IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

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HAM NO. 212 OF 2015

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BETWEEN   :   **TIMOCI NACOLATABISA & OTHERS**

<div align="right">

Applicant

</div>

AND   :   **STATE**

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Respondent

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Counsel   :   **Mr. Aman Ravindra-Singh**
                          and Mr. Mark Anthony for Applicant
                          Mr. S. Babitu for Respondent

Date of Hearing   :   **7th of December 2015**

Date of Ruling   :   **10th of December 2015**

BAIL RULING

1. The Applicant files this Notice of Motion seeking an order that the Applicants be released on bail. The Notice of Motion is being supported by an affidavit of Timoci Nacolatabisa, stating the grounds for this application for bail. Mr. Timoci stated the background of this application and the personal background of the Applicants in his affidavit.

2. The Respondent filed an affidavit of Acting Inspector of Police Aminiasi Tuvura, stating their objection for granting bail. AIP Tuvura stated that he does not dispute the personal background and circumstances of the Applicants as stated in Mr. Timoci's affidavit. However, AIP Tuvura deposed

that their objection is founded on the ground of public interest as the Applicants are charged with a serious offence. He further deposed that the main suspect is still at large and in the event of granting the Applicants bail, they also might abscond from the hearing. Mr. Timoci filed his affidavit in reply denying such allegation and affirmed that the applicant will abide any strict bail condition imposed by the court.

3. Subsequent to the filing of respective affidavits, this motion was set down for hearing on 7th of December 2015, where the learned counsel for the Applicant and the Respondent were directed to file written submissions, which they filed as per the direction. Having considered the respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.

4. 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.

5. The primary consideration in granting bail is the likelihood of the accused person appearing in court. Section 18 (1) of the Bail Act has stipulated that a person making an application against the presumption in favour of bail must deal with the following grounds, that;

    i.   *The likelihood of the accused person surrendering to custody and appearing in court,*

    ii.   *The interest of the accused person,*

    iii. *The public interest and the protection of the community,*

6. Having considered the objections and the submissions filed by the respondent, it appears that their objections are founded on the grounds of

unlikelihood of appearing in court and of the public interest and the protection of the community.

7. Section 19 (2) (a) and (c) stipulates some of the circumstances that the court must have to consider in order to determine the issue of likelihood of surrender to custody, and public interest, where it states, that;

(a)

    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,*

(c)

    i.   *Any previous failure by the accused person to surrender to custody or to observe bail conditions,*

    ii.   *the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person,*

    iii.   *the likelihood of the accused person committing an arrest able offence while on bail.*

8. The Respondent contended that the main suspect is still at large and there is a possibility that the Applicants may regroup with him and abscond from the hearing. The respondent further contended that the investigation is still going on in search of fire arms.

9. Meanwhile, the Applicants contended that the investigation has failed to find any fire or destructive arms and the investigation has now being completed. They further stated that they will abide by any strict bail condition imposed by the court.

10. The test of refusing bail is that the court is not required to satisfy that the circumstances stipulated under Section 19 will occur in the event of bail being granted. The court is only required to satisfy that there are substantial grounds to believe that they would occur.

11. It appears that the Respondent's objections that the Applicants will regroup with the main suspect, who is still at large is mainly funded on speculation as there is no material facts before the court to believe that it would occur in the event of bail being granted.

12. The Applicants have been in remand since August 2015 and there is no any record of previous failure to surrender to custody or observe bail conditions. The applicants have filed their grounds for voir dire as the Prosecution proposes to give in evidence from the respective caution interviews of the applicants. Under such circumstances, the hearing of voir dire and the substantive matter would probably take place in middle of 2016.

13. Having considered the reasons discussed above and the personal background and the circumstances of the applicants, I grant the applicants bail on following conditions.

    i.   Each to be released on personal bail bond in the sum of $ 1,000,

    ii.   To provide two suitable sureties in the similar amount ($ 1000),

    iii. To live at the given address in the bail bond and not to move without

leave of the court,

iv. To report to nearest police station twice a week, (Monday and Saturday),

v. Not to leave Viti Levu until the trial is finished,

vi. Not to meet with more than three people at any given time apart from any urgent and important family occasion,

vii. Provide two telephone numbers for contact at any given time,

viii. Not to reoffend,

ix. Not to interfere with any prosecution witnesses,

R. D. R. Thushara Rajasinghe

Judge

At Lautoka

10th of December 2015

Solicitors   :   Aman Ravindra- Singh Lawyers for Applicant

Office of the Director of Public Prosecutions