

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 253 OF 2018

BETWEEN : **JOELI NUKUNAWA**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in Person**
Mr. S. Babitu for Respondent

Date of Ruling : **1st March, 2019**

BAIL RULING

1. This is an application for bail pending trial.
2. The Applicant is charged with one count of Aggravated Robbery, an offence punishable under the Crimes Act.
3. This is Applicant's second bail application. His previous bail application was refused by this court. This application therefore should be considered as an application for a review.

4. The test for a renewed application for bail is whether there is a change in circumstances from the last decision on bail or are there circumstances which, although they then existed, were not brought to the attention of the court. [*State v Takiveikata* [2008] FJHC 31; HAM 107.2007 (4 March 2008), *Masikerei v State* (No. 2) [2018] FJHC 507; HAM112.2018 (15 June 2018) *Nottingham Justices, ex parte Davies* [1981] QB 38)].
5. The State is objecting to the application on the basis that there is no change in circumstances from the previous bail determination.
6. Either in his new bail application or written submission, the Applicant has not advanced any fresh ground for bail.
7. It appears that the Applicant is relying on Section 13 (4) of the Bail Act as a new ground for bail. The section states:

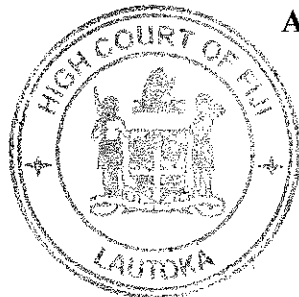
“If a person charged for an offence has been in custody for over 2 years or more and the trial of the person has not begun, the court must release the person on bail subject to bail conditions the court thinks fit to impose”
8. There is no dispute that the Applicant has been in custody for over two years. A trial date has been fixed although the trial has not yet begun. Therefore on the face of the section the Applicant is entitled to be released on bail. However, the Applicant was a serving prisoner in other matters and therefore his liberty had already been taken away by lawful court orders in those matters. Technically, the Applicant was not in remand custody for the present matter while he was serving his prison terms. Therefore he is not entitled to be released on bail under Section 13 (4) of the Bail Act.
9. The applicant has two pending cases and nine previous convictions except one of similar nature. He has been convicted thrice for escaping from lawful custody while in remand or prison.

10. The presumption of innocence is a principle of fundamental justice which applies at all stages of the criminal process, but its procedural requirements at the bail stage are satisfied whenever the requirements in the Bail Act are satisfied.
11. Seriousness of the charge in itself is not a valid basis to refuse bail. However, to assess Applicant's likelihood to abscond, seriousness of the charge, prescribed penalty it carries and the strength of the prosecution's case are relevant considerations for bail under the Bail Act. Vide: Section 19 (2) iii, iv.
12. Given Applicant's past criminal record and his tendency to escape from lawful custody, there is a real likelihood that the Applicant will not come to court to face the charge and that he will reoffend while on bail. The seriousness of the offence and the past criminal record of the Applicant should be taken into account in determining bail in order to protect the interests of the public and to ensure their safety and security.
13. For the reasons given, I refuse to grant bail to the Applicant.
14. Order- Bail refused.
15. 28 days to appeal.



Aruna Aluthge

Judge



At Lautoka

1st March, 2019

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for the Respondent