

CANADA / JUDGMENT

R. v. Hatamiboldaji

2023 BCSC 1889

COURT

Supreme Court of British Columbia

DECIDED

9 June 2023

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2023 BCSC 1889 R. v. Hatamiboldaji

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hatamiboldaji,

2023 BCSC 1889

Date: 20230609

Docket: 33330-3

Registry: Vancouver

Rex

v.

Danesh Hatamiboldaji

Restriction on Publication: Pursuant to 486.5(1) of the Criminal Code

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

at Judicial Interim Release Hearing

Counsel for the Crown:

S. Bains

Counsel for the Accused:

T.L. Spettigue

Place and Date of Hearing:

Vancouver, B.C.

June 9, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 9, 2023

- [1] THE COURT: The Crown seeks a finding pursuant to s. 524(3)(a) and (b) that there are reasonable and probable grounds to believe that the accused has contravened his release order. The Crown further seeks to have the accused's release order cancelled pursuant to s. 524(2)(a) and to have him detained on the secondary and tertiary grounds.
- [2] This is a reverse-onus situation.
- [3] The accused is charged with criminal harassment, sexual assault, and six counts of breaching his release conditions. The complainant of the substantive offences is his former girlfriend of approximately one year. The allegations are serious. Briefly put, when the complainant tried to end the relationship with the accused, he allegedly harassed her. He turned up at her work, contacted her friends and family, threatened to throw acid on her, and threatened to send intimate photos of her to her friends and family and to post them on the internet. This went on during the summer of 2021.
- [4] On September 12, 2021, the accused allegedly brandished a knife and forced sexual intercourse on the complainant.
- [5] The accused has had a number of bail hearings. On October 6, 2021, he was released on an undertaking with the condition that he not communicate, directly or indirectly, with the complainant and to stay away from her. Despite those conditions, between November 21 and December 19, 2021, he had contact with her five times. Those incidents comprise Counts 3 through 7 on the indictment.
- [6] On one of the occasions, the accused told the complainant that no matter what she does, he will be able to find her. On another, he told her that he does not fear police repercussions.
- [7] The accused was arrested on the breaches on January 26, 2022, and released again on January 28, this time on a release order in the amount of \$5,000, no deposit, no surety. Again, the paramount condition was that he have no contact, directly or indirectly, with the complainant and stay away from her.
- [8] On April 20, 2022, the accused failed to attend court. A bench warrant was issued. He was arrested on April 28 and released again, this time with more conditions. The release terms also included the no contact and stay away conditions.

[9] On the afternoon of August 31, 2022, the accused followed the complainant in his car. When she stopped to get out of her vehicle, the accused approached her, grabbed her arm, and told her to drop the charges against him. The complainant videotaped this, plus it was captured on surveillance video. The accused was arrested again. This time he was detained.

[10] In detaining the accused, Judge Hamilton of the Provincial Court made the following comments:

In my view, I cannot come up with conditions that would reduce the substantial likelihood you will have further contact with Ms. S. She deserves to go about her business and her work without fear that you are going to confront her or follow her. She does not want to have anything to do with you. She does not want to talk to you. She does not want to see you, but you do not respect that; you continue to confront her. So for that reason . . . you are detained.

[11] On October 7, 2022, the accused brought a bail review pursuant to s. 520 and sought his release with a \$10,000 cash deposit. In denying that application, Mr. Justice Gaul made the following comments:

[31] In my opinion, the accused has shown himself to be someone who is quite prepared and willing to breach promises that he makes the police and to the court, if it suits his purpose or mood. He has, on multiple occasions, been prohibited from contacting the complainant, yet he has flouted those directions. He also has apparently said that he is not troubled by any consequences that may come to him for doing so.

. . .

[33] I am not satisfied that the terms suggested by the defence, including the \$10,000 cash bail, are sufficient to address the substantial likelihood that the accused will, if released on bail, again attempt to improperly contact and influence the complainant and interfere with the administration of justice.

[34] In my respectful view, the continued detention of the accused is necessary. He constitutes a real and present risk to the complainant and the public at large and, in my opinion, no level of cash bail or restrictions on his movements will reduce that risk to an acceptable level.

[35] Overall, I find the accused has demonstrated by his past behaviour that he cannot and will not comply with court orders and refrain from contacting the complainant. . . .

[12] On March 3, 2023, the accused had a detention review hearing. Mr. Justice Edelmann of this court released him on a release order with a \$10,000 deposit. The accused was placed on house arrest with the conditions that he was only permitted to leave his house for work, medical emergencies, with the written permission of his bail supervisor, or on Saturdays and Sundays between 1:00 and 4:00 p.m. to attend to personal needs.

- [13] Of particular import to this application, the accused was not to be outside of North Vancouver without the written permission of his bail supervisor. The justice made it clear to the accused that this was in order to keep him away from the complainant. The consequences of him breaching the orders was made clear by Justice Edelmann.
- [14] On April 19, 2023, the accused had the written permission of his bail supervisor to be in West Vancouver for three specific reasons at three specific addresses. Park Royal was not one of them, nor was it close to any of them. At 11:34 a.m., the complainant was at London Drugs at Park Royal. She observed the accused there. According to the complainant, the accused approached her. There is no evidence alleged in this bail application that he tried to talk to her.
- [15] The accused is not denying being at London Drugs. His story is that he was at the West Van Police Department, was on a bus to go back to North Van and he started feeling unwell, something to do with his high blood pressure. He got off the bus, called a friend, went into London Drugs to get some unspecified medication, and just happened to see the complainant there.
- [16] Section 524(4) provides that:
- (4) If the judge or justice cancels the summons, appearance notice, undertaking or release order, the . . . justice shall order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why their detention in custody is not justified under subsection 515(10).
- [17] I am satisfied that the accused contravened his release order.
- [18] I do not accept his explanation. It lacks detail, is unsubstantiated and, in my view, is farfetched. Even if I did believe it, it does not provide an excuse for the accused to be in West Vancouver at Park Royal.
- [19] By bus, Park Royal is minutes from North Vancouver. There is no reason why he could not have stayed on the bus until he was over the border.
- [20] Considering the circumstances of the Park Royal incident in light of all of the circumstances of this case, including the serious offences and the numerous breaches, I am satisfied that the only way to protect the complainant and ensure that the accused will stop committing further breaches and criminal offences and to maintain public confidence in the justice system, is to detain him.
- [21] The accused has been given chance after chance to prove that he will abide by conditions and he has shown over and over again that he will not. I am not satisfied that the accused has shown cause as to why his detention is not justified.
- [22] Stand up, please, sir. Your release order is cancelled. I order that you are detained on the secondary and tertiary grounds pending the completion of your trial.

"The Honourable Madam Justice Murray"

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