SUPREME COURT OF QUEENSLAND

CITATION:	*Re: Van Rooijen* [2014] QSC 116
PARTIES:	**BRADY VAN ROOIJEN**
	(applicant)
	v
	DIRECTOR OF PUBLIC PROSECUTIONS
	(respondent)
FILE NO/S:	BS4602/14
DIVISION:	Trial
PROCEEDING:	Application for bail
DELIVERED ON:	30 May 2014
DELIVERED AT:	Brisbane
HEARING DATE:	28 May 2014
JUDGE:	Alan Wilson J
ORDER:	**The applicant is granted bail on the conditions set out in the draft order provided for the applicant and amended, with consent, by the respondent**
CATCHWORDS:	CRIMINAL LAW – PROCEDURE – BAIL – before trial – generally – where the applicant must show cause why detention in custody is not justified
	CRIMINAL LAW – PROCEDURE – BAIL – jurisdiction of Supreme Court – generally
	Bail Act 1980 (Qld), ss 9, 16
	Vicious Lawless Association Disestablishment Act 2013 (Qld), s 5
	DPP v Bakir [2006] QCA 562
COUNSEL:	Mr S Holt SC for the applicant
	Mr D Meredith for the respondent
SOLICITORS:	Peter Shields Lawyers for the applicant
	Director of Public Prosecutions (Qld) for the respondent

[1] **Wilson J**: Mr Van Rooijen, 25, has been in custody since 12 May 2014 on five charges: possession of a dangerous drug (one 5 mg Diazapam tablet), possession of a restricted drug (one 5 mg sachet of Seldinafil) extortion, assault occasioning bodily harm in company, and being a participant at a criminal organisation (the Hells Angels Motorcycle Club). His alleged association with that declared *criminal organisation* means that each of the other four charges includes an allegation that he was *a vicious lawless associate*.[1]

[2] The application is brought under the *Bail Act* 1980 (Qld). There is a presumed entitlement to bail under s 9, but that presumption is rebutted if the court is satisfied, under s 16(1), that there is an *unacceptable risk* that the defendant if released on bail would fail to appear and surrender into custody or would, while released on bail, commit an offence, or endanger the safety or welfare of a person who is claiming to be the victim of an offence, or interfere with witnesses or otherwise obstruct the course of justice.

[3] The burden of establishing that there is an *unacceptable risk* ordinarily falls upon the Crown but, under ss 16(3) and 16(3A), that burden shifts in certain circumstances to the applicant, who must be refused bail if he or she cannot show cause that detention in custody is *not justified*. That circumstance attaches here.

[4] The first factor upon which s 16(2) focuses is the nature and seriousness of the offences charged. According to the DPP submissions, the charges had their genesis in a drug sale and an unpaid debt for drugs. The complainant – who was not, it appears, the debtor but a person who instigated or was involved in the drug transaction – was allegedly assaulted by Mr Van Rooijen and another person. Doing the best I can with the police material and submissions for the DPP, it appears the extortion charge arises from threats or inducements made in the course of or following that assault. There is nothing to suggest the threats made at the time were executed, or attempted. These things are said to have happened in the course of activity by a criminal group. On any view the charges are serious, but not of an order which compels the conclusion that their very nature makes the applicant an unacceptable risk.

[5] As to his character and antecedents, he has four convictions in Southport Children's and Magistrates Court between 2005 and 2009, none of which resulted in the recording of a conviction. In March 2010 he was convicted of robbery with actual violence in company and sentenced to 30 months imprisonment, but released on parole after three months.

[6] He lives with his partner on the Gold Coast and she is expecting their first child within the next week or so. He has other local family support and a record of employment as a qualified carpenter and tradesman. His parents are prepared to offer a surety of $50,000. There is also evidence of offers of employment if he is released. His conviction in Southport District Court in March 2010 was for offences in November 2008. He says that charges and his other offending involved youthful indiscretions and immaturity and claims that, since he has been with this partner, he has settled down.

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[1] Under the *Vicious Lawless Association Disestablishment Act* 2013 (Qld), s 5.

[7] As to s 16(2)(c), nothing in his criminal history suggests any propensity for breaking bail. His two previous appearances for breaches of bail conditions occurred in late 2009 and in neither instance was a conviction recorded.

[8] The Crown says it has a strong case against him. He denies the charges. Unsurprisingly perhaps, the Crown and Mr Van Rooijen are at arms length about the strength of the evidence against him. The Crown says that it has a strong case, supported by a digital recording. Mr van Rooijen is not however a party to or a participant in that recording. It is reasonably clear that the prosecution case relies primarily on the evidence of a single witness whose credibility is likely to be strongly challenged.

[9] The Crown presses the submission that the nature of the alleged offences here indicates propensity to interfere with witnesses. That is not, however, something that has ever featured in his known criminal history.

[10] This examination of the relevant factors points to the conclusion that he is not an unacceptable risk. A relevant material factor is that a refusal of bail would prevent him being involved in the birth of his first child, and establishing a relationship with it and denying his partner his financial, practical and emotional support in that time.

[11] The court is required to conduct a balancing exercise, doing its best to measure the risk and determine whether or not it is unacceptable. As Keane JA (as his Honour then was) has observed, the determination relies on an assessment as to the likely course of human behaviour and is, inevitably, a matter of impression and degree.[2] An examination of the factors set out in s 16(2) (and other relevant matters) does not point, with any compulsion, to the existence of an unacceptable risk. The point pressed by the Crown with greatest vigour – the risk of interference with witnesses – cannot be said to give rise to a risk of that kind when there is no history of it, only the one offence is charged, and it can be addressed with a plain, stringent condition.

[12] Whatever risk exists can be appropriately addressed by conditions. The provision of a surety reinforces the prospects for compliance. A draft order was provided by Mr Van Rooijen's lawyers and amended, with their consent, by counsel representing the DPP. It is appropriate to make an order in its terms.

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2 *DPP v Bakir* [2006] QCA 562 at [27].