

JERSEY / JUDGMENT

AG v Freitas [2021] JRC 251 (08 October 2021)

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JUDGMENT

THE COMMISSIONER: 1. We have considered the Defendant's application for bail and we are willing to grant it with some comments as to why and also some comments about the proposed bail conditions. 2. The objections to bail are placed on two grounds by the Crown. The first is that the Defendant may fail to respond to bail, therefore not turn up to trial and the second is that there is a risk of interference with witnesses particularly the Complainant. 3. Under the Criminal Procedure (Bail)(Jersey) Law 2017 the Court is obliged to consider questions of bail against the background that the Defendant has a right to bail unless the conditions of the law are met. Those conditions are set out in Schedule 1 and it is important to remember that these must be considered against the questions whether the Defendant will fail to surrender to bail, whether he will commit an offence whilst on bail and whether he will interfere with witnesses or otherwise obstruct the course of justice and we have considered all the matters which the schedule requires us to consider against these issues. 4. As to the failure to respond to bail the Defendant is of good character. It is said to us by his counsel that he has never been in court before and he is entitled therefore to say that there is no evidence on which one can properly suggest he will not respond to bail in this case. I have added the words "in this case" deliberately because there are some serious offences where the fact that someone has no previous convictions would not necessarily entitle them to bail. 5. We have had regard to the strength of the prosecution case in this way. We are not the trial court and we cannot say how the evidence will come out at trial, but both counsel seem to accept that the case will turn very much on whether the Jury will accept the Complainant's evidence. In those circumstances we consider that the fact that these are serious offences which he faces makes it less likely he will turn up for trial and thus should not prevent him from obtaining bail. 6. I turn next to the risk of interference with witnesses. The Crown say that there is a risk the Defendant will try to persuade the Complainant not to give evidence at trial. There is no evidence of him trying to do so, so far. The Crown say that is not surprising since he has been in custody since the day after the alleged offence. On the other hand, it would have been possible for indirect pressure to be brought upon her whether in person or by the use of social media. No such evidence has been put before us and the burden is on the Crown to do so if we are to find that this is a legitimate objection to the Defendant's right to bail. 7. We also consider that the bail conditions are capable of meeting these particular objections, although we

do have some comments to make on all those conditions. The first is that the conditions must address the concerns which would otherwise lead to bail being refused. In the present case the Complainant lives, we are told, next to the partner and young child of the Defendant and so the conditions which require him to reside somewhere else seems to us to be legitimately addressing the concern that otherwise he would come and go in very close proximity to the Complainant. 8. Conditions 2, 3 and 4 address whether or not he will turn up for trial and we think those are appropriate conditions. There is no condition 5 on the bail conditions given to us but Condition 6 suggests a curfew. We are told that the accommodation in which the Defendant would live at Glen Ora is a single room and given the condition for tagging we do not regard a curfew of any kind as a proportionate interference with his Convention rights. And so, in the circumstances of this case we do not think a curfew is necessary. We wish to make it quite plain that in other cases a curfew might be appropriate. 9. Condition 7 requires the Defendant not to approach or contact directly or indirectly, Witness 1, Witness 2 and Witness 3 and we impose that condition with this extra provision, if the Defendant should find himself inadvertently in a place where the Complainant is as well it is his obligation to remove himself from that place immediately. 10. Condition 8, with Condition 9 are the tagging provisions which we think are appropriate. So, on this basis we are satisfied that Conditions 8, 9 and 10 are proportionate and we impose those as bail conditions. 11. A copy of the bail conditions should be provided to the Defendant in Portuguese as soon as possible. 12. Mr Freitas you must be quite clear about these bail conditions, these are essential and if you fail to comply with them you are liable to be taken back into custody immediately. 13. Ms Ferreira, I understand that you have applied for other accommodation and that seems very sensible because there is a reasonable chance that you will come across the Complainant from time to time. The Court cannot impose conditions, I think, on you directly but I want you to know that if you were to do anything which breaches these conditions the probability is that the Prosecution would say that your partner is behind it and so it is very important for you to recognise that although the conditions are not imposed on you, and you are not going to be committing any offences if you were to do so, he will probably suffer if you did. It is a matter of common sense for you that you should stay well out of the Complainant's way and other witnesses in this case. 14. Bail is granted on those terms. 15. Mr Freitas there is a directions hearing in relation to trial at 9am on 1 st November 2021. Your bail is given that you must be back in Court on 1 st November for 9am that day at one of the courts in the Royal Court Building. Authorities Criminal Procedure (Bail)(Jersey) Law 2017. Page Last Updated: 14 Oct 2021 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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