

IN THE HIGH COURT OF FIJI
AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISC. CASE NO.: HAM 028 OF 2007

BETWEEN:

NIKO BOLAVAGONE

Applicant

AND:

THE STATE

Respondent

Counsel: Ms. R. Senikuraciri for the Applicant
Mr. A. Rayawa for the State

Date of Hearing: Wednesday 19th March, 2008
Date of Ruling: Friday 28th March, 2008

RULING

- [1] This is an application for bail pending trial. The applicant is charged with the murder of Ravin Prakash. The trial is set for hearing on the 7th of July 2008.
- [2] The applicant is represented by the Legal Aid Commission. In his affidavit in support of the application, the applicant says that he was arrested for the alleged murder on the 22nd of May 2006. He was denied bail when he first appeared in court to answer the charge. The applicant contends that he had been in custody pending trial for nearly 16 months which violates his right to the presumption of innocence.
- [3] On the 6th of October 2006, the applicant was convicted of larceny in an unrelated matter and sentenced to 3 months imprisonment.
- [4] After serving two months of his sentence, the applicant was released from the prison to serve the remaining sentence extramurally on the 6th of December 2006.

- [5] It is unclear why the Prison Authorities released the applicant from their custody when the applicant was placed in the remand centre pending his trial in this case. By right, the applicant should have been moved to the remand centre after he had served his imprisonment sentence in the other case.
- [6] On the 30th of March 2007, the applicant failed to appear in court when the case was called before Winter J for a pre-trial conference. Counsel for the applicant informed the court that the applicant had not contacted her since he was released from the prison. Winter J issued a warrant to arrest the applicant because the applicant was aware of the hearing on the 30th of March 2007 and he failed to appear in court.
- [7] On the 11th of April 2007, the applicant was arrested on the bench warrant issued by Winter J. His reason for the non appearance was that he was mistaken about the pre-trial conference date. The applicant was remanded in custody. -
- [8] State Counsel opposes the application saying the charge is seriousness, a trial date had already been set for July and the applicant has breached bail condition before by failing to appear in court for hearings.
- [9] Under the Bail Act there is a presumption in favour of bail which has to be rebutted by the party opposing bail. The presumption is discharged by the party opposing bail if the applicant has previously breached a bail undertaking or condition. Nevertheless, the court must still consider the matters in section 19(1) of the Bail Act, namely:
- (a) that the accused is unlikely to surrender to custody and appear in court
 - (b) the interest of the accused will not be served through granting bail or
 - (c) granting bail would endanger the public interest or make the protection of the community more difficult.

- [10] In my view, proof of any one condition specified in section 19(1) would suffice to refuse bail.
- [11] I accept that the applicant is entitled to the presumption of innocence and that he had spent nearly 16 months in remand pending trial in this matter. In this regard the interest of the applicant will not be served by refusing bail. However, this is not the only factor to be considered. The overall interests of justice should be taken into account in considering whether bail should be granted.
- [12] My concern is that a trial date had been fixed and the applicant has a history of not appearing in court for hearings.
- [13] The applicant admits that he has breached bail conditions in unrelated cases by not appearing for hearings. Ms. Senikuraciri submits that the applicant is indigent and not very intelligent to understand the court procedures. Finally, counsel submits that the applicant should be given a second chance.
- [14] In my view, non appearance in court for hearings by an accused who was granted bail should not be taken lightly by the courts. Such conduct affects timely disposal of criminal cases and the administration of justice. There has already been some delay in the hearing of this matter. The hearing of the trial must proceed as scheduled. Given the applicant's history of not appearing for hearings in court, I am not satisfied that it is in the interests of justice to grant him bail.
- [15] The application for bail pending trial is refused.



Daniel Goundar
JUDGE

At Suva
Friday 28th March, 2008

Solicitors:

Legal Aid Commission, Suva for the Applicant
Office of the Director of Public Prosecutions, Suva for the State