IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 70 OF 2015

BETWEEN	:	**APAKUKI COKA**
		APPLICANT
AND	:	**STATE**
		RESPONDENT
Counsel	:	**Applicant in person** **Mr. S. Babitu for Respondent**
Date of Hearing	:	**05th June 2015**
Date of Ruling	:	**05th June 2015**

BAIL RULING

1. This is an application for bail filed by the applicant (accused) in person seeking bail.

2. It is not clear whether the applicant, by making this application, is invoking the review jurisdiction or the original jurisdiction of this Court under Section 30 (7) of the Bail Act.

3. Whatever the case maybe, this Court can hear the application only if it is satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application.

4. The Resident Magistrate of Nadi has, by her ruling dated 16th February 2015, refused the second bail application made by the applicant consecutively.

5. Aggrieved by the aforesaid ruling this application has been filed.

6. In response to the application filed before this Court, the State has filed its response objecting to bail.

7. According to Section 14 (1) of the Bail Act, an accused can make any number of bail applications. However, power to review an existing bail order should be exercised only if the Court is satisfied that there are special facts or circumstances that justify a review.

8. According to Section 30 (7) of the bail Act, Court which has power to review a bail application 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 a fresh application, refuse to hear the review or application.

9. Since the learned Resident Magistrate of Nadi has already made orders in the Magistrate's Court in respect of the bail application of the applicant, I am inclined to consider the application before me as that of a review.

10. I have considered the facts filed by the applicant. I am convinced that the applicant has not revealed any new facts or circumstances that were not before the Magistrate's Court which justify a review. There is no change in circumstances.

11. On a second or subsequent application for bail, Magistrates need only ask first whether there had been a material change in circumstances since the original order. If there had been no change, there was no need to look at the facts underlying the previous refusal of bail.

12. However, it is just and fair that Section 30 (7) of the Bail Act read and understood in the light of the judgment of Lord Justice Donaldson in *Regina v Notingham Justices, ex parte Davis; QBD (1981) QB.38,71 Cr.App.R.178 DC*

13. The Lord Justice Donaldson said;

> *...The Court considering a fresh the question of bail is both entitled and bound to take account not only of the change in circumstances which has occurred since the last occasion but also all circumstances which, although then existed, were not brought to the attention of the Court. To do so is not to impugn the previous decision of the Court and is necessary in justice to the accused. The question is a little wider than 'Has there been a change?; it is Are there new considerations which were not before the Court when the accused was last remanded in custody?...*

14. The learned Magistrate who reviewed her own previous bail decision has stated which I quote:

> *....Considering his objection about his confession and he is the sole breadwinner in the family, he never mention about it in his first bail application which he knew from the beginning....*

15. It is clear that the learned Magistrate, when she considered the second bail application, has refused to take cognizance of some of the grounds that were not brought to her notice in the first bail application. However, in view of the words expressed by Lord Justice Donaldson, she is both entitled and bound to take account not only of the change in circumstances which has occurred since the last occasion but also all circumstances which, although then existed, were not brought to the attention of the Court.

16. Although the accused's opposition to the confession and the fact that he was the sole breadwinner of the family were not brought to the notice of the Magistrate in the first bail application despite his knowledge about them from the beginning, the learned Magistrate was still bound to take account of them if they were invoked in the second application.

17. Since the learned Magistrate has failed to take some matters into consideration in the second bail application, this Court assumes jurisdiction under Section 30 (7) to review the existing bail order.

18. Now I proceed to review the magisterial order according to Section 30 (10) of the Bail Act.

19. In response to the application, the State has filed its response and both parties have filed submissions. I carefully considered all the material before me.

20. According to Section 3 (1) of the bail Act every accused has a right to be released on bail unless it is not in the interests of justice that bail should be granted.

21. It is clear that the right to bail guaranteed to an accused under the Bail Act is conditional upon the primary consideration of interest of justice.

22. Justice is for all. Not only for the accused, but for everybody who would be affected by his or her conduct, victims, witnesses and the society (potential victims) as a whole.

23. The presumption in Section 3 (3) of the Bail Act in favour of granting of bail can be displaced when there are valid grounds for detention.

24. The State has filed a response supported by an affidavit of WDC Irene of the CID, in order to rebut the presumption and objected to bail being granted to the accused on the grounds stated therein.

25. According to Section 17 (1) of the Bail Act, the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer the charge laid against him.

26. The applicant is charged with the offence of Aggravated Robbery contrary to Section 311(1) (a) of the Crimes Decree, 2009.

27. He has six previous convictions of similar nature all committed during 2010-2012 period and a pending case of similar nature in the Magistrate Court of Nadi.

28. The applicant has drawn the attention of this Court to Section 216 of the Criminal Procedure Decree whereby the Court is precluded from reading out previous convictions unless and until the accused has either pleaded guilty or to or been convicted of the subsequent offence.

29. That Section does not preclude the Court, in a bail matter, from looking at previous convictions in order to satisfy itself regarding the likelihood of the accused person committing an offence while on bail.

30. The charge against the accused is serious and carries a maximum punishment of twenty years imprisonment, if found guilty.

31. There is an alleged confession to the crime by the applicant and voluntariness of which can only be tested at the *voire dire* hearing.

32. In these circumstances there is a strong likelihood of the accused not appearing in Court if granted bail.

33. As regards the interests of the accused person, the applicant seems to have stated in his second bail application to the Magistrate's Court that he is the sole breadwinner of the family. There is no proof about that and even if proved, that is only a one matter that the Court is bound to consider out of many other considerations in Section 19 of the Bail Act, some of them may even supersede the ones that the applicant is invoking.

34. In *Isimeli Wakaniyasi v. The State (2010) FJHC 20; HAM 120/2009 (29th January 2010)* Justice Gounder (referring to Section 19 of the Bail Act) states that :

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

35. As regards the public interest and the protection of the community, the accused is alleged to have committed the present crime whilst another case is pending against him in the Magistrate's Court.

36. Applicant has six previous convictions of similar nature all committed during 2010-2012 period.

37. There is a high risk of reoffending if granted bail.

38. Hence, refusal of bail would be in the interest of the public and to the protection of the community.

39. I am fully in agreement with the learned Magistrate's finding where she has taken into consideration the fact that the applicant had six previous convictions for similar offences and a suspended term of imprisonment.

40. The applicant has shown a tendency of reoffending which concerns the safety of others. Granting of bail to the applicant would endanger the public interest and make the protection of the community more difficult.

41. I am conscious of the right guaranteed to an accused under Section 3 of the Bail Act and the presumption of innocence in favour of the accused. However, the right guaranteed under the Bail Act is subjected to the rights of other people to exercise their rights. Interest of justice can only be achieved by striking a right balance between the rights of an accused and the rights of the community, especially potential victims of crimes.

42. I consider the bail application is frivolous and vexatious. I therefore, affirm the ruling of the Resident Magistrate of Nadi and refuse to grant bail to the applicant.

43. 30 days to appeal.

HIGH COURT OF FIJI LAUTOKA

Aruna Aluthge
Judge

At Lautoka
05th June 2015