

**IN THE COURT OF APPEAL OF BELIZE, A.D. 2006**

**CLAIM NO. 12**

**BRANDEL MICHAEL**

**CLAIMANT**

**AND**

**THE QUEEN**

**RESPONDENT**

**Ms. Sondra Garoy for the Claimant**

**Ms. Cheryl-Lyn Branker Tait for the Respondent**

**DECISION**

1. I think the statement by the United States Chief Justice Rehnquist in the case of *United States v. Salano 481 1987 US 739* at page 755:

*"In our society liberty is the norm and the detention prior to trial or without trial is the carefully limited exception . . ."*

cannot be overemphasized in our society in Belize. A liberal democracy where personal liberty should always count high in our scale of values.

2. However, the increasing incidence of crime and the difficulties attendant on investigating, arrest and processing alleged criminals in the criminal justice system have presented the authorities with serious challenges. As a result, there have been over the years, several attempts to put restrictions on the institution of bail which is secured by the Laws of Belize both the Constitution, the Common-law and indeed the general law. Bail is meant primarily to ensure that an accused will be available to take his trial at the appropriate time and this is concomitant with the presumption of innocence to be found in Section 6 of the Constitution of Belize. But regrettably, all these considerations have weighted the scale against an accused in Belize today so that the burden in applications for bail has been shifted to an

accused and the Magistrate's Court have had their hands tied behind them in consideration and grant of bail, consequently the Supreme Court is inundated with applications for bail.

3. The latest and primary legislation in this regard is Act No. 25 of 2003, the *Crime Control and Criminal Justice Act*. This has amended the provisions relating to bail both as contained in the Indictable Procedure Act and as originally contained in the Crime Control and Criminal Justice Act Chapter 102 of the Laws of Belize.

4. Subsection (3) of Act No. 25 of 2003 contains the overriding consideration for applications for bail and it is provided in this subsection that:

*“The Supreme Court may, (which imports a discretion in the court,) for special reasons to be recorded in writing, grant bail to such a person other than for the offence of murder.”*

However, in considering the exercise of its discretion granted it in applications for bail, the Court must have regard to:

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- (a) *the prevalence of the crime with which the accused person is charged;*
  - (a) *the possibility of the accused person being a danger to the public or committing other offences or interfering with witnesses while on bail;*
  - (b) *the public interest involved in assisting the security services to combat crime and violence; and*
  - (d) *all other relevant factors and circumstances.”*

I must say that I find these provisions unhelpful in themselves even though

they are intended to fetter the discretion granted to the Court.

1. However, in considering the application the following rules as stated by subsection (4) of Act No. 25 of 2003 are to apply when the discretion is to be exercised pursuant to Subsection (3) that:

“

- (i) *One week's notice is to be given to the D.P.P's office before the hearing of the application;*
- (ii) *that a condition of the grant of bail should be that the applicant should report to the nearest police station every week on a day and time fixed by the Court;*
- (iii) *the Court may attach to the grant of bail such other conditions as it may deem necessary or expedient; and*
- (iv) *bail shall be revoked if the accused person breaches any of the conditions therefore or is charged with any other offences committed while on bail.”*

6. Speaking for myself, the provisions relating to the grant of bail are so confusing and unhelpful now that it is about time a fresh look is taken at the institution of bail.

7. The Common-law origin of bail was to ensure that the accused who is only an accused before conviction, will be available to take his trial and it is not meant as a pretrial incarceration or punishment of the accused, but these considerations seem to have been subverted by the desire of the authorities in fighting crime.

8. In my estimation, the reference to special circumstances in subsection (3) of

Act No. 25 of 2003 is somewhat unclear. No help is given by way of special circumstances, and rightly so, for this is a matter of appreciation of the adjudicating court to consider in the light of all the facts put before it whether it should record a special reason in writing in admitting the Applicant to bail.

9. It cannot be overemphasized that each bail application is *sui generis*, different one from the other, just like the commission of a crime itself. There cannot be one settled indistinguishable pattern. So it is with bail application. So it would be difficult to spell out before hand what special circumstances are. It is for the Court to make an appreciation on the evidence and put it in writing whether a particular applicant shall be admitted to bail or not, of course bearing in mind the considerations stated in subsection (3) of Act No. 25 of 2003 itself.
10. On the instant application before me, it is not in dispute that the Petitioner is facing grave offences; four counts of attempted murder, three counts for use of deadly means of harm, Dangerous Harm, and Aggravated Assault and that one of the alleged victim is the mother of an infant child who itself is an alleged victim of the offences alleged to have been committed by the Applicant. These are grave offences and the Court cannot be unmindful of them.
11. On behalf of the Applicant, it is not in doubt that he is in employment, has ties to the community, the father of a child, and, if I may so say, of tender years, only 20 years old and without any previous conviction. Ordinarily, these should weigh in his favour in considering a bail application.

12. But, the D.P.P's Office strenuously opposes bail on the grounds that there is a likelihood, with an exhibited statement and an affidavit by Sergeant Hilberto Romero of the Belize Police Department that an eyewitness to the alleged offences literally lives in mortal fear of his life and I quote from paragraph 11 of Sergeant Romero's affidavit.

*"I have spoken with Rudon ( the alleged eyewitness) in relation to this incident and he has informed me that he fears for his life particularly because on the morning of Sunday 14 January, 2006 another person went into Tailor's Alley in the vicinity of the house in which Rudon is presently staying and fired shots. Police are still investigating that matter but believes that the shootings are connected."*

The Court cannot be unmindful of this allegation but again there is no direct nexus with it and the Petitioner before me.

13. This Application presents me with serious anxiety. On the one hand, my concern for personal liberty buttressed on the presumption of innocence and on the other, the need for the investigation and prosecution of crime not to be stymied by interference with possible witnesses as has been attested to in this case.

14. I must say that I regret the fact that the allegation of possible interference by the Applicant is raised late in the day in opposition to the application. The best practice would require that the Petitioner is confronted with allegations of possible interference with witnesses to allow any rebuttal, if necessary, before the Application comes on for hearing. This has not been done in this

case.

15. Regrettably, in the light of cogent and sufficient averment, without rebuttal, I am minded by paragraph (b) of subsection (3) of Act No. 25 of 2003 of "the possibility of the accused person interfering with witnesses while on bail. "
16. Ms. Garoy for the Applicant has ably argued why bail should be granted and I commend her for the assistance she has given the Court but in the circumstances of this application, I am constrained to deny the bail application but this should not be a precedent for the future. If the D.P.P's office has any serious points in opposition they should afford the Applicant for bail an opportunity to meet and address those points.
17. I decline the application with regret.

DATED this 25<sup>th</sup> day of January, 2006.

ABDULAI CONTEH  
Chief Justice