brought to trial within a reasonable time, which were both important rights but distinct and different rights. The seriousness of the offence and the severity of the penalty likely to be imposed on conviction might well provide grounds for refusing bail, but they did not do so of themselves, without more: they were factors relevant to the judgment whether it was necessary to deprive the appellant of his liberty.”

[41] I consider that this Applicant is likely to have access to the means to flee from this jurisdiction. But does that mean that anyone with assets who is charged with a serious offence is likely to flee? A court is duty bound to consider other factors where they exist to find whether this risk of flight is confirmed or mitigated.

[42] In the case of **Sefilyan v Armenia** (App. No. 22491/08) - [2012] ECHR 22491/08, the European Court of Human Rights made the point that:

“The danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see Yağcı v Turkey [1995] ECHR

16419/90, para 52). *The risk of absconding has to be assessed in the light of the factors relating to the person's character, his morals, home, occupation, assets, family ties and all kinds of links with the country in which he is prosecuted. The expectation of heavy sentence and the weight of evidence may be relevant but is not as such decisive and the possibility of obtaining guarantees may have to be used to offset any risk (see Neumeister v Austria [1968] ECHR 1936/63, para 10).*

[43] As is stated in **Blackstone Criminal Practice 2020** at paragraph D7.19:

“Examining the community ties involves looking at how easy it is for the accused to abscond and how much the accused has to lose by absconding. Relevant factors include the following: How long has the accused lived at the present address? Does the accused have a partner? Does the accused have dependent children? Is the accused in employment? If so, for how long? Does the accused have a mortgage or a protected tenancy? An accused of ‘no fixed abode’ or living in short term accommodation is not debarred from bail, but the ease of disappearing to another address is a factor to be considered.”

[44] I wish to add to this, that most of the learning about social and family ties relates to large first world jurisdictions where there are a considerable populations and several cities or States; it is very possible not to leave the country and to move to other cities or States and be hidden for extensive periods without detection. In our smaller island States, regard must be had that when a defendant is deciding to flee, it is not likely to be a decision to flee from one part of the island State to another, but it is more in the nature of a decision to leave the jurisdiction entirely to be escape the long arm of the law. This is a much more significant decision to make that simply escaping to another metropolitan city in another State. This added gravity must be added to the consideration of whether the Defendant poses an unacceptable risk of fleeing.

- [45] So, what is there on the other side of this equation? This is a 32 year-old family man. There is evidence of the strong family and other ties to the BVI community. This Applicant has a 7 year old son and another child is on the way. He has worked with the BVI Government for the last ten years. He is a Land Surveyor. The prosecution has not denied the strong family and other ties. This is uncontested evidence.
- [46] His previous convictions have been pointed out. I accept that generally, previous convictions may weigh in favour of refusing bail where it makes a term of imprisonment more likely. 'Moreover, a person of previous good character is more likely to be trusted by the Courts than one with a criminal record.' (para D7.18, Blackstone's Criminal Practice 2020).
- [47] But in this case, I do not find that the relevant previous convictions take the matter any further. The first relevant conviction was one for aggravated burglary and possession of an unlicensed firearm appearing to have been of the same incident. That occurred in 2008. This man would have been 19 or 20 years old at the time. There was nothing criminal known against him again until 2012 when a court convicted him of cultivation and possession of a quantity of marijuana and he was fined. Then in 2015 he was again convicted of possession of a quantity of marijuana and fined. On all these charges he pleaded guilty on the first occasion.
- [48] In fact, I consider that this man's strong family and other ties and the fact that he has generally moved on from his first criminal conviction mitigates the risk of him being a flight risk – there is always a risk, but I do not think that in this case this risk is unacceptable and that proper and appropriate conditions may not assist in securing his attendance at trial. If this man were to flee, he would forever make himself a fugitive from the law and be unable to ever see his son and his unborn child in normal circumstances. The Senior Magistrate is right in considering that holding passports do not mean someone cannot flee, but that is not the test.

[49] Other persons caught with large quantities of drugs were sent out on bail. There must have been also criminal organizations with significant assets at work. What is special about this case and the circumstances of the accused that that should result in his pre-trial detention? There is a presumption of bail, and in my view the circumstances of this case do not present this court with enough to take away his liberty at this stage. I do believe that there are conditions which can be imposed that are likely to ensure his attendance at his trial.

[50] For the avoidance of doubt, there cannot be a rule that if some persons are granted bail for drug trafficking offences, then ipso facto others must also be granted bail. The case submitted does not make that point. No point of constitutional discrimination arises here. The consideration of whether or not bail should be granted is a task to be assessed with reference to each individual and the unique circumstances of each case. Mr. Daniel asked the Court to consider **McEwan and Others v. Attorney General of Guyana** [2018] CCJ 30 (AJ).

Ground No. 2 - Interference with the Investigation

[51] The prosecution has also objected to the grant of bail on the ground that the defendant if released would interfere with the investigation.

[52] The point was re-iterated in **Sefilyan** that '[t]he danger of the accused's hindering the proper conduct of the proceedings cannot be relied upon in abstracto, it has to be supported by factual evidence (see *Trzaska v Poland* [2000] ECHR 25792/94, para 65, 11 July 2000)'.

[53] As far as this objection goes, that he will interfere with witnesses or the investigation, nothing has been presented by way of evidence or from the bar table which makes this an identifiable risk for this objection to carry any weight.

[54] There is, therefore, no merit to this ground.

A Note on Disclosure

[55] During the earlier parts of this hearing, the prosecution had indicated that the investigation was still ongoing and that they were not prepared to provide disclosure at that stage and could not indicate when this would be done.

[56] This was a curious stance to take. This was a man charged with an offence where most of the witnesses are likely to be police officers. One would expect that they would have their statements prepared within a reasonable time. Reports would have surely had to be made immediately on their return to the police station or within a reasonable time thereafter. Regardless, however, the prosecutor must be prepared to tax the police for firm timelines and be prepared to say more to the court that to leave the matter with such uncertainty.

[57] These issues were raised during the hearing and Mr. Johnson later changed this position and indicated that disclosure would have been provided on the day the oral decision was rendered.

The Grant of Bail

[58] In all of the circumstances of this matter, this Court will grant bail on conditions. Bail is granted in the following terms:

(a) The Applicant is granted bail with two (2) suitable sureties jointly and severally in the sum of US\$200,000.00.

(b) The Applicant is to be of good behavior.

(c) The Applicant shall surrender all travel documents, including Passports, Alien Immigration Cards (including US Green Card), Social

Security Cards and Identification Cards to the Registrar at the High Court, Road Town, Tortola.

- (d) The Applicant shall not leave the Virgin Islands except with the permission of the Court and upon having made application to the Court for that purpose.
- (e) The Applicant shall be on curfew daily between 8:00 p.m. and 6:00 a.m
- (f) The Applicant is not to engage in any conduct whatsoever that would hinder, impede or otherwise obstruct the investigations in the matter herein.
- (g) The Applicant shall report to the Road Town Police Station of the Royal Virgin Islands Police Force on Mondays, Wednesdays and Fridays between the hours of 6:00 a.m. and 6:00 p.m.
- (h) In the event that curfew restrictions are imposed by the Government of the Territory of the Virgin Islands, to report to the Road Town Police Station at such hours as permitted by the curfew.

59. There was some discussion in the setting of conditions and it was first insisted by the prosecution that the amount of the cash bond should have some reference to the street value of the drugs. The court felt that that could not be the rights. Such an approach would likely mean that the grant of bail would be meaningless. I am fortified in this view having regards to the opinion expressed by Walsh J in **The People (Attorney General) v O'Callaghan** [1966] IR 501 with which I agree. His Lordship stated at pages 518 to 519:

"Bail must not be fixed at a figure so large as it would in effect amount to a denial of bail and in consequence lead to an inevitable imprisonment. As I indicated earlier in this judgment, both Bracton and Hawkins testify that at common law the Court in fixing the amount of the bail is to be guided by

the ability to give bail and the condition or quality of the prisoner, in addition, of course to the other factors, such as the nature of the offence and the gravity of the evidence. If persons come from a humble walk in life or are of little means it is most likely that their friends or those of them who are prepared to go as surety for them are of the same condition and the amount of bail required must be just and reasonable in all the circumstances having regard to the condition and ability of the accused, bearing in mind all the time the overriding test of the probability of the accused failing to appear for trial. Needless to say, any bail which a party can in fact procure cannot be considered excessive"

60. This is bail granted under section 60 of the Magistrate Procedure Act. For the avoidance of doubt, the Senior Magistrate being seized with the trial of this matter, is entitled on every and any occasion hereafter to reconsider the question of bail and to add to and or vary conditions as become necessary.

Final Point on Long Adjournment

61. Before I leave this matter, I must address the date of adjournment in this matter. I am told that the trial had been adjourned to the 18th May 2021. This man was first detained on the 19th January and Bail was refused on the 29th January 2021. Drug cases are serious, so serious the prosecution is here vigorously opposing bail – seeking as it were to have a court take away this man's liberty. Yet, the very casual manner in which the magistrate would accept that after arrest and charge, this man should be placed in custody for three months to await the testing of the substance raises concern. This court was earlier told that the Analyst would be due in April. The court was informed that the Analyst would only be brought in when there are sufficient work for him – meaning more cases in which he has to test substances. Now, this is clearly a matter of resourcing, but surely this ought not to be the approach in strong cases where the other evidence is in and the matter is one of drug trafficking. At the earlier hearing of this matter, the Court commented strongly on this deliberate lack of haste.

62. On the day the oral decision was rendered, great comfort was given to the court when the prosecution advised that things had fundamentally changed and that the Analyst was due within weeks into the jurisdiction. That is to be applauded as liberty is a sacred thing.
63. Administrative delays cannot be avoided, but the rule to law would be better served if the authorities and the prosecution would get on with it and seek to have this matter tried as soon as possible. Delays which are caused simply by putting matters to the side for various budgetary reasons, and which have the effect of extending pre-trial detentions, cannot be the way in which the liberty of the subject is to be dealt with. Pre-trial detention cannot work like this. No-one should be held in pre-trial detention for one day longer than he has to be detained. This Court views this as an unfortunate approach and it has to be one which requires a reconsideration by all of the stakeholders. It is hoped these comments will provide some guidance.
64. Finally, the Court wishes to express its gratitude to both sides for their assistance.

Darshan Ramdhani
High Court Judge (Ag.)

By the Court



Registrar