IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

HAM NO. 86 OF 2015

BETWEEN : ETHAN KAI

Applicant

AND : STATE

Respondent

Counsel : Mr. Aman Singh for Applicant

Ms. N. Kiran for Respondent

Date of Hearing: 12th of June, 2015

Date of Ruling: 19th of June, 2015

BAIL RULING

1. The Applicant files this Notice of Motion pursuant to Section 3 (1) of the Bail Act, seeking following orders *inter alia;*
   i. *The applicant be released on bail,*
   ii. *Any other orders that the court may deem just in the circumstances of this case to facilitate the aforementioned orders sought,*

2. The Notice of Motion is being supported by an affidavit of the Applicant, stating his grounds for this application. The Applicant stated that he is an

Australian Citizen and arrived to Fiji in December 2014. He was arrested by the Police on or about 20th of December 2014 and subsequently charged for one count of Unlawful Importation of Illicit Drugs contrary to section 5 (b) of the Illicit Drugs Control Act. Furthermore, he stated that he has been in remand since his arrest in December 2014. The Applicant stated that the prosecution case against him is weak. He is able to provide a place of residence in Lautoka and surrender his passport in order to satisfy the court that he will remain in the country and face the charges against him.

3. The Respondent filed an affidavit of Detective Inspector Aiyaz Ali in opposition of this application, stating their objection for granting the bail. D.I Ali deposed in his affidavit that the prosecution has a strong case against him and if he found guilty he could be sentenced for a long imprisonment period as the charges against him is very serious. Since the Applicant has no community tie or connection in Fiji, it will be a strong incentive for him to abscond the hearing if granted him bail. Moreover, D.I. Ali stated that the charge against the Applicant involves trafficking of 29.9 kilograms of heroin valued at about $ 30 million, one of the largest found in the history of Fiji, wherefore, it certainly a threat to the security of the country.

4. Subsequent to the filing of respective affidavits, the application was set down for hearing on 12th of June 2015, where the learned counsel for the Applicant and the Respondent made their respective oral arguments and submissions. Having considered the respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.

5. 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.

6. The primary consideration in granting bail is the likelihood of the accused person appearing in court. Section 19 (2) (a) stipulates some of the circumstances that the court must have to consider in order to determine the issue of likelihood of surrender to custody, where it states, That;

   i. The accused person's background and community ties,
   ii. Any previous failure by the person to surrender to custody or to observe bail conditions,
   iii. The circumstances, nature and seriousness of the offence,
   iv. The strength of the prosecution case,
   v. The severity of the likely penalty if the person is found guilty,
   vi. Any specific indication,

7. The Applicant is an Australian Citizen and has no community tie in Fiji. He has not property or family interest in Fiji. Though he stated that he could find a place of residence, he has failed to specify the location of that propose residence. Moreover, there is no evidence that how will he finance to reside in such a place as he has no business or financial interest in Fiji.

8. The offence that the Applicant is being charged is a very serious offence. It involves with sophisticated manoeuvre 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 perilous to admit this applicant to bail".

9. Having considered the observations of Justice Madigan in **Xhemail (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 of this nature is heavily depended on the issue of public interest, and the nature and seriousness of the offence.

11. The Respondent stated that this offence involves with trafficking of 29.9 kilograms of heroin valued at about $ 30 million, one of the largest found in

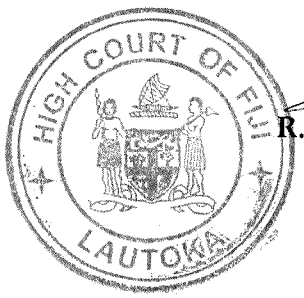
the history of Fiji. This reflects the serious nature of this offence and it obviously attracts a heavy penalty if the Applicant is found guilty.

12. 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.

13. Moreover, the hearing of his charge has already fixed in the month of July 2015, which is few weeks away now. Accordingly the Applicant is not required to remain in prison for a longer period waiting for his hearing.

14. Having considered the reasons and the judicial precedents discussed above, I refuse and dismiss this application of the Applicant for bail on the grounds of unlikelihood of surrender to custody if granted bail and 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

19th of June 2015

Solicitors : **Aman Ravindra- Singh Lawyers for Applicant**

Office of the Director of Public Prosecutions