

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

CRI-2017-004-005092

THE QUEEN

v

MOHAMED SAMSUDEEN

Hearing: Order made following telephone conference

Appearances: B Dickie and H Steele for the Crown
K Raftery QC, D Manning with S Lamain and D Mansouri-Rad
for Mr Samsudeen
R Stewart for the New Zealand Herald

Order: 3 September 2021

ORDER OF WYLIE J

Solicitors/counsel:
Meredith Connell, Auckland
K Raftery QC, Auckland
D Manning, Auckland
D Mansouri-Rad, Auckland
R Stewart, Auckland
S Lamain, Auckland

[1] On 3 July 2018, I issued an oral judgment prohibiting publication of Mr Samsudeen's name, address, occupation and identifying particulars pursuant to s 200(2)(e) of the Criminal Procedure Act 2011. At that stage, Mr Samsudeen's status as a refugee in this country was uncertain. He had been granted refugee status by the Immigration and Protection Tribunal on 20 December 2013 but, on 31 May 2018, the Refugee Status Board had served him with notice of its intention to cancel that status. Accordingly, I directed that my suppression order was to remain in place until Mr Samsudeen's status as a refugee was finally determined.

[2] I was advised tonight by Mr Mansouri-Rad, who has recently appeared for Mr Samsudeen, that Mr Samsudeen appealed the notice of intention to cancel his refugee status but that the hearing of his appeal has not yet been completed.

[3] The Crown has tonight filed an urgent memorandum seeking that my suppression order should be lifted. The Crown says that Mr Samsudeen was involved in serious offending in a supermarket in Auckland and that he was shot dead by the police as the incident unfolded. That Mr Samsudeen is now dead has been confirmed in an email from Detective Superintendent David Lynch which was annexed to the Crown's memorandum.

[4] I clarified the position with Mr Dickie, appearing for the Crown. He confirmed that he wanted the memorandum to be treated as an application seeking revocation of the suppression order that I made in July 2018.

[5] The Crown had contacted Ms Manning, who appeared for Mr Samsudeen when I made the suppression order. It had also contacted Mr Raftery QC and Mr Mansouri-Rad who had acted more recently for Mr Samsudeen. The New Zealand Herald also advised the Registrar that it wished to be heard in relation to the issue and it instructed Mr Stewart to act on its behalf.

[6] I convened a telephone conference at short notice and I am grateful that counsel were able to appear. Neither Ms Manning, Mr Raftery nor Mr Mansouri-Rad had been able to obtain instructions but all expressed concern for members of Mr Samsudeen's family who I am told live in various parts of the world. Mr Mansouri-Rad has been endeavouring to contact them but has been unable to do so. All counsel, other than

Mr Stewart, submitted that anything which puts family members at risk should be avoided and for that reason, that Mr Samsudeen's name and other identifying details should not be put in the public domain, at least until the family members have had the opportunity to consider the issue. I was urged not to rush to judgment.

[7] Mr Stewart referred to the high public interest in this matter and to the principles of open justice.

[8] Mr Dickie, on behalf of the Crown, offered an undertaking not to disclose any particulars of the grounds for Mr Samsudeen's refugee status to try and ensure that Mr Samsudeen's family are not put at risk. He accepted that various passages in my judgment of 3 July 2018 should be redacted but argued that otherwise the judgment should be put in the public domain as well.

[9] I refer to the suppression order made by me. It is open to me to review that order at any time – s 208(3). The application before me in July 2018 was premised on the risk to Mr Samsudeen and not on any risk to his family members. The order made was confined to the risk to Mr Samsudeen personally. Further, I have no materials before me relevant to any risk to his family members and I do not consider that their interests are relevant to whether or not I should revoke the suppression order that I made. I do however record the Crown's undertaking.

[10] If family members wish to seek orders in their own right, it seems to me that they will have to make fresh application.

[11] There is, without doubt, high public interest in this matter in this country. Both the Prime Minister and the Commissioner of Police have appeared on national television in relation to the issue. At present, the order made by me precludes the publication of Mr Samsudeen's name and any identifying details.

[12] I suppressed Mr Samsudeen's name, address, occupation and identifying particulars because I considered, on the materials then before me, that there was a real and appreciable possibility that, in the event that Mr Samsudeen's refugee status was revoked and he was deported to Sri Lanka, his safety could be in danger.

[13] Clearly, that risk has now gone and there is no longer any proper basis for a suppression order on the grounds of any risk to Mr Samsudeen's safety.

[14] Accordingly, I revoke the suppression order made by me.

[15] Mr Samsudeen was previously entitled to confidentiality of his name and identifying particulars and his claim to refugee status under s 151 of the Immigration Act 2009. Mr Samsudeen is no longer able to maintain any claim to refugee status. That section, in my view, can no longer apply and I rescind this aspect of my order as well.

[16] I understand that recently Mr Samsudeen was granted bail by Judge Winter in the District Court and that a suppression order was made at that time. It is not for me to revoke that suppression order. Rather, it is a matter for the District Court. If the suppression order was made because of the suppression order made by me that should cause no great difficulty.

[17] I am alive to the possibility that members of Mr Samsudeen's family may wish to make a fresh application. Accordingly, I suspend the operation of this order for a period of 24 hours to give them the opportunity to make application. I am prepared to consider extending that period if it becomes necessary to do so, because counsel are unable to obtain instructions.

[18] I excuse Ms Manning from further appearance. She is no longer instructed. Mr Mansouri-Rad took over Mr Samsudeen's immigration matters relatively recently.



Wylie J