

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 018 OF 2015

BETWEEN : MALAKAI KOTOBALAVU

Applicant

AND : STATE

Respondent

Counsel : Applicant in person

Ms. Latu . L. for Respondent

Date of Hearing : 2nd of March 2015

Date of Ruling : 9th of March 2015

Bail Ruling

1. The Applicant made this bail application pursuant to section 14 (1) and 30 (7) of the Bail Act. This is the third bail application of this Applicant, where all of his previous applications have been refused and dismissed.
2. This application is founded on four grounds. They are that unlikelihood of surrender to court, interest of the accused, no history of failing to observe bail

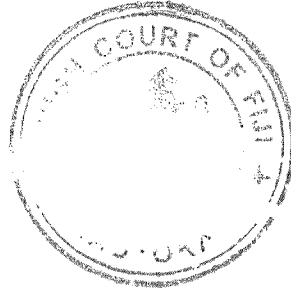
and presumption of innocent. The applicant stated in his application that he will appear in court if he is given bail. He further stated that he needs to retain a lawyer on his choice to defend this case, for which he needs to go out on bail.

3. The Respondent objected for this application and stated that these grounds were considered by the court in the applicant's previous bail applications. The applicant was charged for this offence, while he was on bail in another high court action, therefore, there is likelihood that the applicant might commit another offence while on bail.

4. Section 14 (1) of the Bail Act (herein after referred as the Act) allows an accused person to make any number of application for bail. However, in view of section 30 (7) of the Act the court could refuse to hear a fresh application for bail, if it is not satisfied that there are special facts or circumstances that justify the making of afresh application. Accordingly, it appears that the accused person is first required to satisfy the court the existence of special facts or circumstances under which he made this new application after his unsuccessful previous bail applications. Once he satisfies this threshold test, then the court could hear the bail application according to the applicable provisions in the Bail Act.

5. The Applicant mainly contended that he needs to retain a lawyer on his own choice in order to defend this action. However, he did not provide any information what prevents him to retain a lawyer while he is in custody. Therefore, I do not find it as a special circumstance. Apart from that he merely stated that he will surrender to court if he is given bail. These factors have already been considered in his previous bail applications. Accordingly, I find

there is no special or change of circumstances which fall within the meaning of section 30 (7) of the Bail Act. I accordingly refuse and dismiss this application of the applicant.



A handwritten signature in black ink, appearing to read "R. D. R. Thushara Rajasinghe".

R. D. R. Thushara Rajasinghe
Judge

At Lautoka
9th of March 2015

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