IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 223 OF 2015

BETWEEN : **PRANEEL CHANDRAN REDDY**

Applicant

AND : **STATE**

Respondent

Counsel : **Mr. N.S. Khan for Applicant**

Mr. A. Singh for Respondent

Date of Hearing : **21st of January 2016**

Date of Ruling : **3rd of February 2016**

BAIL RULING

1. The Applicant filed this notice of motion seeking an order that the applicant be released on bail. This is the third bail application of the Applicant. Two of his previous applications have been refused by the High Court. The first application was refused on the ground of unlikelihood of surrender in custody and the second was refused on the ground of absence of any material change in circumstances that justified granting of bail.

2. The notice of motion is being supported by an affidavit of Mr. Permal Reddy, the father of the applicant. He has annexed two affidavits of the applicant, which were filed by the applicant in his previous two applications for bail as an annexure to his affidavit. Having being served with the notice of motion, the Respondent filed an affidavit of D/Cpl Isireli Waqairalia, in opposition to the application for bail. D/Cpl Waqairalia stated in his affidavit that this application for bail is founded on the same grounds as that of the previous two bail applications. Hence the applicant has not satisfied the court that there are special facts or circumstances to justify the making of afresh bail application.

3. Subsequent to the filing of respective affidavits of the parties, the motion was set down for hearing on 21st of January 2016. The counsel for the applicant made a lengthy oral submissions in support of this motion during the course of the hearing. The learned counsel for the Respondent informed the court that he relies on the affidavit of D/Cpl Waqairalia and does not wish to make any oral submissions. Having carefully considered the respective affidavits and the oral submissions of the learned counsel for the Applicant, I now proceed to pronounce my ruling as follows.

4. Section 14(1) of the Bail Act allows an accused person to make any number of bail applications. However, if the court is of the view that such application is vexatious and frivolous, the court could refuse to entertain such an application pursuant to Section 14(3) of the Bail Act.

5. Moreover, Section 30 (7) of the Bail Act states that if the court is not satisfied that there are special facts or circumstances that justify making a bail application

afresh under Section 14(1) of the Bail Act, the court could refuse to hear such application.

6. Accordingly, the rights given to the accused under Section 14(1) of the Bail Act to make any number of bail applications has been subjected to the provisions of Section 14(3) and Section 30 (7) of the Act.

7. In view of the affidavit of Mr. Permal Reddy, it appears that this application of bail is founded on the same grounds as advanced by the applicant in his previous two bail applications. Accordingly, the main issue to be determined in this application is whether this court has jurisdiction to hear on the same grounds which have already been considered and determined by another high court.

8. The learned counsel for the applicant submitted in his oral submissions that the high court has inherent jurisdiction to hear and give a different consideration to the same grounds which have previously been heard and determined by the high court. The learned counsel heavily relies on the judicial dicta enunciated by Justice Goundar in **Kasim v State (2008) FJHC6; HAM 106.2007 (25 January 2008),** and Justice Aluthge in **Nagata v State (2015) FJHC 644;HAM152.2015 (31 August 2015).**

9. Justice Gounder in **Kasim v State (supra)** held that;

"In my view, this court has inherent jurisdiction over all bail applications including an application to vary bail conditions imposed by another judge".

10. Justice Gounder had to consider an application to vary the bail condition given by another judge in **Kasim (supra).** His lordship has allowed the application on the basis that the court could exercise its inherent jurisdiction over such an application. His lordship has not reconsidered the grounds that has already been considered by the previous High Court Judge in granting bail. He has only considered the circumstance for the variation of bail conditions. Accordingly, I am of the view that the judicial precedents enunciated in **Kasim (supra)** has no application to this instant case.

11. Donaldson LJ in **Regina v Nottingham Justices, Ex Parte Davies (1980) 2 All ER 775** has discussed the applicable principles pertaining to the issue of subsequent bail application in an inclusive manner, where his lordship expounded that;

"However, this does not mean that the justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a schedule 1 exception was made out. if it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This "satisfaction" is not a personal intellectual conclusion by each justice. It is a finding by the court that schedule 1 circumstance then existed and is to be treated like every other findings of the court. It is res judicature or analogous thereto. It stands as a finding unless and until it is overturned on appeal. An Appeal is not to the same court, whether or not of the same constitution, on a later occasion.....

12. In view of the observation made by Donaldson LJ in **Nottingham Justices (supra)** it is my opinion that a judge of the high court is not allowed to revisit or to give a different consideration to the same facts that has previously been

considered and determined by another judge of the high court in relation to an application for bail. A decision of a judge is not his own individual decision, it is a decision of the High Court.

13. Donaldson LJ in **Nottingham Justices (supra)** went further and discussed the scope of the subsequent application of bail, where his lordship found that;

"The starting point must always be the finding of the position when the matter was last considered by the court. I would inject only one qualification to the general rule that justices can and should only investigate whether the situation has changed since the last remanded in custody. The finding on that occasion that schedule 1 circumstances existed will have been based upon matters known to the court at that time. The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since that last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in justice to the accused. The question is a little wider that "has there been a change?". It is "Are there any new considerations which were not before the court when the accused was last remanded in custody?"

13. Accordingly, the court is required to consider an application of this nature only when there are any other new facts or circumstances that were not brought before the court in the previous application of bail.

14. In view of Section 14 (3), and Section 30 (3), (7) of the Bail Act, and the above discussed judicial precedents, it is my opinion that this court has no jurisdiction to hear this application for bail which is founded on the same grounds that has

already been considered and determined by Justice Fernando in the previous two bail applications of the applicant.

15. Accordingly I am satisfied that this application for bail is frivolous and vexatious pursuant to Section 14 (3) of the Bail Act. Moreover, it is my opinion that the applicant has failed to satisfy the court that there are special facts and circumstances to justify the making of a bail application afresh pursuant to Section 30 (7) of the Bail Act. Hence, I refuse and dismiss this notice of motion filed by the applicant on 11th of December 2015.

16. Thirty (30) days to appeal to the Fiji Court of Appeal.

R. D. R. Thushara Rajasinghe

Judge

At Lautoka

3rd of February 2016

HIGH COURT OF FIJI LAUTOKA

Solicitors : Babu Singh & Associates for the Applicant

Office of the Director of Public Prosecutions