

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Misc. Application No HAM 144 of 2022
Criminal Case No. HAC 095 of 2021

BETWEEN : **SENITIKI COLATI**

AND : **THE STATE**

Appearances : Applicant in person
: Mr. Zunaid, Z for the State

Date of Hearing : 30 June 2022
Date of Ruling : 25 July 2022

RULING

1. This is the Applicant's third application for bail. He faces a charge of aggravated robbery with three co-accused. They are alleged to have taken part in a home invasion in the early hours of the morning while the occupants of the home were asleep. It is alleged the accused persons were armed with a pinch bar, and used force on all the three complainants. One of the complainants, aged 67 years was allegedly punched and beaten several times. A young child with a disability suffered extreme shock and trauma as a result of the incident. The total value of items stolen is \$8200 out of which less than half has been recovered by the Police.
2. He has been remanded in custody since 24 March 2021.
3. A trial date has now been fixed for 16 January – 3 February 2023.

4. The Applicant is not a first offender. He has a previous conviction for robbery with violence in 2013.
5. The first application for bail was refused by Hamza J on 30 November 2021 on the basis that granting bail to the Applicant would endanger the public interest and make the protection of the community more difficult. The Court was also of the view that the Applicant was likely to not appear in Court in light of the serious charge against him.
6. The second application was refused on the ground of no material change in circumstances.
7. In this application, the Applicant seeks bail to get employment and to be able to farm so as to provide for his young children. He says the seriousness of the offence on its own cannot form a ground for refusal of bail. He promises to appear in Court whenever required to do so and to comply with bail conditions, including any curfew condition imposed. He says there is no evidence that he is unlikely to appear in Court to answer the charges against him. He proposes his two elder brothers as sureties. He says his previous conviction was for robbery with violence and is not similar to the current charge against him. He cites a number of cases of aggravated robbery and murder where accused persons had been released on bail.
8. In deciding this application, the Court is entitled to consider new material as well as those which had existed when the earlier applications were made but which were not placed before the Court. (*Regina v Nottingham Justices, Ex Parte Davies* (1980) 2 All ER 775)
9. While it cannot be doubted that seriousness of the offence cannot, of its own be sufficient to refuse bail, this is not the case here. Granted, the alleged offending is serious. If convicted, the Applicant faces the likelihood of a lengthy imprisonment sentence.
10. The Prosecution relies on circumstantial evidence linking the Applicant to the alleged offence. It intends to rely identification evidence from CCTV footage and on the evidence of people who had been with the Applicant a few hours after the alleged offending and seen him with some of the stolen items from the complainants' home, and witnesses who

had been with him on the same day when he talked about his involvement in the alleged offending, and to whom he had given some of the items to be sold.

11. The potential strength of the prosecution case and the likelihood of a long sentence of imprisonment upon conviction are an incentive to not turn up to Court. This concern is exacerbated by some evidence that the Applicant had run away and even swum across a river to evade the Police as soon as he saw them coming. I form the view that the Applicant is unlikely to appear in Court to answer the charge against him if released on bail.
12. He was sentenced on 26 March 2013 for robbery with violence which, but for the maximum penalty, is the same offence as that of aggravated robbery under the Crimes Act. The previous conviction being of the same or similar nature as this charge lead me to the conclusion that enlarging the Applicant on bail would endanger the public interest and make the protection of the community more difficult.
13. Each bail application is considered and decided on its own merits. Simply saying that an applicant charged with a more serious charge was granted bail by this Court or any other Court is not the test. The requirements are those set out in the Bail Act. Thus a person charged with a more serious offence may be granted bail where the Court is satisfied they are neither a flight risk nor a danger to the public interest and the protection of the community.
14. The Applicant on this application also seeks bail to look for employment and to farm to provide for his young children.
15. The welfare of children is a relevant consideration for bail. In all actions concerning children, the best interests of the child are a primary consideration. (Article 3, United Nations International Convention on the Rights of the Child)
16. In *Devi v State* [2003] FJHC 200, Shameem J cited *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273; 128ALR 353; 39ALD 206; 69ALJR 423 where the High Court of Australia said of Article 3 of the Convention:

The concluding words of Art 3.1 are “the best interests of the child shall be a primary consideration”. The article is careful to avoid putting the best interests of the child as the primary consideration; it does no more than give those interests first importance along with such other considerations as may, in the circumstances of a given case, require equal but not paramount weight.

17. In this application, he says he has young children. In his first application he listed his dependents as being his wife and their 3 month old child. In the second application, he said he has 5 children. In his cautioned interview with the Police, he said he was in a de facto relationship and had one child, then one month old. The child would be just over a year old now and I would presume, in the care of its mother while the Applicant is in remand.
18. His situation is not the same as that in *Devi* (supra) which was a case where both parents of the young child were in custody. In addition, the applicant in *Devi* was charged with less serious offences, had no previous convictions and who was, in the Court’s opinion, not a risk to re-offend while on bail.
19. In any event, the Applicant’s interests must in the ultimate, be weighed in the balance together with considerations as to the likelihood to appear in Court, and the public interest.
20. He has failed to show a material change in circumstances and bail is refused.




Sainiu F. Bull
Acting Puisne Judge

Solicitors:

Applicant in person

Office of the Director of Public Prosecutions for the Respondent