

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF MONTSERRAT**

IN THE HIGH COURT OF JUSTICE

Criminal Case MNIHCR 2019/ 0008

BETWEEN:

THE QUEEN

And

DAVID BRANDT

Appearances:

Dr David Dorsett for the Accused

Anesta Weekes QC, Mr. Oris Sullivan DPP and Mr. Henry Gordon Senior Crown Counsel for the Crown

2020: March 2, 5.

March 9.

**RULING ON APPLICATION PURSUANT TO SECTION 20(1) OF THE CONSTITUTION OF MONTSERRAT
RULING ON ALTERNATIVE APPLICATION FOR RE-ADMITTANCE TO BAIL**

[1] **Persad J:** Before the court is an application filed by Dr. Dorsett for the defendant titled "Notice of Application pursuant to section 20(1) of the Constitution of Montserrat" and alternatively a "Notice of Application for re-admittance to bail".

[2] In this notice the defendant seeks three forms of relief.

- a. Firstly, he is seeking a declaration that the hearing of the 17th and 18th of June 2019 by Mr. Justice Evans was in breach of the defendant's constitutional right to the protection of law.
- b. Secondly, he is seeking an order that any orders made at that hearing of the 17th and 18th of June 2019 be set aside.
- c. Thirdly in the alternative, that this court re-admit the defendant to bail on the same terms and conditions as obtained prior to the revocation of Bail on the 18th June 2019.

[3] There has in the course of the arguments before this court been quite a bit of discussion as to the nature of this application. It is sufficient to say at this point that what is before me is not a traditional bail application in which this court is invited to consider whether bail should be granted to the defendant at this stage of the proceedings.

[4] In fact if that was so, the first thing that the defendant would have to do is to satisfy the court that there has been a change of circumstances since the last bail hearing, before this court, could even begin to consider the merits of whether bail should be considered.

[5] What Dr. Dorsett makes clear in his submissions, is that this court is being invited to look at the hearing before Mr. Justice Evans held on the 17th and 18th of June 2019 and determine whether such hearing was a fair hearing within the meaning of the Constitution of Montserrat.

[6] The submission being made by Dr. Dorsett is that once this court finds that the hearing afforded to the defendant in June 2019 breached his constitutional rights to the protection of law and fair hearing, it would be open to this court as a guardian of the Constitution to make appropriate orders to vindicate his client's rights under the Constitution.

[7] Accordingly, Dr. Dorsett seeks initially a declaration that the hearing of the 17th and 18 June 2019 before Mr. Justice Evans was in breach of the defendants right to the protection of law.

- [8] Presumably if this court is prepared to make that finding, the court would be invited either to vacate the Order made by Mr. Justice Evans or alternatively on the basis of section 20(2) of the Constitution of Montserrat make such orders issue such writs and gives such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the foregoing provisions of the Constitution.
- [9] Specifically he says it is open to this court in the alternative to admit the defendant to bail on the same terms and conditions as obtained prior to the revocation of bail on 18th June 2019.
- [10] Dr. Dorsett was afforded an opportunity to make his submissions before the court and submitted among other things, that the defendant's right to the protection of law and his entitlement to a fair hearing was compromised and breached when the Learned Director of Public Prosecutions was allowed to give evidence relative to an anonymous witness who had raise issues on matters relevant to the question of bail.
- [11] Further, it was submitted that the defendant's constitutional rights were compromised in that he was not afforded enough information so as to allow him or his legal representative to effectively cross-examine and challenge the information and allegations been made against him.
- [12] Dr. Dorsett drew the court's attention to a number of matters from the transcripts and the ruling of Mr Justice Evans relative to that matter in order to submit that there were material before the court that suggested that the learned judge hearing the bail application, took into account matters relative to the defendant which he should not have and that the effect of that was that the defendant was deprived of an independent and impartial hearing.
- [13] The position taken by the Crown is that it is a misuse of the court process to raise constitutional issues relative to the hearing by Mr. Justice Evans at this stage of these proceedings primarily because this court is being put in the role of an appellate court to review a previous decision of a court of equal jurisdiction.
- [14] Further the Crown suggests that is it is an abuse of process for the defendant to raise constitutional issues in these proceedings when there is open to him, common law remedies in the form of a

fresh bail application which this clearly is not. In such circumstances the Crown argues that the court should be slow to allow the defendant to use constitutional mechanisms to raise issues when they are proper common-law options open to him.

[15] The court has considered the submissions by Dr. Dorsett and Ms Anesta Weekes QC and has decided that this court will dismiss the defendant's application and decline to make any orders under the application on the basis that to do so would be academic in the circumstances of this case.

[16] It is trite law¹ that in public law matters the court will be slow to grant relief in situations where to do so would be academic in nature. The learning suggests that where an issue has become academic it is only where there are issues of great public interest in the issues raised that the court should proceed to hear the matter and make pronouncements.

[17] Essentially a public law court will only make orders that are meaningful. In this case Dr. Dorsett has invited this court to examine the proceedings before Mr. Justice Evans and to express a view as to whether or not that hearing conducted on the 17th and 18th of June 2019 leading to the revocation of the defendants bail was in fact in breach of the defendant's constitutional rights.

[18] What is material however is that in November 2019 some five months after Mr. Justice Evans revoked the defendants bail, a fresh application for bail was made before Mr. Justice Stanley John which was heard via video link in Antigua.

[19] It is clear from the evidence put before this court in the affidavit and supplemental affidavit of the defendant that according to Mr. Brandt at paragraph three of his principal affidavit dated 24 February 2020 he says that his counsel in his written submissions did advance the case that he did not receive a fair hearing.

¹ R v Secretary of State for the Home Department, ex p Salem [\[1999\] 1 AC 450](#), and in particular the passage at 457, which is quoted in the case of Bobb and Moses v Manning, CA No. 97/02,

- [20] According to the Affidavit, Justice John did not make a determination on the point of whether or not the hearing before Evans J that culminated in his bail being revoked was a fair hearing consistent with his constitutional rights to due process and the protection of law.
- [21] What this clearly establishes is that the same arguments which are being made before this court relative to the constitutional breaches of the defendants right in June 2019 were in fact made before another judge in a fresh bail application in November 2019 and that court having the benefit of the same arguments refused to re-admit the defendant to bail.
- [22] Before this court no challenge has been made to the decision of Mr. Justice Stanley John in his decision of November 2019 and there is no suggestion that that hearing was unconstitutional in any shape or form.
- [23] Accordingly even if this court was to accept the invitation of Dr. Dorsett to express of view on the constitutionality of the proceedings before Mr. Justice Evans in June 2019 it would appear that any view expressed by this court will be purely academic as the order that presently has the defendant in custody relates to that of Mr. Justice Stanley John made in November 2019.
- [24] It would seem to me that impugning or making any findings relative to the order of Mr. Justice Evans of June 2019 is purely academic and even if this court was minded to agree with the issues raised by Dr. Dorsett my vacating the orders of Mr. Justice Evans revoking the bail will not in any way impact upon the order of Mr. Stanley John made in November 2019 relative to bail of the defendant
- [25] Accordingly this court is not prepared to exercise its discretion under section 20(1) the Constitution of Montserrat to grant any relief on this application having regard to the academic nature of this exercise and it is also the view of this court, that the public interest in the issues raised in this matter are not of a nature that requires this court to adjudicate on the issues raised by the defendant relative to the hearing before Mr. Justice Evans in June 2019.
- [26] This court therefore does not need to consider in depth when the application to raise constitutional issues before this court relative to the hearing before Mr. Justice Evans constitutes an abuse of the

court process having regard to the availability of common law remedies or whether it is in fact appropriate for the judge sitting in the criminal trial to seek to pronounce on the lawfulness/ constitutionality of a previous decision relative to bail which strictly speaking is not part of the fair trial process or is an issue which can be raised in the course and conduct of the criminal trial going forward.

[27] That having been said this application is therefore dismissed.

Justice Rajiv Persad
High Court Judge (Ag)