

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION
CRIMINAL MISCELLANEOUS CASE NO: 217 OF 2014

BETWEEN : **AARON ANWAR KHAN**
Applicant

AND : **STATE**
Respondent

Counsel : **Mr. K. Vuataki for the Applicant**
Mr. J. Niudamu for Respondent

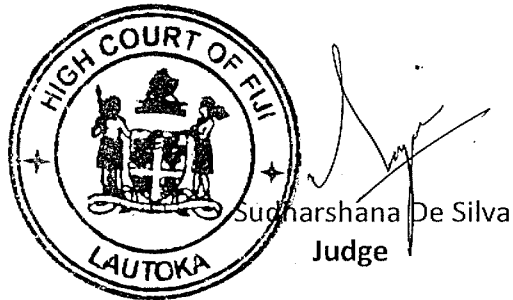
Date of Hearing : **19 September 2014**
Date of Ruling : **22 September 2014**

Ruling

1. The applicant above named had filed an application for variation of bail. He is charged with Importation of 5.4 Kg of Pseudoephedrine contrary to Section 6 (a) of the Illicit Drug Control Act of 2004.
2. He was granted bail by the Resident Magistrate Nadi on 28.8.2014, when he was first produced in Court. The bail conditions are:
 - (i) 2 sureties of bond \$2,000.00
 - (ii) The accused to sign at Namaka Police Station once a week on Sunday between 9.00 am - 12.00 pm
 - (iii) The accused to surrender his passport
 - (iv) There is a stop departure on the accused as he is a dual citizen.
3. This matter was then transferred to this Court and was mentioned on 10th September 2014. State moved for 14 days to file the Information and Disclosures and the case to be mentioned on 25th September 2014. The accused was represented by counsel.

4. On 18th September 2014, this application for stop-departure to be lifted was filed with supporting documents for the applicant to travel to Belarus on 22nd September 2014.
5. This case was mentioned on 19th September 2014 at 9.00 a.m. and was taken up for hearing at 2.30 p.m. It was revealed in the hearing that the applicant had submitted only one of his passports to Nadi Court (Fiji Passport). He is also holder of Australian passport. The Australian passport was submitted to this Court on 19th September 2014 at the time of hearing after Court requested him to surrender the same in the morning.
6. Applicant gave evidence supporting his application. He stated that he disclosed to the Magistrate that he is a holder of two passports and the clerk only wanted him to surrender one passport. He further stated that purpose of his visit is to sign some contracts. He had done 99% negotiations and wanted to meet the parties personally before signing the contracts. He does not need to get visa and will get on arrival visa. The air ticket is not paid yet. He had built a jetty in Fiji and made a huge investment.
7. Counsel for the applicant had filed three judgments in support of this application.
8. In *Laca v State* Criminal Miscellaneous Application No. 117 of 2012 the applicant was allowed to travel to attend a church conference in England. In that case the Court had observed that the applicant had complied with bail conditions for a period of time. The applicant was a senior pastor and had strong ties to Fiji.
9. *Lyndon v Legal Aid Commission* [2003] FJHC 323; HAM 0038.2002s (21st February 2003) was a case of constitutional redress where USA citizen was refused Legal Aid and has no relevance to this case.
10. In *Seniloli v The State* [2004] FJHC 204; HAM 0029D.2004 (19 May 2004) was a case where applicant sought release of passport to travel abroad for a general medical review. It was allowed.
11. The state had objected for variation of this condition on the basis that applicant is a flight risk. It is further submitted that the conduct of the applicant is suspicious as he failed to surrender his Australian passport to the Court.
12. The primary consideration in any bail condition is the likelihood of the accused appearing in Court to consider charge against him.
13. The applicant had failed to satisfy Court that there is a need for him to travel abroad immediately. Further he had failed to comply with the bail conditions of the learned Magistrate as he had not surrendered his Australian passport.

14. The application for variation of bail is refused. The applicant's Australian passport is taken to Court custody. Applicant could file necessary papers and support for variation of bail if necessary.



At Lautoka
22nd September 2014

Solicitors : Vuataki law for the Applicant
Office of the Director of Public Prosecutions for Respondent