

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

**CRI 2001-054-832244
[2013] NZHC 2652**

**MARK EDWARD LUNDY
Applicant**

v

**THE QUEEN
Respondent**

Hearing: 11 October 2013 (AVL Conference)
Counsel: F Geiringer for Applicant
B D Vanderkolk for Respondent
Judgment: 11 October 2013

**ORAL JUDGMENT OF RONALD YOUNG J
(Bail Application)**

[1] Mr Lundy applies for bail. His circumstances are well known. He was charged and tried in the Palmerston North High Court in 2002 with the murder of his wife and child. He was convicted of both murders and sentenced to life imprisonment and initially ordered to serve a minimum period of 17 years. Subsequently the minimum term was increased to 20 years on appeal.

[2] On 7 October 2013 the Privy Council gave judgment on an appeal by Mr Lundy. The appeal was allowed the convictions quashed and an order that the appellant should stand trial again on the charges of murder was ordered.

[3] Mr Lundy has now applied for bail in this Court and it is for this Court to decide if he should be granted bail.

[4] Section 9A of the Bail Amendment Act 2013 which came into force in September of this year and provides that where a person is charged with murder the onus is on the defendant to satisfy the Judge that bail should be granted. In particular, the defendant must satisfy a Judge on the balance of probabilities that that person will not while on bail, commit any offence involving violent against, or danger to the safety of any person. A Judge must consider as a primary matter the protection of the public and the need to protect the safety of any particular person or persons.

[5] Mr Lundy and his brother-in-law have filed supporting affidavits in this application.

[6] Counsel for Mr Lundy submits that I should be satisfied of the matters set out in s 9A because:

- (a) firstly, Mr Lundy has no history of offending other than the two murder convictions which are now quashed;
- (b) secondly, he has an exemplary record in prison. To that end a copy of an email from the residential manager at the Tongariro-Rangipo Prison has been provided. That records that Mr Lundy has not been reported as being involved in any incidents of violence during his 12 years in prison, nor instances of involvement with drugs, nor any misconduct reports;
- (c) thirdly, given the allegations relating to the killing of his wife and daughter Mr Lundy is unlikely to be a danger to the wider public; and
- (d) finally, counsel stresses that Mr Lundy is entitled to the presumption of innocence.

[7] Mr Lundy has a home to go to on bail which is said to be suitable. The address is well away from Palmerston North where the killings occurred.

Submissions by the Crown

[8] The Crown oppose the granting of bail. I have read the submissions from the Crown which attach a police opposition to bail. The police accept through the Crown that there is no appreciable risk that Mr Lundy will offend on bail. Second, the police through the Crown say there is a risk that should Mr Lundy be granted bail he will attempt to influence the evidence witnesses may give at trial. However, they accept that the s 8(1) Bail Act matters favour bail but say the s 8(2) matters point toward refusing bail.

[9] The views of the family of the deceased are reported as strongly against bail being granted to Mr Lundy. They do not wish to have any contact with Mr Lundy and are fearful that he will contact them.

[10] The Crown in their opposition urge me to refuse bail on the basis that to do so would be adverse to the public interest in the future conduct of the retrial, the public interest and the privacy and protection of witnesses and the need for a semblance of calm and dignity to resume are all important factors.

[11] The police also wish to undertake its investigation of the killing of Mrs Lundy and her daughter anew. They seek the opportunity to conduct this in an orderly manner and the prosecution say the police should be able to undertake this investigation without witnesses being in fear from knowledge that Mr Lundy is at large in the community. The Crown stress this was a violent killing and know that Mr Lundy was not granted bail pending his trial in 2002.

Decision

[12] First, has Mr Lundy overcome the s 9A presumption? Mr Lundy is entitled to the presumption of innocence. He is back to the stage where he is charged and the Crown has not proved a case of murder against him. Apart from these very serious allegations there is no other evidence in Mr Lundy's past, including his time in prison, which would suggest he is a danger to the wider community. He has no previous convictions for violent offending and during his time in prison has not been involved in any report of violence or indeed any misconduct.

[13] As counsel for Mr Lundy pointed out, the Crown's allegations in this case relate to a domestic killing and do not, given Mr Lundy's background, give any reason for concern more broadly about his conduct. There is no evidence, therefore, to suggest Mr Lundy will commit any offence of violence if granted bail and I am satisfied on balance he will not do so.

[14] As to the primary bail considerations, risk of reoffending, risk of failing to turn up for trial and risk of interfering with witnesses, there is no suggestion that Mr Lundy is at risk of reoffending or at risk of failing to turn up for trial.

[15] The police opposition has focussed on the likelihood of interfering with witnesses. But there is no suggestion that any attempt was made at the time of the first trial by Mr Lundy (although I accept for part of the period prior to trial he was in prison) to interfere with any witness. There is no evidence whatsoever that Mr Lundy has or will try to interfere with witnesses.

[16] I accept the expression of concern about witness interference from the detective reflects the concern of potential witnesses at trial. But there is in fact no evidence to back up that concern. If granted bail it would clearly be appropriate for non association provisions to be made preventing Mr Lundy from contacting such witnesses. Any breach would inevitably result in a remand in custody. Mr Lundy will be well aware of that. In those circumstances, therefore, I assess the likelihood of interference with witnesses as low.

[17] To return to some other matters raised by the Crown. It does not seem to me proper to refuse bail because the police now wish to undertake its investigation with a fresh outlook and that they need time to carry out that investigation. Granting Mr Lundy bail will not interfere with that desire nor would it be proper to refuse Mr Lundy bail because others fear that he is in the community. Unless the fear is rationally based it would be wrong for me to take it into account.

[18] As far as the strength of the case is concerned it is not possible or appropriate for me to undertake at this stage of the case an in depth assessment of the strength of the prosecution case in the defence response. This case is far too complex to do so at a bail hearing.

[19] In those circumstances, as I have noted, the proper course is for me to simply note that Mr Lundy is entitled to the presumption of innocence but that he is charged with two very serious charges.

[20] In my view all of these factors point toward a grant of bail. I am satisfied, therefore, first that Mr Lundy has overcome the s 9A presumption regarding danger to the public through violent offending and I am satisfied there is little or no risk of him offending while on bail, interfering with witnesses or failing to turn up for trial nor any other residual reasons why bail should not be granted.

[21] The application for bail is, therefore, granted. It will be granted on the following conditions:

- (a) first, that Mr Lundy reside at [suppressed]. I suppress from publication that address;
- (b) secondly, that Mr Lundy makes no contact whatsoever nor attempts to communicate with any of those persons who gave evidence at his trial on the previous occasion. A list of those persons will be attached to the bail grant;
- (c) next, Mr Lundy is to report to the [suppressed] police station once per week on a Wednesday between 2.00 p.m. and 4.00 p.m.;
- (d) I suppress from publication the name of the police station. Some suggestion of a geographical limitation was raised. Given the prohibition against contact with witnesses I do not consider that that is, in this case, required.

[22] Two further matters. I repeat my warning to Mr Lundy that any breach of bail particularly relating to the non contact provision would likely result in a remand in custody.

[23] Finally, I emphasise for the benefit of those in Court today and especially those from the media that s 19 of the Bail Act 2000 severely restricts what can legitimately be reported of this bail hearing. No doubt all members of the media are already familiar with that provision.

[24] Mr Lundy is remanded until the next call over of this case at 9.00 a.m., Monday, 11 November 2013 at the High Court, Wellington. Mr Lundy's attendance on that date is excused but he may appear if he wishes to do so.

Ronald Young J

Solicitors:
F Geiringer, Barrister & Solicitor
Ben Vanderkolk & Associates, Palmerston North