

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION
Misc. Case No: HAM 016 of 2008

Between: POH CHING SHEU
 RAJNISH PRATAP
 ATUNAISA VEITATA
Applicants

And: THE STATE
Respondent

Hearing: 15th February 2008
 Ruling: 18th February 2008

Counsel: Mr. A. Seru for Applicants
 No appearance for the State

BAIL RULING

The Applicants move the High Court under section 30(a) of the Bail Act, to review their refusal of bail by the Suva Magistrates' Court. They were refused bail in the Suva Magistrates Court on the 11th of February 2008. No written ruling was given to me, and I called for the Magistrates Court file to check the reasons for myself.

The application is made by motion (seeking review of the decision to refusal of bail) and the affidavit of Rajnish Pratap (the 2nd Applicant). That affidavit sets out the facts of the case. All the Applicants have been in police custody since the 9th of February. They have been jointly charged with one count of possession of forged document, one count of uttering a false document, and one count of demanding property on forged document.

The charges are as follows:

FIRST COUNT

Statement of Offence

POSSESSION OF FORGED DOCUMENT: Contrary to section 346(1) of the Penal Code, Cap. 17.

Particulars of Offence

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA between 9th day of January 2008 and 23rd day of January 2008, without lawful authority, or excuse, were in possession of a forged bank note, namely a Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z-17-188-592, dated 6th June 2008 of the sum of fifty million EUROS (EUROS 50,000,000) knowing the same to be forged.

SECOND COUNT

Statement of Offence

UTTERING A FALSE DOCUMENT: Contrary to section 343 of the Penal Code, Cap. 17.

Particulars of Offence

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAISA VEITATA between 9th day of January 2008 and 23rd day of January 2008, at Suva in the Central Division, knowingly and fraudulently uttered a forged Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z-17-188-592, dated 6th June 2008 of the sum of fifty million EUROS (EURO 50,000,000), having deposited the said bank draft into the account of FULL CREATION INTERNATIONAL INVESTMENT LIMITED, account numbered 9617231 at ANZ, Main Branch, Victoria Parade, Suva, knowing the same to be forged and with intend to defraud.

THIRD COUNT

Statement of Offence

DEMANDING PROPERTY ON FORGED DOCUMENT: Contrary to section 345 of the Penal Code, Cap. 17.

Particulars of Offence

POH CHING SHEU (FU JINXU) alias Desmond, RAJNISH PRATAP SINGH s/o Ram Pratap and ATUNAIISA VEITATA between 9th day of January 2008 and 23rd day of January 2008, at Suva in the Central Division, with intend to defraud, caused or procured to be paid or transferred into the account of FULL CREATION INTERNATIONAL INVESTMENT LIMITED, account of fifty million EUROS (EURO 50,000,000) by virtue of a forged instrument, namely a Westpac Banking Corporation, Westgate, New Zealand, bank draft numbered Z-17-188-593, dated 6th June 2008, knowing the same to be forged.

The 2nd Applicant states that he is a priest and spiritual healer and a businessman who looks for foreign investors to invest in Fiji. Six months ago he met the 1st Applicant in Hong Kong. Together they set up a company called Full Creation International Investments Ltd. It entered into a joint venture with Mahe Investment Ltd., a company in which the 2nd Applicant has 99% shareholding. The 1st Applicant came to Fiji in December 2007 with one Ng Tat Wai alias David. He gave the Applicants a New Zealand Westpac Bank Draft 217188592 in the sum of Euro 50,000,000. "David" left Fiji on 9th January 2008. He was to have been followed by the 1st Applicant but he was stopped by the police.

The 2nd Applicant states that the bank draft, now alleged to be a forgery, was deposited into the Company bank account in Suva, and that the Applicants had no idea that it was a forgery. He states that bail was refused in error in the Magistrates Court, that he and his co-applicants were not a flight risk and that they each have acceptable sureties. Finally he says that the remand centre at the Korovou Prison is overcrowded and that they are sleeping on the floor because of the congested conditions.

Counsel for the Applicant submitted that there was no likelihood that the Applicants would abscond, and that the seriousness of the alleged offending was insufficient to justify a refusal of bail. The 2nd Applicant has one previous conviction from 2007, of obtaining by false pretence. The 3rd Applicant has one previous conviction for assault occasioning actual bodily harm, in 2000.

The Magistrates Court file shows that the case was first called on the 11th of February 2008. The charges were read to the Applicants and they all pleaded not guilty. Counsel then applied for bail. The State opposed the application. The learned Magistrate ruled on the matter and referred to the large sum which is the subject of the charges (50 million euros). He said that

although all three offered sureties they were not named, and that, he had no confidence that they would appear in court when required to do so. The learned Magistrate also said this:

“While Mr. Seru has indicated that there is a possible surety, no one had appeared to confirm this. There is no evidence where the 3 accused would stay if granted bail. The first accused is a Singaporean national and his visa had expired on 8.2.2008 and there is no record of his previous convictions.”

Bail was refused. The matter will be called next on the 22nd of February.

I am unable to disagree with this decision. The 1st Applicant is not a Fiji citizen. And both he and the 2nd Applicant appear to have business interests abroad. Even if we were to confiscate their passports, persons charged have been known to flee the country. The affidavit of the 2nd Applicant gives me no information about the Applicant's families, business interests or ties in Fiji. They are alleged to have tried to defraud the Westpac Bank of a substantial sum of money. The 3rd Applicant has given me no information at all about employment, financial and family ties and antecedents. In these circumstances I am unable to say that the learned Magistrate erred in his approach. I note that the 2nd Applicant was on a suspended sentence at the time the offences were alleged to have been committed.

As for the overcrowding of the remand centre, the prosecution has not had the opportunity to rebut this allegation and I am unable to draw any conclusions about it. I suggest that it is raised in the Magistrates Court on the 22nd of February and that the prosecution be given an opportunity to call evidence on the issue. Since it was not raised in the Magistrates Court, it is difficult to treat the issue as a matter for review.

Bail is refused.



Nazhat Shameem
JUDGE

At Suva
18th February 2008