

**NOTE: INTERIM ORDER PROHIBITING PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF DEFENDANT PENDING FURTHER ORDER**

**NOTE: PUBLICATION RESTRICTIONS APPLY PURSUANT TO S 19(1) OF THE BAIL ACT 2000. SEE**

**<http://www.legislation.govt.nz/act/public/2000/0038/latest/DLM68927.html>**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CRI-2017-004-005092  
[2018] NZHC 1597**

**THE QUEEN**

v

**MOHAMED SAMSUDEEN**

Hearing: 29 June 2018

Appearances: H Steele for the Crown  
A Holland for and D Manning for Mr Samsudeen

Judgment: 29 June 2018

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**ORAL JUDGMENT OF WYLIE J**

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Solicitors/counsel:  
Meredith Connell, Auckland  
A Holland, Auckland

## **Introduction**

[1] Mr Samsudeen is a Sri Lankan. He has lived in New Zealand for some five years and he has refugee status in this country. Until today, he had no criminal convictions in New Zealand.

[2] In August 2017, the police charged Mr Samsudeen with nine charges of knowingly distributing objectionable material, two charges of using a document for pecuniary advantage, one charge of possessing an offensive weapon, and one charge of failing to assist an officer in the execution of a search warrant.

[3] Mr Samsudeen's trial on those matters was due to commence on 9 July 2018 next before me.

[4] The material said to be objectionable comprised images posted by Mr Samsudeen on Facebook showing war related violence, including a number of acts said to have been inflicted on Muslims. The material was referred to the Office of Film and Literature Classification. It examined the material and concluded that it was not objectionable outright, but that it should be restricted to persons who have attained the age of 18 years. The Crown applied for a review of this decision to the Film and Literature Review Board. On 26 June 2018, the Board released its decision determining that the material should be classified as "restricted" rather than "objectionable".

[5] As a result, the Crown amended the charges. The amended charges alleged that Mr Samsudeen knowingly distributed restricted material, contrary to s 126(1)(a) and (2)(a) of the Films, Videos, and Publications Classification Act 1993.

[6] Mr Samsudeen was rearraigned before me this morning. He entered guilty pleas to two charges of using a document for pecuniary advantage, two charges of knowingly distributing restricted material and one charge of failing to assist an officer in the execution of a search warrant. I have entered convictions against Mr Samsudeen in respect of these charges.

## **Bail**

[7] Mr Holland, appearing on Mr Samsudeen's behalf, now applies for bail pending sentencing, which is scheduled to occur on 7 August 2018.

[8] The Crown does not oppose the grant of bail. It does, however, seek the imposition of various conditions.

[9] There is a large measure of agreement between counsel as to the appropriate conditions. Two, however, remain in dispute.

[10] First, the Crown seeks a curfew between the hours of 9 pm and 6 am each day. A curfew is resisted by Mr Holland. He argues that Mr Samsudeen has already spent some 13 months in custody on remand in relation to the original charges. He says that Mr Samsudeen is not going to be sentenced to a term of imprisonment of greater than 13 months, and that there should be no further restrictions on his liberty except insofar as they are volunteered. Mr Steele, for the Crown, submits that Mr Samsudeen poses a risk of further offending. He notes the earlier bail decisions made by Venning J and Courtney J, both of which were made when Mr Samsudeen was facing the more serious charges, and before he entered his guilty pleas.

[11] Secondly, the Crown seeks a condition that the police should be able to check Mr Samsudeen's electronic devices on demand. Mr Holland accepts that such condition is appropriate. Indeed, I am told that Mr Samsudeen has volunteered the condition because it may assist him when it comes to sentence. There is, however, a difference between counsel as to the terms of such a condition. Mr Steele seeks simply that the police should be able to access Mr Samsudeen's electronic devices on demand without more. Mr Holland suggests that any request should be made between the hours of 9 am and 5 pm, and that it should be made through either him or Ms Manning, as Mr Samsudeen's counsel.

[12] I have considered the respective submissions of counsel. I accept that earlier, both Venning and Courtney JJ declined bail applications made by Mr Samsudeen, essentially on the basis that there was a risk that he might further offend. Statements made by Mr Samsudeen on Facebook have contained threats. There have been references to martyrdom, and concern has been expressed over the treatment of

Muslims in other countries. There is apparently evidence from a former flatmate who refers to Mr Samsudeen threatening violence, the fact that he had acquired a knife, and that he knew how to make a bomb. Apparently, there is similar evidence from other unnamed associates.

[13] Nevertheless, there are no charges against Mr Samsudeen in relation to the possession of an offensive weapon. There was a charge relating to a knife, but that was dropped by the police in the latest charge list to which Mr Samsudeen has entered guilty pleas. There are no other charges alleging attempted violence.

[14] Mr Samsudeen has been in custody for some 13 months. It is common ground between counsel that any sentence imposed will not exceed that period.

[15] Except insofar as Mr Samsudeen is prepared to agree to conditions, I cannot see that there should be any further conditions on his liberty. His liberty will not be curtailed following sentencing and he has already been in custody for longer than the sentence counsel agree he is likely to receive.

[16] Accordingly, I impose the following conditions on the grant of bail. Mr Samsudeen has consented to or volunteered these conditions.

- (a) Mr Samsudeen is bailed to [redacted];
- (b) Mr Samsudeen is to surrender his passport to the police;
- (c) Mr Samsudeen is not to apply for any travel documents;
- (d) Mr Samsudeen is only to operate one Facebook account, and to provide the name and/or identity details of that account through counsel to the police. He is to operate that account on a public setting only;
- (e) Mr Samsudeen is to allow the police to check his personal electronic devices on demand, provided that such demand is made:
  - (i) between the hours of 10 am and 5 pm;

- (ii) through Mr Samsudeen's counsel, Mr Holland and/or Ms Manning; and
- (iii) Mr Holland and Ms Manning are to ensure that any check demanded is able to be carried out within a period of 24 hours from the time of demand.
- (f) Mr Samsudeen is to attend any interviews required for the purposes of preparing a pre-sentence report or a psychiatric report under s 38 of the Criminal Procedure (Mentally Impaired Persons) Act 2003; and
- (g) Mr Samsudeen is to surrender his bail at this Court at 8.30 am on 7 August 2018.

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Wylie J