

SUPREME COURT OF QUEENSLAND

CITATION: *Heke, Re an Application for Bail* [2015] QSC 374

PARTIES: TAMATE HENRY HEKE
(Applicant)
v
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
(Respondent)

FILE NO: BS 12362 of 2015

DIVISION: Trial

PROCEEDING: Application for Bail

DELIVERED ON: 17 December 2015 (*ex tempore*)

DELIVERED AT: Brisbane

HEARING DATE: 17 December 2015

JUDGE: Atkinson J

ORDER: **1. As per the draft order initialled by Atkinson J and placed with the file; and**
2. That the bail address for the applicant not be published.

CATCHWORDS: CRIMINAL LAW – PROCEDURE – BAIL – BEFORE TRIAL – MURDER CASES – whether, among other considerations, the strength of the evidence against the applicant warranted a conclusion that the applicant was an unacceptable risk with respect to any event specified in s 16(1)(a) *Bail Act* 1980 (Qld) – whether the applicant has shown cause why his detention in custody pending trial is not justified.

LEGISLATION: *Bail Act* 1980 (Qld), s 13, s 16

COUNSEL: A. J. Kimmins for the applicant
S. L. Dennis for the respondent

SOLICITORS: Lawler Magill for the applicant
Director of Public Prosecutions (Queensland) for the respondent

ATKINSON J (delivered *ex tempore*)

[1] HER HONOUR: This is an application for bail by Tamate Henry Heke, who has been charged with one count of murder. Because of that charge against him, he may only be granted bail by a judge of the Supreme Court, pursuant to section 13 of the *Bail Act*.

[2] When a defendant is charged with an offence to which section 13 applies, the court shall refuse to grant bail unless the defendant shows cause why his detention in custody is not justified. The justification for detaining a person in custody pending trial depends on whether or not there is an unacceptable risk that the applicant, if released on bail, would fail to appear and surrender into custody, or would, whilst released on bail, commit an offence, or endanger the safety or welfare of a person who is a victim of the offence with which the defendant is charged, or anyone else's safety or welfare, or interfere with witnesses, or otherwise obstruct the course of justice.

[3] The court is required to have the matters set out in section 16, subsection (2) of the *Bail Act* in assessing whether or not there is an unacceptable risk with regard to any of those matters, although those matters are not exclusive. They include:

the nature and seriousness of the offence;
the character, antecedents, associations, home environment, employment and background of the defendant;
the history of any previous grants of bail to the defendant;
the strength of the evidence against the defendant.

Those are the relevant matters for this application. Having regard to those matters, the offence of murder is the most serious offence with which a person can be charged in this jurisdiction.

[4] I turn then to the character, antecedents, associations, home environment, employment and background of the defendant. This defendant, Mr Heke, has no criminal history whatsoever, has, by all accounts, been a model citizen, and is a mature man who lives with his de facto partner and their three children. His home environment appears stable, and although he lost his job as a result of the events which caused him to be charged, he would be able to obtain employment. Furthermore, those who know him have sufficient confidence in his compliance with bail conditions as to offer a surety in the sum of \$100,000 should he be granted bail. That confidence does not appear unwarranted in the circumstances. There is no history of previous grants of bail to the defendant because, as I have said, he has not faced criminal charges ever before.

[5] The last matter to be considered is the strength of the evidence against him. The events that happened were shocking and witnessed by many members of the public. Briefly,

what appears to have occurred is that the deceased and the defendant were involved in what is commonly referred to as a road-rage incident and the deceased died after falling onto the roadway, having been punched by the defendant. The deceased was then struck by a large truck, which could not avoid hitting him in the circumstances. Unsurprisingly, many people who witnessed the incident and its immediate aftermath are very traumatised by what they saw.

- [6] That does not appear, however, to be the whole story. There is before the court an affidavit from a previous employer of the deceased which demonstrates that there were many complaints made against him, as a professional driver, of road rage involving other people. Original evidence is annexed to that affidavit to demonstrate the veracity of that history. I shall not go into it in detail because in the end this will be a matter for, first, the DPP to determine which charge should be laid on indictment in this court and, then, for the jury to determine whether or not the elements of the offence are made out. Suffice it to say that it could not be said that the evidence strongly suggests that the defendant would be convicted of murder. I say this, of course, on the basis of the material before me on a bail application.
- [7] I turn to consider each of the matters I have to consider with regard to the risk on bail. In view of the applicant's complete lack of a criminal history, and the extremely unusual circumstances of the offence alleged to have been committed, he does not appear to be an unacceptable risk of committing an offence whilst on bail. Indeed, by including a condition that he not drive at all whilst on bail, that would tend to ensure that no such offence could be committed by him whilst on bail. There is no suggestion at all that he would endanger the safety or welfare of any person who has claimed to be a victim of the offence, or anyone else's safety or welfare. There is, further, no suggestion that he would seek to interfere with witnesses, or otherwise obstruct the course of justice.
- [8] The argument, in the end, turned on the question of whether or not there was an unacceptable risk that he would fail to appear and surrender into custody. The applicant is in Australia on a visa. He has surrendered his passport to his solicitor and so it can be surrendered to the court. There is no capacity for him to apply for an Australian passport. As I have already mentioned, his de facto wife and his three small children

are in this jurisdiction, as are a number of other members of his family. He would, if released, live with that stable family.

- [9] In the circumstances, given the ties he has to people in this jurisdiction, I am satisfied that there is not an unacceptable risk that he would fail to appear and surrender into custody. Accordingly, on the very stringent conditions offered in the draft bail order tendered to the court, I am prepared to grant bail for the reasons I have given. I order that his bail address not be published. So that it is perfectly clear what the bail order includes, I shall read it out. It is ordered that:

Upon the provision of a surety in the amount of \$100,000, the applicant be admitted to bail upon his own undertaking, such undertaking being conditioned that:

(1) The applicant appear and surrender himself into custody:

(a) at the Magistrates Court of Brisbane on 25 January 2016, and on such other dates and times as the Magistrates Court may determine;

(b) before the criminal sittings of the court to which the applicant may be committed in respect of the offence or, in any event, at the sitting specified by the court to which the applicant is committed, at the date, time, and place fixed for the trial, notice of which shall be given to the applicant, or the applicant's solicitor, by the Director of Public Prosecutions, or a person authorised by the Director of Public Prosecutions;

(c) before the criminal sittings of the Supreme Court of Brisbane on a date, time, and place, notice of which shall be given to him or his solicitors by the Supreme Court;

(d) the applicant not depart from either court without leave of the Court and so often as leave is granted return at the time appointed by the Court and again surrender himself into custody.

(2) The applicant shall reside at the address given in the order or at such other address as approved in writing in advance by the Director of Public Prosecutions.

(3) The applicant shall report to the officer in charge at the Beenleigh Police Station each day between the hours of 5 am and 5 pm unless he has the prior written consent of the Director of Public Prosecutions to do otherwise.

(4) The applicant not leave the State of Queensland without the prior written consent of the Director of Public Prosecutions.

(5) The applicant must not approach or enter any international point of departure without the prior written consent of the Director of Public Prosecutions.

- (6) The applicant shall not be released from custody until he has surrendered his current passport to the registrar of the Supreme Court and the receipt for a surrendered passport document has been executed by the registrar.
- (7) The applicant shall not apply for any passport or exit visa during the currency of this order.
- (8) The applicant shall have no contact, direct or indirect, with any non-police Crown witnesses.
- (9) The applicant shall not drive, put into motion or be in charge of a motor vehicle during the currency of this order.
- (10) Subject to any variation by the Director of Public Prosecutions, within three business days of the applicant's release from custody, he will telephone a nominated anger management service provider and make an appointment for ongoing counselling for anger management and comply with and participate in any program as directed by the nominated anger management service provider.
- (11) The applicant provide to the nominated anger management service provider a written authority in terms of annexure A, which is attached to the order.
- (12) If the applicant cannot locate an anger management service near his bail address:
 - (a) the applicant, within three business days of his release from custody, shall attend at his general practitioner and have a mental health assessment and seek a referral to a psychologist or psychiatrist for further treatment for issues for anger management and any other issues identified in the mental health assessment. The applicant will comply with this treatment;
 - (b) the applicant provide a written authority in terms of annexure B attached to the order to the referred psychologist or psychiatrist at his first appointment and also provide a copy of this undertaking to the Director of Public Prosecutions within 28 days from the date of this order.

[10] I will make the order as per draft, which I will initial and place with the file.