

***Rakielbakhour v DPP* [2020] NSWSC 323 (31 March 2020) – New South Wales Supreme Court**

‘Bail application - covid-19 pandemic’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm - relevance of covid-19 pandemic to application for bail’

Offences: Common assault x 1; Assault occasioning bodily harm x1.

Proceedings: Application for bail

Issues: Whether to grant bail; Relevance of the COVID-19 pandemic

Facts: The female victim was married to the accused man and it is alleged that he believed she was conducting an affair with another man (his mother told him she exchanged telephone numbers with a real estate agent) at the time of the alleged offending. It is alleged that the accused became jealous and "punched the victim repeatedly to the face and body, before tackling her to the ground and continuing to punch her." [3] The accused then allegedly hit the victim in the head and face with a hair dryer. The victim had significant bruising and swelling as well as a laceration across the forehead and scratches to her neck.

The victim told police "she fell in the shower and hit her head on the step" [8] while the offender claimed to have not been home at the victim sustained the injuries and refused to give evidence. The offender pleaded not guilty to both charges.

Judgment: Bail granted subject to conditions. The judge noted that in some domestic violence cases, a victim's refusal to provide evidence may be "a reason for hesitating before granting bail" due to the concern "that the psychology of the victim of domestic abuse is such that they do not want to implicate their intimate partner out of fear or out of love or loyalty. The release of the alleged perpetrator may heighten those emotions" [7].

The judge found that the applicant had a relatively minor criminal history and enjoyed significant family and community support. He accepted evidence demonstrating that the applicant and his father suffer from various illnesses, and that the applicant's business was experiencing a significant downturn due to his incarceration and the COVID-19 pandemic. Justice Hamill acknowledged that the pandemic and its associated risks were "matters properly to be taken into account" when considering a release application under s 18 of the Bail Act [15]. "Without attempting to be exhaustive, the pandemic may be relevant to the following paragraphs within s 18(1):

- Section 18(1)(m) says it is relevant to consider "the need for an accused person to be free for any other lawful reason". That might (or must) include the need for an applicant to protect themselves from

infection and to support their family if there is evidence to support such a finding. It is relevant to the present application because of the applicant's father's ill-health.

- > Section 18(1)(h) is also relevant. The length of time a person will remain in custody will often be affected by the measures courts are taking to ensure that participants in litigation are safe. As has been seen, many cases have been, and will be, adjourned or delayed.
- > Section 18(1)(l) relates to the need for the accused to prepare for their appearance in court or obtain legal advice. At present, all legal visits in NSW prisons are being conducted by video-link. While the same is probably true of most conferences between lawyers and their clients, the facilities within the prison system must be under great strain because so many court cases are being conducted by video link and the number of available audio-visual suites is finite.
- > Section 18(1)(k) refers to any "special vulnerability the accused person has". While not relevant to present application, the literature published by the Health authorities suggest Aboriginal and Torres Strait Islanders are particularly susceptible to the spread of the virus."^[15]