

IN THE SUBORDINATE COURTS OF THE REPUBLIC OF SINGAPORE

[2007] SGDC 208

NSS No 203 of 2007
Magistrate's Appeal No. 138 of 2007/01

Ng Wah Onn James

Against

Public Prosecutor

GROUND OF DECISION

Ng Wah Onn James

v

Public Prosecutor

[2007] SGDC 208

NSS No 203 of 2007

29 June 2007, 8 August 2007

District Judge Roy Grenville Neighbour:

1. The appellant stood surety totaling \$60,000 for one Huang Rongxun who was charged for 22 offences under section 57(1)(b) and section 57(1)(ia)(A) of the Immigration Act (Chapter 133). On 29 June '07, at the hearing, the appellant was not represented by counsel. He elected not to show cause. In mitigation, the appellant urged the court not to forfeit the full amount of the bail. At the conclusion of the hearing the court ordered the forfeiture of a sum of \$50,000 in default a warrant of attachment and sale to issue. Dissatisfied with the order the appellant has appealed.

FACTS

2. On 20th April '07, the appellant stood surety for Huang Rongxun providing a sum of \$30,000. On 23rd April '07, he again stood surety providing an additional sum of \$30,000 to secure Huang Rongxun's attendance in court on the charges. In respect of the bail bond provided on 20th April '07, the appellant provided his UOB savings passbook as security. With regard to the bond on 23rd April '07, he provided cash of \$30,000. The two bail bonds were duly signed by Huang Rongxun and the appellant. In each of the bail bonds the Huang Rongxun and the appellant signed, they declared :-

“I, Huang Rongxun (m) PPT No G 0605091-W of c/o 36 Temple Street, #01-02, Singapore (058581) being charged with S 57(i)(aa) p/u under s 57(1)(ia)(A) Cap 133 r/w S 107(c) Cap 224 in cases No. DAC No 14094-0/07 (SC 12404) do hereby bind myself to attend at Court No. 4, Subordinate Courts, Singapore at 9.30 a.m. on the 2nd day of May 2007 to answer to the said charge(s) and thereafter to attend as may be directed by a Court until all proceedings relating to the said charge(s) shall have been finally disposed off and in case of my making default herein I bind myself to forfeit to the Government of the Republic of Singapore the sum of \$30,000 which has been deposited with the Court on my behalf. I further bind myself that I shall not proceed beyond the limits of Singapore without the permission of the Court.”

“I, Ng Wah Onn, James NRIC No. S 1724340 C of 113, Tao Ching Road, #08-15, Singapore (610113) hereby acknowledge that the sum of \$30,000 deposited by me with the court on behalf of the above-named accused and that in the case of his making default the said sum of \$30,000 shall as above provided be forfeited to the Government of the Republic of Singapore the sum of \$30,000 which has been deposited with the court on my behalf.”

3. On 17 May '07, when Huang Rongxun failed to present himself in Court, a warrant for Huang Rongxun's arrest was issued forthwith by the learned District Judge Mr. See Kee Oon in Subordinate Court No. 4. The appellant was then ordered to show cause. To date the whereabouts of Huang Rongxun are unknown.

Mitigation

4. In mitigation the appellant stated that he was approached to be a surety for Huang Rongxun because his wife who was close to Huang's wife requested him to help. Then Huang's wife was desperately seeking assistance for Huang Rongxun whom she said is suffering from cancer. Out of kindness for Huang Rongxun the appellant agreed to help by being Huang Rongxun's bailor.

5. With respect to his financial standing, the appellant stated that he owns an eating house. However, business has been bad. He is currently in financial difficulty and is indebted to credit card companies.

6. With regard to discharging his responsibility as surety, the appellant said he had reminded Huang Rongxun several times over the phone to attend court but Huang Rongxun did not answer his calls. The appellant claimed that after Huang Rongxun attended a pre-trial conference in court on 2 May '07, he made arrangements to meet Huang Rongxun every 2 days to remind him to attend court on 17 May '07 but Huang Rongxun absconded. His efforts to trace the whereabouts of Huang Rongxun proved futile. He urged the court to forfeit a small amount of the bail monies.

Judgement

7. It is settled law that the obligation of a surety to procure the attendance of the accused at his trial or appeal is a very serious one. Chan Sek Keong JC (as he then was) in *Yap Kin Kok v PP*¹ clearly pointed this out. He stated:-

“In respect of the obligation of the surety to procure the attendance of the accused at his trial or appeal, it cannot be emphasized too strongly or frequently that the obligation is a serious one. Donaldson LJ (as he then was) had these observations to make in *R v Waltham Forest Justices, ex parte Parfrey* [1980] Cr. L. R. 571;

“The obligation entered into by someone who enters into a recognizance as a surety is a very serious obligation indeed. I hope that nothing I say today will suggest the contrary. There is an obligation on a surety to be fully satisfied that he or she can meet the liability which will arise if the accused does not surrender to his bail. This failure to surrender is not a theoretical possibility, though a surety may think it is. The unhappy event of arrested persons not surrendering happens frequently. There is a real risk. Indeed it is difficult to conceive a set of circumstances in which a surety can be absolutely sure that the accused will surrender to his bail. So let no one think that this is an obligation which can be entered into lightly. Furthermore, the burden on satisfying a court that the full sum

¹ [1998] 1 MLJ 237

should not be forfeit is a very heavy one, so again let no one think that they can simply appear before the magistrates and tell some hard luck story, whereupon the magistrates will say, “Well, be more careful in future.” We are not dealing with that character of obligation at all.”

Continuing Chan Sek Keong JC stated:

“In *Knightsbridge Crown Court* [1980] Cr. L. R. 715 Donaldson LJ said:

“ It has been said by this court, and by other courts time and again, that entering into suretyship (going bail for someone, to use the common phrase) is an extremely serious matter not to be lightly undertaken, and those who go to bail must understand that if the accused fails to surrender to his bail, it is only in the most exceptional circumstances that the court will be prepared to modify the prima facie position, which is that the amount that the person concerned has stood surety will be forfeit in full.”

Thus, because of the serious nature of the obligation, it cannot be said; “the mere fact that every effort to secure the appearance of the accused man has been made and that there was no want of diligence involved the proposition that the amount of the obligation should be remitted entirely” per Donaldson LJ in *Ex parte Parfrey* (supra).”

8. Though the obligation of the surety is a serious one and the court takes a strict view of his financial means, the surety is still entitled to place evidence of his means² before the court. Therefore, a surety, if called upon, must pay despite being in financial difficulties. Thus, it is not sufficient for a surety to be relieved from full liability even if he had placed his savings or taken a loan to put up bail.

9. In *Loh Kim Chiang v PP*³ Karthigesu J (as he then was) in the exercise of his discretion forfeited half the amount of the bail. In his judgment he also accepted these principles of forfeiture of bail after considering the English authorities on the issue of a surety’s responsibility. Quoting from *R v Crown Court at Ipswich, ex parte Reddington*,⁴ Karthigesu J stated:

“The passage quoted is I think important and it is this:

² R V Uxbridge Justices, ex parte Heward-Mills [1983] 1 All ER 530

³ [1992] 2 SLR 233

⁴ [1981] Crim LR 618

“ Of course, anyone who stands surety for someone’s attendance must have solemnly undertaken that they are good for the amount of the surety, that they have sufficient resources available. So that when considering the question of means it is a little difficult for the surety to say that he has not got the money which, when entering the recognizance, he must have indicated that he had at that time. But it clearly would be right, and that case (Ex p Green) is authoritative, that courts considering estreatment of recognisance must consider not only the extent of the surety’s resources and the ability to meet what is in effect a financial penalty in those circumstances.

Lastly McCullough J says, for the sake of completeness, he would mention his own judgment in *R v Crown Court at Oxford, ex p Jones and Jacobs* (unreported), He read from the transcript of his judgment the following passage:

“One has to arrive at a decision which is fair and just in all the circumstances, In so doing one must assess the surety’s culpability. One must consider his means, One must remember that one is not fixing a penalty for misconduct, One is deciding whether to mitigate the ordinary principle which is that if somebody says: “I promise to pay 20,000 if X does not turn up in court” and X does not turn up in court, then 20,000 is forfeited”,

Continuing Karthigesu J stated:

“Having summarized all the passages in the cases where this topic falls to be considered as a matter of principle, so far as I know and as far as research done by counsel has shown, I would draw together the more important principles to be derived from the authorities as follows:-

- (1) When a defendant for whose attendance a person has stood surety fails to appear, the full recognizance should be forfeited unless it appears fair and just that a lesser sum should be forfeited or none at all;
- (2) The burden of satisfying the court that the full sum should not be forfeited rests on the surety and is a heavy one. It is for him to lay before the court the evidence of want of culpability and of means on which he relies;

- (3) Where a surety is unrepresented the court should assist him by explaining these principles in ordinary language, and giving him the opportunity to call evidence and advance argument in relation to them

10. Referring to section 361(4) of the Criminal Procedure Code (CPC), Karthigesu J stated:

“Section 361(4) of the CPC gives discretion to the court to remit any portion of the penalty and to enforce payment in part only. I see section 361(4) and the exercise of the discretion thereunder as most important as it gives the court the opportunity to weigh the culpability of the bailor and to act fairly and justly in determining whether the full amount of the bail should be forfeited or a lesser sum or not at all. The learned district judge, to my mind, did not apply his mind to the means of the appellant, although it must be said that a bailor entering into a bond, *ex facie*, is declaring his ability to pay the full amount of the bail. All that the learned district judge said was to ask himself the question “Were the circumstances such that the whole sum ought to be enforced? and answered it – “In my view, the circumstances were such that the whole sum ought to be forfeited”.

This is not a proper exercise of the discretion. I cannot infer that by that simple question and answer the learned district judge purported to weigh the degree of the culpability of the appellant from the evidence he gave on affirmation. As was said by Lord Greene MR in *Associated Picture Houses Ltd v Wednesday Corporation* [1948] 1 KB 223 at 225” a person with a discretion must direct himself properly in law. He must call his attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter he has to consider.”

11. The court bore in mind the above principles in determining whether to forfeit the full amount of the bail monies or in part. Bearing in mind that the court has a discretion to forfeit all or some of the bail amount, the quantum of bail to be forfeited has not been clearly defined. There is also no provision for a refund of the amount forfeited if the accused is eventually apprehended and prosecuted for the offence. A way of determining the quantum of bail to be forfeited is perhaps to consider the amount of fine to be imposed if the accused is ultimately caught and convicted on the charge. Currently, the appropriate level of forfeiture requires the court to balance a number of factors and

considerations operating in a variety of ways in order to achieve the purpose of bail and not compromise the effectiveness and integrity of the bail process. This is the position in other jurisdictions as well. In *Queen v James Coe & Ors*⁵ the Hong Kong Supreme Court in dealing with a situation where the sureties had difficulty in paying, the court forfeited only some of the bail monies to demonstrate that sureties have to pay when called upon to do so. The Courts in Australia have also adopted a similar stance. The question of financial hardship is a relevant consideration and in an appropriate case, the court may permit a reduction on grounds of hardship even though the surety has not taken reasonable steps to secure the attendance of the accused⁶. This is also the position in United Kingdom. In *R v Leicestershire Stipendiary Magistrate, ex parte Kaur*⁷ the potential impact of making payment on sureties and others was considered to be a relevant consideration. Thus, the purpose of bail is not to punish the surety but the consequence of his failure to fulfill his obligation namely, that he voluntarily undertook to ensure the accused's presence in court.

12. The court also considered the fact that the appellant had elected not to show cause and to mitigate. Though the appellant had signed a bond declaring his ability to pay the full amount of the bail, the court also considered the following facts stated in mitigation namely,

- (i) that the appellant had out of kindness, friendship and trust stood surety for Huang Rongxun with Huang Rongxun betraying that trust by absconding;
- (ii) that the appellant is currently in financial difficulty;
- (iii) that the only steps the appellant took to ensure Huang Rongxun's attendance in court was to arrange to meet with Huang Rongxun every two days and make telephone calls to Huang Rongxun to remind him to attend court.

⁵ Criminal Case 320 of 1989

⁶ Re Application by Melincianu [2005] VSC 89

⁷ 164 JP 127 (DC) (Cited also in Archbold (2007) Criminal Pleading Evidence and Practice para 3-144b)

13. The court also considered the decision in *Public Prosecutor v Mahadi Bin Mohamed Daud*⁸ that where the source of the security came from the accused and not from the surety, it is proper for the court to order the forfeiture of the whole amount posted as bail. It would be wrong in principle to allow any part of the bail money to be remitted to the surety since the money had been given by the accused to the surety. In such circumstances, the surety had no incentive to ensure that the accused present himself in court for his trial. In the instant case, there was no evidence that this was so. The appellant in providing the bail sum had surrendered his UOB savings passbook and a sum of \$30,000 in cash as security to the Bail Centre. In determining the amount to be forfeited I had considered the surety's culpability, the efforts the surety had taken or the arrangements made to monitor, supervise or produce the accused to court as well as his lack of financial means. It was also noted that other than making arrangements to meet the accused and telephoning the accused to remind him to attend court, the appellant he had taken no other steps to ensure that Huang Rongxun be present in court. Furthermore, the appellant made no attempts to trace the whereabouts of Huang Rongxun. Huang Rongxun is still at large and a warrant for his arrest is still outstanding.

14. In view of all the circumstances, I exercised my discretion to forfeit a sum of \$50,000. Accordingly, a sum of \$50,000 was ordered to be forfeited in default a warrant of attachment and sale to issue. The amount forfeited was within the general range of amounts ordered to be forfeited.

R G NEIGHBOUR
DISTRICT JUDGE

Appellant in person

⁸ [2000] 1 SLR 30