IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE
(CRIMINAL JURISDICTION)

CASE NO: BA20230546

IN THE MATTER OF JOAN SALAZAR -A PRISONER AWAITING TRIAL
AND
IN THE MATTER OF SECTION 47(1) OF THE CRIMINAL CODE, CHAPTER 101 OF THE SUBSTANTIVE LAWS OF BELIZE, REVISED EDITION 2020
AND
IN THE MATTER OF SECTION 16 OF THE CRIME CONTROL AND CRIMINAL JUSTICE ACT, CHAPTER 102 OF THE LAWS OF BELIZE, REVISED EDITION 2020
AND
IN THE MATTER OF SECTION 62 OF THE INDICTABLE PROCEDURE ACT, CHAPTER 96 OF THE LAWS OF BELIZE, REVISED 2020

Before: **The Honourable Mr. Justice Nigel Pilgrim**

Appearances: **Mr. Dickie Bradley for the Petitioner.**
Mr. Dercene Staine for the Respondent.

Decided on written submissions.

Date of Delivery: **29th September 2023.**
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BAIL- CRIME CONTROL AND CRIMINAL JUSTICE ACT- UNLAWFUL SEXUAL INTERCOURSE- SPECIAL REASONS

RULING ON PETITION FOR BAIL

[1] PILGRIM J.: Joan Salazar (hereinafter the Petitioner) has applied for bail. The Petitioner was arraigned on 28th August 2023, for several counts of unlawful sexual intercourse contrary to section 47(1) of the **Criminal Code**[1]. This is an offence requiring special reason for the grant of bail pursuant to the conjoint effect of section

[1] Cap. 101 of the Substantive Laws of Belize, Revised Ed. 2020

16(2)(g) and section 16(3) of the **Crime Control and Criminal Justice Act**[2] (hereinafter the "CCCJA").

[2] The Petitioner has submitted that the definition of "special reason" under the CCCJA given by Barrow J. (Ag.) as he then was, in **Timoteo Douglas Jimenez**[3] at first instance is wrong and too narrow and that the definition given by Legall J., also at first instance, in **Omar Urbina**[4] is to be preferred.

[3] The Court, in deference to the submissions raised, will examine the definition of "special reason" in the context of the CCCJA.

The Law and Analysis

[4] The Court approaches the task of statutory interpretation with the guidance of the apex Court, the Caribbean Court of Justice (hereinafter the "CCJ"), in the Belizean case of **Titan International Securities Inc. v Attorney General of Belize and another**[5], per Rajnauth-Lee JCCJ:

> *"[40]* ***The court's role in statutory interpretation has been settled. Parliament makes the law; judges interpret it. Judges have a duty to interpret an Act according to the intent of those who made it. The primary indication of legislative intention is the legislative text, read in context using internal aids, like other provisions in the act*** *or external aids, such as the legislative history." (emphasis added)*

[5] The relevant provisions of the CCCJA read as follows:

> *"16.-(1) Notwithstanding any other law or rule of practice to the contrary, no magistrate, justice of the peace or a police officer shall admit to bail any person charged with any of the offences set out in sub-section (2).*

[2] Cap. 102 of the Substantive Laws of Belize, Revised Ed. 2020
[3] Action No. 235 of 2004
[4] Claim 156 of 2009
[5] [2019] 2 LRC 279

(2) The offences referred to in sub-section (1) are–…(g) carnal knowledge of a girl under sixteen years of age;

…

(3) Where the bail is refused by the magistrate or justice of the peace under the foregoing provisions of this section, the person charged may apply to theSupreme Court for bail and ***the Supreme Court may, for special reasons to be recorded in writing****, but subject to sub-section (4), grant bail to such a person other than for the offence of murder, but in considering any such application the Court shall pay due regard to the following factors, namely–*

(a) the prevalence of the crime with which the accused person is charged;

(b) the possibility of the accused person being a danger to the pubic or committing other offences or interfering with witnesses while on bail;

(c) the public interest involved in assisting the security services to combat crime and violence; and

(d) all other relevant factors and circumstances.

…

(5) ***Where bail is withheld under this section, the trial of the accused person shall, subject to sub-section (6) below, take place–***

(a) in the case of summary trial, not later than three months from the date following the day on which bail is withheld;

(b) in the case of trial on indictment, at the next practicable sitting of the Supreme Court for the district*.*

(6) ***Where for any reason the trial cannot be proceeded with within the time prescribed in subsection (5) above, the accused person may be admitted to bail in the discretion of the judge or magistrate, at any time following the last day upon which the trial should have been held under that sub- section****." (emphasis added)*

[6] It is the Court's view that on a plain reading of section 16(3) of the CCCJA the High Court can only grant bail, after the refusal by the magistrate who is restricted by section 16(1), for special reasons in writing.

[7] The Court reminds itself as the CCJ held in *Titan* that it its function is to interpret the law as intended by the National Assembly, as revealed by its words. The National Assembly, by section 68 of the **Constitution**, is empowered to make laws for the peace, order and good government of Belize, subject to that *Constitution*. Whatever the state of the common law regarding bail outlined in **Carlos Caveza**[6] before the coming into force of the amendment giving rise to the current section 16 of the

[6] Action 229 of 1992

CCCJA on 10th January 2004, the National Assembly has the power to alter it by legislation once it is not ultra vires the *Constitution*.

[8] The Court reminds itself of the guidance of the CCJ in *Titan* in that regard, again per Rajnauth-Lee JCCJ:

> *"[35] …Section 2 of the Constitution states that 'this Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void'**. An Act passed by the National Assembly of Belize is presumed constitutional until a court of competent jurisdiction declares that it is inconsistent with the Constitution**. **Thus, the party alleging the breach has to prove that the law is unconstitutional, and the burden of proof is a significant one**." (emphasis added)*

[9] The Court also reminds itself of the guidance of the CCJ in the Belizean decision of **Zuniga and Others v Attorney General**[7], per Saunders JCCJ, as he then was:

> *"[49] It is trite law that the court is entitled to determine whether laws enacted by Parliament are in conformity with the Constitution and to strike them down to the extent of their inconsistency**. If the Chief Justice's words are interpreted to mean that, absent some breach of the Constitution (outside of a perceived breach of s 68 itself) the court is at liberty to declare a law void merely because, in its wisdom, the court does not consider the law to fall within the compass of what conduces to the 'peace, order and good government' of Belize, then respectfully, we must disagree.** We prefer the approach taken by Mendes JA, who noted that—*
> ***'it is not possible to eke out an implied principle that the judiciary may second guess the elected representatives on the question of what purpose it is appropriate for legislation to serve. Such a power would put the judiciary in competition with the legislature for the determination of what policies ought to be pursued in the best interests of Belize.**' (See [2014] 2 LRC 11 at [49].)*

[7] [2014] 5 LRC 1

> *[50]* ***In the realm of policy, the National Assembly is not only best equipped, but it also has a specific remit to assess and legislate what it considers suitable for Belizean society. The expression 'peace, order and good government' is not to be, and has never been seen as, words of limitation on Parliament's law-making power….On the contrary, the words are to be regarded as a compendious expression denoting the full power of Parliament freely to engage in law making subject only to the Constitution. Without more, it is not for the court to question the wisdom or appropriateness of an Act of Parliament to determine whether the Act is inimical to the peace, order and good government of Belize****.." (emphasis added)*

[10] The Court observes that provisions similar to the CCCJA in the Gambia, which had a similar constitution was held to be appropriate by the Privy Council in **Attorney-General of The Gambia v Jobe**[8]. In 1979 Gambia enacted a "special reason" bail requirement like the requirement in section 16 of the CCCJA:

> *"7. (1) Any person who is brought to trial before the Court shall not be granted bail unless the Magistrate is satisfied that there are special circumstances warranting the grant of bail."*

[11] The provisions of the 1970 Gambian Constitution[9] with regard to bail, section 15(5), are almost identical to the Belizean Constitution at section 5(5):

> *"5(5) If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions."*

[8] [1985] LRC (Const) 556

[9] Section 15(5) *If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."*

[12] The presumption of innocence provision at section 6(3)(a) of the Belizean Constitution[10] is identical to section 20(2)(a)[11] of the 1970 Gambian Constitution.

[13] The Board held that the temporary deprivation of bail without special reason on very similar provisions was not unconstitutional, per Lord Diplock at pages 561-2:

> *"**There is thus nothing in the Constitution which invalidates a law imposing a total prohibition on the release on bail of a person reasonably suspected of having committed a criminal offence, provided that he is brought to trial within a reasonable time after he has been arrested and detained. Section 7(1) of the Act which prohibits release on bail, not totally but subject to an exception if the magistrate is satisfied that there are special circumstances warranting the grant of bail, cannot in their Lordships' view be said to be in conflict with any provision of the Constitution**.*
>
> *…*
>
> ***Section 15(5) of the Constitution does not come into operation unless the person who has been arrested upon reasonable suspicion is not tried within a reasonable time. There is nothing in the Act which authorizes unreasonable delay in bringing a suspected person to trial. On the contrary, the second recital makes plain the parliamentary intention that offences made triable by the Special Criminal Court shall be dealt with expeditiously. To permit unreasonable delay in bringing an accused to trial before the Special Criminal Court would be a breach of the magistrate's judicial duty under the Act and the supervisory power of the Supreme Court under section 94(2) of the Constitution is available in reserve to ensure that the magistrate performs his official duty. For the purpose of determining the constitutionality of the Act itself it must be presumed that judicial officers will do what the Act requires them to do; if in a particular case they fail to do so the person aggrieved***

[10] 6(3) *Every person who is charged with a criminal offence-(a) shall be presumed to be innocent until he is proved, or has pleaded, guilty;"*

[11] "*Every person who is charged with a criminal offence-(a) shall be presumed to be innocent until he is proved, or has pleaded, guilty;"*

> ***has a remedy in the form of an application for redress under section 28 of the Constitution***.
>
> *…*
>
> ***In their Lordships' view this section of the Act does not conflict with any provision of the Constitution. It is a valid law made by Parliament in the exercise of the legislative power of the Republic vested in it by section 56 of the Constitution.*** *" (emphasis added)*

[14] The case of *Jobe* was followed by the Supreme Court of Zimbabwe in **Bull v Minister of Home Affairs**[12], where there were again, like the Gambia, provisions similar to the Belizean Constitution, per Beck JA:

> *"**Accordingly, in the case of a person detained upon reasonable suspicion of having committed a criminal offence, it would be constitutionally permissible to authorise a continuing deprivation of liberty pending trial within a reasonable time, without making any provision for bail under any circumstances**.[13]" (emphasis added)*

[15] The Court is of the view that the National Assembly set the trial within a reasonable time requirement in sections 16(5) and 16(6) of the CCCJA, and it was their intention to restrict bail, without special reason, until the time mentioned in those sections expired.

[16] The Court notes that the framers of the Belizean Constitution did not choose to formulate the right to bail as exists, for example, in the Trinidad and Tobago **Constitution** which provides at section 5(2)(f)(iii) that a citizen has a right "to reasonable bail without just cause". This is identical to a provision in the Canadian Charter of Rights and Freedoms, section 11(e), which was held by the Canadian Supreme Court, in **R v Pearson**[14], to mean that:

[12] [1987] LRC (Const) 547
[13] P. 561
[14] [1992] 3 S.C.R. 665

> *"Section 11(e) creates a broad right guaranteeing both the right to obtain bail and the right to have that bail set on reasonable terms….the basic entitlement under section 11(e) to be granted bail unless pre-trial detention is justified by the prosecution…"*

[17] The Court now considers the issue of what are special reasons for the purposes of the CCCJA. The National Assembly has not defined the term; therefore, it would be helpful to look to the common law for guidance. The Court relies on the principle of statutory interpretation, as outlined by the Supreme Court of the United Kingdom in **Campbell v Gordon**[15] that the National Assembly knew the common law before creating section 16 of the CCCJA and "is presumed to legislate in the knowledge of the current state of the law when it is doing so".

[18] The Court of Appeal of New Zealand in **Basile v Atwill**[16] defines "special reason" thusly:

> *"In the statutory context "special" is a limiting adjective**. A special reason is one that is not found in the common run of cases. While not necessarily being categorised as "exceptional" or "extraordinary" it is one that may properly be characterised as not ordinary or common or usual**." (emphasis added)*

[19] The Australian courts in **R v Ferri**[17] have defined special reasons in this way:

> *"…**the expression "special reasons" necessarily connotes the existence of some situation which is, patently, a substantial departure from the normal**…" (emphasis added)*

[20] Regionally, the words "special reasons" were considered by the Trinidad and Tobago Court of Appeal in **Darmanie v Joseph**[18] and the Court of Appeal in Guyana

[15] [2016] UKSC 38 per Lady Hale at [44]
[16] [1995] 2 NZLR 537 at 539
[17] [2002] SASC 217 at [12]–[16], per Olsson AJ
[18] (1971) 18 WIR 94

in **Knights v de Cruz**[19] and both adopted the meaning of the phrase in the English case of **Whittal v Kirby**[20]:

> *"**'A "special reason" within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is, in other words, a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason" within the exception**." (emphasis added)*

[21] The Court having reviewed the state of the common law finds that the use of the words "special reason" by the National Assembly was meant to require a reason that was special to the offence and not the offender. The Court presumes that the National Assembly knew what the common law meaning of the phrase "special reason" was before inserting it into the CCCJA and meant it to apply. It would make nonsense of the use of the word "special" in section 16(3) of the CCCJA, if the normal considerations for bail peculiar to the offender were considered "special reason", as observed by the New Zealand Court of Appeal in *Basile*.

[22] Thus, the Court accepts as correct the ruling by Barrow J. (Ag.) in *Jimenez*:

> *"10. … a special reason was one which was special to the facts which constituted the offence and not one which was special to the offender as distinguished from the offence…. It was made clear that the fact that the offender had no previous conviction or that the application of the law would cause hardship did not constitute special reason.*
>
> *…*

[19] (1996) 54 WIR 252
[20] [1947] KB 194

12. It may be argued that such weakness in a case which comes before the Supreme Court on a bail application provides special reason for granting bail.

…

13. The family circumstances and obligations of the petitioner and his good standing in his community, which counsel for the petitioner had initially proposed to urge as matters for the court to consider on this application, have been shown by the authorities as incapable of constituting special reasons. The length of time that the petitioner will have to wait before he is tried, to which counsel also referred, is undoubtedly a factor that must concern the court as an aspect of its concern with the administration of justice but that is not a special reason either, it is a very general reason that is of concern in every case.

14. It is a matter for which the Act makes provision by allowing for the accused person to be admitted to bail if he is not tried at the next practicable sitting of the Supreme Court. If in this case, or in cases of bail applications generally, the response of the court seems unsympathetic let it be remembered that it is the duty of the courts to recognize the intention of the legislature as expressed in the language of the Act….It would be wrong for the court to try to stretch the meaning of special reasons to grant bail in a case where, but for the restriction imposed by the Act, it would have granted bail. The Act exists and it is the law and it is not open to the court to ignore its clear intent."

[23] Legall J.'s holding in *Urbina* is that the cases along the *Kirby* line are distinguishable because those cases defined "special reasons" in cases that were post-conviction[21] and the presumption of innocence applies to bail applicants. This Court, very respectfully to my erstwhile brother, believes that finding is per incuriam. That Court was not referred to the case of *Jobe* where under a similar constitutional matrix, including the right to be presumed innocent, the Board held that it was not a violation to enact a temporary deprivation of bail once it does not collide with the right to trial within a reasonable time. Again, the Court presumes that the National Assembly

[21] P. 4

knew the common law definition of "special reasons" and intended it to apply to section 16. In this regard this Court also respectfully disagrees with the holding that delay can be a special reason as section 16(5) and (6) already spells out what a reasonable period of detention is, in line with the decision in *Jobe.*

[24] The Court, however, agrees with the challenge thrown down by Barrow J. 19 years ago in *Jimenez*[22] that as important a matter as bail and the CCCJA, and whether the range of offences falling under it may be constitutionally proportionate in the sense used by the CCJ in *Titan*, may be appropriate for consideration by a constitutional action which may ultimately be considered and determined by higher courts. However, this Court is bound to interpret and apply the CCCJA as it believes was intended by the National Assembly who legitimately represent the will of the people of Belize.

The instant case

[25] It is in the context of the above that the Court examines the Petition. The Court is looking for special reasons for the grant of bail. The Petitioner has pleaded his employment and family ties; a claim of innocence; and that he is willing to abide by bail conditions. The Court is of the view that none of these matters cited are special reasons on the authority of *Jimenez*. The Court then looks at the evidence for special reason. The case appears to rely on the credibility of a first-hand account from the virtual complainant (hereinafter referred to as "the VC") who referred to the Petitioner as her "boyfriend". The span of alleged sexual activity runs for almost a month. The Petitioner cited in his petition that he reasonably believed that the VC was under 16 years old and that he was 17 years old, so he is the beneficiary of a defence under section 47(2)(i) of the Code. A reasonable tribunal of fact may find that being the "boyfriend" of the VC, allegedly, for almost a month and having sexual intercourse 8 times, again allegedly, that it is unreasonable to believe that the

[22] Para. 15

Petitioner would not have come upon information as to the age of the VC. In any event the Court is of the view that this is not a weak case.

[26] The Court having found no special reason refuses bail. The Court reminds the Petitioner of his right to re-apply for his bail if the trial does not start pursuant to sections 16(5) and 16(6) of the CCCJA.

Dated 29th September 2023

NIGEL C. PILGRIM
JUDGE OF THE HIGH COURT OF BELIZE
CENTRAL DISTRICT