

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 227 OF 2023

BETWEEN: GUSTON FEDRICK KEAN

APPLICANT

AND : STATE

RESPONDENT

Counsel : Applicant in Person
 Mr T. Tuenuku for Respondent

Date of Hearing : 30 January 2024

Date of Ruling : 13 February 2024

REVIEW ON BAIL RULING

1. This is an application for review of the Bail Ruling of this Court dated 31 August 2023 refusing bail to the Applicant. The Application which was filed in person is not supported by an affidavit.
2. In the substantive matter, the Applicant is charged with one count of Aggravated Burglary and one count of Theft with his co-accused Mr Ronil Kumar. The Applicant has been in remand since June 2023.

3. The Respondent (State) objects to bail on the basis that the Applicant has not shown any change in circumstances since the previous bail determination. According to the Bail Act, the Applicant must satisfy the Court that there are special facts or circumstances that justify a review.
4. The Applicant in his application has advanced two grounds for bail review. First, the Applicant submits that he is unable to prepare his defence because he has been denied access to trial disclosures by the officers at the remand centre who have withheld the same. His claim is not substantiated on evidence.
5. The second ground is based on Sections 13(2) and 18(4) of the Bail Act 2002. He argues that his detention in remand is contrary to these sections of the Bail Act. The relevant parts of Section 13 the Bail Act provides as follows:

13.-(1) A court may determine an application for **bail** by an accused person, as defined in section 2(1).

(2) If an accused person is refused **bail** in respect of an offence-

(a) the hearing of the case must not be adjourned for more than 14 days except with the person's consent;

(b) any further adjournment must be for a period not exceeding 48 hours and must be to a court available to deal with the case.

(3) Subsection (2) does not apply to an accused person who is in custody in connection with another offence, or if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that **bail** should continue to be refused.

5. This ground appears to be misconceived. Section 13(2) must be read in conjunction with Section 13(3) of the Bail Act. Accordingly, Subsection 13(2) does not apply if the court is satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused.
6. In the previous bail Ruling, the Court refused bail to the Applicant and was satisfied that there are reasonable grounds for a longer period of adjournment and that bail should continue to be refused. Therefore, this ground fails.

7. Section 18(4) of the Bail Act provides:

If a court refuses bail the court must remand the accused person in custody to appear before that or another court for trial or review of bail within 14 days from the date of refusal or review.

8. The court, having refused bail to the Applicant, is in the process of issuing production orders fortnightly for the Applicant to be produced in Court to review his bail because an early trial is not possible until the pre-trial issues are sorted out.

9. There are no special facts and circumstances that justify a review. The application for bail review is dismissed.



Aruna Aluthge
Judge

13 February 2024

At Lautoka

Counsel:

- Applicant in Person

- Office of the Director of Public Prosecution for Respondent