

Case Name:
R. v. Baba

Between
Her Majesty the Queen, and
Sargon Baba

[2006] O.J. No. 5387

Ontario Court of Justice
Toronto, Ontario

G. Trotter J.

Oral judgment: October 25, 2006.

(13 paras.)

Counsel:

B. Gluckman, Mr.: Counsel for the Crown.

M. Sack, Mr.: Counsel for the Accused.

REASONS FOR RULING

1 G. TROTTER J. (orally):-- Mr. Baba is charged with numerous offences involving drugs and firearms. Police executed a search warrant at a hotel room on Dixon Road near the airport, in which they found a duffle bag containing almost two kilograms of cocaine, 482 grams of marijuana and almost 1,000 ecstasy pills. It goes without saying that the quantity and value of these drugs is substantial. Also found in the bag was a loaded Glock handgun with a high-capacity magazine clip.

2 The facts before me suggest that the accused and another individual were observed by the police around the hotel room, coming and going. The hotel room was rented to somebody else at the time. The Crown alleges that the accused and his co-accused were exercising control over the room

and the contents therein. Shortly after the police discovered these items in the Holiday Inn on Dixon Road the accused was apprehended at a gas station nearby. He was searched and the police found another loaded handgun with a high-capacity magazine. A further 99 grams of cocaine was found on his person.

3 Mr. Baba is 20 years old. He has no criminal record. He has no legitimate job. Until recently, he was living with his parents. For the past seven months he has been living with his girlfriend. However, he has maintained weekly telephone and personal contact with his parents.

4 By virtue of some of the drug offences with which he is charged, the onus is on the accused to justify his release.

5 He adduced evidence from his parents. Both struck me as honest and hardworking people, perplexed by what their son is alleged to have done. Both are prepared to support him by signing for his release as sureties. They have assets only in cash at this point, probably in the amount of \$6,000 to \$7,000. A friend of the family also testified. She has known the accused for seven years. She is prepared to be a surety. She has \$200,000 equity in real estate, but wishes to pledge only \$5,000. She was asked if she would be prepared to pledge more. She said that she would, but it was clear to me that she was not keen on doing so.

6 There is no real issue on the primary ground in this case. The focus must be on the secondary and tertiary grounds. The offences which Mr. Baba faces are serious. Mr. Sack in his excellent submissions did not suggest anything less. The Crown's case is seemingly strong at this point. I find that it is extremely strong, at this point, on the second set of charges related to the drugs and the gun found on his person. While the evidence is less strong on Mr. Baba's connection to the hotel room, there is a reasonably cogent case that he was involved in significant drug trafficking with the use of firearms. It is concerning that the accused was arrested in a public place with a firearm that was loaded. It is very early in the proceedings and of course, this is not meant to be a trial, but it is fair to say that, if convicted, Mr. Baba will face a substantial term of imprisonment in the penitentiary.

7 The onus makes a difference in this case. On all of the evidence I am not satisfied that Mr. Baba has discharged his onus that he will not commit further offences if released on bail. His sureties are honest and hardworking people. The plan is a good one in theory. However, after listening to them and watching them testify, I am not sure that they have such a good connection with their son and a sufficient understanding of his present life such that they would be effective sureties.

8 As for the tertiary ground, the Supreme Court of Canada in Hall upheld the validity of that provision of the Criminal Code in Section 515(10)(c). However, the Court interpreted the provision in a very narrow way. Hall involved a brutal murder in which the victim was nearly decapitated with a knife. In her majority decision in R. v. Hall (2002) 167 C.C.C. (3d) 449 (S.C.C.) Chief Justice McLachlin observed that the crime was "heinous and unexplained." The evidence against the accused was "very strong" and people in the community were afraid. As the Chief Justice said:

"To allow an accused to be released into the community on bail in the face of a heinous crime and overwhelming evidence may erode the public's confidence in the administration of justice. Where justice is not seen to be done by the public, confidence in the bail system, and, more generally, the entire justice system may falter. When the public's confidence has reasonably been called into question dangers such as public unrest and vigilantism may emerge."

9 The Chief Justice expressed the need to restrict the use of this ground to relatively rare cases. In other words, detention is not the norm but a serious exception on this ground. The courts, in particular the courts in this province, have struggled to determine what is meant by the term "rare" cases. In Toronto, judges have struggled with what it means in the context of gun cases.

10 Some judges, such as Mr. Justice Ducharme in the case of *R. v. A.B.* (2006), 204 C.C.C. (3d) 490, (Ont. S.C.J.) have held that detention was not justified on the tertiary ground in a case involving the possession of a firearm. Justice Ducharme engages in a lengthy analysis of the importance of the presumption of innocence in the bail context. On the facts of that case, where the offence was not as serious as what Mr. Baba faces and the evidence was not as strong, Justice Ducharme held that public clamour could not justify the detention of the accused on the tertiary ground simply because he was found in possession of a firearm.

11 However, there are other cases where courts have taken different positions. In the case of *R. v. Whervin*, a [2006] O.J. No. 443, decision of Justice Casey Hill, January 17, 2006, (Ont. S.C.J.) he dealt with a person with no criminal record caught with a gun and drugs during a vehicle stop. Justice Hill justified the detention of the accused, saying at pages five and six:

"I am satisfied on the totality of the evidence that the profile of the applicant is involved in ongoing drug dealing, which emerges from the evidence at this time, justifies the conclusion that he was involved in the possession of cocaine for the purposes of trafficking and that the weapon was related to that ongoing illegal activity. I am satisfied that the Crown has established that there is a substantial likelihood that if he were to be released from custody he would commit a further criminal offence. As for the tertiary ground under Section 515(10)(c) of the code, dealing with the maintenance of confidence in the administration of justice, I've already indicated that there is a relatively strong prosecution case. The circumstances of the offence indicate possession of crack cocaine together with a loaded revolver, one bullet in the chamber, its only use to be to inflict deadly force when and if required. There is the potential on the face of these offences and the evidence that support them for a substantial penitentiary term. There is clearly an increase in concern in all segments of society for firearms crimes and risks to public safety including to members of the public and police officers. In all of those circumstances the Crown has shown cause as to why no other form of release described in Section 515(1) of the Criminal Code is equal to the task of

countering the secondary and tertiary ground concerns. The result, the Crown has established on this review that detention must continue."

12 See also the recent judgment of Mr. Justice Dambrot, *R. v. C.P.*, [2006] O.J. No. 3709, reasons of Justice Dambrot, June 26, 2006, (Ont. S.C.J.).

13 I follow the approach of Justice Hill in *Whervin* in this case. Given the offences with which the accused is charged, along with the strength of the evidence including the presence of not one but two loaded firearms in the context of significant drug trafficking, the public would lose confidence in the administration of justice if he were to be released back into the community on the plan that is being put before me. Therefore, bail is denied.

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