

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION
CRIMINAL MISCELLANEOUS CASE NO: HAM 167 OF 2014

BETWEEN : LAITIA VUIVUDA

Applicant

AND : STATE

Respondent

Counsel : Applicant in Person
 Mr. J. Niudamu for the Respondent

Date of Hearing : 19 August 2014
Date of Ruling : 20 August 2014

RULING

1. The applicant is charged before the Nadi Magistrate Court with one count of Criminal Intimidation contrary to Section 375 (1) (a) of the Crimes Decree, one count of Aggravated Robbery contrary to Section 311 (1) (a) and (b) of the Crimes Decree, one count of Theft contrary to Section 291 (1) of the Crimes Decree and one count of Damaging Property contrary to Section 369 (1) of the Crimes Decree. His application for bail was refused by the learned Magistrate on 28th April 2014 on the basis that there is no change of circumstances from the earlier bail applications. The applicant had appealed to this Court.
2. Respondent has filed detailed written submissions.
3. The applicant submits following grounds for bail:
 - a) There is presumption in favour of granting bail,
 - b) To get legal assistance,
 - c) He is in remand for more than seven months,

d) Strength of the prosecution case.

4. The State Counsel objects for bail and submits following factors:

- a) Accused is charged with a serious offences for which if convicted he may face an imprisonment term up to 20 years
- b) There is strong case against the accused
- c) His actions would endanger the public considering his previous convictions,
- d) He will not appear in Court to face charges considering previous record of escaping from arrest.

5. I consider Section 3 of the Bail Act and it states as follows:

- (1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
- (2) Bail may be granted by court, subject to Section 8 (2), by a Police officer.
- (3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.

6. The presumption of bail is displaced when the person seeking bail has previously breached a bail undertaking or a bail condition according to Section 3 (4).

7. Considering the decision made by Justice Shameem in **Tak Sang Hoa v The State** (2001) FJHC 15 and Justice Fatiaki in **Adesh Singh & Others** Miscellaneous Case No. 11 and 12 of 1998, I consider following factors:

- a) The presumption of innocence;
- b) Whether the accused to appear to stand trial;
- c) Whether bail has been refused previously;
- d) The seriousness of the charges;
- e) The likelihood of the accused re-offending on bail;
- f) Any interference with prosecution witnesses;
- g) The accused's character;
- h) The accused's right to prepare his defence;
- i) The likelihood of further charges;
- j) The State's opposition to bail.

8. Considering both the application for bail and submission by the State, I am of the view that the applicant falls within the ambit of Section 19 of the Bail Act.

9. Now I consider and refer to Section 19 (1) of the Bail Act;

19 (1) An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be,

- (a) The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
- (b) The interests of the accused person will not be served through granting bail; or
- (c) Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

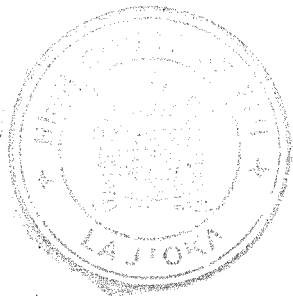
10. In **Isimeli Wakaniyasi v. The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) Justice Gounder states that:

"All three grounds need not to exist to justify refusal of bail. Existence of any one ground is sufficient to refuse bail."

11. Considering all above, I am of the view that it is with public interest that the Applicant remains in remand pending trial. Applicant has 67 previous convictions during last ten years and most of those cases are Theft and Robbery related offences. Further, there is likelihood of applicant might not appear in Court considering his six previous conviction of escaping from lawful custody.

12. The learned Magistrate was correct in refusing bail to the applicant and I find no reason to interfere with his ruling dated 28th April 2014.

12. The appeal is dismissed and bail is refused.



At Lautoka
20th August 2014

A handwritten signature in black ink, appearing to read "Sudharshana De Silva".

Sudharshana De Silva
Judge

Solicitors: Applicant in person
Office of the Director of Public Prosecutions for the Respondent