

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL CASE NO. HAM 09 OF 2018**

**BETWEEN** : **SHALENDRA BHAN SINGH**

**APPLICANT**

**A N D** : **THE STATE**

**RESPONDENT**

**Counsel** : Mr. R. Kumar for the Applicant.  
: Mr. S. Babitu for the Respondent.

**Dates of Hearing** : 26 February and 9 March, 2018

**Date of Ruling** : 19 March, 2018

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**RULING**

[Application for bail pending trial]

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1. This is an application for bail pending trial. The Applicant makes this application by filing a Notice of Motion supported by the Applicant's own affidavit sworn on 25<sup>th</sup> January, 2018.

2. The application filed by the Applicant is opposed by the State. The State in its opposition to bail has filed the affidavits of Sgt. Mehesh Chand sworn on 8<sup>th</sup> February, 2018 and 20<sup>th</sup> February, 2018 respectively.

### **BACKGROUND INFORMATION**

3. The Applicant has been charged with one count of Murder contrary to section 237 of the Crimes Act. It is alleged that the Applicant on the 25<sup>th</sup> of December, 2017 murdered Kunal Kamlesh Sami.
4. The Applicant deposes that he has been in remand from 12<sup>th</sup> January, 2018. He is 40 years of age, carpenter by profession, married with a child of 4 years. He is the sole bread winner of the family and as a result of his remand his family is suffering.
5. Furthermore, the Applicant's family has been evicted from the Koroipita Settlement in Lautoka where he was living (the alleged crime scene). The Applicant has stated his willingness to provide three (3) sureties as part of bail security. The individual proposed sureties have sworn separate affidavits stating their willingness to be bound by the terms of any bond that they may be called upon to sign. They have attached their Bank Statements to show that they have the means to pay the surety bond if required. The proposed sureties have also stated that they understand their responsibilities as sureties.
6. The Applicant has also deposed that he is going to reside with one of the surety's namely Satendar at Maro, Sigatoka away from the place of the alleged incident.

7. The Applicant is willing to abide by any bail conditions that may be imposed by this court should bail be granted. The Applicant also suggests the following additional bail conditions:
  - a) Curfew between 8pm and 6am;
  - b) Reporting to Vatudradra Community Police Post or Sigatoka Police Station every day;
  - c) Restricted movement unless with approval of the court.
8. In his affidavit in opposition the Investigating Officer Sergeant Mehesh Chand deposes that the alleged action of the Applicant has traumatised the residents of Koroipita Settlement and for the safety of the community the Applicant be further remanded. Moreover, the Applicant is charged with a serious offence, if found guilty he will face a sentence of life imprisonment.
9. Bearing in mind the high likelihood of a long custodial sentence the Applicant will not appear in court if given bail also the State has a strong case against the Applicant.
10. Finally, the Applicant has an active previous conviction of robbery with violence dated 23<sup>rd</sup> January, 2009.

### **LAW**

11. Section 3 of the Bail Act states that every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted. There is a presumption in favour of the granting of bail but the person who opposes may seek to rebut this presumption. The presumption in favour of the granting of bail is displaced where:

- a) the person seeking bail has previously breached a bail undertaking or bail condition;
  - b) the person has been convicted and has appealed against the conviction; or
  - c) the person has been charged with a domestic violence offence.
12. Under section 17 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 custody before trial if bail was not granted. 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 or her.
13. Under section 19 of the Bail Act an accused person must be granted bail unless in the opinion of the court;
- a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
  - b) the interests of the accused will not be served through the granting of bail;
  - c) granting bail to the accused would endanger the public interest or make the protection of the community more difficult.

### **DETERMINATION**

#### **LIKELIHOOD OF SURRENDER TO CUSTODY**

14. The State does not dispute the Applicant's background. This court takes into account that the last conviction of the Applicant is 9 years old and that up till now the Applicant has not been on the wrong side of the law. The charge against the Applicant is serious which carries a mandatory

life imprisonment if convicted, however, no matter how serious the charge is it is not a sufficient ground to refuse bail pending trial (see *Nazeem Sheraz Ali vs. State, Criminal Misc. Case No. HAM 101 of 2016 (6/07/2016)*).

15. The State relies on direct witnesses and video footage of the alleged act to prove the charge against the Applicant. On the date of the first hearing of this application the State had not disclosed the video footage to the defence. The video footage was disclosed on 6 March, 2018. The Applicant has the right to test the veracity of the State's case which can only be done during the trial. At this stage there is some evidence against the Applicant which suggests that the State has a strong case which is relevant to assess the likelihood of the Applicant's appearance in court to answer the charge.
16. On the other hand there is no previous bail violation by the Applicant although there is a conviction against him which is 9 years old. The Constitutional safeguard of presumption of innocence in respect of this charge is still very much in favour of the Applicant (*see Bechu and Another vs. R, 8 FLR 240*).
17. The State has not made any suggestions that the Applicant had not co-operated with the Police at the time of arrest or had shown resistance to arrest.

#### **INTEREST OF THE ACCUSED**

18. This is a 2018 matter and the court diary for this year is full hence a trial this year will not be possible even to the extent that it is quite unlikely that this matter will be heard in 2019 hence it is not in the interest of the Applicant to be kept in custody for an indefinite period.

## **PUBLIC INTEREST AND THE PROTECTION OF THE COMMUNITY**

19. The State contends that the actions of the Applicant have traumatised the residents of Koroipita where the alleged incident took place and therefore remanding the Applicant will ensure the safety of the community.
20. There is no evidence before the court from the members of the community affected as to how they were traumatised by the actions of the Applicant. Furthermore, the Applicant has provided evidence of his relocation to Sigatoka where he will be residing with a surety.
21. The State is also concerned that the Applicant may interfere with the prosecution witnesses.
22. In my view, the concerns of the public and the protection of the community can be taken care of by imposing strict bail conditions.

## **CONCLUSION**

23. For the reasons stated above this court is satisfied that it is in the interest of justice that the Applicant be granted bail pending trial under strict conditions which also binds the three (3) sureties who have willingly come forward to be bound with the Applicant.

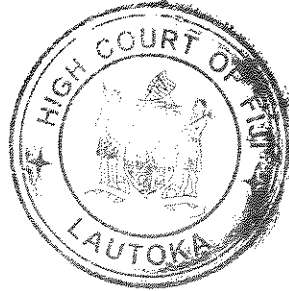
## **ORDERS**

- a) The Applicant is bailed in the sum of \$2,000.00 with the three (3) sureties to be bound in the like sum.

- b) The Applicant is to deposit the sum of \$1,500.00 being cash bond prior to release from remand. This cash bond is to be returned to the Applicant upon the conclusion of the substantive matter. The Applicant will forfeit the sum of \$1,500.00 if there is any breach of the bail conditions.
- c) The Applicant is not to interfere with the prosecution witnesses either directly or indirectly or harass them in any way whatsoever and is to stay with the surety Satendar at Maro, Sigatoka. The Applicant is not to change his residential address without the approval of the court.
- d) The Applicant is to be of good behaviour and is not to commit any offence whilst on bail.
- e) A Stop Departure Order is to issue against the Applicant immediately.
- f) The Applicant is to report to Vatudradra Police Post every Monday and Thursday between 6am to 6pm.
- g) A curfew is imposed on the Applicant between 8pm and 6am everyday.
- h) The Applicant is not to go near the Koroipita Settlement or where the prosecution witnesses live and is to stay 3 kilometers away from this settlement and the witnesses.

- i) For administrative purposes the Applicant is to provide a photo identification which will be photocopied and kept in court file for future reference.
- j) The Applicant and the sureties are to sign the usual terms and conditions of bail as additional conditions.

At Lautoka  
19 March, 2018



  
**Sunil Sharma**  
**Judge**

**Solicitors**

**Messrs Iqbal Khan & Associates for the Applicant.**  
**Office of the Director of Public Prosecutions for the Respondent.**