

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

HAM NO. 56 OF 2015

BETWEEN : MOHAMMED SHAHEED KHAN

Applicant

AND : STATE

Respondent

Counsel : Mr. W. Pillay for Applicant

Ms. N. Kiran for Respondent

Date of Hearing: 15th April, 2015

Date of Ruling : 15th May, 2015

BAIL RULING

1. The applicant files this application for bail pursuant to sections 14 and 30 (7) of the Bail Act (hereinafter referred as the Act). This is the third bail application of the applicant. His two previous bail applications had been refused on the ground of public interest on 27th of January and 24th of March 2015 respectively.
2. This application is being supported by an affidavit by the applicant, where he has deposed the grounds for this application. Upon being served with the

notice of motion and the affidavit in support, the respondent appeared in court and filed an affidavit of Detective Inspector Aiyaz Ali in objection of this application. The matter was then set down for hearing on 15th of April 2015, where the learned counsel for the applicant and the respondent made their respective oral arguments and submissions. The learned counsel for the applicant filed his written submission at the conclusion of the hearing. Having carefully considered the motion, respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.

3. This bail application is mainly founded on the ground that the applicant's business is now at risk of being liquidated. He deposed in his affidavit that since the filing of his first bail application, he was served with two notices by ANZ bank indicating their intention to withdraw all loan facilities advanced to his company. He further stated that the prosecution has concluded its investigation. Apart from these grounds, the applicant has extensively discussed his right of bail and the difficulties that his family and his business have been undergoing due to his incarceration.
4. The Respondent in their affidavit in opposition stated that the grounds advanced by the applicant in this bail application have already been considered in his last two bail applications. They further deposed that the accused has been charged with a serious offence and there is a likelihood that he may interfere with the prosecution witness if he is granted bail.
5. Having briefly discussed the background of this application, I now turn to discuss the applicable law.
6. Section 14 (1) of the Bail 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 a fresh application.

7. Donaldson L.J. in Regina v Nottingham Justices, Ex parte Davies (1981) QB 38, 71 Cr.App R 178 DC) has discussed the applicable principles pertaining to a subsequent bail application made after the previous applications were refused. Donaldson L.J. held that;

"However this does not mean that the justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a schedule 1 exception was made out. If it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This "satisfaction" is not a personal intellectual conclusion by each justice. It is a finding by the court that schedule 1 circumstances then existed and it to be treated like every other finding of the court. It is res judicata or analogous thereto. It stands as a finding unless and until it is overturned on appeal."

It follows that on the next occasion when bail is considered the court should treat, as an essential fact, that at the time when the matter of bail was last considered, schedule 1 circumstances did indeed exist. Strictly speaking, they can and should only investigate whether that situation has changed since the".

8. Bearing in mind the observations made by Donaldson L.J. in Regina v Nottingham Justices (supra), I now draw my attention to section 30 of the Bail Act. It appears that the Magistrates are allowed to review any decision of bail made by police officers or any other magistrates including a reviewing magistrate pursuant to section 30 (1) (2) of the Act. However, the High Court is only allowed to review any decision made by a magistrate or by a police

officer. Unlike the Magistrate court, the High court is not allowed to review a decision made by another high court pursuant to section 30 (3) of the Act.

9. Section 30 (7) of the Act states that;

"A court which has power to review a bail determination, or to hear a fresh application under section 14 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of afresh application, refuse to hear the review or application".

In view of section 30 (7) of that act, it appears that the inquiry of a subsequent bail application differs from the inquiry of the first bail application. The applicant is first required to satisfy the court the existence of special facts or circumstances to justify the making of bail application afresh.

10. Donaldson L.J. in Regina v Nottingham Justices (Supra) has discussed the scope of "special facts or circumstances", where his lordship found that;

"the court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since the last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not impugn the previous decision of the court and it is necessary in justice to the accused. The question is little wider than "has there been a change". It is "are there any new consideration which were not before the court when the accused was last remanded in custody?"

11. In view of the Donaldson L'J's observation and the section 30 (7) of the Act, it appears that the court is not only required to look into change in circumstance which has occurred since the last decision, but also other special facts and

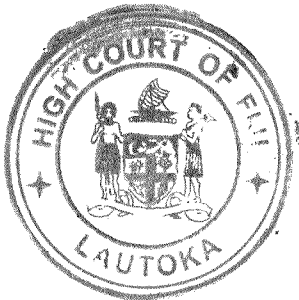
circumstances, which were not presented or had not considered by the court in previous bail applications.


12. Turning into this instant application, I find that the applicant's application is mainly founded on the ground that his incarceration has adversely affected his business, which is now at the risk of liquidation. He tendered three letters sent to his company by ANZ bank on 12th, 20th and 21st of January 2015 respectively.
13. It appears that all those three letters had been delivered to the applicant before the hearing of his first bail application on 26th of January 2015. The learned counsel for the applicant stated in his oral submissions that those letters were not present at the time of the first bail hearing. However, it appears from the first bail ruling of Justice De Silva that his lordship has considered the difficulties and financial loss in the applicant's business.
14. Justice De Silva has considered the letter dated 20th of January 2015 in his second bail ruling dated 24th of March 2015 and found that the court had already considered the facts of the absence of anyone to manage the business of the applicant and the financial loss. In view of these facts, it appears that Justice De Silva had an opportunity to consider the letter dated 20th of January 2015 sent by ANZ Bank demanding the applicant's company to pay all money granted him under various headings.
15. In view of the three letters mentioned in the affidavit of the applicant, the letter dated 20th of January 2015 is directly related to the company of the applicant, which has already been considered by Justice De Silva in his second bail rulings. Wherefore, it is my considered opinion that the financial condition of the applicant and the crisis arisen in his company has already been considered in the previous bail applications. Accordingly, I do not find

any special facts or circumstances, which were not presented or had not considered by the court in previous two bail applications to justify the making of a bail application afresh.

16. Apart from the issues arisen in his business, other grounds advanced by the applicant, inter alia, his family obligations, presumption of innocence, presumption in favour of bail have already been considered in the first bail application.

17. Having considered the reasons set out above, it is my conclusion that there are no special facts or circumstances to justify making of afresh application for bail. I accordingly refuse and dismiss this bail application.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka

15th May 2015

Solicitors : Gordon & Co. for Applicant
Office of the Director of Public Prosecutions