

CATALOGUE OF NSWSC BAIL DECISIONS WHERE CAUSE WAS SHOWN

This guide compiles previous ‘show cause’ bail decisions from the Supreme Court and Court of Criminal Appeal (and some from the District Court) and summarises the factual and subjective circumstances of each case in a searchable table. Cases have been included where bail was granted, cause was shown (but the unacceptable risk hurdle was not satisfied) or if especially pertinent comments were made re show cause factors. Cases are given catchwords such as ‘Indigenous’, ‘delay’, ‘likelihood of custodial sentence’ and so forth. **A complete list of catchwords is included at the end of this guide.**

This table is designed to serve as a quick reference if you are appearing in a show cause application. By searching for catchwords relevant to your matter, you can find previous bail decisions with similar facts to support your client’s application. Given the large number of SC bail decisions and the breadth of factual circumstances the Court has considered, there is bound to be a relevant SC decision for nearly every occasion.

The *Bail Act 2013* (NSW) came into force on 20 May 2014. This introduced the ‘unacceptable risk’ test. In respond to a review, reforms to the Act came into force on 28 January 2015, including the ‘show cause’ requirement. Hence, this table considers decisions from this latter date onward.

It is likely that some Magistrates (or an enthusiastic Prosecutor) may dispute the precedential authority of a Supreme Court bail decision, and may cite the oft-quoted remarks of Justice Hulme in *DPP v Zaiter* [2016] NSWCCA 247 at [30] – [33]:

It is important to recognise that such judgments do not often lay down anything of precedential value for ‘bail authorities’...Bail decisions involve a discretionary evaluative judgement on a variety of factors...[and] are very specifically directed to the facts and circumstances of the case at hand...A decision by a single judge of the Supreme Court...is no more than the view taken by that particular judge in the circumstances of the particular case at hand.

NB: In *Lin v Director of Public Prosecutions* (Cth) [2017] NSWSC 312 [35], Beech-Jones J affirmed that the same can be said of bail determinations of the CCA.

While it is certainly true that a Supreme Court bail decision is not *binding* on the Local Court, it is highly persuasive and ought to be applied in a like case. A Magistrate would arguably fall into error if they refused bail when the SC had granted bail in an application with remarkably similar facts. Moreover, such refusal would fly in the face of the principle that *like cases should be treated in a like manner*.

The following authorities may assist if a Magistrate doesn’t share your enthusiasm about the persuasiveness of a Supreme Court decision involving similar facts:

Barr (a pseudonym) v DPP [2018] NSWCA at [67] – Leeming JA:

‘...a decision of the Supreme Court [on] a release application [can] assist in elucidating the principles to be applied in lower courts’.

Wong v The Queen (2001) 207 CLR 584 at [5] and [6] – Gleeson CJ:

One of the legitimate objects of [appellate court] guidance is to reduce the incidence of unnecessary and inappropriate inconsistency...**Like cases should be treated in a like manner.** The administration of criminal justice...should be systematically fair, and that involves...**reasonable consistency**’.

(emphasis added)

NB: Although *Wong* discussed guideline sentencing judgments, the remarks of Gleeson CJ are equally relevant to discretionary decisions such as bail.

Some remaining preliminary points are the following:

1. In *Moukhallaletti v Director of Public Prosecutions (NSW)* [2016] NSWCCA 314, Justice Button at [51]-[56] provided a useful summary of the principles to be considered by a court considering bail for a show cause offence. This summary was cited approvingly by the NSWCCA in *Tsintzas v Director of Public Prosecutions (NSW)* [2017] NSWCCA 172. His Honour reaffirms that the show cause requirement is separate from the unacceptable risk test, but that there may be ‘substantial overlap’ in the factors relevant to each hurdle. Also, ‘cause may be shown by a single powerful factor, or a powerful combination of factors’. See the authorities cited in this passage; and also *McGlone v Director of Public Prosecutions (Cth)* [2019] NSWCCA 99.
2. This table, therefore, should principally be used as a repository of *factually* useful (rather than *legally* useful) cases relevant to show cause applications, bearing in mind the separate unacceptable risk test and that bail decisions cannot be used as precedents in the normal way.
3. Nonetheless, NSW courts have repeatedly identified common factual trends relevant to showing cause which may be useful to highlight in a bail application. Such trends include:
 - a. family vulnerability if the applicant is denied bail: eg *DPP (NSW) v Mawad* [2015] NSWCCA 227;
 - b. time spent in custody pending trial (delay): eg *R v BNS* [2016] NSWSC 350 [62] (Garling J);
 - c. strength of the Crown case: eg *R v Fallon (a pseudonym)* [2017] NSWSC 1796 [18].

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>R v AC (No 3)</i> (Detention application) [2016] NSWSC 209</p>	8 March 2016	Hamill J	<p><u>Accessory before the fact</u> (1) murder (2) discharge firearm with GBH intent</p>	<p>On bail for many months. Offender then pleaded guilty and the Crown brought a detention application.</p> <p>Participation in several organised shootings perpetrated by the 'Brothers for Life' group (<i>R v Qaumi</i>), initially visiting Bassam Hamzy in prison as a paralegal.</p> <p>Relevant to the show cause test were: the Respondent's past compliance with strict bail conditions (including \$1.4mil surety); the assistance provided to the Crown; her bail meant that her sentencing proceedings could be expedited and avoid delay to the trial of the co-accused; lack of flight risk / danger to community.</p>	<p>Numerous conditions set out at [21], including reporting conditions, surety and preventing her from associating with co-accused, witnesses or approaching correctional facilities.</p> <p>Curfew condition added on application of the Crown</p>	<p>Guilty plea Assistance to authorities Compliance Delay OMCG member</p>
<p><i>R v Alchin</i> [2015] NSWSC 2112</p>	16 February 2015	McCallum J	<p><u>Aggravated entering a dwelling with knowledge</u></p>	<p>The Applicant is an Indigenous man. Few facts are given as to the circumstances of offending. Evidence is word against word.</p> <p>First child had just been born. Also, there was a likelihood of a lengthy period in remand</p>	<p>Not detailed – but directed to engagement in family life and medical treatment.</p>	<p>Indigenous Recent birth Delay Oath vs oath</p>

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				<p>awaiting trial. Her Honour noted the “cycle of disadvantage” in Indigenous communities and that refusing bail would perpetuate this – a “strong factor” towards show cause.</p> <p>Risk of reoffending and endangering victim adequately mitigated by conditions.</p>		
<p><i>Ali v DPP</i> (NSW) [2017] NSWCCA 155</p>	28 June 2017	<p>Hoeben CJ at CL RA Hulme J Garling J</p>	<p><u>s 61J</u>: aggravated sexual assault <u>s 61M(1)</u>: 2 x aggravated indecent assault</p>	<p>Applicant was a school bus driver and complainant was a 15 y/o school student with a hearing disability. Applicant alleged to have digitally penetrated complainant in the bus and as well as repeated other indecent assaults.</p> <p>Applicant was 51 y/o with no criminal history or other allegations. Strong community ties. Living with family, married for 30 years with two daughters, home owned for 15 years. Wife diagnosed with breast cancer; daughter wants her father to be at wedding.</p> <p>Crown case neither strong nor weak. Significant delay: trial likely to occur in mid-2018.</p>	<p>Prohibition on contract with complainant's or complainant's family.</p> <p>Comply with any AVO in force.</p> <p>Residential condition and reporting to police three times / week.</p> <p>Prohibition on being in presence of a child under 16 y/o unless with another adult.</p>	<p>Mature age Limited history Strong ties Delay</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>R v Awad</i> [2015] NSWSC 2106</p>	3 February 2015	Davies J	<p>(1) Supply prohibited drug (2) Possess prohibited drug (3) Deal with proceeds of crime</p>	<p>Alleged supply of an indictable quantity of cocaine. He was on bail and serving a suspended prison sentence at the time (for driving while disqualified) – hence the show cause hurdle.</p> <p>Two prior convictions of driving while disqualified and two prior breaches of bail. No lengthy history or time in custody. Crown had no view on bail.</p> <p>Proposal to live with supportive parents, offering \$50,000 surety. Employer and priest also offered support. Offences not especially serious.</p>	Not detailed	<p>Breach conditional liberty Drug supply Strong ties</p>
<p><i>R v Azar</i> [2021] NSWSC 146</p>	3 March 2021	Davies J	<p><u>Breach ISO</u> (s 12, <i>Crimes (High Risk Offenders) Act</i>)</p>	<p>Pleaded guilty to manslaughter on the basis of substantial impairment (schizophrenia). On parole, the Applicant committed several offences (property damage and assault) and was taken back into custody. An ISO was imposed. On several occasions, the Applicant breached the ISO in aggressive verbal altercations with correctional officers – he was arrested and charged and return to custody. After an</p>	Comply with ISO and ESO	<p>Mental illness High risk offenders Likelihood of custodial sentence</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>ESO hearing, the Applicant applied for bail, opposed by the Crown.</p> <p>Show cause: the strict ISO then imposed on the Applicant and also the nature of the breach was impulsive rather than premeditated or sophisticated. His Honour also considered the Applicant's mental illness, that the period of remand would exceed the length of any custodial sentence and the forthcoming ESO.</p> <p>Risk of reoffending/harm to be addressed through the ESO.</p>		
<p><i>Benzce v R;</i> <i>Yates v R</i> [2015] NSWSC 139</p>	18 February 2015	McCallum J	<p><u>Yates</u>: domestic violence offences while on parole</p> <p><u>Benzce</u>: serious indictable offence while on bail</p>	<p>Yates proposed to undertake a full-time rehabilitation course at a Family Centre.</p> <p>Benzce proposed to undertake a drug rehabilitation course.</p> <p>[Note: McCallum J was applying the single, conflated show cause / unacceptable risk test (see <i>M v R</i>), subsequently overturned]</p>	Presumably to undertake the rehab proposed	<p>Substance abuse</p> <p>Domestic violence</p> <p>Rehabilitation</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>DPP (NSW) v Boatswain</i> [2015] NSWCCA 185 (overturning <i>R v Boatswain</i> [2015] NSWSC 878)</p>	8 July 2015	<p>Hoeben CJ at CL Johnson J RA Hulme J</p>	Murder	<p>Respondent was a 64 y/o man, married for 40 years with strong community ties and very limited criminal history. He was charged with the murder of a 75 y/o woman, shot on her doorstep.</p> <p>Suffered from liver cancer and was estimated to live for a couple of years. Still active day-to-day and being adequately treated in custody. Any delay before trial therefore carried greater weight. Also, he was illiterate, making preparation for trial difficult. There was a reasonably strong circumstantial Crown case.</p> <p>Especially given the illness, cause was shown. However, there was an unacceptable risk of reoffending and interfering with witnesses.</p>	Bail refused (but this could change on a deterioration in health)	<p>Medical issues Mature age Delay</p>
<p><i>R v Boatswain</i> [2015] NSWSC 1828</p>	30 November 2015	Campbell J	Murder	<p>Same as immediately above.</p> <p>New release application as a treating doctor gave the offender a revised life expectancy of "hours to days". His cancer had significantly worsened since July –</p>	<p>Good behaviour Reside at all times in hospital ward</p>	<p>Medical issues s 74 factors</p>

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				<p>“material change in circumstances”.</p> <p>Cause shown and no unacceptable risk (sufficiently incapacitated now as to no longer pose a threat to witnesses).</p>		
<p><i>R v Boyd</i></p> <p>[2015] NSWSC 1065</p>	14 July 2015	Hamill J	<p>Wounding/GBH with intent (s 33)</p> <p>Reckless wounding/GBH (s 35)</p> <p>Affray (s 93C)</p>	<p>Offender/Applicant and Co-accused sought to exact revenge on suspected perpetrators of a B&E in two violent assaults. Offender was on parole at the time, hence show cause requirement.</p> <p>Applicant had an “appalling criminal history” (at [15]). However, in favour of showing cause were: good family (including small children), counselling and employment support, “extremely lengthy delay” before trial, difficulty of preparing defence in gaol.</p> <p>Good example of show cause through a combination of factors rather than one exceptional factor (at [19]).</p> <p>Stringent conditions.</p>	<p>See [32] for extensive conditions.</p> <p>Good behaviour; reporting; residence; no alcohol/drugs; curfew; no association with certain persons; counselling; small surety</p>	<p>Breach conditional liberty</p> <p>Cannot prepare defence in gaol</p> <p>Delay</p> <p>Family hardship</p> <p>Poor history</p> <p>Strong ties</p>

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<p><i>R v Carlton</i> [2015] NSWSC 2001</p>	17 December 2015	Fagan J	Aggravated sexual assault (s 61J)	<p>Charged and convicted of one count under s 61J (digital penetration of 11 y/o girl), on bail prior to conviction and showed good compliance.</p> <p>Parties consented to a long adjournment between conviction and sentence, namely four months.</p> <p>Useful discussion from [19] of considerations relevant to showing cause after verdict.</p> <p>Factors esp. relevant: ability to earn to support his family/children and the Crown's change of position (initially consenting to the long adjournment and continuance of bail pending sentence) – fairness.</p>	<p>Continuance of previous conditions:</p> <p>No contact with victim or her mother</p> <p>\$10,000 security</p> <p>Weekly reporting</p>	<p>Convicted</p> <p>Delay</p> <p>Family hardship</p>
<p><i>R v Darwiche</i> [2020] NSWSC 1865</p>	17 December 2020	Rothman J	<p>Two sets of charges:</p> <p>(1) 5 offences ~ assault, stalk</p> <p>(2) 23 offences ~ unlawful sale and possession of firearms and ammunition</p>	<p>The second set of charges allegedly occurred while on bail for the first set – hence, show cause requirement.</p> <p>The Applicant relied on: (1) weak Crown case (rejected by his Honour); (2) his wife's recent birth of twins; (3) delay before trial; (4) stringent bail conditions proposed (incl.</p>	<p>Extensive conditions at [55]:</p> <p>Twice daily reports</p> <p>House arrest</p> <p>Electronic monitoring</p>	<p>Breach conditional liberty</p> <p>Delay</p> <p>Family hardship</p> <p>Large surety</p> <p>Limited history</p> <p>Recent birth</p>

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				house arrest); (5) substantial security (\$515,000). Some criminal history, but unrelated. Applicant also involved in care for his mother's mental health. Court hesitant about house arrest due to domestic violence allegations. Bail nonetheless granted.	Restriction on movement and association No drugs/alcohol Good behaviour	Domestic violence
<i>R v Davis</i> [2018] NSWSC 1831	27 November 2018	Rothman J	Murder	Infamous 'samurai sword' killing in Forest Lodge in Sydney. The Applicant had almost no criminal history and had never spent time in custody prior. Detailed consideration of Crown case – potential weaknesses re self-defence and provocation. No unacceptable risk (flight risk never been tested due to scant history).	Not given in judgment – see Court file Declined to forbid contact between co-accused	First time in custody Hardship in custody (see [10]) Limited history Strength of Crown case
<i>R v Draca</i> [2015] NSWSC 1150	17 August 2015	RS Hulme AJ	(1) cultivate large commercial quantity of cannabis (293 plants)	Police had the Applicant under surveillance and conducted a search of his property. Applicant was 40 y/o with no significant criminal history. Migrant background and two	Good behaviour Residence/report requirements.	Drug supply Family hardship Limited history Strong ties

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
			(2) supply same (284kg)	<p>young children. Good employment as builder and community ties.</p> <p>No unacceptable risk – counts in favour of showing cause.</p> <p>Refusal of bail would lead to loss of business and family financial hardship. Crown case not accepted to be weak.</p>	<p>Restriction on communication and travel</p> <p>Security</p>	
<p><i>R v DS</i> [2017] NSWSC 1842</p>	19 December 2017	Hamill J	<p><u>First set:</u> aggravated B&E / B&E and steal</p> <p><u>Second set:</u> Assault and threaten with weapons</p>	<p>16 y/o Indigenous boy who was alleged to have committed the second set of offences while on bail for the first. No show cause requirement due to minority (but otherwise would have been). Relatively strong Crown case across the board.</p> <p>Lengthy criminal history and breaches of conditional liberty. Had recently started working with a new caseworker from FACS who was having a positive impact.</p> <p>Useful comments re incarceration of ATSI people and reference to <i>Bugmy/Munda</i> at [7]. Wrote</p>	<p>Bail granted</p> <p>Stringent bail conditions imposed to address the concerns (almost all of which applied), not provided in the judgment.</p>	<p>Breach conditional liberty</p> <p>Indigenous</p> <p>Poor history</p> <p>Strong ties</p> <p>Youth</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				letter to judge asking for one more chance.		
<i>R v Elzamtar</i> [2017] NSWSC 275	21 March 2017	Harrison J	Breach ADVO Stalk/intimidate 2 x possess prohibited weapon, contrary to prohibition order	The offences were committed while the Applicant was on parole for previous firearm offences – hence show cause. Marriage broke down (ADVO for wife), the Applicant has one son. Threatening phone call made to wife to breach ADVO; police search found weapons. Factors argued to show cause: (1) delay (18 months); (2) unlikelihood of gaol for ADVO breach (no actual violence; “lower end of seriousness”); (3) weak Crown case for weapons charges (“circumstantial”); (4) favourable s 18 factors and bail conditions. Harrison J accepted especially (1)-(3). No unacceptable risk in light of bail conditions.	At [26] Good behaviour Residence, reporting, curfew Travel restrictions Comply with ADVO and firearms prohib. Order One mobile phone, provided by police	Breach conditional liberty Domestic violence Delay Likelihood of custodial sentence Strength of Crown case
<i>R v David Ewen</i> [2017] NSWSC 1328	28 September 2017	Beech-Jones J	Sexual assault, <10 y/o – s 66A(1)	The Applicant (50 y/o man) was alleged to have licked a 3 y/o girl on her vagina and also placed his hand the girl’s inner thigh on a separate occasion.	At [47] Residence, curfew and reporting	Family hardship Mature age Strength of Crown case

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
			2 x indecent assault, <16 y/o – s 61N(2)	<p>The Crown case was “relatively weak”, due to gaps in witness testimony. In addition, the Applicant had three school age children, a former (but harmoniously separated) wife and ran a newspaper business on behalf of his elderly parents.</p> <p>Such factors were sufficient to show cause. Also, the bail proposal was compelling: including curfew and residence conditions which satisfied the Court re unacceptable risk.</p>	<p>Surrender passport etc</p> <p>Not to be in the presence of other children w/o another adult (except his own)</p> <p>\$200,00 security</p>	Strong ties
<p><i>R v Farrell</i> [2016] NSWSC 1278</p>	9 September 2016	McCallum J	<p>2 x shooting with intent to kill (s 29)</p> <p>2 x shooting with GBH (s 33A(1)(a)) – alternatives</p>	<p>Shooting of Applicant’s sister’s boyfriend and his father. ID was the major issue for the Crown. Previously refused bail by Campbell J, so required to satisfy <i>Bail Act</i> s 74.</p> <p>The key feature was that the trial date had been vacated by 11 months, meaning that the Applicant would remain in remand for 3 years before trial. Sufficient to show cause and satisfy s 74: see comments re delay from [24].</p>	Minimal conditions: surety to discourage flight	<p>Delay</p> <p>s 74 factors</p> <p>Strong ties</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				Moderate Crown case; strong community ties. Acceptable conditions to mitigate risk.		
<i>R v Gao</i> [2018] NSWSC 1011	29 June 2018	McCallum J	Two offences contrary to ss 61J(1) and 61JA(1)	<p>Professional and famous Chinese film actor alleged to have sexually assaulted a co-worker in the presence of another man. Only s 61JA carried the show cause requirement.</p> <p>The Applicant relied on five factors to show cause, only some of which were accepted. The Crown case was weak as re the s 61JA charge. Also, his incarceration would need to be “on protection” – significantly more draconian. Family hardship/relocation was also a factor; and the Applicant agreed to submit to electronic monitoring. A surety of \$3mil was offered.</p> <p>These conditions also satisfied the Court there was no unacceptable risk of flight.</p>	Extensive conditions, see [43] (including the surety and elec. Monitoring)	<p>Strength of Crown case</p> <p>Family hardship</p> <p>Hardship in custody</p> <p>Large surety</p> <p>GPS monitoring</p> <p>Flight risk</p>
<i>DPP (NSW) v Ghama</i>	18 April 2018	Hamill J	<u>First set:</u>	Offences in a domestic violence context: the second set occurred while there was a warrant out for the Offender’s	Extensive conditions at [40] Key change was to prohibit the	Breach of conditional liberty

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
[2018] NSWSC 1427			Breach AVO: stalk, intimidate and assault <u>Second set:</u> Aggravated B&E with intent to stalk/intimidate (+ breach AVO)	arrest re the first set (hence show cause). Bail was granted by a magistrate and the Crown brought a detention application two months later. Scant consideration of show cause, but Hamill J was persuaded by: (1) previous compliance with bail; (2) delay before trial; (3) weaknesses in the prosecution case. However, due to risks in interfering with the victim, bail was regranted on stricter conditions.	offender and victim having contact	Delay Domestic violence Compliance Strength of Crown case
<i>R v Goodwin</i> [2015] NSWSC 2107	11 March 2015	Harrison J	Larceny Supply prohibited firearm to an unauthorised person ABH assault Throwing explosive with intent to maim	Offender was a young man (nearly 22 y/o) in gaol for the first time: at [4], “ Those matters appear to me to demonstrate a sufficient indication that he has shown cause why his continued custody is not justified. ” Two bail concerns: (1) reoffend; (2) endanger victims or the community. The explosive offence involved trying to set someone alight with petrol. Limited but	Bail refused	First time in custody Youth

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				indicative criminal history. Conditions insufficient.		
<i>R v Gountounas</i> [2018] NSWCCA 40	19 March 2018	Simpson JA Fullerton J McCallum J	2 x conspiracy to import commercial quantity <i>(Cth Code ss 307.1.(1) and 11.5(1))</i>	<p>The Offender was involving in a drug importation enterprise infiltrated by undercover police (planned to import 101kg of methamphetamine and 500kg of cocaine). Arrested in South Australia and extradited to NSW.</p> <p>There was a split as to the show cause requirement, Fullerton J not finding cause shown, McCallum J dissenting and granting bail. Simpson JA agreed with Fullerton J in the result but appeared to favour that cause would have been shown.</p> <p>The latter two made useful comments re delay, [54]– McCallum J finding this could be sufficient to show cause. Also relevant were family and legal hardship (being based in SA). Adverse to the Offender was a strong Crown case, likelihood of gaol time and a “very real flight risk”.</p>	Bail refused	<p>Cannot prepare defence in gaol</p> <p>Delay</p> <p>Drug supply</p> <p>Family hardship</p> <p>Strength of Crown case</p> <p>Likelihood of custodial sentence</p> <p>Flight risk</p>

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<i>R v Greenup</i> [2020] NSWSC 1866	18 December 2020	Rothman J	Murder	Murder allegedly perpetrated in retribution for a sexual assault (joint criminal enterprise). Bail refused and cause not shown. However, consideration from [11] of Indigenous offenders and curious comment that that may bare on the question of flight risk at [16].	Bail refused	Indigenous Flight risk
<i>R v Grooms</i> [2019] NSWSC 359	2 April 2019	Fullerton J	Breach interim supervision order (s 12 of <i>Bail Act</i>)	Crown did not oppose bail provided that a recently made extended supervision order was complied with. Unlikely that any custodial sentence would be imposed and past compliance with supervision orders. Court had no concerns with release.	Reside with parents and abide by curfew	Likelihood of custodial sentence High risk offenders Breach of conditional liberty Past compliance
<i>DPP (NSW) v Hing</i> [2017] NSWCCA 325	28 November 2017	Simpson JA RA Hulme J Wilson J	Cause GBH to resist arrest (officer suffered serious fracture) Large commercial	Surveillance evidence and forensic testing = accused involved in major cocaine supply / importation Over \$1 million in cash linked to accused Strong circumstantial case	Bail refused – cause not shown.	Drug supply

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			cocaine supply (max. life gaol) Assault police Serious traffic charges Proceeds of crime > \$1 million in cash	Serious injuries suffered by detective during arrest (thrashing around and fell on officer, badly breaking her leg) Was initially granted very strict bail by single SC Justice – DPP made a detention application a few days later		
<i>JM v R</i> [2015] NSWSC 978	22 July 2015	Garling J	Murder	Consistent history of breaching previous bail conditions or failing to appear. Offence breached a s9 bond Victim felt slighted / insulted by accused and kept ringing him + arrived on his doorstep at night. Accused initially ignored the victim calling out at door. Victim let into house by 3 rd party – argument occurred and accused stabbed the victim – admissions to 3 rd parties + seen with knife after stabbing. Accused attempted to clean crime scene with bleach + mop Accused attended police station to report death of victim and gave false account.	Cause shown (key factors being youth, first time in custody and likely period on remand until trial) Must reside with aunt + uncle Night curfew + enforcement cond. Report twice daily No witness contact No alcohol / drugs \$20k cash surety Not approach airport etc	Youth Strength of Crown case Delay Self Defence Breach conditional liberty First time in custody

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				Self defence will be key issue in case, and it is relevant to strength of Crown case If remanded, will spend > 18m in custody = undue delay.		
<i>Kangas v R</i> [2015] NSWSC 1294	30 July 2015	McCallum J	Possess ice (indictable)	On bail for weapon-possession charges and committed drug offences 5 months on remand to date Court noted that accused made considerable efforts and overcame bureaucratic hurdles to secure a bed in residential drug rehabilitation Useful remarks about show cause and residential rehabilitation bed Time on remand may end up exceeding actual sentence	Cause shown re bed in drug rehab Conditions not published (presumably to comply with rehab treatment)	Breach conditional liberty Rehabilitation Likelihood of custodial sentence
<i>Katellaris v DPP (NSW)</i> [2018] NSWCCA 193	31 August 2018	Beazley P RA Hulme J Hamill J	Large commercial cannabis (oil) – max. life penalty	Accused is former medical-practitioner (since deregistered) and life-long medicinal cannabis crusader. Court noted that accused is not a ‘typical drug dealer’ and was engaged in oil making to help those with illness/pain.	Cause shown (unusual facts and difficulty preparing own defence) Report 3 x p/week No illicit drugs Not to provide any cannabis therapy	Medicinal cannabis Drug supply Cannot prepare defence in gaol Breach conditional liberty

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>Accused was granted legal aid but refused it and chose to represent himself – problems preparing own defence whilst in gaol re lack of resources, access to case-law etc.</p> <p>Was initially granted DC bail but was arrest re further summary cannabis charges and bail refused.</p>	<p>or counsel anyone re this therapy</p> <p>Not to possess / procure etc any cannabis products</p>	
<p><i>Kitson v DPP (NSW)</i> [2019] NSWSC 1856</p>	19 December 2019	Hamill J	Agg B&E, assault, destroy property (victim is sister)	<p>Committed whilst on parole</p> <p>Broke into sister's house and caused damage + assaulted her. Very poor criminal history (incl. against same victim)</p> <p>Schizophrenic with severe psychosis + hallucinations.</p> <p>Hardship in custody as he's locked in 23hr p/day due to risk from other inmates. Lack of psychiatric care in gaol</p>	<p>Cause shown re mental health</p> <p>Conditions not published in full but decision notes it will include night curfew, stringent reporting, reside at address >400km from victim, drug / alcohol ban and accept mental health treatment</p>	<p>Breach conditional liberty</p> <p>Poor history</p> <p>Mental illness</p> <p>Hardship in custody</p>
<p><i>R v Lazar</i> [2016] NSWSC 1462</p>	14 October 2016	Harrison J	Death threats by carriage service + fraud	<p>Bail refused by the LC.</p> <p>Violent death threats sent by text and fraud charges (about \$600k worth) – was already on bail for theft, fraud, and pervert course of justice.</p>	<p>Cause shown re delay + mental health concerns</p> <p>Must reside 24/7 in psych hospital and accept treatment</p>	<p>Breach conditional liberty</p> <p>Delay</p> <p>Mental illness</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>5 months on remand to date, >12 month delay to trial</p> <p>2 x expert reports tendered re accused's mental health deteriorating in custody + bordering on manic psychosis.</p> <p>Psychiatrist believed accused not receiving adequate care in gaol + being threatened by other inmates</p>	<p>(only leave with clinician consent for emergencies)</p> <p>Report daily by phone</p> <p>No passport</p> <p>No mobile phone</p> <p>\$10k surety</p> <p>No victim contact</p> <p>If discharged from hospital, must return to SC for bail hearing</p>	<p>Hardship in custody</p>
<p><i>Lin v DPP (Cth)</i></p> <p>[2017] NSWSC 312</p>	31 March 2017	Beech-Jones J	Import ice (large commercial)	<p>56kg of ice hidden in 70 bar stools. Arrested for possessing two stools (with 1kg of ice) and granted bail but, following further AFP investigations, was charged with role in importing entire 56kg of ice (conspiring to commit).</p> <p>9 months on remand to date – at least 12 months till trial date</p> <p>Step-daughter (7yr old) has severe intellectual disability and in full-time nappies + recent major surgeries</p>	<p>Cause shown (re family + previous bail compliance)</p> <p>Report daily</p> <p>Night curfew</p> <p>Not travel > 25km from home</p> <p>\$1m surety (pooled by 5 friends)</p> <p>No passport</p> <p>Must wear GPS monitor 24/7 (at</p>	<p>Drug supply</p> <p>Delay</p> <p>Disabled child</p> <p>Family hardship</p> <p>GPS monitoring</p> <p>Limited history</p> <p>Compliance</p> <p>Large surety</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				Affidavit from wife - struggling with caring for disabled child while accused on remand Accused was on bail for 5 months before charges were upgraded and bail refused – his compliance with previous bail was key factor for Court	own expense) which alerts police if he travels > 25km from home or approaches airport etc	
<i>Liristis v DPP (NSW)</i> [2015] NSWSC 1258	24 August 2015	RA Hulme J	Multiple sexual offences (3 x alleged victims) + larceny	Bail refused by SC Judge – fresh application re s74. Lured women + teenager to address with fake ads for work and locked doors etc then sexual assaults occurred (already on bail at time for property-type matters). Poor history including breach of s9 bonds etc Accused gave evidence in bail application – his credibility was described as ‘questionable’	‘Doubtful’ whether cause was shown. Refused due to unacceptable risks	s74 Factors Breach conditional liberty Poor history
<i>DPP (NSW) v Mawad</i> [2015] NSWCCA 227 (overturning <i>R v Mawad</i> [2015] NSWSC 1237)	21 August 2015	Gleeson JA Adams J Beech-Jones J	Armed robbery (with pistol) Possess f/arms Take and drive	Armed robbery with co-accused and assistance from insider employee. \$40k taken. Strong Crown case (employee gave up co-accused and incriminating phone taps).	Cause shown due to family hardship. <u>Bail refused</u> due to unacceptable risk (commit further offence)	Family hardship Disabled child

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>Accused on bail for Agg B&E at time – history otherwise ok.</p> <p>Wife having surgery and two young children with special needs (one severe). No family support + financial stress.</p> <p>[43]: age, lack of antecedents, strong family support, ties etc may be enough to show cause</p>	NB: Hamill J granted bail at first instance which included curfew, daily reporting, \$300k surety (on house) and \$10k cash surety but the Crown appealed	
<p>McAndrew v R</p> <p>[2016] NSWCCA 58</p>	18 April 2016	<p>Hoeben CJ at CL</p> <p>Harrison J</p> <p>Schmidt J</p>	Armed robbery	<p>Unrepresented in CCA appeal</p> <p>Partner recently had a baby, grandmother died and mother suffered strokes.</p> <p>In <i>obiter</i>, notes that an accused suffering a significant medical issue (which can't adequately be treated in gaol) likely to satisfy show cause.</p>	Bail refused – cause not shown	<p>Family hardship</p> <p>Recent birth</p> <p>Medical Issues</p>
<p>R v McCormack</p> <p>[2015] NSWCCA 221</p>	17 August 2015	<p>Hoeben CJ at CL</p> <p>Price J</p> <p>Fagan J</p>	<p>Use gun whilst intoxicated</p> <p>Assault</p> <p>Possess loaded gun + endanger safety</p>	<p>Granted bail by SC at first instance – Crown appealed.</p> <p>Rural property, dispute over dogs. Accused drunk and aimed a loaded rifle at victim. Witness disarmed accused, who then grabbed victim's shirt and raised his fist.</p> <p>DPP election to prosecute in LC so only 2yr max penalty.</p>	<p>Cause shown and bail granted</p> <p>Live with daughter > 40km away from victims</p> <p>No alcohol + testing condition</p> <p>Not enter licenced premises</p>	<p>Mature age</p> <p>Limited history</p> <p>Medical Issues</p> <p>Likelihood of custodial sentence</p> <p>First time in custody</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>Significant delay with hearing</p> <p>65yr old with no history of violence (3 x PCA only)</p> <p>Custodial penalty unlikely re Judcom statistics.</p> <p>Serious back issues and pain (aggravated whilst on remand for 2 months)</p>	<p>Not possess gun</p> <p>10km exclusion from victim home</p> <p>No contact</p>	<p>Hardship in custody</p>
<p><i>R v Melmeth</i> [2015] NSWSC 1762</p>	<p>24 November 2015</p>	<p>Schmidt J</p>	<p>Wound w/ intent to cause GBH</p> <p>Detain in company</p>	<p>Accused + co-accused detained victim (bound with ropes), forcibly injected him with drugs, serious GBH assault and threats to kill.</p> <p>On remand for 6 months prior to SC application.</p> <p>Trial delay > 12 months.</p> <p>Insulin dependant diabetes (Type 1). Poorly controlled + has dizziness / blurred vision.</p> <p>Accused receiving very poor level of care in gaol – letter from diabetes nurse re concerns about care in gaol</p> <p>Condition deteriorating whilst on remand.</p>	<p>Cause shown (only due to compelling medical issues).</p> <p>Live with father under virtual house arrest (only leave for medical / legal reasons in company of a parent) + enforcement condition</p> <p>No alcohol / drugs + testing condition</p> <p>Report daily</p> <p>Not contact victim or co-accused</p>	<p>Delay</p> <p>Single parent</p> <p>Medical Issues</p> <p>First time in custody</p> <p>Limited history</p> <p>Hardship in custody</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<i>R v Najem</i> [2015] NSWSC 2108	18 February 2015	Wilson J	B&E + steal (multiple) Drive susp.	On 2 x bail for AVO and property offences and 2 x s9 bonds (AVO offences). Serious arm / spinal injuries from previous crash. Accused claimed that adequate care not being provided in custody. Corrections failing to properly care for sick or injured inmate may = cause shown.	Cause shown (lack of care) but bail refused. Unacceptable risk of committing further offences Proposed conditions not sufficient to mitigate risk	Medical issues Hardship in custody
<i>R v Ojeh</i> [2017] NSWSC 552	8 May 2017	Harrison J	Commercial drug importation (Cth charges)	Attempted importation via mail. 5 months remand to date and 12-18 month trial delay. Significant issues with preparing defence in custody (TI in foreign language etc). Accused = poor English. Wife 2 x major surgery and requires full-time care.	Cause shown + bail granted. Report daily Curfew Give up passport Not leave NSW Not enter airport etc	Delay Cannot prepare defence in gaol Family hardship Language Limited history
<i>DPP (NSW) v Quinn</i> [2015] NSWSC 1326	9 September 2015	RA Hulme J	Murder	Stabbed ex-girlfriend and attempted suicide. Survived but quadriplegic due to partly severing own spine with knife. Initially granted bail to reside in rehab hospital but accused assaulted staff with wheelchair, spat at nurse, attempted suicide, abusive etc.	Cause shown but bail refused due to unacceptable risks Hulme J noted it was an unusual case and Long Bay was 'least worst' option.	Medical Issues Hardship in custody

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				Real concerns about capacity of Long Bay to care for him.		
<i>Raad v R</i> [2015] NSWSC 532	12 February 2015	McCallum J	Possess sawn-off shotgun + threat offences	Threatened victim with sawn-off shotgun and with knife at an earlier incident. Police found accused in possession of sawn-off s/gun. Accused's step-daughter provided statement that victim / witnesses lied and planted gun on accused (police believe she was pressured to give a false statement). Accused's partner confronted victim about charges.	Cause shown (new statement = weaker Crown case) but bail <u>refused</u> due to real risk of interference with evidence and witnesses.	Delay Strength of Crown case
<i>Rakielbakhour v DPP (NSW)</i> [2020] NSWSC 323	31 March 2020	Hamill J	Serious DV (AOBH with weapon)	Strong Crown case (fresh injuries, assault heard by neighbours) but victim refusing to give evidence + gave an exculpatory version of events. <u>Not</u> a show cause matter but very useful remarks about Covid-19 and its relevance to show cause and s18 considerations.	Bail granted Report 3 x p/week \$10k surety House arrest (except for work, police, health etc) No victim contact No passport	Delay COVID-19 Limited history Strength of Crown case
<i>R v Russell</i>	5 October 2018	Hidden AJ	Commercial ice + cocaine import / supply	Local Court bail granted – DPP appealed to SC	Bail granted	Drug supply Strong ties

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
[2018] NSWSC 1496			\$300k tainted cash + weapon	Sophisticated criminal operation to import / supply If guilty, long prison term likely Strong ties, runs large earth-moving business (but assets frozen by Crime Commission). Family offered large surety (which is significant factor re show cause / s18 risks)	House arrest (only leave with parents) \$1 million surety Report daily No passport Not contact witnesses Only 1 mobile phone	Limited history Large surety
<i>R v Saenz de Heredia</i> [2017] NSWDC 293	9 August 2017	Hatzistergos DCJ	Attempt murder (with parcel bomb)	Offence in 1998 and accused arrested. While on bail, gunmen attempted to kill him in a targeted hit (hospitalised). Fled country in 1999 using a false passport and extradited back to Aust. in 2016. First trial in 2017 ended in a hung jury. On remand for 16+ months at time of application – likely to be delay with 2 nd trial. Useful remarks re <i>Bail Act</i> considerations when accused is non-citizen and proposes to submit to immigration detention upon being released from remand (Court does not have power to impose such a condition)	Cause shown (strength of Crown case and delay) but bail <u>refused</u> re unacceptable risk.	Delay Flight risk Immigration detention Limited history

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>Singh v R</i> [2015] NSWCCA 257</p>	8 June 2016	Macfarlan JA	Agg robbery (but later downgraded)	<p>Committed agg' robbery while on bail for supply charges.</p> <p>Bail refused by SC at first instance – accused appealed.</p> <p>On day of CCA bail appeal, DPP withdrew agg' robbery + replaced it with 4 x charges to be heard summarily in LC.</p> <p>Young (19) with no violence history – strong family support</p> <p>Charges being downgraded relevant to both show cause and s74 change of circs.</p>	<p>Cause shown (re age and reduced charges / delay).</p> <p>Night curfew</p> <p>Family \$2k surety</p> <p>No passport</p> <p>No victim contact</p>	<p>s74 Factors</p> <p>Limited history</p> <p>Youth</p> <p>Delay</p> <p>Strong ties</p> <p>First time in custody</p> <p>Likelihood of custodial sentence</p>
<p><i>R v Tasker (No 2)</i> [2015] NSWSC 467</p>	16 April 2015	Button J	Commercial cultivation and firearms	<p>SC granted bail but, unknown to Button J, accused pleaded guilty on same day to charges.</p> <p>Button J granted bail due to delay, right to liberty while presumed innocent, possible weakness re Crown case.</p> <p>Bail revoked and application relisted when SC became aware of guilty plea.</p> <p>Guilty plea removes key factor of right to liberty whilst innocence and means custodial sentence almost inevitable = cause not shown.</p>	<p>Bail refused – cause not shown</p>	<p>s74 Factors</p> <p>Strength of Crown case</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				Due to late plea, DPP entitled to oppose bail re s74 change of circs.		
<i>R v Toksoz</i> [2015] NSWSC 1234	23 July 2015	Hamill J	Shoot with intent to murder, MDMA supply	<p>Accused + co-accused involved in 'drug rip off' in which co-accused produced a gun + fired.</p> <p>Issues with Crown case re common purpose as victim stated that accused attempted to grab gun off co-accused + possibly trying to 'stop' him.</p> <p>While accused on remand, his brother died and corrections refused permission to attend funeral. Evidence that this caused serious anguish for accused which is ongoing.</p> <p>Tight knit and supportive family</p> <p>Likely to be on remand for 2yrs awaiting trial.</p> <p>Useful remarks regarding an 'acceptable person' for surety etc especially if they have criminal history</p>	<p>Cause shown and bail granted</p> <p>Report daily</p> <p>Night curfew</p> <p>\$200k surety</p> <p>No witness or co-accused contact</p> <p>No passport</p> <p>No alcohol / drugs</p>	<p>Drug supply</p> <p>Family hardship</p> <p>Bereavement</p> <p>Delay</p> <p>Strength of Crown case</p> <p>Strong ties</p> <p>Acceptable person factors</p> <p>Large surety</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>Tsintzas v DPP</i> (NSW) [2017] NSWCCA 172</p>	21 July 2017	Bathurst CJ McCallum J N Adams J	Commercial ice + cocaine supply	<p>Very strong Crown case (phone taps, surveillance, caught with drugs in car).</p> <p>Remand 8 months (delay with brief + charge negotiations).</p> <p>While accused on remand, his two sons were in serious car crash and both wheelchair bound with major 24hr-a-day care needs. Likely to be long-term or permanent care.</p> <p>Mother struggling to care for sons due to lack of other support (daughters are working long hours to financially support family re mother stopping work due to sons' care) and her stature compared to weight / height of both sons (aged 16 & 22).</p> <p>Crown provided evidence re accused's OMCG membership and risk of re-offending.</p>	<p>Cause shown (re family hardship)</p> <p>Virtual house arrest + reporting</p> <p>No passport</p> <p>\$620k surety (from elderly parents)</p> <p>1 mobile phone</p> <p>Not contact co-accused or any OMCG members</p>	<p>Drug supply</p> <p>Family hardship</p> <p>Limited history</p> <p>First time in custody</p> <p>Strong ties</p> <p>Likelihood of custodial sentence</p> <p>OMCG member</p> <p>Large surety</p>
<p><i>R v Unasa</i> [2017] NSWDC 291</p>	11 May 2017	Hatzistergos DCJ	Cause GBH w/ intent to murder (shooting)	Drug related shooting w/ a strong circumstantial Crown case (bullet found in body, photo ID procedure, forensic results and phone records)	<p>Cause shown (delay) but refused due to unacceptable risk of failing to appear</p>	<p>Strength of Crown case</p> <p>Delay</p> <p>Poor history</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>Victim gave statement but now refusing to cooperate and one witness left country. Case relies on victim credibility and Crown conceded case was 'vulnerable'.</p> <p>1yr 11m on remand to date, trial still 5 months away</p> <p>Useful remarks re delay and strength of Crown case</p>	+ interfere with witnesses etc	Likelihood of custodial sentence
<p><i>R v Walton</i></p> <p>[2021] NSWDC 182</p>	27 April 2021	Grant DCJ	15 x child sex offences (max penalty = life)	<p>Multiple counts of rape (forced fellatio) and indecent touching of his stepdaughters.</p> <p>11 months of remand to date – further delays likely due to impact of COVID-19 on trials in country areas.</p> <p>No corroborative evidence, case is oath vs oath and DPP conceded case is not strong (accordingly, a custodial sentence is not inevitable)</p> <p>Accused illiterate = very hard for him to prepare case in gaol during limited legal visits</p> <p>Accused cares for 69y/o mother (health issues) who doesn't have other support</p>	<p>Cause shown</p> <p>Reside with mum</p> <p>Night curfew (unless with mum)</p> <p>Report daily</p> <p>No alcohol / drugs</p> <p>Not enter any licenced premises</p> <p>No passport</p> <p>No victim / witness contact</p> <p>Mum agree to forfeit \$10k and sign character acknowledgement</p>	<p>Delay</p> <p>COVID-19</p> <p>Strength of Crown case</p> <p>Oath vs Oath</p> <p>Family hardship</p> <p>Cannot prepare defence in gaol</p> <p>Likelihood of custodial sentence</p> <p>Strong ties</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
<p><i>R v Wright</i> [2015] NSWSC 2109</p>	7 April 2015	Rothman J	DV assault, damage property, agg B&E, breach bond, resist etc	<p>Not a show cause offence but useful remarks re bail and Indigenous applicants</p> <p>Cites <i>R v Brown</i> [2013] NSWCCA 178 and its dicta on Royal Commission into Indigenous deaths in custody.</p>	Not fully published – reside in different town and not contact victim	<p>Indigenous</p> <p><i>Bugmy</i> factors</p> <p>Poor history</p> <p>Domestic violence</p>
<p><i>R v Xi</i> [2015] NSWSC 1575</p>	26 October 2015	Hamill J	Large commercial ice supply	<p>Accused a member of a group involved in large-scale drug supply > 9kg (transacted with undercover officers).</p> <p>Accused's exact degree of involvement unclear but 1kg of ice, scales and other indicia of supply found in his home. Strong Crown case re 1kg ice.</p> <p>In remand 5 months to date, likely to be 12+ months until trial</p> <p>Accused main carer for his severely disabled son (dystonic quadriplegia cerebral palsy + epilepsy). Accused's parents were caring for child during his remand but they were struggling due to age and their own health issues.</p> <p>Useful remarks re option of GPS monitoring (at</p>	<p>Cause shown (mainly due to disabled child)</p> <p>Report daily</p> <p>House arrest (may only leave for son's medical care, reporting, legal appointments + must be with a parent)</p> <p>Only travel 20km radius from home</p> <p>No passport</p> <p>Accused agree to forfeit \$15k</p> <p>Family \$150k surety</p> <p>Must wear GPS monitor 24/7 (at own expense)</p>	<p>Drug supply</p> <p>Disabled child</p> <p>Delay</p> <p>Single parent</p> <p>Family hardship</p> <p>Strength of Crown case</p> <p>Flight risk</p> <p>Likelihood of custodial sentence</p> <p>Limited history</p> <p>Large surety</p> <p>GPS monitoring</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				<p>accused's expense) by a private security company – whether permitted under Act</p> <p>Although accused has strong ties to Sydney, also has ties to China = significant flight risk due to seriousness of charges</p>	<p>which alerts police if he travels > 20km from home or approaches airport etc</p>	
<p><i>R v Xie</i> [2015] NSWSC 1833</p>	8 December 2015	Fullerton J	Murder x 5	<p>High profile murder case – two earlier trials aborted and jury in third trial could not reach unanimous / majority verdict.</p> <p>Upon jury being discharged, DPP immediately advised it would re-try accused and accused's counsel made an application for bail.</p> <p>4 ½ years on remand to date</p> <p>Strong family and financial links to China (recent evidence of substantial money transfers to / from family in China)</p> <p>Accused was assaulted by another inmate in 2014 + for past 12 months had been kept in solitary wing for his own safety: arduous conditions, no exercise / social contact, 24hr lockdown etc.</p>	<p>Cause shown (re hardship in custody and delay)</p> <p>Judgement mentions 'house arrest', \$1.5m house as surety, and GPS monitoring but conditions aren't fully published.</p>	<p>Likelihood of custodial sentence</p> <p>Flight risk</p> <p>Delay</p> <p>Strength of Crown case</p> <p>Hardship in custody</p> <p>Large surety</p>

Case	Decision date	Judge	Charge(s)	Facts	Conditions	Catchwords
				Diagnosed with Major Depressive Disorder + expert evidence tendered stating that accused cannot properly instruct lawyers as he was effectively going mad in solitary confinement.		

(Some) Unreported NSWSC bail decisions

- R v **Alahmad**, NSWSC, Hidden AJ, 8 October 2015
- R v **Anderson**, NSWSC, McCallum J, 16 February 2015
- R v **Burke**, NSWSC, McCallum J, 16 February 2015
- R v **Kirby**, NSWSC, Garling J, 2 February 2015
- R v **McMahon**, NSWSC, Hall J, 9 February 2015
- R v **Stanley**, SCNSW, Hall J, 11 February 2015

Catchword	Meaning
Acceptable person factors	Cases which address who can be an 'acceptable person' and considerations relevant to a Court's decision on this question
Assistance to authorities	The accused has, or will, provide assistance to authorities or give evidence against a co-accused
Bereavement	A relative or friend has died while the accused is in remand (so they have a need to attend a funeral or support grieving relatives etc)
Breach conditional liberty	Matter is show cause because accused committed offences whilst on bail, parole or another form of conditional liberty (including where there an outstanding warrant for the accused)
<i>Bugmy</i> factors	Any case where the accused's history of deprivation, trauma or abuse is relevant to the Court's bail decision
Cannot prepare defence in gaol	Accused cannot adequately prepare their defence in custody due to conditions, illiteracy, English difficulties and so forth.
Compliance	The accused has a demonstrated history of complying with bail and/or court orders.
Convicted	The accused has been convicted and seeks bail pending sentence
COVID-19	Any case where COVID-19 impacts (such as infection risk in custody or longer trial delays due to juries being cancelled) was a key factor

Catchword	Meaning
Delay	Accused will spend significant period on remand due to delays with trial
Domestic violence	The offences occurred in the context of domestic violence (often accompanied by breach AVO or ADVO)
Disabled child	Accused is parent of a child with special needs or a disability
Drug supply	Accused has been charged with drug supply or their charges are linked to drug dealing activity (ie: violent)
Family hardship	Accused being incarcerated on remand causes their family / dependants hardship (ie: accused is carer for sick / disabled relative)
First time in custody	If accused is remanded, it will be their first time ever in custody
GPS monitoring	Cases where the accused, at their own expense, proposes to wear a GPS bracelet monitored by a private company (which automatically alerts police if accused breaches house arrest, place restriction etc) as a bail condition which can mitigate against flight risk
Guilty plea	Where guilty plea is relevant to Court's assessment of bail application (eg observations about the presumption of innocence no longer applying)
Flight risk	Any case in which flight risk was a key factor (particularly cases where the accused had overseas family or connections)

Catchword	Meaning
Hardship in custody	Accused will suffer hardship due to poor health (or lack of adequate health care) or will experience arduous conditions due to threats from other inmates or solitary-like conditions in protective custody
Immigration detention	Any case in which the accused is a non-citizen and is likely to be detained in immigration detention if released from remand custody
Indigenous	Accused is an Indigenous person
Language	Accused will have difficulty in custody or preparing their defence due to language difficulties (CALD background, non-English speaker etc)
Large surety	Accused or their family can deposit a large surety for bail
Likelihood of custodial sentence	Any case where the likelihood (or otherwise) of a custodial sentence upon conviction is a key factor that was considered by Court. Includes where period of remand is compared to expected sentence.
Limited history	Accused has no antecedents (or very minor history) or their criminal history is irrelevant to current charges (ie: PCA history in Agg B&E)
Mature age	Accused is of mature age and has no or limited criminal history.
Medicinal cannabis	Accused has engaged in cannabis cultivation and/or supply for medicinal or altruistic purposes (ie: grows cannabis and manufactures oil to assist people suffering with medical conditions)

Catchword	Meaning
Medical issues	Accused has medical issues which may be negatively impacted by being in custody (or requires treatment in the community)
Mental illness	Accused has a mental illness and their need for treatment is relevant factor when considering bail
Oath vs Oath	The Crown case against the accused is oath vs oath with little or no evidence to corroborate complainant's evidence.
OMCG member	Accused is a suspected member of an OMCG or similar type of organised criminal group.
Poor history	Accused has significant criminal history and/or poor history of compliance with bail or court orders.
Recent birth	Accused (or their spouse) has recently given, or is about to give, birth
Rehabilitation	Proposed bail condition is to enter full-time drug rehabilitation (or similar)
s74 Factors	Any cases which addressed s74 and change of circumstances to justify further application for bail.
Self Defence	Where issue of self-defence is raised in bail application regarding strength (or otherwise) of the Crown case

Catchword	Meaning
Single parent	Accused is sole carer for their child/ren.
Strength of Crown case	Any case where the strength or weakness of the Crown case was a key factor that was considered by the Court.
Strong ties	Accused has strong family, community, employment or educational ties which mitigate against flight risk.
Substance abuse	Where the accused is struggling with substance abuse (eg drugs, alcohol) – often in conjunction with 'rehabilitation'
Youth	Child (under 18) or young adult with limited maturity.