

1 **FOR PUBLICATION**

2
3 **IN THE SUPERIOR COURT**
4 **OF THE**
5 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

6 COMMONWEALTH OF THE NORTHERN)
7 MARIANA ISLANDS,)

8 Plaintiff,)

9 v.)

10 AMBROSIO T. OGUMORO,)

11 Defendant.)

DPS CASE NO. 2006-001181

**ORDER GRANTING
DEFENDANT’S MOTION FOR
BAIL MODIFICATION**

12
13 **I. PROCEDURAL BACKGROUND**

14 This matter came before the Court on February 15, 2006 at 3:00 p.m. in Courtroom 223A on
15 Defendant Ambrosio T. Ogumoro’s (hereinafter OGUMORO) Motion for Bail Modification.
16 Assistant Attorney General Jeffrey Warfield appeared on behalf of Plaintiff. Edward Arriola and
17 Edward Manibusan appeared on behalf of Defendant OGUMORO. The Court, having reviewed the
18 documents submitted by counsel, heard their arguments and being fully informed of the proffered
19 arguments now renders its written decision.

20 **II. BACKGROUND**

21 The requested bail in the affidavit supporting the Search Warrant and Arrest was for five
22 million dollars. Judge Manglona reduced Bail to one million dollars. The alleged violations of law
23 were Assault and Battery, Illegal Possession of a Firearm, and Illegal Possession of Ammunitions.

24 On February 13, 2006 a Bail Modification hearing was held and although the Government
25 argued that the defendant posed a dangerous threat to the community it did not present any
26 corroboration of such fact, except what was presented in the said affidavit.

27 The search of defendant’s property yielded one allegedly illegal rifle with one 20 round
28 magazine and 16 rounds of high powered ammunition, and as stated in Court, thousands of rounds

1 of ammunition for a variety of other weapons. Said affidavit alleged that a family member saw many
2 guns laid out on a table six years ago and saw a handgun fired a few months ago by defendant. The
3 family member also claimed that defendant threatened to shoot anyone who comes after him.
4 However, the police did not find any of those guns observed by the family member, including the
5 one allegedly used recently, and the defendant presented no resistance to the police when they
6 arrested him.

7 Defendant's requested modification was that a property bond be accepted in lieu of the cash
8 which the Court granted subject to a Title Report listing defendant as the owner of property to be
9 presented to the Court, along with a recorded Mortgage with a Spousal Consent and an Appearance
10 Bond. The defendant on February 14th, 2006 presented an Appraisal showing value of the property
11 as 1.1 million dollars. Also presented was a Title Report showing defendant as owner. However,
12 Spousal Consent was not provided, and consequently, the Court did not sign a release for the
13 defendant.

14 Defendant moved the Court again for Bail Modification for defendant on February 15, 2006
15 which was opposed by the Government.

16 **DISCUSSION**

17 This court, when presented with a defendant appearing in court for the first time after arrest
18 will, in recognition of the principles and authorities stated in this decision proceed as follows:

19 The defendant will, upon first appearance in this court be entitled to the presumption that he
20 may be released on his or her promise to appear or personal recognizance or upon execution of an
21 unsecured appearance bond in an amount set by the court. This presumption is supported by
22 constitutional principles, policy considerations and practical experience.

23 However, this presumption is not an absolute right and may be overcome by showing a
24 necessity for more restrictive conditions of release or detention in individual cases. In the absence
25 of, or in addition to, this showing, the Court may also arrive at a similar result by its own questioning
26 of the defendant in order to exercise its discretion in determining that such a release would not
27 reasonably assure the appearance of the defendant as required. In making such determination the
28 court will consider the factors set forth at 6 CMC § 6404. The Court must consider the following

1 factors when determining the conditions or release: (1) the nature and circumstances of the offense
2 charged, (2) the weight of the evidence against the accused, (3) the accused's family ties, (4)
3 employment, (5) financial resources, (6) character and mental condition, (7) the length of his/her
4 residence in the community, his/her record of convictions and his/her record of appearance at Court
5 proceedings or of flight to avoid prosecution or failure to appear at Court proceedings. Com. R.
6 Crim. P. 46(a)(2).

7 Once the Court makes the determination that more than the above methods of release are
8 required then the court will, either in lieu of or in addition to the above methods of release imposed
9 follow the guidelines as set forth at Com. R. Crim. P. 46. In other words, once the presumption of
10 release on personal recognizance has been overcome, the court will impose restrictive conditions.

11 Consistent with the presumption of innocence, and in view of the fact that liberty is such a
12 fundamental right, and because the decision to restrict a defendant's liberty is such a formidable one,
13 the burden for providing the need for more restrictive conditions of release falls on the prosecution.

14 In sum, this Court will only deny pretrial release where the Court finds that the defendant
15 poses either a substantial flight risk or substantial threat to the safety of the community, or that there
16 is a substantial probability that the defendant committed the instant offense and that no condition or
17 set of conditions will minimize the risk. *Reynolds v. United States*, 80 S.Ct. 30, 32 4 L.Ed.2d 46
18 (1959) (release on bail cannot be denied for the purpose of punishment). In addition, it is important
19 to remember that every bail proceeding is fact sensitive. The facts surrounding each case will
20 determine the decision. For this reason, every bail proceeding must be decided on a case by case
21 basis.

22 Of the above factors, the nature and circumstances of the offense charged, the weight of the
23 evidence, the character and background of the accused, and the financial resources of the defendant
24 weighed most heavily in favor of denying the request for modification.

25 The nature and circumstances of the charged offenses. Count 1 of the Information charges
26 with Assault and Battery in violation of 6 CMC § 1202(a), Count 2 with Illegal Possession of a
27 Firearm in violation of 6 CMC § 2202, and Count 3 with Illegal Possession of Ammunitions 6 CMC
28 § 2202.

1 individualized, supported by sound reasons and evidence and if necessary, subject to a prompt
2 appeal.

3 It is this Court's position that the use of bail schedules negates the individuality of the release
4 decision, however they do serve a limited purpose at the time of arrest and before a defendant is
5 brought to court. However, they are instituted in an effort to speed the release decision and rely only
6 on the nature of the offense charged and do not consider other factors more relevant to the
7 probability of appearance, which this court will do at a defendant's first appearance.

8 Accordingly, the Court finds that it has the discretion to modify the bail order entered on
9 February 13, 2006, and thereby permit Defendant to be released on a \$100,000 secured appearance
10 bond and other conditions which will aid in ensuring the presence of the accused in the future and
11 prevent any danger to the community or to an individual. *See* Com. R. Crim. P. 46(a)(1).

12 Here, the Commonwealth presented insufficient evidence as to any of the aforementioned
13 factors to overcome the presumption in favor of pretrial release. As such, the Commonwealth failed
14 to convince the court that the terms and conditions of Defendant's release should include the
15 imposition of cash bail in the amount of \$1,000,000. However, the court does agree with the
16 government of defendant's potential danger to the community, but also one which the court believes
17 can be mitigated by conditions of release. The danger to the community posed by the defendant must
18 be of such dimension that only his incarceration can protect against it. *U.S. v. Provenzano*, 605 F.2d
19 85 (3rd Cir. 1979).

20 Accordingly, the Court exercised its discretion and determined that the following terms and
21 conditions would be sufficient to reasonably assure the appearance of Defendant as required and to
22 mitigate any threat of danger to the community or to the alleged victim: (1) \$100,000 bond with a
23 10% cash deposit and the balance of \$90,000 to be secured by property¹; (2) a requirement that
24 Defendant return to Court whenever required to do so; (3) a requirement that Defendant obey all
25 Commonwealth laws; (4) a requirement that Defendant stay away from all seaports and airports.

27 ¹Although the property bond is the same one previously submitted and referred to herein without the spousal
28 consent, the court believes that even if it was determined that the property was marital, that based on the appraisal,
defendant's interest would be able to cover the secured bond posted.

1 Stay away from all DPS Offices and facilities. No contact with alleged victim; (6) a requirement that
2 Defendant keep all appointments with his attorney; (7) a requirement that Defendant shall have no
3 direct or indirect contact with the alleged victim and refrain from any criminal activity; and (8) the
4 surrender of any and all firearms.

5 **III. CONCLUSION**

6 For the foregoing reasons, Defendant's Motion for Modification of Bail is **GRANTED**.

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8 **SO ORDERED** this 23rd day of February 2006.

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10 /s/
11 DAVID A. WISEMAN
12 Associate Judge
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