



CHIEF JUSTICE
Supreme Court of the Northern Territory

STATEMENT IN RELATION TO THE GRANT OF
BAIL TO A YOUTH WHO ABSCONDED

1. This statement is in response to public commentary concerning the grant of bail to a youth ("XR") on 17 February 2025 for the purpose of allowing him to attend his grandfather's funeral in Lajamanu.
2. There are conventions that limit the manner and extent to which Judges are able to participate in public debate about decisions they have made. Those conventions include that after reasons for decision have been given in court, a Judge is not permitted to enter into public debate about that decision. In accordance with that convention, the Judge who granted bail to XR is not at liberty to make any response to the public commentary and criticism of the outcome.
3. Some of that commentary and criticism misunderstands the considerations that the courts are required to take into account when determining whether to grant compassionate bail to youths on remand, the circumstances in which compassionate bail was granted in this case and the conditions to which the grant of bail was subject.
4. At the time the application for bail was first made, XR was on remand in relation to 10 sets of charges alleging the commission of offences between 12 June 2023 and 11 December 2024. The most recent episode of alleged offending on 11 December 2024 involved the unlawful entry of residential premises in Alice Springs during which an infant suffered a fractured skull. It is alleged that XR was one of the youths involved in that unlawful entry. However, it was common ground between the prosecution and the defence during the course of the bail application that XR was not the person in possession of the metal fridge handle which caused injury to the infant, and was not the person who caused that injury.
5. XR was arrested following that offending on 11 December 2024 and had not at any stage since that time made an application for general or continuing bail. However, on 12 February 2025 XR's legal representatives made application to the Youth Justice Court for a grant of bail on compassionate grounds for one day to allow XR to attend his grandfather's funeral in Lajamanu on 19 February 2025.
6. XR is a child who has been under the care and protection of the Chief Executive Officer of the Department of Children and Families since he was eight years of age. The application for compassionate bail was made by XR's legal

representatives in consultation with XR's Case Manager at the Department of Children and Families, a member of the Specialist Assessment and Treatment Services and a psychologist employed at the Holtze Youth Detention Centre where XR was being held on remand. The bail proposal which had been formulated by XR's legal representatives and the Department of Children and Families was for XR to board a charter flight to Lajamanu departing Darwin at 7am on 19 February 2025, accompanied by his Case Manager and the two Holtze Youth Detention Centre employees, to return to Darwin on the charter flight from Lajamanu departing at 3pm, and to be immediately transported from Darwin Airport back to the detention centre.

7. When the application for bail was first heard by the Youth Justice Court on 12 February 2025, the Department of Children and Families had already secured a quote for the charter flight in accordance with the bail proposal which had been formulated. That quote was tendered into evidence. During the course of the bail application the following matters became apparent:

- (a) XR came from a disadvantaged background and has diagnoses of Foetal Alcohol Spectrum Disorder and Attention Deficit Hyperactivity Disorder. He had recently turned 17 years of age.
- (b) The deceased grandfather whose funeral was to be held on 19 February 2025 had been the only significant father figure for the majority of XR's life.
- (c) The Department of Correctional Services had not approved Youth Justice Officers to accompany XR to Lajamanu because they had assessed the risk as unacceptable. However, officers of the Department of Children and Families had indicated they were prepared to accompany XR to Lajamanu to allow him to attend the funeral.
- (d) Youth Justice Officers had indicated that in the event bail was granted they would liaise with the Department of Children and Families to formulate a "safety plan" by which XR would be taken to and collected from Darwin Airport by Youth Justice Officers, but accompanied to and from Lajamanu by his Case Manager and the two Holtze employees.
- (e) XR had assured his legal representatives and Case Manager that it would be shameful for him to run away while at his grandfather's funeral.
- (f) The prosecution opposed the grant of bail on the basis that XR was facing serious criminal charges, and had a long history of prior offending and non-compliance with court orders which gave rise to an unacceptable risk that he would abscond and/or commit further offences while on bail.
- (g) The prosecution also opposed the grant of bail on the basis that there was no evidence before the Youth Justice Court as to what the "safety plan" would provide for while XR was in Lajamanu, and that there would not be any Correctional Services escort to ensure XR's compliance with the conditions of bail.

8. The Youth Justice Court granted bail on compassionate grounds for the specific purpose of allowing XR to attend the funeral of his grandfather in Lajamanu. The conditions of bail included:

- (a) That XR travel to Lajamanu by chartered aircraft on 19 February 2025, departing Darwin Airport at 7am and returning to Darwin airport by 5:15pm.

- (b) That XR be accompanied at all times by his Case Manager and two Holtze employees.
 - (c) That on his arrival in Darwin XR would immediately be returned to remand at the Holtze Youth Detention Centre
9. The prosecution sought an urgent review by the Supreme Court of the decision of the Youth Justice Court to grant XR compassionate bail. That application for review was heard by the Supreme Court on 17 February 2025.
10. During the course of the review proceedings XR's legal representative and the prosecution made essentially the same submissions which had been made before the Youth Justice Court. During the course of the hearing XR's legal representative tendered a copy of the safety plan which had been formulated on 13 February 2025 in conjunction with officers of the Department of Children and Families and members of the Specialist Assessment and Treatment Services employed at the Holtze Youth Detention Centre.
11. The one change to the bail proposal which had been put to the Youth Justice Court was that XR would be accompanied to Lajamanu by his Case Manager at the Department of Children and Families, a Senior Aboriginal Caseworker at the Department of Children and Families and a Throughcare Officer from the North Australian Aboriginal Justice Agency. Those officers were all male. The reason for that change was because there were concerns that it would be culturally inappropriate to have XR accompanied to the funeral by female workers.
12. Following submissions, the Supreme Court affirmed the decision of the Youth Justice Court to grant compassionate bail, but subject to the following conditions:
- (a) XR will be taken to the Hardy Aviation hangar at 6 am to travel to Lajamanu on the Hardy Aviation charter flight at 7 am on 19 February 2025.
 - (b) XR must return from Lajamanu to Darwin on that charter flight at 3 pm on 19 February 2025.
 - (c) XR must be accompanied at all times whilst in Lajamanu by [his named Case Manager at the Department of Children and Families, a named Senior Aboriginal Caseworker at the Department of Children and Families and a named Throughcare Officer from the North Australian Aboriginal Justice Agency].
 - (d) XR must not be out of eyesight of those persons at any time while in Lajamanu.
 - (e) While in Lajamanu XR is to participate only in funeral-related activities.
 - (f) XR will be collected from the Hardy Aviation hangar by Youth Justice Officers on his return to Darwin at 5:15 pm on 19 February 2025 and is to proceed immediately to Holtze Youth Detention Centre.
13. The conditions of bail did not include any requirement for electronic monitoring. A requirement for electronic monitoring in a remote community for a period of approximately six hours would not have been practicable. In any event, XR was apprehended shortly after he absconded without the assistance of electronic monitoring.

14. In making the decision to affirm the grant of bail which had been made by the Youth Justice Court, the Supreme Court was required to take into account the criteria set out in section 24 of the *Bail Act*. In this case, those criteria relevantly included:
 - (a) The probability of whether or not the person will appear in court in respect of the offence for which bail is being considered.
 - (b) The needs of the person to be free for any lawful purpose.
 - (c) Whether or not the person is a youth.
 - (d) Any needs relating to the person's cultural background, including any ties to extended family or place, or any other cultural obligation.
 - (e) The risk that the accused person would, if released on bail, commit an offence, a breach of the peace or a breach of the conditions of bail.

 15. Because XR is a youth, the Supreme Court was also required to take into account the criteria set out in section 24A of the *Bail Act*. In this case, those criteria relevantly included:
 - (a) The need to consider all other options before remanding a youth in custody rather than granting bail.
 - (b) The need to strengthen and preserve the relationship between the youth and the youth's family.
 - (c) The cognitive capacity, health and developmental needs of the youth.
 - (d) If the youth is an Aboriginal person, any issues that arise due to the youth's Aboriginality including cultural background, ties to extended family or place and any other relevant cultural issues or obligation.

 16. Those provisions form part of the law of the Northern Territory which a court is required to take into account and apply when considering a bail application. The formulation and content of bail laws is a matter for the executive government and the legislature rather than the courts.

 17. Unlike New South Wales, by way of example, there is no provision in the Northern Territory legislation requiring that bail must not be granted to a youth unless the court has "a high degree of confidence" the young person will not commit a further offence while on bail. However, it must be borne in mind that since the introduction of the New South Wales provision the number of youths in custody in that jurisdiction has increased by 32 percent.

 18. The courts frequently grant compassionate bail to adults in custody and youths in detention in the application of the existing bail laws to permit them to attend funerals or comply with other cultural obligations. Those determinations require a complex balancing exercise between the competing considerations under the bail legislation. The risk of some breach of bail must be balanced against the conditions of bail which might be imposed to reduce that risk and the need to adopt a humane approach to family bereavement and cultural obligation. There is rarely any breach of the conditions of bail granted for compassionate reasons.
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