

Flight Risk, Gravity of Crime Weighed in Setting Large Bond

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New York Law Journal

04-13-2012

A mother of four with no arrest record who has stayed close to her upstate home for most of the last decade has been jailed at Rikers Island for 50 days, unable to meet the \$2 million bond imposed after she was charged with running a Manhattan prostitution ring.

Legal observers contacted by the *New York Law Journal* offered varying opinions about whether the bail is too high in a case where Anna Gristina, 44, has so far been charged with a single nonviolent low-level felony. Their comments provide insight into how bail is set and reviewed in state courts.

Gristina was arrested after an investigation by Manhattan prosecutors who specialize in investigating allegations against police. They insist that substantial evidence suggests Gristina had been running a high-end prostitution business for years, that she profited handsomely and she had tried to launder and hide her proceeds. She has pleaded not guilty to the Class D felony of promoting prostitution, which carries a maximum jail time of 2 1/3 to seven years but does not require prison time on conviction.

Acting Supreme Court Justice Juan Merchan (See Profile) initially set the bond for Gristina. Justice Charles Solomon (See Profile) rejected a writ of habeas corpus calling for a lower bond. Her attorney, Gary Greenwald of Chester, said he will ask the Appellate Division, First Department, to overturn the bail in the next week.

"Keeping this woman from her home and her family without a rational bail is immoral and I think unconstitutional," Greenwald said at an April 9 hearing.

Greenwald said that his client's family does not have the means to meet her bond.

The purpose of bail is to ensure that a defendant shows up for trial. Among the factors listed in Criminal Procedure Law §510.30 for use in determining the amount are the defendant's character and reputation, financial resources, family ties and length of residence, criminal record, the sentence if the person could be convicted, the weight of evidence and the person's previous record in responding to court appearances or "with respect to flight to avoid criminal prosecution."

The Manhattan District Attorney's Office argues that Gristina is a flight risk, given that she already had "fled" to Montreal amid the 2008 investigation that led to Eliot Spitzer's resignation as governor.

"Gristina appears on tape discussing, inter alia, her connections in law enforcement and the fact she fled to Canada when some of those connections voiced concern that she was under surveillance," Assistant District Attorney Charles Linehan wrote in a response to her petition for writ of habeas corpus.

Countering the argument that Gristina is facing only a nonviolent, low-level charge, Linehan wrote that "most cases, murders or otherwise, don't feature a tape recording of the defendant bragging about her ability and willingness to flee the jurisdiction at the first sign of trouble."

Greenwald has pointed out that Gristina was not charged or arrested as the result of her trip to Canada. And some criminal attorneys who are not involved in the case question whether the prosecution's rationale is sufficient to justify a seven-figure bond in these circumstances.

"It's uncommon, in my experience, for a high bail because of conduct in a much earlier incident" unrelated to the current charge, said Joel Cohen, a criminal defense partner at Stroock & Stroock & Lavan who writes a *Law*

Journal column on the ethics of criminal practice.

'Lurid Prostitution Press Case'

If the motive of a high bail is to ensure defendants return to court, defense lawyers point to alternative methods such as electronic monitoring, house arrest and confiscating passports.

"It seems like it's an inordinately high amount of bail for a person with no record," said Daniel Parker, who at one point represented Cecil Suwal, the "madam" of the Emperor's Club tied to the scandal involving Spitzer.

Federal court set bond at \$500,000 for Suwal. Charged with money laundering and conspiracy to violate federal prostitution statutes, she faced up to 20 years in prison but ultimately was sentenced to six months.

"One might wonder if the notoriousness of [the Gristina] case has influenced the bail decision," said Parker, of Parker and Carmody in Manhattan. "The fact that it's a lurid prostitution press case might have some effect on a court's decision in terms of setting bail."

In another high-profile case in New York, Sydney Biddle Barrows, the alleged "Mayflower Madam" who was charged by the Manhattan District Attorney's Office in the 1980s, had bail set at \$7,500, according to news reports.

Heidi Fleiss, who was accused of running a call-girl ring in California, was initially charged in August 1993 with felony pandering and a drug violation and was set free on a \$100,000 bail, news reports said.

Suspects in Manhattan murder cases are frequently held without bail, but defendants in other violent cases often get lower bail. Michael Enright, the film student accused of slashing a Muslim taxi driver's neck in Midtown, was charged with attempted murder as a hate crime, assault, aggravated harassment and criminal possession of a weapon, but was released in October 2010 on \$500,000 bail.

Some attorneys who have represented defendants charged with promoting prostitution say that Gristina's bail is unprecedented for that charge alone.

Gristina's co-defendant Jaynie Baker, who is accused of helping to run the prostitution ring, pleaded not guilty and was released on a \$100,000 bond.

Peter Brill said that a promoting prostitution charge usually comes with nominal bail, such as under \$50,000, or the defendant is released on her or his own recognizance. In a large operation with ties to organized crime, Brill said he has seen bail for promotion of prostitution in the low hundreds of thousands of dollars.

However, cases with underage girls or women held captive can carry higher bail, said Brill, a former assistant district attorney in Nassau County now practicing in Manhattan at the Brill Legal Group.

Jeremy Saland, a criminal defense attorney at Crotty & Saland and a former Manhattan assistant district attorney, said he wouldn't be surprised to see a seven-figure bail in connection with a large criminal enterprise.

Prosecutors argue that Gristina has ties to "a number of high-wealth individuals" who could help her flee.

In particular, "a successful lawyer and longtime client and benefactor helped her get started in the prostitution business and assisted (Gristina) in laundering her illicit proceeds," Linehan, the assistant district attorney, wrote in the response to the habeas petition.

Linehan added that, according to Gristina, "her lawyer friend had locked money away for her in the event she was ever apprehended, so that she would be taken care of when she was released."

Criminal defense attorneys say a high bail can be used strategically for prosecutors who are looking to resolve the case or for cooperation in an investigation.

"People generally are more easily manipulated when their freedom is being withheld from them," Saland said.

"From the perspective of a prosecutor, you have someone where you want them. You have control when that

person is on Rikers Island," Saland said, adding that is not a valid reason for a high bail.

Bennett Gershman, a Pace Law School professor and a former prosecutor in Manhattan, said using bail as a hammer for cooperation sometimes happens, although it shouldn't.

"Prosecutors will use all the weapons they have if they want to be aggressive in their investigation of corruption," he said.

Foreign Citizenship

Criminal defense lawyers say foreign citizenship is usually a significant factor in setting bail.

Gristina says she has a British passport, according to prosecutors' court documents. Greenwald, her attorney, confirmed she is not a U.S. citizen.

"Anytime someone is not a citizen, there is always going to be an increase in bail as a result of that," said Matthew Galluzzo, also a former Manhattan prosecutor and now a criminal defense attorney at Galluzzo & Johnson whose practice includes representing clients with prostitution charges.

Galluzzo said that Gristina's bail seemed high, but "wasn't totally out of line."

James Cohen, an associate professor at Fordham University School of Law who teaches criminal law and professional responsibility, noted the bail was high for the charge, but the fact that Gristina traveled to Canada during another investigation is "pretty concrete evidence of a risk of flight."

"Under all the circumstances, the bail doesn't seem that crazy to me," he said. "It sounds like there's some legitimate concern about the likelihood that she's going to return to court. When there is that legitimate concern, that's exactly why there's a high bail."

DSK Comparison

A few lawyers compared Gristina's circumstances to Dominique Strauss-Kahn's criminal case, another high-profile matter prosecuted by the Manhattan District Attorney's Office. The French citizen was accused of sexually assaulting a hotel maid, but criminal charges were ultimately dropped.

Strauss-Kahn was held without bail for nearly a week after his May 2011 arrest. His lawyers ultimately persuaded a judge to release him after he posted \$1 million in cash and \$5 million in a property bond. The court also imposed extensive conditions, including confinement in an apartment rented by his wealthy wife, an ankle monitor, surveillance cameras and armed guards, according to news reports.

"If a man who is accused of rape is permitted to get out of jail and forfeit his passport and have a reasonable amount of bail that he can afford, there is no reason that a woman accused of a lesser crime can't get the same thing," Saland said.

Laura Brevetti, a former federal and state prosecutor in New York and a white-collar criminal defense partner at K&L Gates, noted that, generally, the chance of bail being overturned on an appeal is low.

No matter the reasons for a high bail figure, Brevetti said she believed the mystery surrounding prosecution's motives in this case might be creating its own problems.

"Everyone starts speculating" on why Gristina is kept in jail on a high bail, Brevetti said. "I think they come up with improper motives on the part of authorities and because of that it undermines the public confidence that things are being done fairly."

She added, "You either explain it very carefully or you lower bail."