

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 210 OF 2015

BETWEEN : **JOSEPH NAYEF ABOURIZK**
Applicant

AND : **STATE**
Respondent

Counsel : **Mr. Iqbal Khan for Applicant**
Ms. Kiran for Respondent

Date of Hearing : **8th of December 2015**

Date of Ruling : **17th of December 2015**

BAIL RULING

1. The Applicant files this notice of motion seeking an order that the Applicant be granted bail. The motion is being supported by an affidavit of the Applicant stating the grounds of this application.
2. Upon being served with the notice of motion, the Respondent filed an affidavit of Detective Inspector Maciu Vava, stating their objections for this application. Subsequently, the matter was set down for hearing on 8th of December 2015, where the learned counsel for the Respondent failed to appear in court. Hence, I presumed that the Respondent would rely only on the affidavit of D.I. Vava. The learned counsel of the Applicant filed his written submissions and did not make any oral submissions or arguments. Having carefully considered the respective

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

3. The Applicant is being charged with one count of Unlawful Possession of Illicit Drugs contrary to Section 5(a) of the Illicit Drugs Control Act. This is the second bail application of the Applicant, where his previous bail application was refused on the grounds of unlikelihood of surrender to custody and on the interest of justice.
4. Section 30 (7) of the Bail Act states that;

“A court which has power to review a bail determination, or to hear a fresh application under section 14 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of afresh application, refuse to hear the review or application”.
5. Accordingly, a hearing of afresh bail application constitutes two components. The applicant is first required to satisfy the court that there are special facts or circumstances to justify the making of afresh application. If the court is satisfied with the first component, it would then proceed to hear the afresh bail application.
6. The Applicant did not disclose the fact that this is his second bail application. However, having considered what is being mentioned in the previous bail application and the present application, I find both applications are founded on the same grounds apart from the following new issues. They are that;

- i. The Applicant proposes Wame Waqanaceva, a prison officer as his proposed surety,
 - ii. Propose to deposit \$ 150,000.00 as a security,
 - iii. Propose to reside with the said proposed surety,
 - iv. Need to prepare his defence with his counsel,
5. I now proceed to discuss abovementioned new issues in turn.
6. The proposed surety is presently working at the Fiji Correctional Service. There is no evidence of the nature of his relationship with the Applicant. The Applicant is an Australian Citizen and arrested for this alleged offence while he was visiting Fiji in July 2015. It is important that the proposed surety must satisfy the court that he has a close and strong relationship. Moreover the surety must have an authority and control over the person to whom he agreed to be a surety.
7. Justice Shameem in **Kumar v The State (2005) FJHC59; HAM0008D.2005S (23 March 2005)** has discussed the duty of the surety in a similar circumstances as of this instant case. His Ladyship having found the Applicant was a foreigner and the relationship of the applicant and the proposed surety is slight, held that;


“The overriding principle in bail applications is whether the applicant will surrender to bail. Most applicants for bail, who have no history of absconding or of re-offending on bail, can offer safeguards against a failure to surrender. Sureties are usually offered, who are in a position to ensure the applicant’s presence in court, not only because of the fear of losing the money guaranteed if there is non- appearance, but also because of some ability to insist on the applicant’s obedience to bail conditions”

8. In this instant case, the Applicant is a foreigner and arrested for this alleged offence while he was visiting Fiji and was remanded. In the absence of any evidence on the nature of their relationship, only possible speculation that I could reach is that the proposed surety only had a professional relationship with the Applicant as a prison officer and inmate. In such circumstances, I do not find the proposed surety would fall within the definition of surety as stipulated under Section 2 of the Bail Act.
9. The Applicant has only stated that he could stay with his proposed surety, but did not provide any particular address or a place of resident. In the absence of such evidence, I refuse to consider this fact as a change of circumstances.
10. Once again the Applicant merely stated that he could deposit \$. 150,000 as a security, but no evidence to substantiate it. I therefore, refuse to consider this fact as well as a change of circumstances,
11. Section 13 (1) (c) of the Constitution has stipulated that it is a right of a detained or arrested person to communicate with a lawyer of his choice in private at the place of his detained. Wherefore, I do not find the detention of the Applicant in the remand centre would adversely refrain him in his preparation of his defence.
12. In view of the reasons discussed above, it is my opinion that the Applicant has failed to satisfy the court that there are special facts or circumstances to justify the making of afresh application for bail.
13. The Applicant is charged with a serious offence under the Illicit Drugs Control Act, which carries a maximum penalty of life imprisonment or \$ 1,000,000 fine.

The Applicant has no family or financial interest in Fiji. Under such circumstances, it is my opinion that there is a substantial ground to believe that the Applicant may fail to appear in court if he is granted bail.

14. In my conclusion, 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

17th of December 2015

Solicitors : Messrs Iqbal Khan & Associate for the Applicant
Office of the Director of Public Prosecutions