

# SUPREME COURT OF QUEENSLAND

CITATION: *Director of Public Prosecutions (Cth) v Dang* [2013] QCA 25

PARTIES: **DIRECTOR OF PUBLIC PROSECUTIONS (CTH)**  
(applicant)  
**v**  
**TAM MINH DANG**  
(respondent)

FILE NO/S: Appeal No 1809 of 2013  
SC No 11837 of 2012

DIVISION: Court of Appeal

PROCEEDING: Application for Stay of Execution

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED EX TEMPORE ON: 25 February 2013

DELIVERED AT: Brisbane

HEARING DATE: 25 February 2013

JUDGE: Fraser JA

ORDER: **The order made by Justice Dalton on 25 February 2013 granting bail to the respondent, Tam Minh Dang, be stayed until the determination of the appeal or earlier order.**

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL – PRACTICE AND PROCEDURE – QUEENSLAND – STAY OF PROCEEDINGS – WHEN GRANTED – where the respondent was charged with attempting to possess a substance that was unlawfully imported, being the border controlled drug, heroin – where the quantity the respondent attempted to possess was a commercial quantity – where bail was opposed in the Trial Division on the basis that the respondent was a flight risk pending the trial – where the primary judge ordered that the respondent be granted bail – where the applicant contends there has been a miscarriage of a discretion – whether a stay should be granted

*Criminal Code 1995 (Cth) s 11.1(1), s 307.5*  
*House v The King* (1936) 55 CLR 499; [1936] HCA 40, cited

COUNSEL: J N Hanna for the applicant  
M F Bosscher (*sol*) for the respondent

SOLICITORS: Director of Public Prosecutions (Commonwealth) for the applicant  
Bosscher Lawyers for the respondent

**FRASER JA:** A Judge in the Trial Division today granted an application for bail by the present respondent in this Court. The applicant, the Commonwealth, now seeks an order staying the operation of the order made in the Trial Division pending the hearing of an appeal.

The respondent was charged with an offence of attempting to commit an offence against s 307.5 of the *Criminal Code* (Cth) in that he attempted to possess a substance that was unlawfully imported, the substance being a border controlled drug, namely heroin, and the quantity attempted to possess being a commercial quantity contrary to s 11.1(1) of the *Criminal Code* (Cth).

The charge is an attempt because the ultimate delivery was a controlled delivery. The evidence before the primary Judge showed that the Crown case is that a large number of parcels of heroin were imported into Australia from Vietnam hidden in wooden furniture items. Customs and Police had detected the heroin and substituted an inert substance for it. After the shipment was released from Customs it was kept under police surveillance and eventually taken to an address and placed in a garage by three men, one of them being the respondent.

Police attended the premises and found the garage door locked from the inside. When they eventually gained entry they found on the Commonwealth case that the bases of the wooden furniture items which contained the inert substance had been smashed and packages removed. There was a car hired by the respondent which had a panel removed from it.

The basis on which bail was opposed in the Trial Division was that there was a flight risk pending the trial which was submitted to be, I think, 12 or 18 months distant at least.

The flight risk was to be inferred largely from the seriousness of the offence with which the respondent is charged and the sentence which would result if the respondent were convicted.

There is no doubt that the offence charged is serious. It is alleged that the pure weight of the heroin which was removed was of the order of 36 kilograms, which may be contrasted with a commercial quantity of heroin, for which the maximum penalty is life imprisonment, of 1.5 kilograms.

The applicant here submits that the evidence was strong that the respondent was the most significant of the three offenders. He was a willing participant in a significant commercial operation involving the acquisition and distribution of a very large quantity of heroin, and it might be inferred from that and some other facts that he is a flight risk.

The other facts seem mainly to be that he had previously used a different name albeit legitimately, and that his ties with the jurisdiction are not strong. According to the evidence for the applicant, he had told an investigator that he had no fixed abode, or words to that effect. It appears that he is not employed and he was divorced from his wife. On the other hand he had lived in Australia for some 30 years.

The respondent opposes a stay mainly on the basis that the grant of bail was an exercise of discretion and that the applicant will not be able to demonstrate any error in the exercise of the discretion. *House v The King* (1936) 55 CLR 499 is cited.

The respondent also made the point that there is no evidence adduced either in the primary proceeding or on appeal demonstrating that there is any strong case that there is a flight risk.

I have formed the view that the applicant does have at least an arguable case that there has been a miscarriage of a discretion. The applicant is unable to identify the particular basis on which the discretion might have been exercised but contends that an examination of the evidence and the result demonstrates that the discretion must have miscarried. That is, I think, arguable.

The matter can be brought on for a final hearing in a very short order hopefully by the end of next week and, if not, the week after.

On that footing - and if there is any particular delay in the hearing of the appeal the matter should be revisited - but on that footing it seems to me that the balance of convenience very strongly favours the grant of the necessarily short stay of execution which is sought.

Accordingly I will make the order granting a stay of execution of the order granting bail.

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**FRASER JA:** The order of the Court is that the order made by Justice Dalton on 25 February 2013 granting bail to the respondent, Tam Minh Dang, be stayed until the determination of the appeal or earlier order.