

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 165 OF 2015

BETWEEN : SOSICENT TOA

Applicant

AND : STATE

Respondent

Counsel : Mr. K. Tunidau for Applicant
Mr. A. Singh for Respondent

Date of Hearing : 27th of November 2015

Date of Ruling : 15th of December, 2015

BAIL RULING

1. The Applicant files this Notice of Motion seeking an order that the Applicant be released on bail. The Notice of Motion is being supported by an affidavit of the applicant stating the grounds of this application. The Applicant is being charged with one count of Attempted Unlawful Importation contrary to Section 4(1) of the Illicit Drugs Control Act and one alternative count of Attempted Unlawful Importation contrary to Section 4(1) and 9 of the Illicit Drugs Control Act.
2. The Respondent filed an affidavit of D/Cpl Isireli Waqairalia stating their objection for this application. Subsequently, the motion was set down for hearing on 27th of November 2015, where the learned counsel for the Respondent informed the court that he relies on the affidavit of D/Cpl Waqairalia and does not intend to file any submissions. The Applicant filed his written submissions. Having considered the notice of motion, respective

affidavits of the parties and written submissions of the applicant, I now proceed to pronounce my ruling as follows.

3. In pursuant of Section 13 of the Constitution and the Section 3 (1) of the Bail Act, every person has a right to be released on bail unless it is not in the interest of justice.
4. The primary consideration in granting bail is the likelihood of the accused person appearing in court. Section 18 (1) of the Bail Act has stipulated that a person making an application against the presumption in favour of bail must deal with the following grounds, that;
 - i. *The likelihood of the accused person surrendering to custody and appearing in court,*
 - ii. *The interest of the accused person,*
 - iii. *The public interest and the protection of the community,*
5. The objections of the Respondent for bail are mainly founded on the grounds of unlikelihood of appearing in court and on public interest. The Respondent contended that the Applicant is charged with a serious offence, which carries a maximum penalty of life imprisonment or \$ 1,000,000 fine. The Respondent further submitted that the Applicant has no permanent place of resident in Fiji Islands as he is an Australian citizen.
6. The Applicant stated in his affidavit that he was granted bail by this court in another matter of similar nature and will abide by any bail condition imposed by this court.

7. The Applicant is an Australian Citizen though he is born in Fiji. There is no any evidence that he has any property or family interests in Fiji. He has rented a house belongs to the parent of his co-accused person. There is no evidence to support that whether he could afford to reside in Fiji since he has no business or financial interest in Fiji if he is granted bail.
8. The offence that the Applicant is being charged is a very serious offence. It involves with sophisticated maneuver and planning. Justice Madigan in Xhemali v State (2011) FJHC 148; CRC 050.2011 (8 March 2011) has outlined the serious nature of the offences under the Illicit Drugs Control Act, and its adverse impact on public interest, where his lordship found that;

“the potential charge will be very serious. Never before in Fiji have dangerous and addictive drugs in such quantity been imported by such sinister means. The method displays obvious sophisticated planning and the latent risk to the vulnerable and uninformed consumers in our society is alarming. It is definitely in the public interest that the perpetrators of this consignment be brought to justices as soon as possible, and to this end it would be perilous to admit this applicant to bail”.

9. Having considered the observations of Justice Madigan in Xhemali (supra), Justice Nawana in Kreimanis v State (2012) FJHC 1316; HAM86.2012 (6 September 2012) found that;


“Recently, in Xhemali v State [2011] FJHC 148, Madigan J., dealing with an identical case of a foreigner suspected of having been in possession of a large quantity of an addictive drug, held that it was definitely in the public interest that the perpetrators in possession of such a large consignments of illicit drug be brought to justice as soon as possible; and, to that end it would be perilous to admit such suspect-applicants to bail.

Accordingly, I conclude that the grant of bail to the applicant in this case is certainly not in public interest, which attracts paramount consideration in granting bail under the Bail Act of Fiji. In the result, bail is refused. Refusal of bail, even after ten-month long detention on remand, is within the statutory framework of the Bail Act - especially under Section 13 (4) of the Act - which empowers court to detain an accused on remand for a maximum period of two years before the trial in appropriate circumstances."

10. In view of the observations made in those two judicial precedents, it appears that the judicial approach in granting of bail for the offences under the Illicit Drugs Control Act is heavily depended on the issue of public interest and the nature and seriousness of the offence.
11. The test of refusing bail is that the court is not required to satisfy that the circumstances alleged in the objection will actually occur in the event of bail being granted. The court is only required to satisfy that there are substantial ground to believe that they would occur.
12. The Respondent stated that this offence involves with large amount of illicit drugs, worth of millions of dollars. This reflects the serious nature of this offence and it obviously attracts a heavy penalty if the Applicant is found guilty.
13. Having considered the background and community ties of the Applicant, the nature and seriousness of the offence, the strength of the prosecution case and the severity of the likely penalty for this offence, I am satisfied that the Appellant is unlikely to surrender to custody and appear in court to answer the charge if he is granted bail.

14. Having considered the reasons and the judicial precedents discussed above, I refuse and dismiss this application for bail of the Applicant on the grounds of unlikelihood to surrender to custody if granted bail and on interest of justice.
15. The applicant may invoke the jurisdiction of the Fiji Court of Appeal to review this ruling pursuant to section 30 (4) of the Bail Act.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
15th of December 2015

Solicitors : Kevueli Tunidau for the Applicant
Office of the Director of Public Prosecutions