

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 95 OF 2015

BETWEEN : **VENKTESH PERMAL GOUNDAR**
Applicant

AND : **STATE**
Respondent

Counsel : **Ms. Nasedra for Applicant**
Mr. Babitu for Respondent

Date of Hearing : **02nd July 2015**
Date of Ruling : **02nd July 2015**

BAIL RULING

1. The Applicant, who is charged with Murder contrary to Section 237 of the Crimes Decree No. 44 of 2009, has filed this Bail Application seeking bail pending trial.
2. The State has filed its response by way of a written submission, in order to rebut the presumption in favour of bail. The State is objecting to bail to the accused on the grounds stated in the submission which is not supported by an affidavit.
3. When there a presumption in law, the party proposing to displace the same is expected to adduce some sort of evidence in rebuttal. Hence, submission of the State, not supported by an affidavit, is devoid of evidentiary basis.
4. Without prejudice to that finding, I proceed to assess the merits of the bail application and the opposition to it.

5. In the submission filed, the State has dealt with all the grounds stated in Section 18 (1) of the Bail Act and seeks to displace the presumption in favour of bail.
6. 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.
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. 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.
9. I now venture into consider each of the criteria in Subsection 18(1), dealing with the submission made on each one.

Likelihood of the Accused person appearing in Court to answer the charge laid against him.

10. 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.
11. The Applicant is a 32 year old joiner, employed by a private Company and residing in Ba with his three children and the mother. This is his first offence.
12. According to the submission filed by the State, The Applicant has committed this offence whilst an interim Domestic Violence Restarting Order (DVRO), coupled with a Non Molestation Order, issued by the Ba Magistrates Court to protect the deceased wife of the Applicant, was in force. The State contends that the Applicant has violated the DVRO and not entitled to be released on bail as the presumption in favour of bail is already displaced with.
13. Section 3(4)(a) stipulates that where the person seeking bail has previously breached a bail undertaking or bail condition, the presumption in favour of bail is displaced with.
14. There is no material before this court to conclude that the DVRO was issued as a bail condition pursuant to Section 22(2) of the Bail Act or the

Applicant had violated any bail condition imposed by the Magistrates Court.

15. A DVRO is generally issued to protect the interests of the victim and not to ensure the appearance of the accused in court to answer the charge against him.
16. In this context, I am not inclined to consider the alleged breach of DVRO as a breach of a previous bail condition.
17. The State has informed that the deceased is the wife of the Applicant and the charge is related to domestic violence. According to the new amendment to the Bail Act, the presumption in favour of bail is displaced when the accused is charged with a domestic violence offence.
18. It appears that there has been a family dispute between the Applicant and his deceased wife and they have lived separately at the time of the incident. Applicant's wife is no more. There is no evidence that any act of violence was directed at his children. There is no apparent risk of domestic violence if the Applicant is released on strict bail conditions.
19. The charge against the accused, no doubt, is in respect of a serious offence and, if found guilty, carries a maximum punishment of life imprisonment. However, seriousness of the offence *per se* does not preclude this court from releasing an accused person on bail pending trial.
20. In these circumstances, I am of the view that the material placed before this court is not sufficient to conclude that the Applicant would not appear in Court if granted bail.

As regards the interests of the Accused person, the Applicant states that:

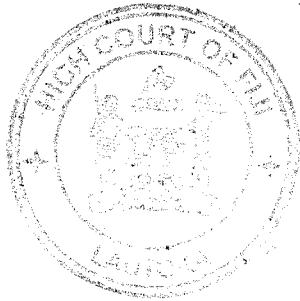
- (a). he is 32 years old and the sole breadwinner of his family. He was financially supporting his three children before going to remand.
 - (b). being in remand for a long period, the Applicant will lose his job and entire livelihood that supports the entire family.
21. The fact that the Applicant is the sole breadwinner of his family and that he is financially supporting his 3 children are not crucially important grounds to be considered when granting bail.


22. However, according to Section 17(1) of the Bail Act, when deciding whether to grant bail to an accused person, the court must take into account the time the person may have to spend in remand before trial, if bail is not granted. The Applicant has so far been in remand for nearly three months. High Court proceedings have just been started. Information and disclosures are yet to be filed. No immediate trial date is possible as the diary of this court is fully booked until April 2016.
23. I am of the view that granting of bail would be in the best interest of the Applicant.

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

24. The State contends that if the Applicant is released on bail, there is a high possibility of interfering with Prosecution witnesses, specially, with his 7 year old son who is the main witness in the case.
25. The Applicant is prepared to give an undertaking not to live with his children in his house in Raviravi and is planning to live in Lautoka during pendency of the case, if bail were granted.
26. I am of the view that imposition of strict bail conditions can guard against any interference with witnesses and interest of the public would not be at risk by granting of bail.
27. For foregoing reasons, the application for bail pending trial is allowed.
28. I order the release of the Applicant subject to following bail conditions:
 - a) Personal surety bond for FJD 1000, (non-cash)
 - b) Surety bond for FJD 2000 with two sureties, (non-cash)
 - c) Report to the Lautoka Police station on every Saturday between 8.00 a.m. and 6.00 p.m.,
 - d) Must provide the address in Lautoka where the Applicant is intending to reside and must confine himself to that address until the conclusion of this case,
 - e) Not to interfere with prosecution witnesses.

- f) Not to visit his children in Raviravi, Ba, until conclusion of the trial.
- g) Payment of maintenance to children must be procured through his employer.
- h) Not to reoffend while on bail.




Aruna Aluthge
Judge

At Lautoka
02nd July 2015

Solicitors: Office of the Legal Aid Commission for the Applicant
Office of the Director of Public Prosecution for the Respondent