

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: 250 OF 2014

BETWEEN : SUDESH MANI NAIDU

Applicant

AND : STATE

Respondent

**Counsel : Applicant in person
Mr. S. Babitu for Respondent**

Date of Hearing : 25 November 2014

Date of Ruling : 26 November 2014

BAIL RULING

1. The applicant above named had filed an application for bail. He is charged with Murder contrary to section 237 of the Crimes Decree No. 44 of 2009 and Robbery contrary to section 310 (1) (a) (i) of the Crimes Decree No. 44 of 2009.
2. This is his fourth application for bail.
3. His first application for bail was refused on 21st February 2013. In the second application for bail (HAM 74 of 2013) bail was refused on 13th March 2013. The third application (HAM 361 of 2013) was refused by this Court on 26th September 2013. Applicant had served a sentence during this period and was released from remand on 27th October 2014. He surrendered to this Court on 3rd November 2014 the next mention date.
4. The applicant submits following grounds for bail:
 - a) Family obligations - Father of a child and sole bread winner,

- b) Time period in remand - 22 months,
 - c) To seek legal assistance.
5. The State Counsel objects for bail and submits following factors:
- a) There are serious charges against the applicant,
 - b) Applicant has 17 previous convictions of similar nature,
 - c) Applicant is presently serving a sentence,
 - d) The likelihood of committing similar offences while on bail considering his previous character.
6. I consider section 3 of the Bail Act and it states as follows:
- (1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
 - (2) Bail may be granted by court, subject to section 8 (2), by a Police officer.
 - (3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.
7. I am in total agreement with the Applicant that under the Bail Act bail is the rule and refusal is exception. But when we consider section 3 of the Bail Act it has limitations.
8. Considering the decision made by Justice Shameem in **Tak Sang Hoa v The State** (2001) FJHC 15 and Justice Fatiaki in **Adesh Singh & Others** Miscellaneous Case No. 11 and 12 of 1998 I consider following factors:
- a) The presumption of innocence,
 - b) Whether the accused to appear to stand trial,
 - c) Whether bail has been refused previously,
 - d) The seriousness of the charges,
 - e) The likelihood of the accused re-offending on bail,
 - f) Any interference with prosecution witnesses,

- g) The accused's character,
- h) The accused's right to prepare his defence,
- i) The likelihood of further charges,
- j) The State's opposition to bail.

9. Considering both the application for bail and submission by the State I am of the view that the state had failed to rebut the presumption in favour of bail. There is no likelihood that the case could be taken up for trial before applicant completes 2 years in remand. Further the applicant surrendered to this Court after he was released from remand.


10. Bail granted subject to following conditions:

- a) Personal surety bond for \$ 1000 (non - cash)
- b) Two sureties for the value of \$1000 (non - cash)
- c) Report to the Lautoka Police station on every Saturday between 8.00 a.m. and 6.00 p.m.
- d) Not to leave Viti Levu until the conclusion of this case
- e) Not to interfere with prosecution witnesses
- f) Not to re-offend while on bail

11. 30 days to appeal.



At Lautoka
26th November 2014


Sudharshana De Silva
Judge

Solicitors : Applicant in person
Office of the Director of Public Prosecutions for Respondent