

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 77 OF 2015

BETWEEN : **LLOYD RICHARD SENIKAUCAVA**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in person**
Mr. Niudamu for Respondent

Date of Hearing : **09th June 2015**

Date of Ruling : **12th June 2015**

BAIL RULING

1. The applicant, charged with the offence of Murder contrary to Section 237 of the Crimes Decree No. 44 of 2009, has filed this bail application seeking bail.
2. This is the first bail application since he was remanded by the Residence Magistrate of Sigatoka on 17th November 2014.
3. The State has filed its response, supported by an affidavit of PC Misidomo Baseisei, and seeks to rebut the presumption in favour of bail on the grounds stated therein.
4. In the bail application, the applicant seeks bail on the following grounds;

- a. He has a right to be released on bail pending trial under the Bail Act.
 - b. Presumption of innocence and presumption in favour of bail under the Bail Act are in his favour.
 - c. Difficulties faced by his dependents, his ailing father and two children.
 - d. Condition of the Natabua prison is bad and it lacks basic facilities to prepare for his defence.
 - e. Delay on the part of the prosecution is denying him the right to a fair trial.
5. In the affidavit filed, the State seeks to displace the presumption in favour of bail, dealing with the grounds stated in Section 18 (1) of the Bail Act. Affidavit of PC Miosidomo Baseisei is based on the following grounds;
- a. Charge against the applicant is serious and entails severe punishment, if found guilty.
 - b. Applicant has a pending Rape case in Sigatoka Magistrate's Court.
 - c. Bail condition imposed by the Magistrate has been violated by reoffending.
 - d. Case against the applicant is strong and likelihood of not appearing in court to face trial is high, if granted bail.
 - e. High risk of interference with prosecution witnesses.
6. The presumption in Section 3 (3) of the Bail Act in favour of granting of bail can be displaced when there are valid lawful grounds for detention.
7. 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.
8. The right to bail guaranteed to an accused under the Bail Act is conditional upon the primary consideration of interest of justice. Justice is not only for the accused, but for everybody who would be affected by his or her conduct, victims, witnesses and the society as a whole.

I now venture in to consider each of the criteria in Subsection 18 (1) of the Bail Act, dealing with the submission made on each one.

As regards likelihood of the accused person appearing in Court to answer the charge laid against him...

9. 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.
10. As per the affidavit filed by the State, the applicant has a pending case (CF: 365 of 2008) charged with one count of rape, contrary to Section 140 and 150 of the Penal Code in the Sigatoka Magistrate's Court.
11. Since the charge is yet to be proved in the rape case, the applicant is presumed innocent until proven guilty. Mere pendency of a criminal case against the applicant cannot be regarded as an indicator of his previous criminal history.
12. The applicant has not denied the fact that there is pending case against him in the Magistrate's Court of Sigatoka. He states, in his lengthy submission, that the pending rape case had been there for the last seven years without resolution, denying him the right to a fair trial.
13. The case number suggests that the year of institution of the rape case is 2008. The State is unable to give any explanation why it has been pending for such a long time without resolution. Hence, the pending rape case against the applicant, in any case, should not be given any consideration as an indicator of applicant's previous criminal history in displacing the presumption.
14. The charge against the accused in the present case is serious and carries a severe punishment, if found guilty. However, seriousness of the charge alone cannot be a good justification to refuse bail.
15. In *Tak Sang Hao v The State (2001) FJHC 15L; HAM 003d..2001*, Justice Shameem stated that even though the seriousness of the offence is relevant but not the predominant factor.
16. According to the affidavit filed by the State, the prosecution case is strong. The confession given by the applicant to police, recovery of evidence during reconstruction and the statements recorded by witnesses during investigation support the prosecution's version.

17. On perusal of disclosures filed by the State in the substantive matter, I find that the prosecution case is mainly based on the confession and on circumstantial evidence. There are no eye witnesses. However, I am satisfied that the prosecution case is well founded and there is a *prima facie* a case against the applicant.
18. The applicant has a history of violating bail conditions. He has admitted that there was a pending rape case against him in the Magistrate's Court of Sigatoka when he was arrested for the present case. Apparently, there had been a considerable delay in resolution of the rape case. The applicant is nevertheless supposed to adhere to the bail conditions imposed by court as long as they are in force.
19. Having considered the above, I am of the view that there is a strong likelihood of the accused not appearing in court if granted bail.

As regards the interests of the accused person...,

20. *the applicant states that:*
 - (a). there is an unreasonable delay on the part of the prosecution to file *voir dire* disclosures to prepare for his defence, violating his right to know the case against him. By denying him a speedy trial, his fair trial guarantees in the Constitution are being violated.
 - (b). he is a father of two children, aged 9 and 2 years, who are being looked after with great difficulty by his 58 year old ailing, unemployed father, in his absence. Being in remand for a long period of time, his dependents, especially his children suffer.
 - (c). Natabua Prison where he is currently being detained lacks basic facilities for human sustenance and to prepare for his defence.
21. On perusal of the substantive file, I find that the applicant has been in remand for five months since 17th of November 2014. The case has been transferred to this court on 19th November 2014. *Voir dire* disclosures have already been filed and the State has moved to file additional *voir dire* disclosures for which another date has been granted.

22. There is a considerable delay in filing *voir dire* disclosures. The Court can understand the difficulties faced by the State in prosecuting a complex case like this. However, the Constitution of Fiji, the Supreme Law of the land, must be upheld and enforced.
23. The Constitution of the Republic of Fiji provides that;
Every person charged with an offence has the right—
- (a). to be given adequate time and facilities to prepare a defence, including if he or she so requests, a right of access to witness statements; Section 14-(1) (c);
 - (b). to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence; Section 14-(1)(e);
 - (c). to have the trial begin and conclude without unreasonable delay; Section 14-(1) (g).
 - (d). every person charged with an offence has the right to a fair trial before a court of law; Section 15 (1).
 - (e). every person charged with an offence and every party to a civil dispute has the right to have the case determined within a reasonable time; Section 15(3).
24. The issue to be determined in the present application is whether there has been a contravention of these rights given to the applicant which now justifies his release on bail.
25. The accused has been in remand only for five months. The law (Section 14(4) of the Bail Act allows an accused to be detained up to two years and facilitates proper administration of justice in a complex case. See State v Sinha (2009) FJHC 114 ; HAC 080. 2008
26. The Court is of the view, that given the complexities involved in the case, delay of five months is not inordinate and unreasonable.
27. Difficulty faced by the family, per se, whilst the accused is in remand, is not a valid ground for consideration of bail. Applicant's children are in the safe custody of his 58 year old grandfather. There is no

document to support his claim that his father is so ill that he is unable to look after children.

28. Detention in remand prison does not prevent the applicant from communicating or accessing Legal Aid schemes to prepare for his defence. He is guaranteed a fair trial, despite his detention.
29. The claim that the condition of Natabua prison is not suitable for human sustenance and it lacks basic facilities to prepare for his defence is not predominant factors in deciding bail.
30. Justice Shameem, in her ruling in Suresh Sani and Deo Raj v State (Mis. Case No. HAM 37 Of 2003), has refused to consider lack of basic necessities in prison as a valid ground for bail.
31. Having considered the above, I am of the view that the interest of the applicant and his right to a fair trial are not badly affected by not granting him bail.

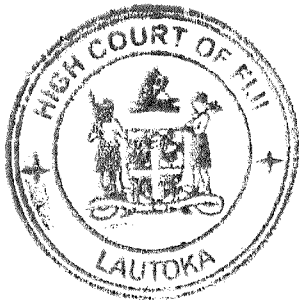
As regards the public interest and the protection of the community....

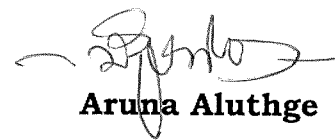
32. The applicant is alleged to have committed the present crime whilst another case is pending against him in the Magistrate's Court.
33. The applicant has a history of violating bail conditions.
34. There is a high risk of reoffending, if granted bail.
35. Prosecution witnesses are from applicant's village and include the boyfriend of the deceased. There is a high possibility of tampering with evidence and witnesses.
36. In Isimeli Wakaniyasi v. The State (2010) FJHC 20; HAM 120/2009 (29th January 2010) Justice Gounder (referring to three grounds in the Bail Act) stated

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

37. I am convinced that protection of the community and the public interest would be in jeopardy if the applicant is granted bail. I am also convinced that there is a likelihood of the accused person not appearing in court to answer the charge laid against him.
38. I hold that the presumption in favour of granting bail is displaced. The application for bail pending trial is dismissed.
39. This order, however, does not preclude the applicant from re-agitating the matter in a subsequent bail application if the trial gets inordinately delayed.
40. 30 days to appeal.

In view of frequent complaints from remand prisoners, I direct the Registry to call a report from the Human Rights Commission on the present condition of the Natabua Correction Centre and its availability of resources and facilities for remand prisoners to prepare for their defences.




Aruna Aluthge
Judge

At Lautoka

12th June 2015

Solicitors : Applicant in person

Office of the Director of Public Prosecutions for Respondent