

01/10; [2009] VSC 606

SUPREME COURT OF VICTORIA

Re HOUSSEIN HAWLI

Whelan J

15, 17 December 2009

CRIMINAL LAW - BAIL - APPLICATION FOR - ACCUSED CHARGED WITH MULTIPLE SERIOUS OFFENCES OF CAUSING SERIOUS INJURY, MAKING A THREAT TO KILL, UNLAWFUL IMPRISONMENT, THEFT AND CRIMINAL DAMAGE - ACCUSED FAILED TO APPEAR ON BAIL ON THREE PREVIOUS OCCASIONS - PRIOR CONVICTIONS FOR SERIOUS CRIMINAL OFFENCES - NO STABLE ACCOMMODATION - ABUSING DRUGS AND ALCOHOL - ACCUSED TO SHOW CAUSE WHY HIS DETENTION IN CUSTODY WAS NOT JUSTIFIED - APPROACH TO BE FOLLOWED - WHETHER BAIL SHOULD BE GRANTED: *BAIL ACT 1977, S4(4)*.

HELD: Application for bail dismissed.

1. The question in the present case was whether or not the accused has shown cause why his detention in custody was not justified. If that question was answered in the affirmative, bail should be granted. If answered in the negative, bail must be refused. There is no second step.

Re Asmar [2005] VSC 487; MC30/2005, applied.

2. Given that a violent relationship between the accused and his ex-wife has existed for many years and that there is an intervention order in place, there is a high risk that if released on bail, the accused may commit further offences. Further, given that the accused has committed serious criminal offences in the past, has failed to answer bail on three occasions, and the prosecution case seems strong, the risk of his answering bail, endangering the safety and welfare of others, interfering with witnesses or otherwise obstructing the course of justice is unacceptable.

WHELAN J:

1. On 7 October 2009 Houssein Hawli was arrested after police were called to a disturbance at his sister's house. He was interviewed that day in relation to a number of offences which had allegedly been committed on 12 September 2009 and 13 September 2009. What is alleged is that on 12 and 13 September he perpetrated a prolonged attack on his ex-wife in a city hotel room. The allegations are that in the course of the attack he used weapons, being a data cabling cord and a shoe; he threatened to kill his ex-wife and their children, who were present in the next room during the attack; and he also threatened to kill a hotel manager. He has been in custody on remand since 7 October 2009.

2. Mr Hawli has been charged with 13 offences. He is charged with intentionally causing serious injury to his ex-wife and with five other assault offences (which I assume are alternatives). He is also charged with making a threat to kill his ex-wife and their two children, making a threat to kill the hotel manager, unlawful imprisonment of his ex-wife, a number of theft charges relating to his ex-wife's motor vehicle and her mobile phone, and intentionally damaging property, which also relates to his ex-wife's motor vehicle.

3. Mr Hawli made unsuccessful applications for bail to the Magistrates' Court on 9 October 2009 and 21 October 2009, and made a further application which was withdrawn on 19 November 2009. There is a committal mention scheduled for 6 January 2010.

4. Mr Hawli is 35 years of age. I was told on this application that he has been separated from his ex-wife for approximately five years, although some form of relationship has continued during that period.

5. Mr Hawli has a prior conviction for armed robbery, for which he received a suspended jail sentence in the Melbourne County Court. He was convicted of that armed robbery in 1994 when he was 20 years of age.

6. On 28 August 2003 he was convicted at Sunshine Magistrates' Court of offences of trafficking ecstasy, possession of cannabis, possession of methylamphetamine, possession of a drug of addiction, and possession of LSD. After an appeal to the County Court, he received a suspended jail sentence on those convictions.

7. Mr Hawli has three prior convictions for failing to answer bail. One of those convictions was on 28 August 2003 when he was convicted of drug trafficking and possession. The other two are on 3 September 2007 and 27 August 2008. In the course of the hearing before me it was suggested that he was apprehended or did appear when warrants were issued, and that one or more of those failures related to charges subsequently dismissed. Otherwise, no explanation for these failures was proffered.

8. In 2006 and 2007 Mr Hawli was charged with a total of eight breaches of an intervention order. According to the evidence of the informant on this application, his ex-wife was the complainant in relation to those eight alleged breaches. There were two court appearances in relation to those matters, both at Broadmeadows, on 4 October 2006 and on 3 September 2007. On those occasions there were also assault charges and charges of intentionally damaging property. On each of those occasions all charges were struck out after being withdrawn. The informant gave evidence before me that Mr Hawli's ex-wife says she was persuaded, pressured or threatened by Mr Hawli to withdraw.

9. There was also a proceeding at the Sunshine Magistrates' Court on 12 December 2006 where a number of assault charges against Mr Hawli were dismissed. I was told his ex-wife was the alleged victim and that she gave evidence.

10. In oral evidence before me on this application the informant said there was an extensive violent history between Mr Hawli and his ex-wife which had involved many police attendances. He referred to the eight counts of breach of intervention orders which had been struck out, and to other incidents. The informant had given a similar account of relations between Mr Hawli and his ex-wife in a statement he had prepared which was exhibited to an affidavit in opposition to the application for bail.

11. In both his written statement and in his oral evidence the informant also referred to Mr Hawli's drug abuse.

12. In his oral evidence the informant indicated that his concern in relation to the granting of bail was that Mr Hawli would harm his ex-wife or his children. He said Mr Hawli's ex-wife is terrified and that his children are traumatised and are in counselling. He said that the latest incident represented an escalation of Mr Hawli's violence towards his ex-wife and that he was concerned that if he was released on bail "he may in fact kill her".

13. In cross-examination of the informant, the history between Mr Hawli and his ex-wife was characterised by Mr Hawli's counsel as "clearly ... very tumultuous". It was put to the informant that the concerns he had expressed about drug use and the future safety of both the ex-wife and other witnesses could be addressed by appropriate conditions. The informant said that he did not consider that drug and alcohol abuse was the relevant source of concern and he said conditions would not allay his concerns.

14. On behalf of Mr Hawli, evidence was called from the applicant's older brother, Bassam Hawli. Mr Bassam Hawli is the owner of an importing business. He is prepared to offer his brother employment as a storeman in a warehouse he operates as part of his business. Mr Bassam Hawli has a wife and four children. He is also offering his younger brother accommodation in the spare room of his home. He said he would notify the police if he became aware of any drug or alcohol abuse. He said he would be prepared to be a surety. He said that his parents live in Lebanon, but that he was confident that his brother would not wish to go there because he "loves his kids too much". In cross-examination he agreed that his brother had not been employed for 12 months or so prior to his arrest, but he referred to his brother's previous operation of a successful small business. He agreed that he could not control his brother's actions but could only help him. He said that he had been surety for his brother before and that he had not lost the money which he had lodged on that occasion. He said his brother had never lived with him or worked with him before.

15. Evidence was also called from Mr Anthony Dieni who is an experienced drug counsellor at St Paul's Drug Prevention and Rehabilitation Centre. Mr Dieni assessed Mr Hawli at the Melbourne Magistrates' Court on 19 November 2009 after being contacted by Mr Hawli's solicitors, Garde Wilson Lawyers. His assessment is that Mr Hawli is an alcoholic who has also abused illegal drugs. Mr Dieni indicated that, if Mr Hawli was granted bail, he would accept him for treatment and that he would initially require him to attend twice a week and subject himself to random testing. He said that if any of the tests were returned positive he would notify the informant. He expressed a positive view of Mr Hawli's prospects if treated.

16. Mr Hawli is charged with an indictable offence where he is alleged to have used an offensive weapon. Both parties approached the application on the basis that the onus is on Mr Hawli to show cause why his detention in custody is not justified, pursuant to s4(4) of the *Bail Act 1977*. I indicated to counsel in the course of the hearing that, subject to submissions to the contrary, I intended to follow the approach of Maxwell P in *Re Fred Joseph Asmar*.^[1] No submission was made to the contrary.

17. Offences of the kind with which Mr Hawli is charged, in circumstances such as those alleged here, can result in substantial terms of imprisonment.^[2]

18. I was impressed with Mr Hawli's brother, Bassam, and with the evidence which he gave. The offers of accommodation and employment which he has made to his younger brother are very generous and would, I strongly suspect, impose a considerable burden upon him and his family. Similarly, I accept the evidence of Mr Dieni that Mr Hawli is a man who would benefit greatly from drug and alcohol treatment.

19. On behalf of Mr Hawli it was submitted that he is contesting the allegations made in relation to the charges he now faces. His counsel was unable to further identify what is likely to be in issue. He submitted that arrangements were in place for stable accommodation and employment, and for drug and alcohol treatment. He submitted that two reliable people, Mr Bassam Hawli and Mr Dieni, were in a position to monitor Mr Hawli and to ensure that he complied with any conditions imposed upon him. He said that Mr Hawli would submit to whatever conditions as to reporting, curfew, passport surrender, and treatment might be imposed. He submitted that Mr Hawli was fully aware that a single proven contact with his ex-wife would result in his return to custody. He submitted that alcoholism and drug abuse was very likely to be the underlying cause of Mr Hawli's offending. He also relied upon the fact that, even on the prosecution's assessment of the position, if the charges were to be fully contested, there would not be a trial before the middle of 2011. He submitted delay was a particularly significant factor.

20. If all matters are fully contested the applicant will be on remand for almost two years before his trial. This is an unsatisfactory position. Unfortunately, it is not unusual.

21. The Director of Public Prosecutions opposed the granting of bail. On behalf of the Director reliance was placed on the seriousness of the alleged offences and on the strength of the prosecution case. It was submitted that Mr Hawli had serious prior convictions, and that he also had three prior convictions for failing to answer bail, as to which no satisfactory explanation had been provided. It was submitted that there was nothing in the material before the Court to suggest that alcohol or drug abuse was the cause of the relevant incident and it was submitted that the position in fact was that Mr Hawli had a vindictive and possessive attitude towards his ex-wife and that he felt entitled to control her. Whilst acknowledging that there would be delay until mid-2011 if all matters were fully contested, it was submitted that this delay was not out of the ordinary.

22. The onus is on the applicant to show that his detention is not justified. I accept the applicant's submissions on delay, but I do not consider that the applicant has demonstrated that his detention is not justified.

23. The applicant has three prior convictions for failing to answer bail. He is now facing very serious charges and, if convicted, he may well face a substantial term of imprisonment. I agree with the submission on behalf of the prosecution that no satisfactory explanation for the prior failures to answer bail has been provided. In my view there is an unacceptable risk that he would fail to answer his bail.

24. There is also an unacceptable risk that he will commit offences whilst on bail, that he will endanger the safety or welfare of other persons, and that he will interfere with witnesses or otherwise obstruct the course of justice.

25. My concerns in this respect are principally in relation to his ex-wife. He has managed to persuade his ex-wife previously to withdraw assault charges and charges of breach of intervention orders against him. The suggestion that a violent relationship between the two of them has existed for many years was not contested in this application. His counsel characterised it as “very tumultuous”. In my view there is a high risk that if he is released on bail Mr Hawli will himself, or through others, take action in relation to his ex-wife to resolve the predicament which he now faces and to eliminate the risk of a substantial jail term. I am concerned that this would involve breach of the intervention order which I was told is currently in place, and I consider that there is a significant risk that it would also endanger the safety of his ex-wife and anyone else who happened to intervene or be in the way, including his children. In my view that risk is unacceptable.

26. I am sure that Mr Hawli would benefit greatly from drug and alcohol treatment, but I am not persuaded that it will eliminate, or sufficiently ameliorate, the risk in relation to his ex-wife. Likewise, whilst I accept the truthfulness and reliability of his older brother, I am not persuaded that he will be able to exercise sufficient control over his younger brother to render the risk to his ex-wife acceptable.

27. Finally, whilst there are matters which operate in Mr Hawli’s favour, being the accommodation and employment offered, and the drug and alcohol treatment proposed, they are all steps emanating from others, namely his brother, his solicitors and Mr Dieni. When he was at liberty and free to pursue his own course the material before me indicates that he had no employment, even though in the past he has demonstrated the capacity to run a small business; he had no stable accommodation; and he was abusing drugs and alcohol. There is no indication that he was either undertaking or seeking assistance in addressing these problems.

28. Added to all of the above are the factors that he has committed serious criminal offences in the past, that the offending now alleged is serious, that on the present material the prosecution case seems strong, and that Mr Hawli does have close family overseas. These factors exacerbate my concerns as to the risk of further offending and the risk of his failing to answer his bail.

29. The application is dismissed.

[1] [2005] VSC 487.

[2] See for example *R v Kelly* [2000] VSCA 164 and *R v Parlapanov* [1999] VSCA 24.

APPEARANCES: For the applicant Houssein Hawli: Mr T Alexander, counsel. Garde-Wilson Lawyers. For the respondent: Mr A Tinney SC, counsel. Office of Public Prosecutions.
