

SUPREME COURT OF QUEENSLAND

CITATION: *Re Halilovic* [2014] QSC 5

PARTIES: **DARIO HALILOVIC**
(applicant)
V
DIRECTOR OF PUBLIC PROSECUTIONS
(respondent)

FILE NO/S: 467 of 2014

DIVISION: Trial

PROCEEDING: Application for bail

ORIGINATING COURT: Brisbane

DELIVERED ON: 23 January 2014

DELIVERED AT: Brisbane

HEARING DATE: 23 January 2014

JUDGE: Philippides J

ORDER: **Bail granted**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – BAIL – BEFORE TRIAL – OTHER CASES – where the applicant is charged with contravening section 60A(1) of the Criminal Code – where applicant must show cause why detention in custody is not justified

Bail Act 1980 (Qld), s 16(1), s 16(2), s 16(3A)
Criminal Code Act 1899 (Qld), s 60A(1)
Criminal Code (Criminal Organisations) Regulation 2013 (Qld)
Vicious Lawless Association Disestablishment Act 2013 (Qld), s 4

R v Carew [2014] QSC 001

COUNSEL: AJ Kimmins for the applicant
VA Loury for the respondent

SOLICITORS: Potts Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

Philippides J:

Bail Application

- [1] This is an application by Dario Halilovic who seeks bail in relation to two charges that he, being a participant in a criminal organisation, was knowingly present in a public place with two or more others who were participants in a criminal organisation: see s 60A(1) *Criminal Code*.
- [2] The applicant has been on remand for the charges the subject of this application since his arrest on 4 January 2014. His next court appearance is a 17 February 2014 mention in the Southport Magistrates Court. The applicant's trial has not yet been given a hearing date. It appears from the submissions made on behalf of the applicant that no trial can be expected before 7 May 2014.

Section 16 of the Bail Act

Section 16(1) of the Bail Act – unacceptable risk

- [3] Section 16(1) of the *Bail Act* provides that a court shall refuse to grant bail if the court is satisfied that there is an unacceptable risk that the defendant if released on bail would:
- (a) commit further offences;
 - (b) interfere with witnesses or otherwise obstruct the course of justice;
 - (c) fail to appear and surrender into custody;
 - (d) endanger the safety or welfare of victims or others; or
 - (e) pursuant to section 16(1)(b) – be at risk such that the detention in custody would be justified by the need for his own protection.

Section 16(3A)(a) of the Bail Act – applicant to show cause

- [4] It was common ground that because it is alleged that the applicant is a “participant in a criminal organisation” the applicant is in a show cause situation pursuant to s16(3A)(a) of the *Bail Act* 1980. Accordingly, bail must be refused unless the applicant “shows cause why” his “detention in custody is not justified”.

Section 16(2) of the Bail Act- relevant considerations

- [5] Section 16(2) of the *Bail Act* provides that in assessing whether there is an unacceptable risk with respect to any event specified in s 16(1)(a), the court is to have regard to “all matters appearing to be relevant” and in particular to such of the considerations listed therein as appear to be relevant. For present purposes, those considerations are:
- “(a) the nature and seriousness of the offence;
 - (b) the character, antecedents, associations, home environment, employment and background of the defendant;
 - (c) the history of any previous grants of bail to the defendant;
 - (d) the strength of the evidence against the defendant.”

Section 16(2)(a) - seriousness of the offence

- [6] Conviction of the offence or offences charged would mean imprisonment ranging from a mandatory minimum of six months served wholly in a corrective services facility to a maximum penalty of three years: see s 60A(1) *Criminal Code*.
- [7] The circumstances of the alleged offending are that:
- The applicant was in the company of Bane Alajbegovic, Daren Haley, Kresimir Basic and Daniel Lovett when spoken to by police at 10 pm on Friday 3 January 2014 on Elkhorn Avenue, Surfers Paradise (count 1).
 - the applicant was in the company of Bane Alajbegovic; and Kresimir Basic in a hotel room at the Hilton Hotel, Orchid Avenue, Surfers Paradise on Saturday 4 January 2014 (count 2).
- [8] It is alleged that all five men are members of various Criminal Motorcycle Gangs. Lovett is alleged to be the Sergeant-at-arms of the Victorian Hells Angels. Haley is alleged to be a member of the Hells Angels. There is no issue that the Hells Angels and Comancheros have each been declared to be “criminal organisations”: see *Criminal Code (Criminal Organisations) Regulation 2013*.
- [9] The applicant does not dispute that he was a nominee of the Comanchero Motorcycle Club in July 2012, but has deposed that he quit the club in early 2013 and has not associated with the club since that time. Alajbegovic does not dispute that he was a member of the Comanchero Motorcycle Club in July 2013, but deposes that in August 2013 he quit the club and has had no association with the club since that time.
- [10] Basic is alleged to be a participant in the affairs of an association pursuant to s 4 of the *Vicious Lawless Association Disestablishment Act 2013*. The respondent’s submissions in that regard are that Mr Basic “asserts, declares or advertises his association with the association or he seeks to be associated” with such association.
- [11] It is not suggested that the occasions of 3 or 4 January 2014 were used to further other criminal activity.

Section 16(2)(b) considerations

- [12] The applicant is aged 23. He is a single man who has resided with his father for the past 2 years in Dandenong, Victoria. He is a qualified carpenter. He has worked since he was 18 years of age for a company named J. Z. Lee Interiors. He works 6 days per week and earns a salary somewhere between \$1,300 - \$2,000 net per week. Approximately 6 months ago, he and Alajbegovic commenced a business in partnership, which is still in its infancy.
- [13] The applicant has a prior conviction on 28 February 2011 in the Melbourne County Court for an offence of reckless behaviour causing serious injury, for which he received a sentence of 18 months imprisonment wholly suspended for 18 months.
- [14] His history does not reveal that he has previously breached any bail undertaking.

- [15] At the time of his arrest for the instance offences the applicant was on bail for offences allegedly committed on 26 September 2013 in Victoria, namely “reckless conduct endanger serious injury” and trafficking in methylamphetamine.

Section 16(2)(c) - earlier bail history

- [16] The applicant was on bail in Victoria when he travelled to Queensland. His presence in Queensland did not contravene any bail condition. He has not previously failed to appear in respect of any bail undertaking.

Section 16(2)(d) – the strength of the Crown case

- [17] As to the strength of the prosecution case, it was submitted on behalf of the applicant that while, *prima facie*, the prosecution will be able to prove that the applicant was at the relevant times in company with his alleged co-accused, the critical issue at trial will be whether the prosecution proves to the requisite criminal standard that the applicant was at the relevant times on 3 and 4 January 2014 a participant “in a criminal organisation”.

- [18] In that regard, as already referred to, the applicant and Alajbegovic depose that they were either supporters, nominees or patched members of the Comanchero Motorcycle Club, Hallam chapter from July 2012 to August 2013. But they depose to having resigned from and having had no association with the club since then. The applicant deposes that at all relevant times in January 2014, neither he, nor Kresimir Basic or Alajbegovic were members of a motorcycle club. The applicant deposes that he has never been a member of the Hells Angels, sought to join the Hells Angels, or attended motorcycle club meetings, functions or rides.

- [19] The respondent submitted that the evidence as it currently stands in respect of the Crown case is in the form of intelligence reports suggesting membership or association by all men with either the Hells Angels or Comancheros at least in 2012 and 2013. It was accepted by the respondent that conviction of the charged offences may depend on whether the applicant adduces the evidence deposed to in his affidavit at trial.

- [20] The second offence charged is particularised as having been committed in a hotel room. Given that that raises an issue as to whether a hotel room falls within the definition of a public place (see s 60A *Criminal Code* definition), the respondent’s counsel sensibly conceded that the prosecution case was not a strong one.

Unacceptable Risk?

Interfering with witnesses/obstruct the course of justice

- [21] It is conceded by the respondent that there is no evidence to suggest that any witness will be at risk if bail were to be granted.

Failing to appear

- [22] The applicant’s current Victorian bail conditions include residential and reporting conditions. The applicant does not have any ties to Queensland; his ties which are significant are to Victoria. Given the absence of any previous convictions for failing

to appear to answer any prior bail undertakings, it is accepted that he is not a flight risk.

Risk of reoffending

- [23] The applicant was on bail for the offences of recklessly causing serious injury and trafficking in methylamphetamine. It is therefore argued by the respondent that there is “some” risk of reoffending.
- [24] However, as mentioned, the applicant has deposed that he has disassociated himself from the Comanchero Motorcycle Club. The respondent accepted that resignation or dissociation from a criminal organisation, like any demonstrated act of rehabilitation, may give rise to cause being shown and the court being satisfied that the person has shown that they are not an unacceptable risk. In addition, the applicant’s legal representative referred to and adopted the observation made by Byrne J in *R v Carew* [2014] QSC 001 as apposite in this case - namely, that the applicant’s anxiety not to return to solitary confinement is a substantial incentive for him not to commit offences. (Since 17 January 2014, the applicant has been in what the applicant described as solitary confinement: a situation described by the respondent as a “single cell with no contact with other inmates” and with “access to an exercise yard”).
- [25] If released on bail, the applicant intends to return to and continue to reside in Victoria with his father.
- [26] On the material before the court, the risk of reoffending is not unacceptable if bail were granted on the conditions contained in the draft order provided to the court, which include conditions as to the applicant appearing and surrendering himself into custody, conditions as to residency, reporting to police, non-contact, that he not leave the State of Victoria except with the prior written consent of the Office of the Director of Public Prosecutions and that he surrender his passport and not apply for a passport or permit to travel outside Australia.¹ The respondent did not seek any other condition of bail in addition to those in the draft order.

Disposition

- [27] The applicant has discharged the burden in s 16(3A) of the *Bail Act* to show cause. In those circumstances, bail is granted on the conditions provided in the draft order.

¹ Section 16(3A)(b)(i) of the *Bail Act* provides that if bail is granted the court is required to order that the applicant surrender his passport.