

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 86 of 2019
[High Court Criminal Case No. HAC 71/ 76 of 2019]

BETWEEN : JUSTIN HO

AND : STATE

Counsel : Mr V. Pillay for the Applicant
Ms. Lata for the Respondent

Date of Hearing : 02 May 2019

Date of Ruling : 06 June 2019

RULING

1. The Applicant filed this bail application on 10 April 2019 seeking bail pending trial. He was charged with one count of attempted unlawful exportation of illicit drugs with another contrary to section 4(1) and 9 of Illicit Drugs Control Act 2004 allegedly committed on 23 December 2018. Later on, 28 May 2019 the State filed an

amended Information consolidating the case No HAC 076 of 2019 with case No HAC 71 of 2017.

2. The Applicant was initially produced before the Magistrate's Court in Rakiraki on 04 April 2019 and he has been in remand custody since then.
3. I have considered the affidavit filed by the Applicant along with his bail application. Further I have considered the submissions of the Counsel for the Applicant.
4. The Respondent opposes the bail application. In response to the bail application the Respondent filed an affidavit deposed by Detective Constable 3333 Ratu Kaliova Vakaruru on 02 May 2019. Subsequently, on 16 May 2019 a supplementary affidavit was also tendered by Woman Detective Constable 3186 Preet Ashika Kumar.
5. Both parties were heard on 02 May 2019. Further the Counsel who appeared for the Applicant on 17 May 2019, was given an opportunity to respond to the supplementary affidavit tendered by the Respondent. But the Counsel did not respond to the facts stated in the supplementary affidavit.
6. Section 3(1) of the Bail Act provides that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.
7. Section 3(4) of the Bail Act provides the following instances where the presumption is displaced;
 - 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.

8. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;
 - 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 person will not be served through granting of bail;
 - c. Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or
 - d. The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.

9. According to His Lordship Justice Goundar in **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) existence of any one ground is sufficient to refuse bail. In light of the above discussed provisions in the Bail Act, I will now consider the material placed before this court in relation to the bail application made on behalf of the Applicant.

10. The State alleges that the Applicant with another person, attempted to export 2015.7 grams of cocaine to Sydney, Australia. The Respondent relies on two main witnesses and claims that the prosecution has a strong case. It is submitted by the Respondent that given the severity of the likely sentence, the Applicant is unlikely to appear in Court. Further it is submitted that due to the alarming escalation of illicit drug related offences in Fiji and the weight of the substance involving in this case it is not in the public interest to grant bail.

11. Subsequently it was transpired that the Applicant has another pending case in the Nadi Magistrate's Court filed by the FICAC for bribery and for producing false and misleading documents. The Respondent filed a supplementary affidavit confirming that the Applicant is released on bail in his pending case (No F 966 of 2014) with the following bail conditions;
 - a) Not to re-offend

documents, whether they are expired or not, when those travel documents must be in Court custody as per the bail conditions in Case no F 966 of 2014. Neither the Respondent nor the Applicant disclosed to this Court whether the said bail condition to surrender the travel documents has been cancelled or varied.

15. However, it appears that the Applicant had travelled overseas from time to time with the permission of Nadi Magistrate's Court by providing additional sureties and by depositing of sums as per the supplementary affidavit. Yet it does not seem that the bail condition to surrender the travel documents to court is cancelled. A copy of a bail bond tendered as an annexure with the supplementary affidavit bears a note that "Accused to deposit \$ 2000 cash bail and upon tendering the original passport on return to court registry to release the said cash deposit [sic]".
16. The lapse on the part of the Applicant to divulge material information about his travel documents and furthermore, making contrary representations are matters of serious concern. In that backdrop, I am not satisfied about the veracity of the Applicant's claims.
17. Nevertheless, I have considered the other matters that the court must take into account in determining bail.
18. The respondent submits that the State has a strong case with direct evidence of two witnesses. The Counsel for the Applicant made lengthy submissions that there is a discrepancy in the description of the parcel or parcels in question. Therefore, he contends that the prosecution does not have a strong case. It must be noted that for the purposes of bail the Court need not go into the credibility or the reliability of evidence and all what the Court must consider is whether the prosecution has a strong case, on the face of it. Evaluation of evidence in detail is a matter to be dealt with at the trial stage. According to the affidavit tendered by Detective Constable 3333 Kaliova Vakaruru it appears that the prosecution has a strong case against the Applicant. If convicted, the alleged offence could attract a severe sentence and I am satisfied that there is a likelihood for the Applicant to be tempted to abscond Court.

19. The Applicant is 28 years and single. He has no dependents. The Applicant is already represented by counsel and the Court does not see any difficulty faced by the Applicant in preparing for his case whilst in custody. The Court is mindful of the importance of considering the time that the Applicant may spend in custody pending trial. As per the new case management strategies in place, it does not seem impossible to prioritize cases of offenders who are kept in remand custody. Therefore, I am of the view that this case can be prioritized, and the Applicant may not have to remain in custody for a prolonged period of time awaiting trial.

20. The Respondent submits that offences relating to illicit drugs are on the rise and it is not in the public interest to grant bail to persons allegedly involved with such offences. There is no doubt that since recent times illicit drugs related offences have become prevalent and particularly, the circumstances of this case have attracted a lot of public interest. Although the Counsel for the Applicant has quoted a number of decisions of courts granting bail to persons alleged with illicit drugs offences, I am of the view that the circumstances of this case would not justify granting bail as far as the public interest and protection of the community is concerned.

21. In the circumstances I am of the view that it is not in the interest of justice to grant bail to the Applicant. The application for bail pending trial is refused.



Rangajeeva Wimalasena
Acting Judge

Solicitors:

Messrs Gordon & Co for the Applicant

Office of the Director of Public Prosecutions for the Respondent