

IN THE HIGH COURT OF FIJI
AT SUVA
[MISCELLANEOUS JURISDICTION]

Criminal Miscellaneous Case No. HAM 362 & 349 of 2018
[High Court Criminal Case No. HAC 433 of 2018]

BETWEEN : KELEPI KOLINISAU
SELEMA TIKOENABUREBURE

AND : STATE

Counsel : Ms B Malimali for the 1st Accused
Mr A Naco for the 2nd Accused
Mr M Vosawale for the State

Date of Hearing : 6 December 2018
Date of Ruling : 14 December 2018

RULING

- [1] Both accused persons are police officers. They are accused of murdering a civilian while he was in police custody. They seek bail pending trial. The State objects to the granting of bail.
- [2] The Bail Act 2002 (the Act) codifies much of the law relating to bail. Part II of the Act contains provisions of general application. The Act provides for two presumptions. An accused has an entitlement to bail (s 3(1)). This does no more than reflect the principle of the presumption of innocence, which is also stated in the Constitution. The entitlement will fail if it is not in the interests of justice that bail should be granted. Secondly, there is a presumption in favour of the granting of bail (s 3(3)). However, that presumption is rebuttable if it can be shown that the

accused has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction, or has been charged with a domestic violence offence (s 3(4)).

- [3] Section 17(2) of the Act states that the primary consideration in determining whether to grant bail is the likelihood of the accused appearing in court to answer the charge laid against him or her. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. Currently, there are about 300 cases awaiting trial in the High Court at Suva. This case is unlikely to be heard in the next 18 months. So if bail is not granted the time in custody while in remand will be about 18 months.
- [4] Although the primary consideration in determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charge (s 17(2)), the court may refuse bail if the interests of the accused person will not be served through the granting of bail or the granting of bail would endanger the public interest or make the protection of the community more difficult (19(1)). Both accused persons were law enforcement officers. They had blameless character before they were charged in this case. Both have strong family and community ties. They have proposed sureties with good standing in the community. I do not think that the accused persons would endanger the public interest or make the protection of the community more difficult if they are released on bail.
- [5] The lawyers for the two accused persons submit that they are likely to prepare their defence more effectively if their clients are released on bail. Currently, the lawyers have limited access to their clients due to administrative prison rules. The charge of murder is serious and it is in the interests of justice that the accused persons have full access to their lawyers to prepare their defence. It is in the interests of the accused persons to be released on bail to effectively prepare their defence for the trial to be fair.

- [6] The State's concerns are that the charge is serious, the prosecution case is strong and that the accused persons being police officers are likely to interfere with the witnesses.
- [7] The State is yet to file Information and disclosures. Counsel for the State has informed the Court from the bar table that the prosecution case is based upon eye witnesses account of the alleged assault of the victim by the accused persons, which eventually led to the victim's death. The lawyers for the accused persons submit that the charge will be defended and the facts are contentious.
- [8] I accept the murder charge is one of the most serious offences in the Crimes Act. The offence is punishable by life imprisonment. But seriousness of the offence alone cannot be a ground for refusing bail. The prosecution case may be strong but there is no reliable evidence to show that accused persons are a flight risk or they are likely to interfere with witnesses if they are released on bail. Both accused persons being police officers understand the consequences of breaching bail conditions or interfering with the witnesses. The presumption in favour of granting of bail has not been rebutted by the prosecution.
- [9] Both accused persons are granted bail pending trial. I will now set the bail conditions.



A handwritten signature in blue ink, appearing to be "D. Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Pacific Chambers for 1st Accused
Naco Chambers for 2nd Accused
Director of Public Prosecutions for the State