

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	CASE NO. ST-2016-CR-0000085
Plaintiff,	)	
vs.	)	V.I. Code Ann. tit. 14, §§ 921, 922(a)(1);
	)	921, 922(b); 2253(a) (3 Counts); 295(1);
MALAKAI GEORGE,	)	297(a)(2)
(D.O.B.: 07-26-85)	)	
	)	
Defendant.	)	
	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant's Emergency Motion for Defendant's Release on Bail, which was filed on May 20, 2016.¹ On June 3, 2016, Plaintiff filed a Response to Defendant's Emergency Motion for Defendant's Release on Bail. On June 7, 2016, the Court held a hearing on the Defendant's pending Motion.

On July 14, 2016, after the bail hearing, the People filed an Informational Motion, to which they attached a three-page letter from Blanche Frazer, the mother of the deceased victim. On July 15, 2016, the Defendant filed a Motion to Strike the People's Informational Motion as inappropriate for several reasons, the most notable of which being that Frazer was present during the June 7, 2016 bail hearing but did not testify with respect to the contents of her three-page letter.

On August 30, 2016, the Defendant filed a Renewed Motion for Bail. On September 23, 2016, the Defendant filed an Emergency Renewed Motion for Defendant's Release on Bail which attached an affidavit from Defendant's Mother detailing treatment received by the Defendant while at Golden Grove Adult Correctional Facility in St. Croix, Virgin Islands.

I. BACKGROUND AND PROCEDURAL HISTORY

Defendant Malakai George is charged with several counts of assaulting and murdering David Payne at approximately 10:30 p.m. on September 7, 2012. There is another criminal matter pending in which Rajesh Tex Maharaj, Jr. is charged with several counts of aiding and abetting in the death of Payne.

Defendant was arrested on February 2, 2016, on a warrant in which the most serious charge was first degree murder. Defendant was advised of his rights on March 3, 2016 and granted bail in the amount of Five Hundred Thousand Dollars (\$500,000.00). Defendant's attorney orally moved

¹ Plaintiff is represented by Assistant Attorney General QuincyG. McRae, Chief of the Criminal Division, V. I. Department of Justice. Defendant is represented by Attorney Darren John-Baptiste.

for the reduction of Defendant's bail to the amount of Ten Thousand Dollars (\$10,000.00) and requested that he be allowed to post 10 percent or \$1,000.00. The Court denied the oral motion. In the instant Motion, Defendant seeks to be released on his own recognizance or on an unsecured bond on the grounds that the bail amount is excessive and constitutes a "de facto denial of bail."² The People oppose the Motion on the grounds that Defendant poses a significant flight risk and a danger to the community.

II. LEGAL STANDARD TO BE APPLIED ON A MOTION FOR REDUCTION OF BAIL.

Section 3 of the Revised Organic Act of the Virgin Islands states criminal defendants shall be bailable by sufficient sureties, except for first degree murder or any capital offense when the proof is evident or the presumption is great.³ Defendant argues that the proof is not evident and the presumption is not great with respect to the pending charges. Further to this point, is that the People did not move to detain Defendant under Section 3 of the Revised Organic Act of 1954. If the People had filed such a motion and established by clear and convincing evidence that the proof against Defendant on the first degree murder charge was evident or the presumption great, then this Court would have been prohibited from granting Defendant release on any bail conditions.⁴ In the absence of a detention motion and adequate proof in support thereof, Defendant has a right to be released on bail.⁵

Superior Court Rule 141 provides that "[a]ll persons shall, before conviction, be bailable by sufficient sureties approved by a judge or magistrate... Whenever a person charged with an offense is before a judge or magistrate of this court for release on bail prior to trial, pursuant to these rules, the judge or magistrate shall, in considering the release of such person, be guided by and apply the appropriate provisions of the 'The Bail Reform Act.'"

Under the guidance of the BRA, the general presumption is that a criminal defendant should be released on his personal recognizance or an unsecured bond, unless a judicial officer determines that the defendant's release would not assure his appearance at trial or may result in harm to the general community or a specific person.⁶

The amount of bail must be set solely to assure the Court that a defendant will appear for his hearings and trial.⁷ When determining the sufficiency of bail and other conditions imposed, the Court must consider the risk that the defendant may flee the jurisdiction pending trial and if he

² Emergency Mot. for Release on Bail, 2, May 20, 2016.

³ 48 U.S.C. §§ 1541 *et seq.*

⁴ *People of the V.I. v. Saldana*, 2015 V.I. LEXIS 1, *9 (V.I. Super. Ct. Jan. 16, 2015) citing *Browne v. People*, 50 V.I. 241, 256-63 (2008).

⁵ *People of the V.I. v. Saldana*, 2015 V.I. LEXIS 1, *9 (V.I. Super. Ct. Jan. 16, 2015).

⁶ 18 U.S.C. § 3142(b); *see also People of the V.I. v. Saldana*, Super. Ct. Crim. No. 187/2014, 2015 V.I. LEXIS 1, at *10 (V.I. Super. Ct. 2015).

⁷ *Saldana*, 2015 V.I. LEXIS 1, at *11.

poses a danger to the community.⁸ The BRA provides the Court with the following factors for consideration:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a firearm, explosive, or destructive device;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including
 - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.⁹

When a defendant provides additional evidence and proffers with his motion to reduce bail, the Court should reassess if the defendant's bail is reasonable.¹⁰ Importantly, determination of the proper bail amount must be conducted on a case-by-case basis.¹¹ The Court must "set out the reasons and findings it makes when issuing orders deciding bail and other release conditions."¹² Therefore, the Court must consider the particular facts before it to determine if a bail amount of \$500,000.00 is appropriate for the degree to which Defendant is a flight risk or danger to the community.

ANALYSIS

The determination of the amount of bail set by this Court is discretionary and governed by Rule 141 of the Rules of the Superior Court. Once bail has been set by the magistrate judge or the trial judge, that "judicial officer may at any time amend the order to impose additional or different conditions of release."¹³ Therefore, the Court will examine the factors as articulated under the federal BRA.

⁸ *Tobal v. People of the V.I.*, 51 V.I. 147, 161 (V.I. 2009); *Saldana*, 2015 V.I. LEXIS 1, at *11-12; *see also* 18 U.S.C. § 3142(b).

⁹ 18 U.S.C. § 3142(g).

¹⁰ *Id.* at 667 ("The mere fact that another judge, presented with another motion, had set those conditions is an insufficient basis on which to refuse to modify the conditions").

¹¹ *Rieara v. People of the V.I.*, 57 V.I. 659, 667 ("When the court resolves a motion to modify bail and release conditions, it must make an individualized determination in order to ensure that the bail is not excessive"); *People of the V.I. v. Camacho*, 47 V.I. 302 (V.I. Super. Ct. 2005).

¹² *Rieara*, 57 V.I. at 668.

¹³ SUPER CT. R. 141 (b); 18 U.S.C. § 3142(c)(3).

A. Danger to the Community Factor.

Under the federal BRA provisions adopted by this Court, the People bear the burden of showing that Defendant's prior criminal history, current charges, and other evidence support a finding that he is a danger to the community or a specific person by clear and convincing evidence.¹⁴

The People contend that Defendant poses a significant danger to the community at large and to himself. He is charged with a seven-count Information with violent crimes all involving a firearm and for which he is facing life imprisonment on four of the counts.¹⁵ In addition, the People note that Defendant's crime involves the use of a firearm and that Defendant poses extreme danger to potential witnesses, i.e. Rajesh Maharaj. The People argue that Defendant may deem such witnesses "rats."¹⁶

The Defendant is charged with violent and deadly offenses. However, the Defendant has been living in St. Thomas, without incident, since the killing of David Payne on September 12, 2012. The Defendant was arrested twice before the death of David Payne, and in both instances, the charges were dismissed.

In contrast to the People's argument that the Defendant is a danger to the community and that he had to take anger management classes, the Defendant presented testimony that he had been permanently injured by the police.

Based upon the evidence presented at the hearing and the parties' written submissions on the issue of bail, the Court finds that Defendant does not pose a significant danger to the community or to a particular individual.

B. Risk of Flight Factor.

The People bear the burden of showing that Defendant is a flight risk by a preponderance of the evidence.¹⁷ Defendant's ties to the U.S. Virgin Islands are significant. He was born on St. Thomas on July 26, 1985 and is a lifetime resident.¹⁸ Further, Defendant has been in the community for more than three years since the events on September 2012 and has not relocated.

Defendant's mother testified that her son listens to her and that she will report him to the authorities should he violate any bail conditions. At the bail hearing, one detective testified that he heard from another source that the Defendant tells his mother what to do. The Court found this testimony to be unpersuasive.

¹⁴ *Saldana*, 2015 V.I. LEXIS 1, at *19 (citing *United States v. English*, 629 F.3d 311, 319 (2d Cir. 2011) (noting that even when there is a presumption of detention under the Bail Reform Act, the prosecution has the ultimate burden of persuading the trial court that a criminal defendant is a danger to the community)).

¹⁵ Resp. to Emergency Mot. for Release on Bail, 6, June 3, 2016.

¹⁶ *Id.*

¹⁷ *Karpouzis*, 961 F. Supp. 2d at 851.

¹⁸ Emergency Mot. for Release on Bail, 4, May 22, 2016.

The Defendant stayed on St. Thomas for the three years that elapsed between the date of Payne's death on September 7, 2012 and his arrest on February 17, 2016. The People have not shown by a preponderance of the evidence that Defendant poses a risk of flight.

C. REASONABLE AMOUNT OF BAIL.

In setting a reasonable amount of bail and other conditions, the Court must fix them at the least restrictive levels which ensure that the Defendant attends all conferences, hearings, and the trial of this case.¹⁹ Defendant argued his bail should be reduced because he cannot afford to pay the current bail amount.²⁰ However, lack of financial resources to pay bail does not automatically render the bail amount excessive or unconstitutional.²¹ Excessive bail refers to an amount more than necessary to ensure that a defendant appears for his hearings and trial, as opposed to his ability to pay.²²

Defendant's current bail is set at \$500,000.00. Prior to his arrest, Defendant lived on St. Thomas all of his life. Defendant's mother is willing to serve as his third-party custodian and she testified that he can reside with her in Estate Bonne Esperance, which is not near the homicide scene or where the victim's mother lives. Given that the Defendant does not pose a flight risk, the Court finds that he is likely to appear at all conferences, hearings, and the trial in this case. Therefore, the Court will release the Defendant on and unsecured bond and terms and conditions designed to insure that he keeps all court appearances.

III. CONCLUSION

The Court finds that the People have failed to establish that Defendant is a danger to the community by clear and convincing evidence, or that he is a risk of flight by a preponderance of the evidence. Given that the Defendant has been a lifelong resident of St. Thomas, U. S. Virgin Islands, and that he has a suitable and responsible third-party custodian, the Court finds that a modification of the Defendant's bail terms are warranted. Further, the Court concludes that it can fashion conditions that are less restrictive than \$500,000.00 bail to insure that the Defendant appears at all proceedings in this matter.

¹⁹ *Saldana*, 2015 V.I. LEXIS 1, at *11.

²⁰ Emergency Mot. for Release on Bail, 5, May 20, 2016.

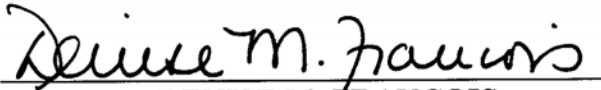
²¹ *People of the V.I. v. Powell*, 2014 V.I. LEXIS 17, at *9 (V.I. Super. Ct. 2014) (citing *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988)).

²² *Galen v. City of L.A.*, 477 F.3d 652, 661-62 (9th Cir. 2007) ("The plain meaning of 'excessive bail' does not require that it be beyond one's means, only that it be greater than necessary to achieve the purposes for which bail is imposed").

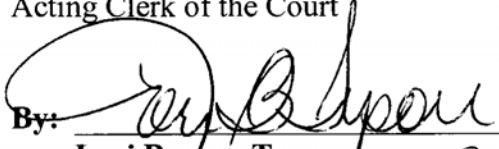
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A separate Order consistent with this Memorandum Opinion containing the conditions of Defendant's pretrial release from custody follows.

DATED: September 27, 2016


DENISE M. FRANCOIS
Judge of the Superior Court of the Virgin Islands

ATTEST:
Estrella H. George
Acting Clerk of the Court

By: 
Lori Boynes-Tyson
Acting Chief Deputy Clerk 9/28/16