

Affirmed and Memorandum Opinion filed August 15, 2023.



In The
Fourteenth Court of Appeals

NO. 14-23-00023-CR

EX PARTE FENG LU

**On Appeal from the 228th District Court
Harris County, Texas
Trial Court Cause No. 179941**

MEMORANDUM OPINION

Appellant Feng Lu brings this habeas appeal from from the trial court's four habeas-corporus judgments maintaining bail at \$5,000,000 in association with a capital murder charge. We affirm.

BACKGROUND

On or about January 25, 2014, Maoye Sun, Me Xie, and their two children Titus and Timothy Sun, were fatally shot inside their home. Appellant was interviewed several times in 2014 and 2015 in association with those murders, and he was arrested and charged with capital murder in September 2022.

On November 15, 2022, the trial court held a proof evident hearing. At the hearing, the trial court concluded the State had not met its burden of proving appellant should be held at no bond, and it set bail for appellant in the amount of \$5,000,000. Appellant filed an application for habeas relief on December 12, 2022 in association with the bail amount, contending that he lacked financial resources to pay the bail ordered by the court, but had sufficient assets to post bail through a bondsman if bail was set at \$100,000.

The trial court held a hearing on appellant's habeas application on December 16, 2022. Two witnesses testified at the hearing: Shelby Burns, a bail bondsman and attorney; and Ya Li, appellant's wife. Burns testified first, stating that he believed appellant and his wife could afford to post a \$500,000 bond through his company and his company could make such a bond on appellant's behalf, but Burns did not indicate any belief as to the highest bond he believed appellant could post. He did, however, testify Burns's own company could not post a \$5,000,000 bond, and that it would shock him if any bonding company in Harris County could do so. He also testified that appellant and his wife owned seven properties in Harris and Fort Bend Counties worth approximately \$1,871,000, but he was unaware how much equity appellant and his wife had in those properties. Burns further testified that his bail bond company would need collateral for a bond of at least \$50,000, but did not provide any specifics about how much collateral would be required generally or for appellant's \$5,000,000 bond in particular.

Ya Li testified next. She gave two estimates for how much equity she and appellant had in their Texas properties, first estimating equity at \$800,000 to \$1,000,000, then revising her estimate to \$700,000 to \$800,000. Relatedly, Ya Li also testified that appellant had one apartment in China that he owned, and he also owned his parents' apartment but that property was subject to probate issues. Ya

Li estimated the properties in China were worth about \$300,000. She also indicated that they were receiving some rental income from those properties, but she did not provide an estimate of how much rental income they were receiving. She further testified that she paid \$70,000 annually for their daughter's tuition, and that although some money for the tuition came from college savings, the remainder came from a salary of an unknown source and amount. Ya Li also testified that she had \$25,000 in savings in her account, but that the value of the account was \$50,000 when stocks were included. Ya Li further testified that she had \$420,000 in a 401(k) account, and appellant had a retirement account with approximately \$300,000 in assets.

At the conclusion of the hearing, the trial court rejected appellant's habeas application, finding expressly that the \$5,000,000 bond was not beyond appellant's financial means, and in reaching this conclusion, found appellant had "about \$800,000 in equity" in his properties in Texas, about \$750,000 - \$800,000 in stocks and retirement accounts, and \$300,000 worth of assets in property in China. The trial court further acknowledged the violent nature of the offenses appellant was accused of, as well as the appellant's ability to travel to China and ownership of assets in that nation, that allegedly made him a flight risk. The court further stated that, although a bail bondsman testified as to his skepticism that any bonding company could supply a \$5,000,000 bond, the trial court believed that bonding companies could pool their resources to make a \$5,000,000 bond. The trial court signed a judgment denying habeas relief that same day. This appeal followed.

ANALYSIS

We review a challenge to the excessiveness of bail for an abuse of discretion. *See Ex parte Rubac*, 611 S.W.2d 848, 850 (Tex. Crim. App. [Panel Op.] 1981). Under this standard, we may not disturb the trial court's decision if it

falls within the zone of reasonable disagreement. *See Ex parte Dupuy*, 498 S.W.3d 220, 230 (Tex. App.—Houston [14th Dist.] 2016, no pet.).

The right to be free from excessive bail is protected by the United States and Texas Constitutions. *See* U.S. Const. amend. VIII; Tex. Const. Art. I, § 11. The amount of bail required in any case is within the trial court’s discretion, subject to the following rules:

1. The bail shall be sufficiently high to give reasonable assurance that the undertaking will be complied with.
2. The power to require bail is not to be so used as to make it an instrument of oppression.
3. The nature of the offense and the circumstances under which it was committed are to be considered.
4. The ability to make bail is to be regarded, and proof may be taken upon this point.
5. The future safety of a victim of the alleged offense and the community shall be considered.

Tex. Code Crim. Proc. Ann. art. 17.15

In addition to those rules, case law provides that courts may consider the following factors: (1) the defendant’s work record; (2) the defendant’s family and community ties; (3) the defendant’s length of residency; (4) the defendant’s prior criminal record; (5) the defendant’s conformity with previous bond conditions; (6) the existence of other outstanding bonds, if any; and (7) the aggravating circumstances alleged to have been involved in the charged offense. *Rubac*, 611 S.W.2d at 849–50. The defendant bears the burden to prove the bail set is excessive. *Id.* at 849.

In both of his issues on appeal, appellant assails the trial court’s decision to maintain bail at \$5,000,000, respectively asserting that it abused its discretion in

doing so (appellant's first issue) and committed constitutional error in setting the amount so high that it committed the equivalent of holding appellant without bail (appellant's second issue).

Looming over both of these issues, and playing a decisive role in the second issue, is the extent to which appellant can afford the ordered \$5,000,000 bond. *Cf. Ex parte Robles*, 612 S.W.3d 142, 147 (Tex. App.—Houston [14th Dist.] 2020, no pet.) (“When bail is set so high that a person cannot realistically pay it, however, the trial court essentially displaces the presumption of innocence and replaces it with a guaranteed trial appearance.”). A \$5,000,000 bond is extremely high, and it would be out of reach for persons with ordinary means. However, the evidence presented at appellant's hearing indicates he has assets available to make bond. The evidence indicates appellant had upward of \$1,900,000 in assets available for making bond; the trial court's own observations about the assets available to appellant were consistent with the evidence presented at the hearing. Although Shelby Burns testified that his bonding company would not be able to post a \$5,000,000 bond, even assuming no bonding company in Harris County would be able to do so (an assumption that does not need to be evaluated here), we see no abuse of discretion or other error in the trial court's finding that multiple bonding companies could post a bond with their combined efforts. Moreover, although Shelby Burns testified that appellant would need to post collateral for a bond of at least \$50,000, he did not indicate how much collateral would be required for a bond of either \$50,000 or \$5,000,000; and in the absence of such evidence, we cannot assess how this would impact appellant's ability to post bond. As such, appellant did not meet his required burden to show that the bail ordered was excessive. *See Rubac*, 611 S.W.2d at 849.

We conclude that the trial court did not abuse its discretion when it found that appellant could afford bail in the amount of \$5,000,000, in light of the assets the evidence indicated were available to him. Accordingly, we overrule appellant's second issue.

As for appellant's first issue whether the trial court otherwise abused its discretion by setting bail at \$5,000,000, we will evaluate the issue in light of the factors provided by article 17.15 and *Rubac*. Regarding the statutory factors, as discussed above, the evidence indicated appellant could afford bail in the amount of \$5,000,000, which indicates bail was not being used as an instrument of oppression. *Ex parte Temple*, 595 S.W.3d 825, 830 (Tex. App.—Houston [14th Dist.] 2019, pet. ref'd). The killing of a family in their home, which underlies appellant's capital murder charge, is especially heinous and indicates the community's safety is at significant risk if appellant is released. *See Milner v. State*, 263 S.W.3d 146, 151 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (holding that a defendant's murder and attempted murder charges "indicate that he presents a risk to the safety of the community").

Turning our attention to the *Rubac* factors, although appellant was employed prior to his arrest, it remains unclear whether he would be similarly employed if he were released on bail. Appellant also has significant family ties in this country as well as in China, and although no evidence has been presented about how long appellant has resided in this country, his wife testified that he had traveled to China three or four times in the prior ten years. The only evidence presented as to appellant's criminal history prior to this charge indicates he was arrested in California in connection with an allegation of domestic violence, though no charges were ever brought and almost no details were provided about the nature of that arrest. No evidence has been provided that appellant has failed to conform

with prior bond conditions or has ever been subject to a bond before. And as mentioned above, there are myriad aggravating circumstances associated with appellant's capital murder charge associated with the death of a family.

As indicated previously, in order to be granted habeas relief, appellant must show his bail amount falls outside the zone of reasonable disagreement. *See Dupuy*, 498 S.W.3d at 230. He has not done so. Although appellant's bail amount is very high, we cannot conclude it falls outside that zone, particularly in light of the evidence of financial resources available to appellant, as well as the heinous facts associated with his alleged offense. Accordingly, he is not entitled to habeas relief, and we overrule his first issue.

CONCLUSION

We affirm the trial court's habeas-corporus judgment.

PER CURIAM

Panel consists of Justices Bourliot, Hassan, and Poissant.

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