

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
CRIMINAL DIVISION

Not Restricted

S ECR 2020 0224

IN THE MATTER of the *Bail Act 1977*

-and-

IN THE MATTER of an application for bail by Lindim ALITI

<u>JUDGE:</u>	COGHLAN JA
<u>WHERE HELD:</u>	Melbourne
<u>DATE OF HEARING:</u>	22 September 2020
<u>DATE OF JUDGMENT:</u>	22 September 2020
<u>DATE OF REASONS:</u>	2 October 2020
<u>CASE MAY BE CITED AS:</u>	Re Application for Bail by Aliti
<u>MEDIUM NEUTRAL CITATION:</u>	[2020] VSC 647

CRIMINAL LAW – Application for Bail – Murder – Exceptional circumstances established –
No unacceptable risk – Bail granted with surety of \$600,000.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Applicant	Mr R Richter QC with Ms C Marcs	Empire Lawyers
For the Respondent	Mr M Rochford QC with Ms J McGarvie	Ms A Hogan, Solicitor for Public Prosecutions

HIS HONOUR:

1 On 22 September 2020 I granted bail to Lindim Aliti ('the applicant'). I indicated that I would provide my reasons which follow.

Introduction

2 On 18 July 2020, the applicant was arrested and charged with murder in relation to the stabbing death of Thomas Tran in Oakleigh on 29 June 2020.

3 The applicant has been in custody since his arrest. By notice dated 9 September 2020, he applies for a grant of bail in this Court. This is his first application for bail.¹

4 The matter is at an early stage of the committal process, being next listed for committal mention in the Melbourne Magistrates' Court on 18 December 2020. At the time this application was filed, the applicant's solicitor had not been provided with a summary of the allegations against the applicant. On 11 September 2020, the respondent provided a draft statement of material facts to both the Court and the applicant's solicitor.

5 The hand-up brief in this matter is required to be served by 6 November 2020. On 25 August 2020, the respondent successfully sought orders for compulsory examination of three witnesses, which will take place on 1 December 2020.

The applicable legislation

6 For the purposes of the *Bail Act 1977* ('the Act'), murder is a Schedule 1 offence.² It follows that bail must be refused unless the Court is satisfied that exceptional circumstances exist that justify the grant of bail.³ The onus of satisfying the Court as to the existence of exceptional circumstances is on the applicant.⁴ In considering whether exceptional circumstances exist, the Court must take into account the relevant 'surrounding circumstances', including those prescribed in s 3AAA.⁵

1 Pursuant to s 13(2) of the *Bail Act 1977* ('the Act'), only the Supreme Court, or a court on committing the person for trial, may grant bail to a person accused of murder.

2 The Act, sch 1, item 2.

3 Ibid ss 4AA(1), 4A(1)-(1A).

4 The Act, s 4A(2).

5 Ibid s 4A(3).

7 If satisfied that exceptional circumstances exist, the Court must apply the unacceptable risk test. In doing so, the Court must refuse bail if satisfied by the prosecutor that there is an unacceptable risk of the kind set out in s 4E(1)(a). In considering unacceptable risk, the Court must again have regard to the surrounding circumstances in s 3AAA and consider whether there are any conditions of bail that might be imposed to mitigate the risk so that it is not unacceptable.

8 Finally, when interpreting the Act, the Court must have regard to the guiding principles in s 1B(1) of the Act.⁶

The alleged offending

9 At the time of the alleged offending, the applicant was 18 years old, being born on 25 February 2002. The deceased was 20 years old. The circumstances surrounding the alleged stabbing murder of the deceased by the applicant involve a series of physical altercations between groups of associates known to the applicant and the deceased around the Eaton Mall in Oakleigh on the evening of 29 June 2020.

10 It is alleged that two men associated with the applicant, Veton Rasimi and Jarma Abdulle, assaulted Andre Huc outside a Domino's restaurant on Hanover Street in Oakleigh just prior to 7pm. The men ceased their assault and fled the scene by car after two friends of Huc came to his aid, but warned the group as they left that they would return with more people.

11 Rasimi then contacted a number of associates via the 'Snapchat' application and advised them of a 'run in' with 'the Greeks' in Oakleigh. In response, a number of those associates began making their way to the Oakleigh area.

12 Rasimi, Abdulle and a third associate, ST, met with Zaki Hallabi at his residence in Oakleigh East. The group of four men then travelled by car to the Vanilla Lounge café inside the Eaton Mall in Oakleigh.

13 Also present at the café were Kyriacos Chronis and Ethan Konstantas, who had earlier

⁶ The Act, s 1B(2).

intervened in the assault of Huc. They recognised Rasimi and Abdulle as the perpetrators of the earlier assault and decided to leave the area as they feared they were about to be attacked. They sought the assistance of three men to walk them to their vehicle in Chester Street in order to leave safely.

14 Konstantas called Huc to advise him that his attackers had indeed returned with more people. Huc decided to travel back to Oakleigh with two associates. On the way, he called the deceased to advise him of the situation, who in turn called another friend and informed him that Huc was being 'arked up' by a group of random men and needed their help for a possible fight.

15 Huc and the deceased, together with associates Mark Karlic, Stephen Gatsidis and Middlemore Tupou, then met in a carpark in Hanover Street, Oakleigh.

16 Rasimi sent a further Snapchat message to his associates directing them to the Chester Street carpark, where he, Abdulle, ST and Hallabi engaged in a tense verbal argument with Chronis, Konstantas and the three men that had escorted them to their car. Chronis and Konstantas then left the carpark.

17 Shortly after, a second group, including the deceased and Huc, entered the Chester Street carpark and engaged in a discussion with Rasimi and the rest of his group, including an unknown associate. Abdulle and the unknown associate were observed to be armed with poles. The interaction turned physical and Rasimi's group fled through the Eaton Mall towards Atherton Road. The prosecution relies on CCTV footage depicting the group being pursued by the deceased and other members of his group, parts of which I have viewed.

18 At approximately 7.46pm, the applicant arrived in the area with four others, being his cousin SA, Jeton Isa, Adem Arifoski and Arif Hajrula. The applicant was wearing light coloured jeans and a dark hooded jumper.

19 The applicant, SA and Hajrula proceeded to the Eaton Mall, while J Isa and Arifoski walked along Atherton Road.

- 20 The applicant's group observed Rasimi and others running into the Eaton Mall and yelling at them to run as well. While running, Hallabi was observed on CCTV to pull a long pole from his trousers. The applicant paused briefly with Hajrula before jogging slowly behind the deceased's group as they approached Atherton Road. As he jogged, he kept one hand inside his front jumper pocket.
- 21 Hajrula and SA gave up the pursuit at Atherton Road and began to walk back. The two are said to be captured on CCTV footage crossing the road and looking in the direction of the location where the stabbing took place.
- 22 The two groups met up again on Atherton Road, where another affray took place. Rasimi's group fled again, this time to Oakleigh Railway Station, where all four men entered a taxi. The deceased's group gave up the chase and turned back towards the Eaton Mall.
- 23 At 7.54pm, as the deceased was nearing the Eaton Mall, the applicant is alleged to have approached him from behind, reached around him and stabbed him once in the chest and then twice in the right hip. The deceased screamed in pain and attempted to walk towards his friends before collapsing to the ground.
- 24 This incident was observed by an independent witness, George Koutsoumaniotis, who has made statements to police and participated in a recorded re-enactment of the incident.⁷ It is his evidence that he saw the attacker 'stab the guy one good one and I think it was 2 or three times, one was just under his chest'.⁸ While he did not witness the first stabbing action, he heard the deceased's scream and observed the remainder of the attack, which he re-enacted as involving the attacker coming from behind the deceased. At the time of the stabbing, the deceased was unarmed, his hands empty and he was walking alone.⁹
- 25 Two of the deceased's associates, Tupou and Karlic, also witnessed the stabbing.

⁷ Affidavit in Opposition, Exhibits JH-4 - JH-6.

⁸ Statement of George Koutsoumaniotis dated 29 June 2020, Affidavit in Opposition, Exhibit JH-4.

⁹ Statement of George Koustomaniotis dated 24 July 2020, Affidavit in Opposition, Exhibit JH-6.

- 26 Tupou made a statement to police on the night of the incident, which was provided to the Court prior to the hearing of the application. It is his evidence that he saw the deceased being pushed to the ground by another person. He states that, after being pushed, he then observed the deceased 'stand up and walk towards [the attacker].' Tupou described seeing the deceased walk towards the attacker, who then grabbed the deceased 'around the neck with his left arm and then proceed to stab him in the centre of his stomach with his right fist which was holding a long blade that I would guess around three inches in length. I observed him stab [the deceased] in the stomach once and then put the knife in his jacket pocket'.¹⁰
- 27 Written submissions prepared by counsel for the applicant quoted parts of Karlic's statement (which was not provided to the Court), in which he stated that he also observed a male attack the deceased from behind and make a lunging motion with his right hand two to three times, resulting in the deceased holding his stomach in pain and stumbling forward.
- 28 The applicant fled to the Oakleigh Railway Station where he attempted to enter the same taxi as his friends, but was refused by the driver as the vehicle was already full. He is captured on CCTV footage from the station concealing an item in the front pocket of his jumper. At this time, the applicant's friends were looking for him and circling the area in a Volkswagon Amarok, driven by J Isa. As they did so, they twice passed the scene of the stabbing and observed the deceased being rendered aid and that police were in attendance. A series of communications between the applicant and J Isa's mobile phones ensued, and he was shortly thereafter collected by J Isa in the Volkswagon.
- 29 Police and ambulance officers attended the scene of the stabbing within minutes of being called. The deceased was assessed as having a deep penetrating wound to his chest and could not be resuscitated. He was pronounced deceased.
- 30 The taxi driver, having dropped Rasimi and others at a residence in Oakleigh East,

¹⁰ Statement of Middlemore Tupou dated 29 June 2020, [22] and [26] – [27].

returned to the scene to report the suspicious behaviour of his passengers to police. As a result, police maintained surveillance of the group and eventually intercepted them travelling in two vehicles on the Princes Highway in Noble Park. Rasimi, Abdulle, Hallabi and ST were arrested, their clothing was seized and their phones examined. On Rasimi's phone, police located the Snapchat conversations discussing the events of the evening. Each of Abdulle, Hallabi and ST provided some information to police in their interviews, including that they had been forced to run away from a group of armed males earlier in the night. Rasimi made no comment.

31 At 8.13pm, two additional associates (who had not been present for the incidents) sent a number of messages to Rasimi and their wider group of friends via a Snapchat group chat, in which they discussed the applicant having stabbed someone. Ajro Imerovski advised all present to make no comment to police, and to 'dump everything... burn the close (sic)...you had on...shoes.... all of it'.

32 At 8.31pm, the applicant, J Isa and two others attended the Dunya Shisha Bar and Pool Hall in Dandenong South and met with several associates in an outdoor smoking area. The area was under CCTV surveillance and it alleged by the prosecution that the applicant was recorded speaking on the phone at 8.37pm and saying 'Guy's dead now, confirmation'.

33 Minutes later, the applicant sat next to friends Fisnik Gashi and Veton Isa (brother of J Isa) and had a whispered conversation in which he told them he had been in Oakleigh and stabbed someone.

34 According to a sworn statement made by Gashi, the applicant told them that 'he was running and these guys were running at him and pretty much staunched him, this other guy had a knife so he stabbed one of them.'¹¹ This conversation is captured on CCTV footage, which I have viewed. While the contents of the conversation cannot be discerned in the footage, it is clear that the applicant demonstrates an underhand stabbing motion to Gashi's abdomen three times in quick succession during the course

¹¹ Affidavit in Opposition, Exhibit JH-7.

of the conversation. A tattoo on his neck, 'Aliti' written in script, is also visible.

35 Gashi further states that SA handed him a flick knife, which he viewed briefly before handing back.

36 He then asked Gashi to drive him home and then return him to the shisha bar. Gashi, alarmed by their conversation and being a probationary driver, requested V Isa drive them. They left the shisha bar at 8.47pm in Gashi's vehicle, driven by V Isa, to [redacted]. The applicant went inside, showered, changed into a red Adidas tracksuit with matching shoes and returned to the vehicle. He retained a distinctive gold-coloured watch that he is alleged to have worn during the stabbing.

37 He returned to the shisha bar and had a further conversation with Senar Mustafovski regarding the stabbing incident. At 10.02pm, he removed the SIM card from his phone and placed it in the hot coal reservoir of a shisha pipe, destroying the SIM card. I have viewed the CCTV footage of both the applicant's conversation with Mustafovski, which is also largely unable to be discerned, and the destruction of the SIM card.

38 A post-mortem examination of the deceased conducted the following day concluded that the cause of death was a single stab wound to the chest that penetrated his heart and two stab wounds to the right hip. The stab wound to the chest was between 8 and 9cm deep and 4.5cm wide, while the hip wounds were superficial and between 2 and 2.5cm wide.

39 On 18 July 2020, search warrants were executed at the homes of the applicant, Gashi, J Isa and Imerovski and they were each arrested. The applicant's red tracksuit, shoes, watch and phone, now utilising a new SIM card and phone number, were seized.

40 The applicant was charged with murder and remanded in custody, while the others were released without charge and remain under investigation. V Isa was arrested on 5 August 2020 and also released pending further investigation. Only the applicant is presently charged with murder.

41 At present, investigators are awaiting enhanced audio-visual recordings from the

footage taken from the Dunya Shisha Bar and the results of DNA examination of the deceased's clothing and two knives seized during the investigation.

42 The three witnesses to be subject to compulsory examination in the Melbourne Magistrates' Court on 1 December 2020 are SA, Mustafovski and Hajrula.

The applicant's background

43 The applicant is 18 years old. He is one of three children to parents of Macedonian-Albanian descent and was born and raised in Melbourne. He has no formal criminal history, having completed a diversion program in respect of the offence of unlawful assault in 2018.

44 The applicant was unemployed and not studying at the time of the alleged offending, having ceased his schooling at the end of year 10 when he was expelled from Dandenong High School. He reports having held a part-time role as a delivery driver with his brother for six months following the end of school. Throughout his life, he has resided with his parents, two siblings and paternal grandparents, most recently at [redacted]. He continues to enjoy the support of his family during his time on remand.

45 The applicant has suffered from epilepsy since he was 13 years old, involving full-body convulsions during sleep (nocturnal seizures). His condition was managed by a paediatrician prior to his remand. He was initially treated with Epilim but later switched to Tegretol and is presently prescribed 400mg twice daily.

46 He has previously struggled with cannabis abuse, smoking up to 1 gram per day at the age of 17 but significantly decreased his use to less than a gram per week in the 12 months' preceding his remand. He has no other history of substance abuse.

The applicant's contentions

47 Mr Robert Richter QC, who appeared with Ms Carly Marcs for the applicant, relied on the following matters in support of the application for bail.

Exceptional circumstances.

Delay

48 The applicant has been in custody since 18 July 2020. At the remand hearing held on that date, the informant was granted late service of the Hand Up Brief, which is due to be served on the applicant by 6 November 2020, being 16 weeks from the date of charge.

49 The committal mention is listed on 18 December 2020, being 154 days (22 weeks) from the date of charge. Prior to the committal mention, three witnesses are expected to be subject to compulsory examination on 1 December 2020. Based on these dates, it was submitted that there is a high likelihood of further delay in the production of the Hand Up Brief, which will necessitate adjournment of the committal mention.

50 In an affidavit in support of bail, the applicant's solicitor foreshadowed an application for discharge at committal, however, this was not revisited by Mr Richter at the hearing. Noting that the applicant would not elect to have the matter 'fast-tracked' to this Court under the fast-track model and would instead await a contested committal hearing, Mr Richter submitted that there would be significant anticipated and potential delays in the matter proceeding to committal and then, if committed, to jury trial, flowing in part from the COVID-19 pandemic. On this basis, it was submitted that the applicant faced an indeterminate period of remand.

Nature and seriousness of the alleged offending and strength of the Crown case

51 Mr Richter drew attention to a number of asserted weaknesses in the Crown case. Namely, he submitted that at least one of the eye-witness accounts of the incident is inconsistent with the way the Crown case is put and further, that Tupou's account, when combined with other evidence, could be supportive of a self-defence argument.

52 Mr Richter also submitted that the eye-witness accounts vary in their description of the clothing worn by the offender, such that the identity of the offender could potentially be in issue at trial.

Youth, special vulnerability and onerous conditions of custody as a result of COVID-19

53 The applicant is 18 years old and experiencing his first time in custody. In addition to these factors, Mr Richter submitted that the applicant is particularly vulnerable in custody due to his diagnosis of epilepsy. Notwithstanding that the applicant has access to Tegretol while in custody, he reports having experienced ongoing seizures while on regular medication and that he suffers periods of depression and suicidal thoughts following those events.

54 While in custody, the applicant was assessed by Professor Mark Cook, a neurologist and epileptologist, and Mathew Staios, clinical neuropsychologist, whose reports dated 28 August 2020 and 7 September 2020 respectively were provided to the Court on this application.¹²

55 In his report, Professor Cook considered that the cause of the applicant's epilepsy is not clear and his condition cannot be regarded as completely controlled, given his persistent seizures despite regular medication. As to the impact of custody on his condition, Professor Cook stated that disrupted sleep patterns and stress can contribute to epileptic activity, and that such a combination is often observed in prisoners. He went on to state that there is a small but appreciable risk of injury or death to young patients who experience major convulsions during sleep, a condition known as 'Sudden Unexplained Death in Epilepsy'. Further, it was submitted that deaths in custody from epilepsy are not without precedent.¹³

56 Both Professor Cook and Mr Staios agreed that the applicant's experience of custody is more burdensome as a result of his epilepsy than a prisoner who does not suffer from the same condition.

57 Mr Staios also assessed the applicant as demonstrating low-average to average intellectual functioning, although there was no evidence to suggested any cognitive impairment associated with his epilepsy. Mr Staios considered that the applicant's age

¹² Affidavit in Support, Exhibits SK-2 and SK-3.

¹³ See Affidavit in Support, [23].

and first custodial experience may lead to a decline in his mental state that may ultimately lead to further seizures.

58 With respect to the impact of COVID-19 on his experience of custody, it was submitted that the applicant was previously subject to almost 24-hour lockdown since the date of his remand, due to increasing restrictions on out-of-cell time. As with all prisoners, the applicant has no access to in-person visits from his family, and his solicitor deposed to having been denied access when attending the Melbourne Assessment Prison to take instructions from him. He has since moved to Port Phillip Prison, where reported to Professor Cook that he interacts with other prisoners during the day but sleeps alone.

Availability of stable accommodation, family support and ties to the jurisdiction

59 If granted bail, the applicant proposed to return to the 'loving, supportive' environment of the family home with his parents, two siblings and paternal grandparents at [redacted]. That residence is presently listed for sale and, if sold, the applicant will move with his family to their new home [redacted]. The new residence is presently under contract of sale, due to settle on 10 December 2020.

Both of the applicant's parents are employed, his father full-time and his mother part-time, and neither have a criminal history.

Lack of criminal history or negative bail history

60 The applicant has no criminal history and no history of failing to comply with bail conditions or other court orders.

Availability of employment

61 If granted bail, the applicant has full-time work available to him as a factory worker at [redacted]. Ms Lucy Zhang, director of that company, gave evidence at the hearing of the application and gave an undertaking to report any breach of bail conditions by the applicant to police.

Substantial surety

62 The applicant's paternal grandfather, Adzi Aliti, is willing to provide a surety of

\$600,000 by way of equity in the property at [redacted]. This property is jointly owned by Mr Aliti and his wife, Adile Aliti, and is presently listed for sale between \$1 million and \$1.1 million. The property is owned outright.

Unacceptable risk

63 With respect to risk, it was submitted that the applicant does not have a passport, or any direct ties to a foreign jurisdiction. Those factors, combined with his lack of criminal history, were relied on in submitting that he is a low risk of flight or re-offending on bail.

The respondent's contentions

64 Mr Mark Rochford QC, who appeared with Ms Jennifer McGarvie for the respondent, opposed bail.

65 He submitted, firstly, that the factors relied upon by the applicant did not amount to exceptional circumstances.

66 Further, it was submitted that the applicant, if granted bail, is an unacceptable risk of endangering the safety and welfare of any person and/or interfering with a witness or obstructing the course of justice in any matter.

67 In addressing the surrounding circumstances, the respondent submitted the following:

Nature and seriousness of the alleged offending

68 The allegations against the applicant are a serious example of the offence of murder and involve a number of aggravating features, including that the applicant had intentionally attended the area while armed to participate in an affray; had not had any interaction with the deceased prior to stabbing him; stabbed the deceased while he was unarmed, alone and walking away from the applicant; inflicted multiple stab wounds on the deceased, including a wound that penetrated his heart; following the stabbing, attended a shisha bar and provided details of the offending to his friends without any remorse; and, finally, undertook action to avoid detection by changing his clothes and replacing his SIM card following the stabbing.

69 The informant stated in his report that there is intelligence to suggest that the applicant's associates are members of an Albanian youth street gang and the initial attack on Huc could be linked to previous gang violence.

Strength of the prosecution case

70 Whilst acknowledging that the Hand Up Brief had not yet been served, the applicant was provided with a significant amount of material prior to the application, including all statements and records of interviews with the applicant and associates.

71 It was submitted that this is a strong prosecution case, supported by CCTV footage of the circumstances surrounding the stabbing, as well as of the applicant admitting his involvement and re-enacting the stabbing while at the Dunya shisha bar.

72 It is further corroborated by the statement and re-enactment of George Koutsomaniotis, who witnessed the incident, and the statement of Fisnik Gashi regarding admissions made by the applicant.

73 The respondent rejected the applicant's contention that Tupou's statement was 'not inconsistent' with the stabber having acted in self-defence.

Delay

74 Contrary to the applicant's submission, it is not anticipated that the committal mention will require adjournment as it is intended that transcripts of the compulsory examination hearings will be made available prior to the committal mention date. No other delay is anticipated. It was noted that the matter is eligible for fast-tracking to this Court and, further, the respondent submits that it is 'difficult to see how the applicant could make an application for discharge at committal in the circumstances of the offending'.

75 Relevantly, the applicant faces a significant sentence of imprisonment if found guilty of murder.

Special vulnerability

76 There is no evidence that the applicant's medical condition cannot be managed in custody.

Suitability of proposed bail address

77 The respondent noted that the applicant resided at the proposed bail address prior to the alleged offending, giving rise to concerns as to the family's ability to supervise him.

78 Further, the applicant's brother recently attempted to acquire a 'gel gun rifle', a toy that looks identical to a real firearm and shoots water-soaked gel balls, that was intercepted by Australian Border Force on 24 August 2020. It was suggested that this toy gun was sought to be obtained for malicious purposes including to intimidate witnesses.

79 Finally, a number of prosecution witnesses reside within very close proximity to the proposed bail address, including the applicant's cousin, SA, who resides in the same street.

View of deceased's family

80 The deceased's family is strongly opposed to a grant of bail.

Unacceptable risk

81 With respect to the applicant's risk if granted bail, the respondent relied on the report of informant Detective Senior Constable Thomas McGowan affirmed on 17 September 2020 in submitting the following:

Endangering the safety and welfare of any person

82 In support of this ground, the informant relied on the nature of the allegations against the applicant, including that he travelled in company with friends to commit violence while armed with a knife. He is accused of stabbing the deceased three times, a display of extreme violence, in a public place and with little prior knowledge of the circumstances leading up to the affrays. He was also provided considerable support from friends to escape the scene and destroy evidence. It is submitted that many of

the applicant's associates have provided misleading information to police.

Interfering with a witness or otherwise obstructing the course of justice

83 One of the applicant's associates, Gashi, has made a significant statement detailing admissions made by the applicant to stabbing the deceased and being driven to his home to change clothes after the incident. Three further associates are expected to appear for compulsory examination on 1 December 2020. Relevantly, SA is thought to have witnessed the entirety of the alleged offending. All four of these associates reside within a short distance of the proposed bail address, such that there is a concern that if granted bail the applicant would have an opportunity to influence their prospective evidence. Should such a risk eventuate, the prosecution case would be significantly harmed.

84 Further, it is submitted that, based on the alleged offending, the applicant has demonstrated an ability to use extreme violence, which is relevant to his ability to interfere with prosecution witnesses. The informant suggested that his brother's attempted acquisition of a gel gun rifle was done in order to use the toy gun to intimidate witnesses who will be tricked into believing it is a real firearm.

Conclusions.

85 The applicant has been charged with murder and is therefore obliged to show exceptional circumstances that warrant his release on bail.

86 It is contended on his behalf that the following matters are relevant to his application: his youth, special vulnerability, onerous conditions of custody, delay, stable accommodation and the family support available to him. He has no criminal history or negative bail history and he has employment available to him. His family, particularly his grandparents, are prepared to provide a substantial surety.

87 Although the respondent accepted that the majority of the factors set out by the applicant did exist, it was contended that they did not individually or in combination amount to exceptional circumstances, having regard to other surrounding circumstances pursuant to s 3AAA of the Act. It followed that regard was to be had

to the nature and seriousness of the alleged offending and the strength of the prosecution case. Such other circumstances raised by the applicant including matters relating to his health, could be sufficiently managed whilst in custody so as to not weigh heavily in favour of the establishment of exceptional circumstances.

88 It cannot be said that the delay in this matter is such that would be beyond, or much beyond, that that would ordinarily apply in cases of this kind, that is murder cases.

89 Further, I was informed that the deceased's family were strongly opposed to the grant of bail. That is another relevant surrounding circumstance, which was not challenged. I have taken the views of the deceased's family into account.

90 It seems to me there are three particular features of the case that weigh heavily in favour of the applicant. First, his age. Second, his lack of criminal history. Third, the fact that he suffers from epilepsy and on the evidence of Professor Cook (from whom a report was provided) that although he has not had any recent episodes of direct epileptic activity, it is not possible to predict with any certainty what might happen in the future. Further, there is risk associated with his condition when he sleeps alone, which is the condition that would apply to him when he is in custody and he might then become subject to the condition known as Sudden Unexplained Death in Epilepsy. Evidence was led on behalf of the applicant that, when he was ordinarily residing at home, the family ensured that he did not sleep alone.

91 In relation to present circumstances arising from the COVID-19 pandemic, the conditions for prisoners are, in general, more difficult than they would otherwise be. The applicant is subject to lockdown at short notice and he has no access to in-person visits from his family. The only in-person visits that he might have would be as a result of being visited by his legal advisers.

92 When those matters are taken in conjunction with the other matters that I have referred to in relation to the applicant I am satisfied that exceptional circumstances that warrant the granting of bail have been made out. I should add that part of that

includes the provision of a substantial surety, although it is not of itself the most important feature.

93 The granting of bail is a two-stage process and, having assessed the existence of exceptional circumstances, I am obliged to have regard to whether or not the applicant has been shown to be an unacceptable risk of endangering the safety and welfare of any person, interfering with a witness or otherwise obstructing the course of justice or committing further offence whilst on bail.

94 The other possible risk of course is fail to answer bail. But it has not been contended that that is a feature of this case.

95 The concern expressed by the respondent in relation to these matters turn to a large degree on the fact that what is alleged against the applicant is that he was travelling in company and that he had been armed with a knife in what was a display of high-level violence, if not extreme violence, in a public place. Further, that he appeared afterwards to receive considerable support from his friends to escape the scene and destroy what might otherwise be evidence, for example, the SIM card in his phone. In addition, many of the applicant's associates have provided misleading information to the police. Although one of the applicant's associates has made a statement to police which is not favourable to his own interests, it is also not favourable to the interests of the applicant and the informant believes that it is possible that the associate may be at risk.

96 I would be foolish to say that I did not entertain some concerns about the risk that the applicant presents in the way described by the respondent. But I am prepared to say that with the imposition of appropriate conditions, that that risk can be reduced to an acceptable level.

97 I am mindful that we are dealing with an 18 year old. That is a factor, as I have already pointed out, that counts strongly in his favour. But we should not proceed on the basis that the reasoning of an 18 year old in this whole process will necessarily be conducive to ensuring that he keeps his conditions of bail. However, his grandfather

and future employer have undertaken to report any breach of bail, and I will also be imposing a specific condition in relation to both his access to mobile telephones and restrictions on the way in which he may use his telephone.

98 I therefore order that Lindim Aliti be admitted to bail.

99 Under 'Other Matters' I include the following matters:

1. The Court is satisfied that exceptional circumstances exist and that it has not been shown that the applicant is an unacceptable risk, for the reasons announced this day.
2. The applicant's grandfather, Mr Adzi Aliti gave an undertaking to the Court that he would report any breach of bail or bail conditions to the police.
3. Ms Lucy Zhang gave an undertaking to the Court that she would report any breach of bail or bail conditions to the police.
4. The applicant's solicitors are to inform the Court once a contract of sale is entered into with respect to the surety property in order for the matter to return to this court for mention.

100 Lindim Aliti will be admitted to bail on his own undertaking with one surety in the sum of \$600,000 and on the following special conditions.

1. He attend the Melbourne Magistrates' Court on 18 December 2020 and then surrender himself, and must not depart without the leave of the Court and, if leave is given, return at the time specified by the Court and again surrender himself into custody.
2. He reside at [redacted] in Victoria, and not change that address without the leave of the Court.
3. He remain at those premises between the hours of 9:00pm and 6:00am each day for the duration of bail, except in the company of a parent or grandparent.
4. He present himself at the front door of the premises during those curfew hours if and when called upon by a member of Victoria Police to do so.
5. He not attend the area within the suburb of Oakleigh bounded by Scotchman's Creek, Warrigal Road, North Road and Huntingdale Road for any purpose during the bail period.
6. He report each Monday, Wednesday and Friday to the Officer in Charge of the

Police Station at Dandenong, or his or her nominee, between the hours of 6:00am and 9:00pm, but such reporting is suspended until the informant has notified the applicant that in-person reporting has resumed.

7. He accept and engage in employment at [redacted] for the duration of the bail period.
8. He not contact, directly or indirectly, or associate with the following people for the duration of the bail period:
 - a) Veton RASIMI
 - b) Jarma ABDULLE
 - c) Zaki HALLABI
 - d) ST
 - e) SA
 - f) Arif HAJRULA
 - g) Jeton ISA
 - h) Adem ARIFOSKI
 - i) Ajro IMEROVSKI
 - j) Fisnik GASHI
 - k) Veton ISA
 - l) Senar MUSTAFOVSKI
9. He not contact, directly or indirectly, any witness for the prosecution, except the informant.
10. He is to have but one telephone and to make that telephone and its password available to the informant when requested to do so.
11. He not use the social media application Snapchat.
12. He not leave the State of Victoria.
13. He surrender any passport he may have to the informant within 24 hours, and not apply for any other.
14. He not attend any points of international departure.
15. He reappear before the Court for judicial monitoring to review his compliance with this order at 9:30am on 4 November 2020, and any further dates this Court appoints during the course of this order.

CERTIFICATE

I certify that the 19 preceding pages are a true copy of the reasons for judgment of Justice Coghlan of the Supreme Court of Victoria delivered on 22 September 2020.

DATED this second day of October 2020.

