

IN THE HIGH COURT OF FIJI  
AT LABASA  
MISCELLANEOUS JURISDICTION

Criminal Miscellaneous No: HAM 29 of 2014

BETWEEN:  
LATCHMAN

*The Applicant*

AND:  
THE STATE

*The Respondent*

Counsel: Ms M. Tarai for the Applicant  
Mr M. Maitava for the Respondent

Date of Hearing: 4 July 2014  
Date of Ruling: 15 July 2014

RULING

- [1] The applicant is charged with indecent assault and rape of a minor. On 13 March 2014, his application for bail was refused by this Court. The reasons for refusal of bail are contained at paragraph [7] of the ruling:

As far as this application for bail is concerned, there is unchallenged evidence that the accused had absconded bail in other pending cases and was apprehended on a bench warrant issued by the court. I find the accused is a flight risk, that is, he is unlikely to turn up for his trial if granted bail.

- [2] The grounds for bail in summary are:
- (i) The right to be presumed innocent until proven guilty.
  - (ii) Strength of the prosecution case.
  - (iii) Interest of the accused for lawful purpose.
  - (iv) Length of time in custody.
  - (v) The assurance that the accused will appear in court on the next court date.
- [3] When bail is refused in the first instance, any subsequent application for bail will only be entertained if the applicant can demonstrate that there has been a material change in circumstances to justify a review of the earlier decision refusing bail. The first ground for this application for bail is the presumption of innocence that applies to the applicant. The presumption of innocence is a principle that is relevant in all criminal cases. The presumption allows an accused to sit back and make the prosecution prove guilt beyond reasonable doubt. In this case, the applicant has elected to be tried. He will be tried in accordance with the presumption of innocence. The question is whether the applicant will turn up for his trial if granted bail. This Court in the first instance found that the applicant posed a flight risk for the reasons outlined in paragraph [1] above.
- [4] When the applicant was refused bail, there was no trial date set. Now the trial is scheduled to commence on 8 December 2014. The total length of time that the applicant will spend in custody on remand from 3 March 2014 is 9 months. The 9 month remand period is not unreasonable. There is no violation of the presumption of innocence arising from the remand period.
- [5] The prosecution case is substantially depended on the testimony of the complainant who is a child witness. She has given a police statement implicating the applicant to the alleged crimes. She has not retracted from

her police statement. However, due to her young age, the complainant is vulnerable to interference.

- [6] Furthermore, the applicant has other pending cases against minors in various courts in Fiji.
- [7] In Magistrates' Court Case No. 24/14 (Labasa), the applicant is charged with indecently insulting or annoying a girl.
- [8] In Magistrates' Court Case No. 79/14 (Labasa), the applicant is charged with indecent assault.
- [9] In Magistrates' Court Case No. 80/14 (Labasa), the applicant is charged with indecently insulting or annoying a girl.
- [10] In Magistrates' Court Case No. 69/12 (Ba), the applicant is charged with indecent assault on a 16-year old girl and breaching a suspended sentence. I called for the file in Case No. 69/12 when the applicant failed to disclose this case when he renewed his application for bail. According to the Ba file, the applicant appeared in court on 13 December 2012, and over strong objection by the prosecution, was granted bail. The prosecutor also informed the learned Magistrate that the applicant had five pending cases in the Nasinu Magistrates' Court (634/08, 538/08, 636/08, 584/08, 923/08). The nature of the charges in the Nasinu cases was not disclosed. After bail was granted, the case was adjourned to 28 March 2012. On 28 March 2012, the applicant failed to appear in court in breach of his bail and a bench warrant was issued for his arrest. The warrant has been renewed on numerous occasions since the applicant could not be located and arrested. The warrant was last renewed on 15 May 2014 and is currently active.

- [11] Despite the above background, on 3 June 2014, the applicant was granted bail in the three cases before the Labasa Magistrates' Court. Since the applicant relied on the lower court's decision, I called for the three cases for a review of the decision to grant bail. The applications for bail in the Magistrates' Court were made in person. He filed three separate bail forms in the Magistrates' Court. The bail form required him to disclose all his pending cases. In all three bail forms, the applicant failed to disclose his pending cases in Viti Levu. Furthermore, when the applicant filed his second application for bail, he did not disclose his pending cases in Viti Levu in his bail form. He also stated that he was applying for bail for the first time, when he knew well that his first application for bail was refused by this Court. In his bail form, the applicant stated that he has a business to run, but he has failed to disclose details of his business for verification purpose.
- [12] For the above reasons, this Court expresses surprise at the learned Magistrate's decision to grant the applicant bail, knowing the High Court has found him to be a flight risk. Even if the lower court's decision to grant bail is correct, there is no automatic right to bail in this Court. The High Court is a superior court and the decision of bail in this matter lies with this Court.
- [13] The sheer number of pending sexual cases against the applicant increases the likelihood of him absconding to avoid trial. Furthermore, the complainants are minors and the likelihood of interference with them is real.
- [14] In my judgment the accused remains a flight risk and his second application for bail must fail.

- [15] The second application for bail is refused. Under the revisionary powers of this Court, I set aside the Labasa Magistrate's decision to grant the applicant bail in Case No. 24/14, Case No. 79/14 and Case No. 80/14. The decision to grant the applicant bail in those cases were made by the learned Magistrate without due consideration of the bail principles under the Bail Act and therefore the decision is incorrect in law. The applicant is remanded in custody pending trial in those cases.
- [16] The Deputy Registrar is directed to forward a copy of this ruling to Labasa, Ba and Nasinu Magistrates' Courts.

  
**Daniel Goundar**  
**Judge**



At Labasa  
Friday 15 July 2014

Solicitors:  
Office of Legal Aid Commission for the Applicant  
Office of the Director of Public Prosecutions, Labasa for the Respondent