



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION**

Cause No.: GC 97 of 2023

BETWEEN

SAMIR BANDALI

Applicant

AND

THE ROYAL CAYMAN ISLANDS POLICE SERVICE (RCIPS)

Respondent

IN CHAMBERS

Appearances: Ms. Lene Doherty of Samson Law, Attorney for the Applicant
Superintendent Wendy Parchment of RCIPS for the Respondent
Chief Inspector Frank Owens present

Before: **The Hon. Justice Marlene I. Carter (Actg.)**

Date of Hearing 25 May 2023

Date of Decision: 25 May 2023

Written Ruling Delivered: 30 May 2023

HEADNOTE

Leave for Judicial Review – Bail for Applicant arrested on suspicion of commission of offence - Refusal to vary bail conditions – Reasonableness and proportionality of refusal.

RULING

1. On 26 May 2023, this court refused the application for judicial review in this matter. These are the reasons for the denial of the application.

2. The Applicant sought leave to apply for judicial review of the decision of the Respondent not to vary the bail conditions imposed on the Applicant. The Applicant sought an order of mandamus or an order of certiorari in respect of the decision to refuse the temporary variation of the Applicant's bail conditions.

The background to the application

3. On 8 March 2023 the Applicant was arrested on suspicion of causing death by careless driving and was later released on bail. The sole condition attached to the bail order was the retention of the Applicant's passport by the Respondent. In effect the Applicant is unable to travel overseas.
4. No charges have yet been brought against the Applicant.
5. On 26 April 2023 and 22 May 2023, the Applicant wrote to the Respondent seeking the temporary variation of his bail conditions, namely the return of his passport for overseas travel. An offer of a CI\$5,000 cash bond and a Caymanian Surety was made to act as sufficient security during the period in which the bail order was to be varied.
6. On 22 May 2023 the Respondent refused the request citing the serious nature of the allegation against the Applicant and that the investigation is still ongoing. Subsequent reference was made by the Respondent to the cash bond and surety not providing sufficient guarantee that the Applicant would return to the Islands.
7. The grounds of challenge on the application were as follows:

“(8) Taking into account the Applicant's previous good character and full cooperation with the investigation thus far, the RCIPS has failed to give proper consideration to whether the refusal to release the Applicant's passport for a temporary period of time is necessary to satisfy one of the grounds outlined in Section 7.

(9) The decision of the RCIPS fails to engage with and give proper consideration to any of the submissions made on behalf of the Applicant or alternative securities offered during the vail variation.

(10) To refuse his request on the same grounds was unreasonable and disproportionate.”

The reasons advanced by the Respondent for not granting the variation sought

8. Section 8 of the Bail Act states:

“8.(1) This section does not apply in respect of the Grand Court.

(2) When a court or police officer makes a decision in respect of bail in criminal proceedings the court or police officer shall make a written record of the decision.

(3) If a court or police officer -

(a) withholds bail in criminal proceedings;

(b) imposes a condition on granting bail in criminal proceedings; or

(c) varies any condition of bail in criminal proceedings or imposes a condition in respect of such bail, the court or police officer shall give reasons for doing so and include those reasons in the record of the decision made in accordance with subsection (2).

(4) A court or police officer shall provide a copy of a record made under subsection (2) to the person in respect to whom the decision was made if requested to do so by that person.”

9. Pursuant to section 8 of the Bail Act the Respondent advanced reasons for the decision not to vary the bail conditions to allow the Applicant to travel overseas. The Respondent submits that the bail variation is refused pursuant to Section 7 (1) (a) of the Bail Act.

“7. (1) A court or police officer shall not grant a person bail in criminal proceedings subject to conditions except such conditions as appear to the court or police officer to be necessary to secure that the person -

(a) surrenders to custody;”

10. The Respondent considered the following in refusing the variation sought, stating that the condition was necessary to ensure that the Applicant would surrender to custody.

- i. The Seriousness of the offence - the matter for which the Applicant was arrested on suspicion of having committed an offence involving a fatal Motor Vehicle Accident.
 - ii. The investigation into the accident was still ongoing.
 - iii. It is alleged that the Applicant left the scene of the accident.
 - iv. The Caymanian surety offered to secure his return and the cash bond of CI\$5,000 was no guarantee of the Applicant's return to the island to face charges should they be laid against him for the accident.
11. No issue arises with this application regarding delay. The Applicant has sufficient interest in this matter.
 12. Regarding an alternative remedy, I am satisfied that the Applicant's only avenue for the redress that he seeks is to apply for judicial review.
 13. The Bail Act and the Police Act both provide avenues for redress of issues such as that raised on the instant application where a person had been detained pending charge or has been granted bail by a court.
 14. Section 16 of the Bail Act allows for variation of bail conditions.

"16. (1)

A court may -

- (a) impose a condition or a further condition on bail it has granted in criminal proceedings after it has granted such bail; or*
- (b) vary or rescind any condition subject to which it has granted bail in criminal proceedings,*

on the application of the person to whom bail was granted, the prosecutor or a police officer.

(2) Section 8 applies in respect of any decision made by a court, other than the Grand Court, under subsection (1)."

15. Section 2 of the Bail Act states: "*court*" includes a Judge, a magistrate, and a justice of the peace;"

16. Section 65 of The Police Act provides that where a person has been arrested and there is a determination that there is insufficient evidence to charge the person taken into custody but the police officer carrying out the arrest has reasonable grounds for believing that the detention of that person without being charged is necessary custody time limits apply. At the expiration of an initial time limit, the detained person can only be held by order of the Summary Court. There is therefore an avenue provided by the statute to ensure that such detention is reasonable and reviewable.
17. Neither of these, the relevant statutes regarding bail in criminal proceedings, contain provisions that allow for redress for a person who has been arrested on suspicion of having committed an offence and bailed with conditions before charge. The fact that the Applicant's passport has been confiscated as a condition of bail is an effective curb on his liberty. There is no ready access/redress within the court system for those not detained but whose liberty has been effectively curtailed. While the Police Act authorizes such curtailment of liberty even without charge, it is of concern that a person arrested only upon suspicion of having committed an offence, and bailed before being charged for an offence, must make an application such as the instant one to the Grand Court in order to test or determine the reasonableness or proportionality of the imposition of the conditions which curtail his liberty.
18. In the instant case the Court granted leave to apply for judicial review of the decision of the Respondent to refuse to vary bail conditions to allow the Applicant to travel. The Court also granted the application, in circumstances where the application was characterized as urgent, for what was in effect a rolled up judicial review hearing upon leave been granted.
19. The Applicant's position is as set out in his affidavit is as follows:

“(3) On 26 April 2023 and 22 May 2023, I wrote to the RCIPS seeking the temporary variation of my bail order. I produce said email correspondence as exhibit BB/2.

(4) Specifically, on 26 April 2023 I wrote to the RCIPS requesting the return of my passport to allow me to travel overseas to Vancouver, Canada to see my grandmother who was hospitalized with a stroke. No substantive response was received.

(5) On 22 May 2023 two further emails were sent to RCIPS seeking the return of my passport for the purposes of travelling overseas. An offer of a CI\$5,000

cash bond and a Caymanian surety were made for the period in which the bail order was to be varied.

- (6) Three grounds supporting the temporary variation of my bail order to allow for overseas travel were outlined in said emails of 22 May 2023. Namely: (i) that the health condition of my grandmother continues to deteriorate, and I wish to see her; (ii) that my father's health has also significantly deteriorated following heart surgery and I wish to see him; and (iii) that I have a number of important fundraising meetings to arrange with investors who are in Miami between the 24 and 27 May 2023. While technology has certainly improved remote communications, face-to-face interactions offer unique benefits that can contribute tremendously to success as a fundraising and growth specialist. Having face-to-face meetings with prospective investors is considered vital to the operation and sustainability of my business.*
- (7) A travel itinerary outlining specific dates, times and flight numbers for travel were provided.*
- (8) On 22 May 2023, the RCIPS refused the request on account of the serious nature of the allegations and that the investigation is still on going. Subsequent reference was made by the RCIPS to the cash bond and surety not providing sufficient guarantee that I would return."*

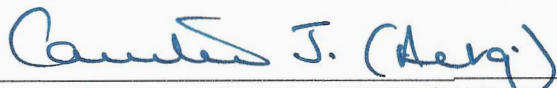
20. Given the short notice, this Court heard oral submissions from the Respondent's representative, Superintendent Parchment. Superintendent Parchment confirmed that the refusal to vary was based on Section 7(1)(a) of the Bail Act, the condition imposed was necessary to secure that the applicant surrender to custody. As stated above, the travel restriction securing the Applicant's passport is the only bail condition imposed by the Respondent. It does not appear that the Respondent took any issue with the reasons advanced for travel advanced by the Applicant.
21. The Applicant contended that the decision was unreasonable and disproportionate in that the Respondent had failed to give proper consideration to whether the refusal to release the Applicant's passport for a temporary period of time is necessary to satisfy one of the grounds outlined in Section 7 of the Bail Law and also that the decision failed to engage with and give proper consideration to any of the submissions made on behalf of the Applicant or alternative securities offered during the bail variation.
22. Counsel for the Applicant expanded on these grounds at the hearing, submitting that the Applicant has ties to the Cayman Islands. He is the co-founder of a local business and part of the Crypto

Cayman community. She outlined that up to 50% of the Applicant's clients were based in Cayman. The Applicant has no property or familial ties to the Cayman Islands.

Court's considerations:

23. Judicial review is not concerned with the merits of the decision that has been taken by the decision maker. Instead, judicial review is aimed at the process by which the decision was made. In determining the reasonableness of the Respondent's decision this Court must consider whether the Respondent took the right matters into account in reaching its decision, examining these independent of the merits of the decision.
24. The Applicant in this case has not submitted that the Respondent took into account irrelevant factors or failed to consider relevant factors, The Applicant submitted that the Respondent appeared not to give proper consideration to whether the refusal to release the passport for a temporary period was necessary in order to secure the attendance of the Applicant. It does not appear to this Court that this factor was not properly considered. Instead, it appears to be the factor that was upmost in the mind of the Respondent, concerned as it was that someone who had been arrested on suspicion of a serious offence would take the variation as an opportunity to remain overseas and not surrender to the court's jurisdiction. This ground of review fails.
25. The second ground pursued by the Applicant was the failure of the Respondent to give proper consideration to alternative securities offered in support of the bail variation. The Applicant contended that this caused the decision to lack detail and justification. In email correspondence exhibited before the court and attached to the application, the Respondent clearly had this issue of alternative sureties in mind in its consideration of the request to vary bail. The email reply from Supt Parchment to the Applicant's attorney on the 22 May 2023 in answer to the proposal of the surety and cash bond was as follows: "*The matter of Death is relevant, with a Caymanian Surety in the sum of CI\$5000.00 is no guarantee that your client will return.*" These matters were relevant and were considered by the decision maker. This ground of review also fails.
26. Given the nature of the matter under consideration, the lack of ties of the Applicant to the island, and the nature and amount of the surety and cash bond that was offered, I do not find that the decision to refuse a variation to the sole condition of bail was disproportionate in all the circumstances.

27. No order as to costs.

A handwritten signature in blue ink, appearing to read "Marlene J. (Actg.)", written over a horizontal line.

THE HON. JUSTICE MARLENE CARTER (ACTG)
JUDGE OF THE GRAND COURT