

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Al-Rawi*, 2021 NSCA 6

Date: 20210107

Docket: CAC 503005

Registry: Halifax

Between:

Bassam Al-Rawi

Appellant

v.

Her Majesty the Queen

Respondent

**Restriction on Publication: pursuant to s. 486.4 of the
*Criminal Code of Canada***

Judge: Derrick, J.A.

Motion Heard: January 7, 2021, in Halifax, Nova Scotia in Chambers

Written Decision: January 8, 2021

Held: Motion granted

Counsel: Ian Hutchison, for the appellant
James Gumpert, Q.C., for the respondent

Order restricting publication — sexual offences

486.4 (1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 210, 211, 213, 271, 272, 273,

279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347,
or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a).

Mandatory order on application

(2) In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

(a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the victim of the right to make an application for the order; and

(b) on application made by the victim, the prosecutor or any such witness, make the order.

Decision:

Introduction

[1] Bassam Al-Rawi was convicted on August 28, 2020 of sexual assault. On December 17, he was sentenced to two years in prison. He appealed his conviction and applied pursuant to s. 679 of the *Criminal Code* for bail pending his appeal. On January 7, 2021, his bail motion was heard over approximately four hours in Chambers. Mr. Al-Rawi and his surety, Faris Jeshami, were cross-examined, and I heard submissions from counsel.

[2] Following the submissions from counsel, I gave oral reasons granting bail. I went over the Release Order with Mr. Al-Rawi and Mr. Jeshami. Pursuant to sections 13 and 14 of the *Canada Evidence Act*, R.S.C. 1985, c. C-5, I took Mr. Jeshami's affirmation for the Surety Declaration virtually as Mr. Jeshami appeared by Skype from Ottawa.

[3] I indicated I would be providing a written decision. This decision duplicates themes addressed in my oral reasons and augments them, providing greater detail of the evidence and relevant legal principles.

[4] Mr. Al-Rawi supported his motion for bail with two alternative release plans. In one, he proposed being released to live in Germany where he was residing until being sentenced to prison. The other proposal was a release plan for Mr. Al-Rawi to live in Ottawa. Each plan involved Mr. Al-Rawi depositing \$25,000 in cash and Mr. Jeshami pledging \$50,000 secured by personal property without a deposit, for a total amount securing Mr. Al-Rawi's release of \$75,000.

[5] The Crown filed a written brief in response to Mr. Al-Rawi's motion. It concluded its analysis by saying: "For the reasons outlined earlier in this brief, the Respondent [Crown] does not have a reasonable basis to oppose the Appellant's release on significant bail, both by cash and surety's pledge".

[6] I granted Mr. Al-Rawi's motion for bail on the basis of his "Germany" release plan.

Bail Pending Appeal – Section 679(3) of the *Criminal Code*

[7] Bail at appeal is materially different from bail pre-trial (known as judicial interim release). Mr. Al-Rawi no longer enjoys the presumption of innocence as he did at his trial. The entitlement to reasonable bail pre-trial guaranteed by s. 11(e) of the *Canadian Charter of Rights and Freedoms* does not apply. Mr. Al-Rawi bears the burden of establishing, on a balance of probabilities, that he meets each of the s. 679(3) criteria (*R. v. Oland*, 2017 SCC 17, at para. 19).

[8] Bail pending appeal is governed by section 679 of the *Criminal Code* which sets out the three statutory criteria:

(3) In the case of an appeal [against conviction], the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

(a) the appeal ... is not frivolous;

(b) he will surrender himself into custody in accordance with the terms of the order; and

(c) his detention is not necessary in the public interest.

[9] The Crown's conclusion that it did not have a reasonable basis for opposing Mr. Al-Rawi's bail, provided substantial conditions are in place, indicated the Crown was satisfied Mr. Al-Rawi has satisfied the requirements of s. 679(3).

[10] In determining Mr. Al-Rawi had satisfied the s. 679(3) criteria, I examined the relevant evidence and submissions. I review details below relating to Mr. Al-Rawi's grounds of appeal, his history of release on bail, and the evidence at the bail hearing.

Mr. Al-Rawi's Appeal

[11] Mr. Al-Rawi's Notice of Appeal alleges the trial judge erred in his consideration of certain evidence relating to the credibility of the complainant; his consideration of the identification evidence; improperly using hearsay evidence; shifting the burden of proof to Mr. Al-Rawi; and his determination that the Crown had established the *mens rea* for sexual assault.

[12] In a Supplementary Brief filed in support of Mr. Al-Rawi's bail motion, Mr. Hutchison developed the arguments he intends to make on appeal. He indicates the allegations of error by the trial judge include: impermissible speculation when assessing the complainant's credibility, specifically, her evidence about the events of the night, including the sexual assault; reliance on neutral factors to enhance the

complainant's credibility; failure to consider and properly apply the law relating to identification evidence, reliance on an in-dock identification, application of the law of circumstantial evidence to evidence of identification, and reliance on hearsay in assessing the issue of identity of the perpetrator; determination that *mens rea* had been proven by the Crown beyond a reasonable doubt; and reversal of the burden of proof by imposing an obligation on Mr. Al-Rawi to explain why the complainant would fabricate her evidence.

[13] Mr. Hutchison advised his Supplementary Brief was intended to augment his submissions that Mr. Al-Rawi's appeal is not frivolous.

Mr. Al-Rawi's Release on Bail in the Courts Below

[14] Mr. Al-Rawi was living in Germany in 2018 when he was charged. He was operating his own businesses and in 2017 had married a German woman with whom he had been involved since 2009. He continued to live in Germany while the prosecution of the sexual assault charge proceeded through the Nova Scotia courts.

[15] Mr. Al-Rawi elected to have a trial before a judge of the Nova Scotia Supreme Court sitting without a jury. He was released on conditions pending his preliminary inquiry on February 4 and 5, 2019. He travelled from Germany to attend his preliminary inquiry and, with his wife, travelled back and forth between Germany and Nova Scotia for his trial. The trial proceeded on eight days in February and early March, 2020. It was then adjourned for continuation on additional dates in late August in order to hear evidence from a toxicologist. As a result of public health directives relating to COVID, Mr. Al-Rawi and his wife quarantined for two weeks in Nova Scotia before the resumption of his trial.

[16] In his sentencing decision, the trial judge noted there had been no issues with Mr. Al-Rawi's attendance at trial: "He waived extradition and appeared here faithfully when required by the Court".

[17] Trial Crown sought to revoke Mr. Al-Rawi's bail upon conviction. The trial judge extended bail under a recognizance with a surety and new conditions. Mr. Al-Rawi was required to deposit \$500. A different surety, not Mr. Jeshami, pledged \$10,000 in personal property. Mr. Al-Rawi was ordered to remain in Nova Scotia. He complied with all his release conditions prior to sentencing in December, 2020. On December 17, 2020, he was taken into custody to begin serving his sentence.

[18] Mr. Al-Rawi was before the Nova Scotia Provincial Court in 2019 on a re-trial after a successful appeal in an unrelated matter. He complied fully with his release conditions and attended court throughout as required. The re-trial concluded in an acquittal.

The Bail Hearing on January 7, 2021

[19] Two witnesses testified at the bail hearing: Mr. Al-Rawi and his surety, Mr. Jeshami. Mr. Gumpert cross-examined both of them on behalf of the Crown. Mr. Jeshami was affirmed by me pursuant to the provisions of the *Canada Evidence Act* I mentioned earlier.

[20] I was satisfied that the evidence provided by Mr. Al-Rawi and Mr. Jeshami could be relied upon. Mr. Jeshami impressed me as a suitable surety – genuine, candid and reliable with a firm grasp of a surety’s role and responsibilities.

[21] Mr. Jeshami provided an affidavit in support of Mr. Al-Rawi’s motion for bail. In it, he attested to the following:

15. I understand Bassam has been convicted of sexual assault and has been sentenced to 2 years jail time;
16. I understand Bassam is making an application for bail to the Nova Scotia Court of Appeal. I support Bassam’s application;
17. I am willing to act as a surety for Bassam if he is granted bail;
18. I understand the roles and responsibilities of a surety;
19. I am willing to pledge \$50,000, without deposit, in my role as a surety for Bassam;
20. I understand that I will be required to pay \$50,000 into court should Bassam breach his bail conditions, commit any further offences, fail to attend court or fail to surrender to the Central Nova Scotia Correctional Facility;
21. I understand Bassam is asking the court that he be allowed to return to Germany or that he be allowed to live in Ottawa. I support both bail plans;
22. I am confident that Bassam will comply with his bail conditions, attend court and surrender to the Central Nova Scotia Correctional Facility;

[22] Mr. Gumpert’s questioning of Mr. Jeshami established that: Mr. Jeshami has been close friends with Mr. Al-Rawi since childhood. They grew up in the same Baghdad neighbourhood in homes 200 meters apart. They went to school together and Mr. Jeshami knows Mr. Al-Rawi’s family, his parents, siblings, and uncle.

When he moved away to the United Arab Emirates for work, Mr. Jeshami continued to maintain close contact with Mr. Al-Rawi through social media. He described Mr. Al-Rawi as like a brother to him and was emphatic about wanting to support him.

[23] Mr. Jeshami emigrated to Canada in 2014. Since 2016 he has worked full-time as a letter carrier for Canada Post. He owns his own home and two rental properties. His affidavit indicates he has substantial savings. His pledge of \$50,000 to secure Mr. Al-Rawi's bail is supported by a solid financial position.

[24] Mr. Jeshami has no criminal record.

[25] In response to questions from Mr. Gumpert, Mr. Jeshami indicated he understood his obligations as a surety, had read Mr. Al-Rawi's proposed release conditions and appreciated he would lose his \$50,000 pledge if Mr. Al-Rawi violated his bail. When asked these questions, Mr. Jeshami's immediate response was: "I am 100 percent sure he would not", referring to the likelihood of Mr. Al-Rawi being non-compliant.

[26] Mr. Jeshami acknowledged that his responsibilities as a surety include contacting the police if he learned Mr. Al-Rawi was not abiding by the terms of his bail. He said firmly, "Yes, I would do that".

[27] Mr. Jeshami was asked about the level of his confidence that if released to return to Germany, Mr. Al-Rawi would return for his appeal. He noted that Mr. Al-Rawi has returned to Canada "many times" from Germany to attend court. Mr. Jeshami said Mr. Al-Rawi had come back to Canada before: "I am fully confident he will come again".

[28] I asked Mr. Jeshami whether he maintained regular contact with Mr. Al-Rawi. He advised he does and is also in frequent contact with Mr. Al-Rawi's wife, and his brother who lives in Germany.

[29] Mr. Al-Rawi confirmed the information from his German immigration lawyer in a letter attached to his supplementary affidavit. He holds a temporary resident permit in Germany and must return by February 8, 2021 to renew it in person. The permit expires on April 20, 2021. Mr. Al-Rawi's conviction prevents him from applying for permanent resident status in Germany.

[30] Mr. Al-Rawi testified he faces possible deportation from Germany because of the sexual assault conviction.

[31] When asked by Mr. Gumpert if he was released to return to Germany, would he come back to Canada, Mr. Al-Rawi testified that, “Everything in my life is dependent on this case”. He said: “Under no circumstances will I fail to attend”.

[32] Mr. Al-Rawi indicated he kept in regular touch with Mr. Hutchison throughout the trial process. Mr. Hutchison confirmed this.

[33] Mr. Al-Rawi described a constellation of reasons the appeal is of critical importance to him. His wife, a German citizen, is 24 weeks pregnant. Ineligible for health care benefits in Canada where she has been visiting to support Mr. Al-Rawi, she must return to Germany to have the baby. The due date is late April/early May.

[34] Mr. Al-Rawi applied to sponsor his wife for permanent residency in Canada and paid in excess of \$1000 as required. The application was rejected because of his conviction.

[35] Mr. Al-Rawi explained the challenges facing his businesses in Germany, due to the pandemic and his conviction. He testified that if he is not able to return to Germany there would be significant financial consequences for his businesses, his employees and his financial situation. He and his wife own a home and have payments associated with the home and the businesses.

[36] Mr. Al-Rawi testified that everything is interconnected and connected to whether his appeal succeeds.

[37] I asked Mr. Al-Rawi about his contact with Mr. Jeshami. He confirmed they are in frequent contact and that Mr. Jeshami also communicates with his wife and brother. Mr. Al-Rawi’s brother lives near where Mr. Al-Rawi and his wife have their home.

[38] Following cross-examination, I heard submissions from counsel. As I mentioned earlier, Mr. Al-Rawi proposed alternative release plans. Mr. Gumpert indicated the Crown did not oppose Mr. Al-Rawi’s release under either the “Germany” release plan or the “Ottawa” release plan.

[39] As I determined Mr. Al-Rawi had met the onus on him to justify his release on bail under the “Germany” release plan, I did not find it necessary to discuss the “Ottawa” release plan. It similarly contemplated strict conditions and, as I

mentioned earlier, the same financial commitments by Mr. Al-Rawi and Mr. Jeshami.

[40] I will now address Mr. Al-Rawi's "Germany" release plan and the criteria under s. 679(3) of the *Code*.

The "Germany" Release Plan

[41] The affidavit and testamentary evidence established that Mr. Al-Rawi's "Germany" release plan would enable him to return to Germany to renew his temporary residency. It would also enable him to support his wife through the rest of her pregnancy and attend the birth of his first child.

[42] Returning to Germany would also mean Mr. Al-Rawi could operate the car rental company he owns there which employs more than 30 people. It would enable him to stabilize his financial situation.

[43] Mr. Al-Rawi's wife provided a letter to the trial judge at sentencing in which she indicated she was overwhelmed by trying to manage the car rental business in her husband's absence. (After his conviction in August, Mr. Al-Rawi was released on bail with a condition to reside in Nova Scotia.) Mr. Al-Rawi's evidence before me indicated his and his wife's financial circumstances would be very adversely affected if he was not able to return to Germany.

Satisfying the s. 679(3) Criteria for Bail Pending Appeal

Is the Appeal Frivolous?

[44] The sexual assault for which Mr. Al-Rawi stands convicted occurred on December 15, 2012. The complainant had a SANE examination (Sexual Assault Nurse Examination) that same day and was interviewed by police three days later. In March 2013, the police took a statement from Mr. Al-Rawi. They advised the complainant they would not be laying charges. Four years later, upon learning that a taxi driver had been acquitted of sexual assault, the complainant contacted the police to see if there was any connection to her case. Mr. Al-Rawi was charged in 2018.

[45] In his sentencing decision, the trial judge gave a synopsis of the facts of the offence:

Mr. Al-Rawi picked up an intoxicated Ms. ECB in the early hours of Saturday, December 15, 2012. He was driving a cab, but she was not a fare. The ride appeared to be a compassionate gesture towards a stranger. Eventually, Mr. Al-Rawi headed for a highway and ended at his apartment building.

He escorted Ms. ECB to his third floor apartment, and she was still very intoxicated. Mr. Al-Rawi had sex with Ms. ECB on his bed in his bedroom. She did not want this. She communicated nothing for consent. Indeed, she pretended to have passed out in an effort to avoid sex.

[46] There is a very low threshold for satisfying the requirement that the appeal is “not frivolous” (*R. v. Ayadi*, 2012 NSCA 113, at para. 19). The Crown recognized this. The Crown’s brief says: “The Respondent acknowledges that the grounds of appeal raise arguable issues”. In oral submissions, Mr. Gumpert said Mr. Al-Rawi’s appeal is “well beyond frivolous”. Mr. Gumpert explained that reviewing the elaboration in Mr. Hutchison’s Supplementary Brief of the grounds of appeal assisted him in coming to this view.

[47] In paragraph 12 above, I reviewed the arguments Mr. Hutchison intends to develop for Mr. Al-Rawi’s appeal. I find they support the position taken by the Crown.

[48] As Mr. Gumpert noted, it is difficult to assess the strength of Mr. Al-Rawi’s grounds of appeal in the absence of being able to review the full record of the trial and the arguments of counsel. The unavailability of the trial transcript restricts somewhat the “preliminary assessment” to be made of the strength of Mr. Al-Rawi’s appeal (*Oland*, at para. 45). This is not at all unusual for bail pending appeal motions. Gauging whether the appeal grounds clear the low “not frivolous” threshold has to be done without recourse to the trial record. The Appeal Book is not available yet. Bail motions are not delayed until the Appeal Book is filed.

Will Mr. Al-Rawi Surrender Himself into Custody as Required?

[49] Mr. Al-Rawi is a Canadian citizen. He arrived in Canada as a refugee. He spent the first 23 years of his life in Iraq which included the first Gulf war in 1991 and the American invasion in 2003. After Saddam Hussein was deposed the political axis in the country shifted and young men of Mr. Al-Rawi’s ethnicity (Sunni Muslim) were being persecuted. As a consequence, Mr. Al-Rawi left Iraq and his family and eventually made his way to Germany.

[50] The Crown's brief recites the trial judge's description in his oral sentencing decision of Mr. Al-Rawi's circumstances, some of which I referred to already:

...The presentence report puts Mr. Al-Rawi's personal circumstances in a very good light. Mr. Al-Rawi has solid family supports. He was brought up well in a middle-class household in Baghdad with good parents and three siblings.

He fled Iraq in the face of persecution against Sunni Muslims after the American invasion. Two decades later, he still maintains good relations with his parents and siblings.

Mr. Al-Rawi and his spouse have been together for over ten years. They are expecting their first child. His wife travelled with him to Nova Scotia to support him during the trial. She says they are, "Together, strong and committed".

Mr. Al-Rawi received a good education in Baghdad. Study appealed to him, especially the study of languages. After high school he earned a biomedical degree, with good marks. Upon moving to Germany, he learned German and Swedish.

Mr. Al-Rawi left Germany for Canada, where he was accorded refugee status. Between 2010 and 2015, he came close to obtaining a commercial pilot's licence. However, mounting legal expenses caused him to withdraw before he could complete the last hours of required flying time.

Mr. Al-Rawi has an excellent work record. He established his first business shortly after emigrating to Germany. He operated that business for seven years before moving to Canada.

While studying for the commercial pilot's licence, he drove and sublet taxi cabs. Since 2016, Mr. Al-Rawi and his wife operated a medical service business and a car rental and driver business in Germany, with good results.

He and his wife had substantial incomes. They own a home, have liquid investments, and carry a significant debt load. I accept his wife's statement about the severely adverse effects separation by imprisonment will have on her. Also, I accept her statements about the severe impacts of such on the business.

[51] In his brief and oral submissions, Mr. Gumpert acknowledged that Mr. Al-Rawi has returned from Germany on a number of occasions to attend at proceedings in this case and also in the previous unrelated prosecution I mentioned previously. As Mr. Hutchison put it, Mr. Al-Rawi has "always answered his bail".

[52] Mr. Al-Rawi has complied with his release conditions and committed no offences while on bail. He has no criminal record.

[53] Mr. Hutchison, pointed out that Mr. Al-Rawi has a great deal riding on his appeal. His conviction significantly complicates his life and that of his wife and unborn child. Mr. Hutchison pointed out in his brief that Mr. Al-Rawi must:

...fully engage in this appeal. A failure to do so will eliminate his chances of obtaining German citizenship and prevent him from living in Germany with his family.

[54] Mr. Al-Rawi would immediately face very significant immigration, financial, domestic, and housing implications if his appeal did not proceed because he failed to comply the requirement of his bail that he return to Nova Scotia and surrender into custody ahead of the release of the decision on his appeal.

[55] The Crown conceded Mr. Al-Rawi is not a flight risk. His compliance with his bail previously, his faithful attendance at all court proceedings, and the powerful incentives for him to robustly prosecute his appeal are compelling indicators he will comply with his bail conditions and return to the jurisdiction in accordance with the terms of his release. These terms include surrender into custody in advance of the release of the decision in his appeal.

Does the Public Interest Require Mr. Al-Rawi's Detention?

[56] The public interest criteria under s. 679(3) has two components: public safety and public confidence in the administration of justice. The determination by Justice Arbour of the Ontario Court of Appeal in *R. v. Farinacci*, (1993) 86 C.C.C. (3d) 32, that the "public interest" is comprised of these two considerations remains "good law". (*Oland*, at para. 26)

[57] The public confidence component involves "the weighing of two competing interests: enforceability and reviewability". (*Oland*, at para. 24) The enforceability component reflects "the need to respect the general rule of the immediate enforceability of judgments". (*Oland*, at para. 25) In other words, it is expected Mr. Al-Rawi will be held to account by continuing to serve the sentence imposed on him. The reviewability component reflects a recognition that our criminal justice system is not fail-safe and that appellants challenging the legality of their convictions "should be entitled to a meaningful review process..." (*Oland*, at para. 25)

[58] Mr. Al-Rawi has been convicted of a very serious offence. The trial judge referred to the "inherent wrongfulness and harmfulness of major sexual assaults" in

his proportionality analysis at sentencing. The seriousness of the offence is a relevant consideration under the public confidence in the administration of justice aspect of the public interest criteria.

[59] In *Oland*, the Supreme Court of Canada directed appellate judges considering motions for bail to apply the factors relevant to the public confidence criteria in pre-trial release. These factors are: the apparent strength of the Crown's case; the gravity of the offence; the circumstances surrounding the commission of the offence, including whether a firearm was used; and the potential length of imprisonment. (at paras. 31-32)

[60] I took the factors relevant to Mr. Al-Rawi's bail application into account. When addressing the issue of where to locate Mr. Al-Rawi's sentence in the appropriate range, the trial judge said: "In my assessment, the positive aspects of Mr. Al-Rawi's personal circumstances and his cooperation with the trial process, also compel the lower end of the range".

[61] Bail pending appeal requires a "final balancing" of the enforceability and reviewability aspects of the public confidence criteria. The "final balancing" must calibrate public confidence as viewed by reasonable, well-informed members of the public. The Supreme Court in *Oland* has been explicit about this:

[47] Appellate judges are undoubtedly required to draw on their legal expertise and experience in evaluating the factors that inform public confidence, including the strength of the grounds of appeal, the seriousness of the offence, public safety and flight risks. However, when conducting the final balancing of these factors, appellate judges should keep in mind that public confidence is to be measured through the eyes of a reasonable member of the public. This person is someone who is thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values: *R. v. St-Cloud*, 2015 SCC 27, [2015] 2 S.C.R. 328, at paras. 74-80. In that sense, public confidence in the administration of justice must be distinguished from uninformed public opinion about the case, which has no role to play in the decision to grant bail or not.

[62] Assessing the public confidence component of the public interest criterion is a nuanced exercise. Appellants who have been convicted of very serious charges may qualify for bail pending appeal. *Oland* determined the relevant principles are applicable in all cases, regardless of the conviction:

[49] In the final analysis, there is no precise formula that can be applied to resolve the balance between enforceability and reviewability. A qualitative and contextual assessment is required. In this regard, I would reject a categorical

approach to murder or other serious offences, as proposed by certain interveners. Instead, the principles that I have discussed should be applied uniformly.

[50] That said, where the applicant has been convicted of murder or some other very serious crime, the public interest in enforceability will be high and will often outweigh the reviewability interest, particularly where there are lingering public safety or flight concerns and/or the grounds of appeal appear to be weak: *R. v. Mapara*, 2001 BCCA 508, 158 C.C.C. (3d) 312, at para. 38; *Baltovich*, at para. 20; *Parsons*, at para. 44.

[51] On the other hand, where public safety or flight concerns are negligible, and where the grounds of appeal clearly surpass the "not frivolous" criterion, the public interest in reviewability may well overshadow the enforceability interest, even in the case of murder or other very serious offences.

[63] The Crown concluding it had no reasonable basis for opposing Mr. Al-Rawi's request for bail pending his appeal was a clear indication to me that the public interest considerations in this case had been satisfied. Based on the evidence and submissions, I was independently satisfied of the solid basis for the Crown's position.

Conclusion

[64] In granting Mr. Al-Rawi bail, I considered the s. 679(3) criteria, the "Germany" release plan proposed by Mr. Al-Rawi, the Crown's position in relation to it, and the evidence from Mr. Al-Rawi and Mr. Jeshami. I concluded the Crown's determination there was no reasonable basis for opposing Mr. Al-Rawi's release pending appeal was well supported by the evidence and applicable legal principles. Mr. Al-Rawi met the burden of establishing he satisfied the criteria for release.

[65] I ordered Mr. Al-Rawi's release on bail in accordance with the "Germany" release plan. Mr. Al-Rawi has an impeccable record of attending court here as required. I was satisfied he and his surety are committed to him complying with his bail conditions under the "Germany" release plan. I found that Mr. Jeshami's close relationship with Mr. Al-Rawi's wife and brother, both of whom will be living in Germany, is a further assurance any issues that might arise in relation to Mr. Al-Rawi's release would soon come to his surety's attention. Furthermore, Mr. Al-Rawi's long-standing friendship with Mr. Jeshami, who has pledged \$50,000 to secure Mr. Al-Rawi's release, will act to bind his conscience.

[66] It was clear from the evidence provided by Mr. Al-Rawi that he is highly incentivized to fully engage with and prosecute his appeal. As he indicated, he stands to lose everything in Germany as a result of his conviction. I find reasonable, well-informed members of the public, members of the public who are “thoughtful, dispassionate, informed of the circumstances of the case and respectful of society's fundamental values” would have confidence in Mr. Al-Rawi’s release on bail.

[67] I granted Mr. Al-Rawi’s bail on the basis of the “Germany” release plan containing conditions to keep the peace and be of good behaviour, attend Court as directed, reside at a specified address unless permission to reside elsewhere is obtained from the Court, have no direct or indirect contact with the victim, report weekly to the police by telephone, and surrender himself into custody in advance of the appeal decision being released. In addition, the release plan requires Mr. Al-Rawi to: attend in person at a Chambers hearing in the Appeal Court at least two weeks prior to the date of his appeal hearing, attend in person at the appeal hearing, and attend in person at a Chambers hearing in the Appeal Court at least two weeks prior to the date when the appeal decision will be released. He must also surrender into custody in advance of the release of the decision.

[68] If Mr. Jeshami was to render as surety, Mr. Al-Rawi has undertaken as a condition of his release to surrender himself to the Court within seven days of the Court advising him of this development.

[69] I thank Mr. Hutchison and Mr. Gumpert for their very helpful written and oral submissions and the professionalism they demonstrated throughout this proceeding.

Derrick, J.A.