



THE COURT OF APPEAL

Record No: 257/2022

**Birmingham P.
Edwards J.
McCarthy J.**

Neutral Citation Number [2022] IECA 315

Between/

**THE PEOPLE (AT THE SUIT OF
THE DIRECTOR OF PUBLIC PROSECUTIONS)**

RESPONDENT

V

PATRICK DOOLEY

APPELLANT

JUDGMENT of the Court (*ex tempore*) delivered by Mr. Justice Edwards on the 20th of December, 2022.

Introduction

1. In this case, the appellant, Mr. Patrick Dooley, appeals against the refusal by the High Court to grant the appellant bail pending his trial on a charge of murder of a Mr. Thomas Dooley, the appellant's brother, at Rath Cemetery, Rathass, Tralee, County Kerry on the 5th of October, 2022.

Bail Application Before the High Court:

2. The application to the High Court for bail was objected to upon a number of grounds. There was an objection based upon s. 2 of the Bail Act 1997, as amended by s. 5 of the Criminal Justice Act 2017, with specific reliance being placed upon s. 2(2)(f)(iii) of the Act of 1997, as so amended, which provides:

"(2) *In exercising its jurisdiction under subsection (1) [to refuse a bail application if the court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by the applicant], a court shall take into account and may, where necessary, receive evidence or submissions concerning–*

[...]

(f) any other offence in respect of which the accused person is charged and is awaiting trial,

and, where it has taken into account one or more of the foregoing, it may also take into account–

[...]

(iii) the nature and likelihood of any danger to the life or personal safety of any person or danger to the community that may be presented by the release on bail of a person charged with an offence punishable by imprisonment for a term of 10 years or by a more severe penalty.”

3. There were also objections on certain grounds that were enumerated by Murnaghan J. in his judgment in *The People (Attorney General) v. O’Callaghan* [1966] I.R. 501, 503-504, specifically objections premised both on the basis of an asserted concern that the appellant would not turn up for his trial, and on the basis of an asserted likelihood that he would interfere with witnesses.

Evidence before the High Court:

4. The evidence put forward by the prosecution in the High Court was that a gang of persons had ambushed the deceased who was the brother of the appellant. The appellant’s brother was killed in extremely violent circumstances where he was essentially hacked to death by men armed with slash hooks and bladed weapons. There were eyewitnesses to the alleged attack including *inter alia* the deceased’s wife, who herself sustained significant injuries, and a number of the deceased’s children. The prosecution’s case was that it was a planned and coordinated attack and that the appellant had led the attack. There was CCTV evidence from prior to the attack which captured the appellant calling to his cousin in his van and collecting his cousin, who was armed with a weapon, and then transporting him to the funeral. There was evidence that the appellant had himself been injured in the incident. However, the appellant had not sought treatment immediately at University Hospital Kerry, which is situated across the R875 road and opposite Rath cemetery, the scene of the alleged offending, but rather he had proceeded with others in a convoy of three vans to Cork where he later presented himself for treatment of his injury at Cork University Hospital, and was arrested there.
5. The High Court heard that the attack had been perpetrated in the context of an ongoing family feud, which continues to persist. The court heard that the deceased’s wife had stated that she was in fear of the appellant and concerned for her safety and that of her children, for which reason Mrs. Dooley had declined to attend court and did not give evidence. Separate from that, Sergeant Henderson of An Garda Síochána had also expressed concern for the safety of the deceased’s wife and family in circumstances where the feud was ongoing.
6. The High Court heard evidence that the appellant resides in Killarney, is a married man, and is father to a 13-month-old infant. His home was about two kilometres away from the deceased’s wife and family, who also reside in Killarney. The appellant has no previous convictions for violent offences. He has 12 road traffic convictions and had received an adult caution in the past for a shoplifting matter. He has ties to the jurisdiction. He was

offering his father, a Mr. James Dooley, as a surety, who was prepared to put up €25,000 funded by a Credit Union loan. Mr. James Dooley gave evidence in relation to the family situation, the special needs of his adult children, and that he requires the appellant's assistance with their care.

7. Further evidence of Sergeant Henderson was that there are no other charges against the appellant and that he has no issues with drink or drugs. The appellant had been interviewed by An Garda Síochána following his arrest and is said to have given an account in which he admits being present, and to having been involved, but only to the extent of having intervened in defence of his brother. Sergeant Henderson testified that in his opinion no conditions of bail would be adequate.

Ruling of McGrath J.

8. This Court has been provided with an agreed note of the ruling of the High Court judge, Mr. Justice McGrath, in which he reviewed the evidence that he had heard and gave reasons for his decisions. Having heard the evidence, the High Court judge was satisfied to refuse bail on all three grounds. He was satisfied that the court's jurisdiction to refuse bail under s. 2 of the Act of 1997, as amended, was engaged.
9. He took into account the serious nature of the offence with which the appellant was charged, and the fact that it carries a potential sentence of life imprisonment. He also took into account the nature of the strength of the evidence. He took into account the uncontroverted evidence that there was a feud. He was satisfied that there was uncontroverted evidence that there was a likelihood of danger to the life and safety of others. He also took account of the submissions made to him by counsel on behalf of the appellant, including that the appellant enjoyed the presumption of innocence, but was nevertheless satisfied that in so far as s. 2 concerns arose that bail ought not to be granted. The High Court judge also expressed himself satisfied that because of the very serious nature of the charge there was a risk of flight, notwithstanding that there had been no bail warrants for not turning up to court in the past, notwithstanding that the appellant had no previous convictions for significant criminal matters and notwithstanding his ties to the jurisdiction. He was also satisfied, based on the evidence of Sergeant Henderson concerning the ongoing feud and the circumstances of the case that there was significant risk of interference with witnesses. The trial judge gave consideration as to whether his concerns could be met by the granting of bail upon conditions but was not satisfied that any conditions would be sufficient to allay his concerns.

Grounds of Appeal:

10. The appellant, in Notice of Appeal lodged on the 21st of November 2022, described 18 grounds of appeal. Many of these grounds interrelate and accordingly it is possible to provide a summary: That the High Court judge erred in fact and in law in
 1. refusing bail to the appellant based on the apprehension/existence of a flight risk (in circumstances where the appellant had "*significant*" ties to the jurisdiction and, "*without prejudice to the generality of the foregoing plea*", in finding the existence

of a flight risk due to the actions of others in leaving the State which cannot be attributed to the appellant.)

2. refusing bail to the appellant based on the apprehension of interference with witnesses (in the absence of *"any substantive supporting evidence"* and *"where the said matter was adduced by way of hearsay evidence"*
3. refusing bail to the appellant based on an objection raised by the prosecution under s. 2(2)(f)(iii) of the Bail Act 1997, as amended, *"due to the existence of a "feud" which said consideration was vague, illusory and unwarranted insofar as the Appellant is concerned"*.

Submissions to the Court of Appeal

11. On appeal, counsel for the appellant submits that the High Court judge erred in failing to engage with the evidence, or more correctly the lack of evidence, to suggest that the appellant was likely as a matter of probability to commit other serious offences, and/or to not turn up for his trial, and/or to interfere with witnesses. In counsel's belief, there was nothing but bald assertion to support the concerns expressed. There was an absence of concrete evidence to support a likelihood of the commission of other serious offences, or of flight, or of interference with witnesses. Further, while it was accepted that there was evidence that the deceased's wife and his children were in fear, such evidence before the court was hearsay and ought to have been afforded little weight. There was a deficit of focused and specific evidence that the appellant presented a risk at the level of likelihood or probability under any of the headings relied upon.
12. Counsel for the respondent submits that the High Court judge gave appropriate consideration and weight to all matters and accordingly was correct in his determination of the bail application. They submit that the High Court judge had more than ample evidence before him to refuse the bail application on *O'Callaghan* grounds, specifically relating to the appellant's flight risk and the potential for interference with prosecution witnesses, and on the basis of s. 2 of the Act of 1997, as amended. In sum, they submit that *"[t]here was no infirmity, legal or otherwise, either in the decision of the learned Judge, or in the manner in which it was reached"* and that in the absence of an error in principle there is nothing to warrant this Court setting aside the decision of McGrath J.

Decision of this Court

13. We have given careful consideration to the issues on this appeal. Having done so, we are satisfied that bail must be refused under s. 2 grounds, and also on *O'Callaghan* grounds relating to a risk of interference with witnesses. We are not satisfied that bail should be refused on the risk of flight grounds.
14. In arriving at our decision on s. 2 grounds we have considered the serious nature of the offence charged, the potential penalty that might be imposed upon conviction, namely life imprisonment, the general circumstances in which the crime is said to have occurred, that it is said to have occurred in the context of a family feud, which is said to be ongoing, and in relation to which it was said there had been previous incidents. Of major significance, insofar as we are concerned, is the extremely violent nature of the attack; the ostensible

premeditation by whoever was responsible; the fact that it occurred at a family funeral where, as a matter of common decency, it was to be expected that the bereaved family's grief and opportunity for mourning would be respected; the intrusion upon a family's grief; the desecration of an interment ceremony; the fact that it was evident from the disrespect shown that there were no boundaries insofar as the assailants were concerned, and; that there were no lengths to which the assailants would not go to achieve their objective. We have considered the strength of the case against the appellant insofar as it is known. We note that there is said to be eyewitness testimony in support of the prosecution case as well as CCTV evidence.

15. We have also taken into account the appellant's presumption of innocence, the fact that he has no material previous convictions, and his ties to the community. We have given serious consideration to the matters urged upon us by his counsel. However, we cannot agree with counsel's submission that there was a deficit of focused and specific evidence sufficient to justify the refusal of bail. There are very real grounds for believing that in the context of an ongoing feud, in which no boundaries have been respected to date, that there is a likelihood of danger to the life and safety of others, including prosecution witnesses. While not discounting the presumption of innocence we are entitled to take account of the strength of the case against the appellant and concerning the centrality of his alleged leadership role in what occurred. We think it is significant that there is CCTV evidence showing that he brought an armed assailant to the cemetery. He may be able to offer an explanation for that, and to raise a doubt in respect of it at trial, but at this remove the prosecution would appear to us to have significant evidence in support of the guilt of the appellant. In that regard, we do note that the appellant has been interviewed by An Garda Síochána and is said to have given an account in which he admits being present, and being involved, but only to the extent of having intervened in defence of his brother. Be that as it may, our overall impression is that the evidence more than suffices to establish a risk, at the level of probability, that the appellant will commit other serious offences, including offences likely to endanger the life and safety of others, and/or interfere with witnesses, as to justify a refusal of bail.
16. We agree with the High Court judge that there are no conditions which would allay the concerns that arise in this case. The appeal against the refusal of bail is therefore dismissed.