



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 73
HCA/18-5/XB & HCA/18-6/XB

Lady Clark of Calton
Lord Malcolm
Lord Turnbull

OPINION OF THE COURT

delivered by LADY CLARK OF CALTON

in

CROWN BAIL APPEALS

by

HER MAJESTY'S ADVOCATE

Appellant

against

SHAHIDA ABID

First Respondent

and

SAIMA HAYAT

Second Respondent

Appellant: McSporran QC; Crown Agent
First Respondent: Ogg (sol adv); Paterson Bell
Second Respondent: Dow; John Pryde & Co

4 September 2018

[1] The court heard together two bail appeals by the Crown which were opposed on behalf of the first and second respondents who were separately represented. The

respondents were charged along with another on an indictment which narrated two charges in the following terms:

“(001) on 3 April 2018 at Flat 1-1, 5 Raithburn Road, Glasgow you MUHAMMED RAUF, SHAHIDA ABID and SAIMA HAYAT did assault Haider Hayat and did, having disconnected a CCTV system fitted within said flat, repeatedly strike him on the head and body with a hammer and a knife or similar implements and you did murder him; and you SAIMA HAYAT did previously evince malice and ill will towards him;

and

(002) on 3 April 2018 at Flat 1-1, 5 Raithburn Road, Glasgow you MUHAMMED RAUF, SHAHIDA ABID and SAIMA HAYAT, having committed the crime libelled in charge (001) hereof and being conscious of your guilt in respect thereof, did delay contacting the emergency services, put bloodstained clothing in a washing machine and attempt to clean said clothing, conceal a computer hard drive containing CCTV footage from within said flat in a bin, bind bin bags around the ankles of you SAIMA HAYAT, pour bleach onto the clothing and body of you SAIMA HAYAT, concoct a false account of the events preceding the crime libelled in charge (001) and, knowing that Salia Hayat, born 5 December 2009, Areeha Haider, born 19 February 2008, and Muhammed Ibrasheel Abid, born 20 June 2007, all c/o Police Service of Scotland, Helen Street, Glasgow, may be witnesses in respect of your involvement in charge (001), induce them to provide said false account to officers of the Police Service of Scotland and this you did with intent to defeat the ends of justice and to avoid detection, arrest and prosecution in respect of charge (001) and you did thus attempt to defeat the ends of justice.”

[2] The second respondent was the wife of the deceased, Haider Hayat. The first respondent was the mother of three children and the second respondent was the mother of five children. Prior to arrest each respondent cared for their children. At earlier stages of the proceedings, applications for bail before the sheriff were refused and appeals on behalf of both respondents were refused. The date of expiry of the 140 day period was 11 September 2018 in respect of the first respondent and 13 September 2018 in respect of the second respondent. The 12 month dates were respectively 16 April and 18 April 2019.

[3] At a continued preliminary hearing held in terms of section 72 of the Criminal Procedure (Scotland) Act 1995 on 29 August 2018, the judge, on the motion of the advocate

depute in the absence of any objection, extended the 140 day period to expire on 10 December 2018 and appointed 4 December 2018 as a floating trial diet. Applications for bail were made on behalf of both respondents. The preliminary hearing was continued in respect of the applications until 31 August 2018 for the respondents to provide appropriate bail addresses to be checked by the Crown. The Crown were asked to identify the appropriate police station should the court be minded to grant bail with special conditions.

[4] The bail applications were further considered on 31 August 2018. Bail was granted to the first respondent subject to the special condition of attendance at a specified police station between specified hours every Monday. The second respondent was also granted bail subject to a special condition relating to the surrender of her passport.

[5] In the note provided by the judge who granted the bail applications, the grounds of opposition put forward by the advocate depute were recorded and the primary reason for opposition to bail by the Crown was that there had been no “real” change of circumstances notwithstanding the grant of the extension of the 140 day period. The judge did not consider that there was any merit in this submission. The advocate depute also opposed bail on the basis of the nature of the crimes and the unsettled nature of the immigration status of the first respondent.

[6] The judge granted bail to the respondents with special conditions for the following reasons:

- “1. The Crown required and were given an extension of time.
2. Neither accused had any criminal record.
3. Each was a mother to young children and the distress caused to the accused by the fact of this kind of separation was a relevant consideration favouring bail.

4. Each accused appeared to have strong ties with the local community and wider family support.”

[7] Neither in the minutes nor in the note of reasons by the judge is there any reference to the statutory criteria for a bail review in terms of section 30(2) of the 1995 Act which gives the court a power to review its decision as to bail or its decision as to the conditions imposed if –

- “(a) The circumstances of the person have changed materially; or
- (b) the person puts before the court material information which was not available to it when its decision was made.”

[8] It was not disputed before this court that section 30 applied. The advocate depute submitted that the criteria in section 30(2) were not satisfied. There was no information before the judge that the circumstances of the respondents had changed materially. The risk factors which justified the refusal of bail at the earlier stage of proceedings remained the same. The charges involved a very serious violent murder and attempt to defeat the ends of justice. There were children of the respondents in the property which was the locus of the murder at the time of the alleged crimes and the Crown had concerns about the influence of the respondents on their children who were due to give evidence on commission in October 2018.

[9] Counsel for both respondents adopted the reasoning of the judge. Both respondents were prepared to accept the specified special condition. It was accepted that the only new information put before the judge was that the trial date had been fixed for 4 December 2018 and the custody period involved was thereby extended by about 3 months. No other new information was given to the judge or put before this court.

Decision and reasons

[10] We accept that as a result of the extension of the 140 day rule, the period of pre-trial custody will be extended by a period of approximately 3 months. Provision for such an extension is specifically provided in the legislation and a remedy is provided in section 72A of the 1995 Act in paragraphs 6 and 7. In particular section 72A(7) states:

- “(7) Where paragraph (b) of subsection (6) above applies –
- (a) if such an application as is mentioned in that paragraph is made and granted, the court shall appoint a trial diet for a date within the 140 day period as extended as well as within the 12 month period;
 - (b) if no such application is made or if one is made but is refused by the court
 - (i) the court shall proceed under subsection (3)(a) or, as the case may be, (4)(a) above to appoint a trial diet for a date within the 12 month period; and
 - (ii) the accused shall then be entitled to be admitted to bail.”

[11] In this case the new trial date was allocated within the 12 month period. One of the relevant considerations for a judge in considering whether to grant an extension of the 140 day period is how any extension may affect the interests of the accused. If, for example, a judge considered that the accused should not remain in custody in all the circumstances beyond the 140 day custody period, a decision may be made to appoint a trial diet for a date within the 12 month period and to refuse to extend the 140 day period. In such circumstances the accused is entitled under the statutory provisions to be admitted to bail.

[12] Our understanding of the procedure adopted is that the interests of the respondents were not considered as part of the decision making about the extension of the 140 day period but separately as an application for bail after the extension had been granted.

According to the court minute, there was no objection to the motion of the advocate depute

to extend the 140 day period. We do not consider that it is incompetent to have a motion for a bail review either orally or in writing after the decision for an extension of the 140 days is made. It is important however to bear in mind that any application under section 30 is for review and must satisfy the statutory criteria. In the circumstances of this case we consider that the mere fact that there was an extension of the custody period as envisaged in the 1995 Act does not of itself meet the criteria in section 30(2) of the 1995 Act. In any event we consider that there is merit in the submissions by the advocate depute, summarised in paragraph 8 above, and in particular his reliance on the seriousness and circumstances of the offences. In our opinion the risk factors which underpinned the decision making about bail at the earlier stages of proceedings are very important and are not addressed by the conditions imposed by the judge in granting bail. We consider that the judge erred in granting bail.

[13] For these reasons the Crown appeals against the grant of bail in respect of each of the respondents is granted.