

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO.
HAM 39 & 40 of 2018

BETWEEN : STATE

AND : 1. AMANI MASIKEREI
2. SAMUELA NATOKALAU

Before : Hon. Mr Justice Daniel Goundar

Counsel : Ms S Tivao for the State
Mr J Dinati for Both Accused

Date of Hearing : 26 March 2018

Date of Ruling : 29 March 2018

RULING

[1] This is an application for bail pending trial. The two Accused are jointly charged with unlawful cultivation of an illicit drug. The charge alleges that the two Accused jointly cultivated 1440 marijuana plants in a remote farm on the island of Kadavu. On 18 January 2018, both Accused were charged and produced in the Magistrates' Court. The case was transferred to the High Court due to the magnitude of the cultivation, that is, over 1 ton. Both Accused were remanded in custody.

- [2] The Information was filed on 15 February 2018. On 26 March 2018, both Accused pleaded not guilty to the charge. They have engaged private counsel of choice to apply for bail. Counsel for the Accused submits that any risk of absconding could be minimized by imposing strict bail conditions. Both Accused have previous good character and are willing to provide suitable sureties.
- [3] The State opposes the application and relies upon the affidavit of D/CPL Josua Gagalia. The prosecution case is that both Accused were caught in the plain view of the police officers who raided the farm. Upon realizing the presence of police officers at the farm, both Accused fled the scene to avoid arrest. The first Accused was caught soon after a chase while the second Accused was caught later. The second Accused had confessed under caution.
- [4] The principles for bail pending trial are settled. Section 3 (1) of the Bail Act 2002 states that an accused has a right to be released on bail unless it is not in the interests of justice that bail should be granted. The primary consideration is the likelihood of the accused appearing for trial (section 17(2)). Other considerations are the interests of the accused and the public interest and the protection of the community (section 18(1)).
- [5] In determining the likelihood of the two Accused appearing for trial, I have considered their background and community ties. Both Accused are unemployed and reside at a remote part of Kadavu. They have offered to reside with their relatives in Suva if they are released on bail. The gravity of the allegation is serious. The case involves the largest quantity of marijuana cultivation to come before the courts in Fiji. The prosecution evidence is strong. The offence was allegedly committed in the plain view of police officers. The maximum penalty prescribed for the offence is life imprisonment. If the Accused is found guilty, a long prison sentence is inevitable. These factors provide a strong incentive for both Accused not to appear for their trial.

[6] For these reasons, I am satisfied that it is not in the interests of justice to release both Accused on bail. Both are to remain in custody pending trial. A priority trial date will be assigned to this case due to the Accused being remanded in custody pending trial.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for State
MIQ Lawyers for Both Accused