

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 062 OF 2014S

AIDEN ALEC HURTADO

VS

THE STATE

Counsels : **Ms. S. Vaniqi for Accused**
Mr. L. Fotofili for State

Hearing : **10 April, 2014**

Ruling : **30 April, 2014**

Written Reasons: **18 July, 2014**

WRITTEN REASONS FOR DENYING BAIL

1. In Suva High Court Criminal Case No. HAC 073 of 2014S, the accused faced the following information:

Statement of Offence

UNLAWFUL TRANSPORT OF ILLICIT DRUGS: *Contrary to Section 5(b) of the Illicit Drugs Control Act No. 9 of 2004.*

Particulars of Offence

AIDEN ALEC HURTADO, between the 7th to 10th February 2014 at **Nadi** in the Western Division and in Suva in the Central Division, procured the transport of Illicit Drugs namely cocaine, approximately weighing 20.5042 kg.

2. The accused had been remanded in custody since his first appearance in the Suva Magistrate Court on 20 February, 2014. He first appeared in the High Court on 7 March 2014, and had been remanded in custody since then. He had been in custody for approximately 5 months. On 30 April 2014, the information was put to the accused, and he pleaded not guilty to the same.
3. The accused person applied for bail on 27 March 2014. He filed a notice of motion and an affidavit in support. The State replied with an affidavit from Inspector H. Kumar, the police investigation officer, on 8 April 2014. I heard the parties on 10 April 2014. On 30 April 2014, I declined the accused's bail application, and I said I would give my reasons later. Below are my reasons.
4. An accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for bail is whether or not the accused will turn up on the date arranged to take his trial. In deciding the above, the court is duty bound to take into account the factors mentioned in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrendering to Custody:

5. The accused is 23 years old, single with no children. He is a citizen of the United States of America and Columbia. He arrived in Fiji on 7 February, 2014. According to the prosecution, he allegedly brought to Fiji 20.5 kg of illicit drug, that is, cocaine. The cocaine was allegedly in his bag. According to the prosecution, they have a strong case against the accused. He allegedly confessed to the police, when caution interviewed on 18, 19, and 20 February, 2014. Although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, if found guilty after trial, he faces a possible prison sentence between 7 to 14 years imprisonment. According to his police caution interview statements, there are people in Fiji, who are trying to take him out of the country. Under this head, in my view, his chances of bail are slim.

Factor No. 2: The Interest of the Accused Person:

6. The accused is likely to be tried on the first and/or second week of February 2016, that is, approximately 1 year 6 months away. He would by then have spent approximately 2 years in custody. The court, by law, can keep a person in remand pending trial for a period of 2 years, and more, if the interest of justice requires. However, time spent in remand will be deducted from the

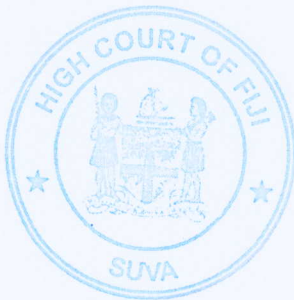
final sentence, if the accused is found guilty as charged. Furthermore, the accused can enjoy the new remand centre in Suva. He is represented by an experience counsel, who could visit him in custody, to prepare his defence. There appears to be no need for him to be at liberty for other lawful reasons. He is not incapacitated. Under this head, the accused's chances of bail are slim.

Factor No. 3: Public Interest and Protection of the Community:

7. The allegation against the accused is serious. It is alleged that he brought 20.5 kg of cocaine, an illicit drug, into Fiji, for delivery to a person in Sydney, Australia. The evils of the trafficking in illicit drugs had been well documented in most publications. Although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it is in the public interest and the protection of the community that, he be remanded in custody until further orders of the court. Under this head, the accused's chances of bail are slim.

Conclusion:

7. For the above reasons, I refused the accused's bail application on 30 April 2014.



Salesi Temo
JUDGE

Solicitor for Accused : Vaniqi Lawyers, Suva.
Solicitor for State : Office of the Director of Public Prosecution, Suva.