

Abul Khabir Uddin Tohron Nisa v Public Prosecutor
[2006] SGHC 57

Case Number : Cr M 8/2006
Decision Date : 31 March 2006
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lau Wing Yum and Han Ming Kuang (Deputy Public Prosecutors) for the Prosecution; S K Kumar (S K Kumar & Associates) for applicant
Parties : Abul Khabir Uddin Tohron Nisa — Public Prosecutor

Criminal Procedure and Sentencing – Bail – Application for bail to be reduced – Purposes behind granting bail – Whether quantum of bail was reasonable amount

31 March 2006

Judgment reserved.

Choo Han Teck J:

1 The applicant was charged with four charges under s 5(3) of the Employment of Foreign Workers Act (Cap 91A, 1997 Rev Ed) (“the Act”), one charge under s 5(2) and 34 abetment charges under s 5(1) of the Act. Sections 5(1), 5(2) and 5(3) read as follows:

- 5(1) No person shall employ a foreign worker unless he has obtained in respect of the foreign worker a valid work permit which allows the foreign worker to work for him.
- (2) No foreign worker shall be in the employment of an employer without a valid work permit.
- (3) No person shall employ a foreign worker otherwise than in accordance with the conditions of the work permit.

2 The maximum penalty for an offence under s 5(1) is a penalty amounting to “not less than 24 months’ levy and not more than 48 months’ levy or to imprisonment for a term not exceeding 12 months or to both”. The penalty for an offence under s 5(2) is a fine of up to \$5,000 or imprisonment of up to one year, or to both. The penalty for an offence under s 5(3) is a fine of up to \$5,000.

3 The applicant was first charged in court on 15 March 2006 and was released on bail of \$40,000 in one surety on 20 March 2006. Three days later, on 23 March 2006, the Prosecution charged him with the 34 charges under s 5(1). Bail was increased to \$100,000 in one surety. The applicant was unable to raise bail and had been in remand again since 23 March 2006. He made this application for bail to be reduced to \$50,000 in one surety. Mr Kumar, counsel for the applicant, submitted that the applicant earned \$1,000 a month as a director of a company that is in the business of recruiting Bangladeshi workers. He denied the charges and stated that he had a valid defence under s 25 of the Act in that he was not the actual offender, and also that he was not in Singapore when the offences under the abetment charges had been allegedly committed. It is, of course, not the function of this court to weigh the merits of his defence, but only to consider whether it was a plausible one. Counsel also submitted that the applicant had no intention of absconding, and that although he was initially released for a few days on \$40,000 bail he dutifully returned to court to face the additional 34 charges.

4 The two major issues in bail cases are first, whether bail ought to be granted, and secondly, if so, the appropriate amount of bond to be provided, and other conditions to be added, if necessary. The first issue was not relevant in this application, as it had been decided in the court below that bail was to be offered. The dispute concerned the second issue. Deciding the appropriate amount of bail is not easy because the court has to take into account numerous factors, each of which varies from case to case.

5 A grant of bail serves two important purposes. First, it helps to preserve the “golden thread” in criminal law, namely, that a person is innocent until proven guilty. Innocent people do not normally spend their time in jail. Secondly, there is a need to ensure that accused persons do not abscond before their trial, and bail serves as the instrument by which accused persons are discouraged from absconding. An accused person who absconds will, when arrested, not only stand trial on his original charge, but will also face a further charge for breaching the bail order. In addition to that, his bailor will in all likelihood lose his money posted for the bail bond. Sometimes, as in the present case, the passport of the accused person may be impounded as a condition of the bail. That is an additional measure to make it difficult for the accused to abscond.

6 The idea behind granting bail, therefore, is that an accused person need not be imprisoned if he meets the terms of the bail. In the light of the dual purposes of bail, it should not be surprising that a high percentage of people who are offered bail will be out on bail. Only the impecunious and destitute would find difficulty raising reasonable bail. Determining what is a reasonable bail is an exercise in balancing the dual purposes of bail.

7 What constitutes a reasonable amount for bail will vary from case to case on the specific facts although the broad points have been reiterated *ad nauseum* in all bail applications. A summary of some of the main ones can be found in the case of *Soo Shiok Liong v Pendakwa Raya* [1993] 2 MLJ 381 that both Mr Kumar and Deputy Public Prosecutor Lau Wing Yum referred to. Mr Lau submitted that the accused is suspected of interfering with prosecution witnesses. If that is so, the Prosecution could apply for the bail to be revoked upon proof, but it is presently not an issue before this court. In the present case, after considering the submission of both counsel, and noting that the accused had no record of previous convictions, as well as the fact that he had already spent one week in prison, I am of the view that the bail of \$100,000 ought to be reduced to \$50,000.

8 The other conditions remain unvaried. The accused is to report daily to the investigating officer or her deputy at such place and time as she might require. Liberty is granted to apply to the District Court in respect of any fresh applications.

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