

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CRI-2020-004-006912
[2021] NZDC 14309**

NEW ZEALAND POLICE
Prosecutor

v

AHAMED AATHILL MOHAMED SAMSUDEEN
Defendant

Hearing: 16 July 2021

Appearances: C Peardon for the Prosecutor
J Raftery QC for the Defendant

Judgment: 16 July 2021

NOTES OF JUDGE P WINTER ON BAIL APPLICATION

[1] This is an application for variation of bail in relation to the named defendant Ahamed Samsudeen. Mr Samsudeen has extensive suppression orders and no publication of this application is permitted, nor is any publication permitted that would identify the defendant as the person in these proceedings, in line with the existing suppression orders which were granted in the High Court in 2018.

[2] This matter came before me in chambers as duty judge two days ago. The defendant is charged with two offences which are alleged to have occurred whilst he was in custody on 23 June 2020. Since that time, the defendant has been sentenced in the High Court in relation to earlier matters, having been found guilty by a jury

before her Honour Fitzgerald J. Those matters were two charges of possessing an objectionable publication with reasonable cause to believe that it was objectionable, and one charge of failing to assist a police officer in the exercise of a search power.

[3] The two objectionable publications concerned were nasheeds, which it was found by the jury promoted and encouraged acts of violence and terrorism. Her Honour stated in her sentencing remarks that those nasheeds did so to a significant extent and degree and justified terrorist violence in the name of religion. The defendant was ultimately was sentenced to 12 months' Supervision, in part because he had been in custody in respect of the matters for which he was sentenced and possibly other matters as well. That sentence of Supervision is due to expire on or shortly after 6 July 2022.

[4] The present matters are set for a judge alone trial case review hearing in this court on 20 October next at 9 am. At this stage, there is no indication as to when a judge alone trial date will be allocated to them. I understand that five days will be required for the hearing. There is pressure on judge alone trial dates in this court, and it may be that no date will be allocated prior to July next year. I do not know at this stage.

[5] There was considerable argument before her Honour in the High Court as to the monitoring of the defendant's possession of electronic devices, capable of accessing the Internet or storing data, for the purpose of checking or cloning those devices. Her Honour discusses that matter at paragraphs [41] and [42] of her sentencing notes.

[6] When this matter came across my desk for consideration as to the imposition of bail conditions in relation to the District Court charges, I added conditions which allowed the police to monitor the defendant, who is presently residing at the address of [redacted]. The further conditions that I imposed were; not to move to any new residential address without the consent not only of his probation officer but of the police, not to possess or use any electronic device capable of accessing the Internet, to disclose all social media accounts to the police on request, and to provide access to the

police to be able to determine whether or not there had been any breach of those conditions.

[7] I also imposed a condition that he abide by all the conditions of the sentence imposed on him by her Honour Fitzgerald J in the High Court on 6 July 2021. I had before me at the time a memorandum signed by both counsel for the Crown and for the defendant, confirming that the conditions sought did not include the extra monitoring provisions that I subsequently did impose, which allowed the police to access the defendant's electronic activities and to do so by making a direct request to do so, of the defendant. I have heard argument before me today from defence counsel that the bail bond be altered to remove the condition that he not move to any new residential address other than that approved for monitoring by the Probation Service. I am prepared to remove that clause and I did advise counsel yesterday that I would do so. Accordingly, that condition is deleted.

[8] The further condition that is in dispute today, is the condition that he not possess or use any electronic device capable of accessing the Internet and to disclose all social media accounts to the police on request and provide access to the police for that purpose. Mr Raftery QC, his counsel, has made the submission to me today, that this should be done upon the basis that, this condition would be in conflict with the aims of the sentence imposed by her Honour Fitzgerald J, and as discussed in particular, at paragraphs [41] and [42] of her decision.

[9] In short, Mr Raftery argues before me today that the defendant has an antiauthoritarian stance towards the police. He believes that the police have in part been responsible for his lengthy remand in custody and it would be setting him up, in effect, to fail, if the police have the ability to directly monitor his activities on the Internet rather than that simply be done by the probation officer. I understand that a culturally appropriate probation officer has been assigned to this case and that has been deliberately done, so to try and ensure that the defendant is not further aggravated by official intervention ,with a view to giving the remaining aspects of his sentence of Supervision an opportunity to succeed, and therefore to rehabilitate the defendant.

[10] I had concerns when I read the matters before me, that there is a possibility that this matter may not be set down for trial before the expiration of the Supervision sentence. I have discussed that issue with counsel. What is proposed now is, that the bail conditions be altered so that the police ability to directly intervene in monitoring his online activities not be a condition of his bail today. Rather, this condition of his bail will be reconsidered at the next hearing in this court, which is on 20 October next, when a date will be allocated for the trial hearing. Further consideration can then be given firstly, as to his progress on the present sentence, and secondly, whether or not further these safeguards are required past the expiration date of the sentence of Supervision when monitoring by the Probation Service, and in particular by the particular probation officer assigned to implement the sentence of Supervision, will cease.

[11] Crown counsel has no objection to that, and accordingly I will amend the defendant's bail bond to fit with that course of action.

[12] The conditions of his bail will be:

- (a) to reside at the address of [redacted];
- (b) not to associate or have contact directly or indirectly with complainant A and complainant B;
- (c) to abide by all of the conditions of the sentence imposed by Fitzgerald J in the High Court on 6 July 2021; and
- (d) not to offer or threaten violence to anyone.

Judge P Winter

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 31/08/2021