

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 157 OF 2015S

BETWEEN

APAKUKI KAUYACA VITUKAWALU

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Mr. Maisamoa for Applicant
Ms. S. Navea for Respondent
Hearing : 2 November, 2015
Ruling : 4 December, 2015
Written Reasons : 4 April, 2016

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 288 of 2015S, the applicant was facing the following information:

Statement of Offence

UNLAWFUL CULTIVATION OF ILLICIT DRUGS: Contrary to section (5) (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

APAKUKI KAUYACA VITUKAWALU between the 1st day of July 2011 and the 3rd day of January 2012 at Kadavu in the Eastern Division, without lawful authority, cultivated 32 plants of Cannabis Sativa, an illicit drug, weighing 11.0 kg.

2. He first appeared in the Suva Magistrate Court on 10 January 2012. He was remanded in custody from 10 January to 19 January 2012. On 19 January 2012, he was put on bail. The case was mistakenly kept in the Magistrate Court until it was transferred to the High Court on 10 August 2015. He first appeared in the High Court on 9 September 2015. Bail was continued.
3. However, the accused did not turn up in court on 29 September 2015. A bench warrant was issued against him. He came late to court on the same day and was remanded in custody. He had been in custody since then, that is, approximately 6 months 6 days.
4. On 6 October 2015, the applicant applied for bail pending trial by filing a notice of motion, with an affidavit in support. The State opposed bail and filed an affidavit in reply on 19 October 2015. I heard the parties on 2 November 2015. I denied the applicant's bail application on 4 December 2015, and I said I would give my reasons later. Below are my reasons.
5. It was well settled that an accused person was entitled to bail pending trial unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will turn up in court on the date set for his trial. In deciding the above issue, the court was bound to consider the factors laid out in Section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrender to Custody:

6. The accused is 38 years old, married with children. He resides in a village in Kadavu. He previously used to work in a hotel, but now works as a subsistence farmer planting yaqona, dalo, cassava, etc. According to the prosecution, they have a strong case against him. He allegedly confessed to the crime. If found guilty after trial, he faces a prison sentence of 14 years and up. Under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused:

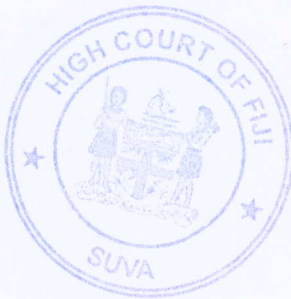
7. The accused will be tried from 15, 18, 19 and 20 July 2016. The trial is approximately 3 months away. Time spent in custody while on remand will be deducted from his final sentence, if found guilty after trial. He is at the new Suva Remand facility. He is represented by counsel, and he can visit him in custody as and when he pleases to prepare his defence. There does not appear to be any reason for him to be at liberty for any lawful reasons. He is not incapacitated. Under this head, his chances of bail are slim.

Factor No. 3: Public Interest and Protection of the Community:

8. The allegation against the applicant was very serious. It was alleged he was cultivating illicit drugs, weighing 11 kg, between 1 July 2011 and 3 January 2012. The evils of drugs had been highlighted in various publications. Although the accused was presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it was in the public interest and the protection of the community that he be remanded in custody, until further orders of the court. Under this head, his chances of bail are slim.

Conclusion:

9. It was for the above reasons that I denied bail for the applicant on 4 December 2015.




Salesi Temo
JUDGE

Solicitor for Applicant :
Solicitor for Respondent:

A. Vakaloloma & Associate, Barrister & Solicitor, Suva.
Office of the Director of Public Prosecution, Suva.