

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 105 OF 2015

BETWEEN : MOHAMMED SHAHEED KHAN

Applicant

AND : STATE

Respondent

Counsel : Mr. Iqbal Khan for Applicant

Ms. N. Kiran for Respondent

Date of Hearing: 17th of June 2015

Date of Ruling: 19th of June 2015

RULING

1. The Applicant files this notice of motion seeking following orders *inter alia*;
 - i. *The Applicant be allowed to visit his Solicitors Chambers at 7 Yasawa Street, Sunbeam Building, Lautoka everyday starting on 16th of June 2015 till the final outcome of the Applicant's case,*
 - ii. *That the Applicant be allowed to visit his solicitors chambers from Monday to Friday from 9a.m to 3 p.m.*

2. The Notice of Motion is being supported by an affidavit of the Applicant, stating the grounds for this application. The Applicant states that he has been charged for one count of Unlawful Importation of Illicit Drugs contrary to section 4 (1) of the Illicit Drugs Control Act. The hearing of the said action is fixed from the first week of July 2015. The Applicant stated that he needs to prepare his defence with his Solicitor. However, he found no adequate facilities to consult and discuss his defence with his Solicitor at the Natabua Remand Centre.
3. The Applicant has not specified the nature of inadequate facilities which he claims in his affidavit. However, the learned counsel for the Applicant in his oral submission stated that the place given to him to consult the Applicant has no air condition, only has fans which made them uncomfortable to discuss their defence.
4. This application is made pursuant to inherent jurisdiction of this court. The learned counsel for the Applicant submitted that he couldn't find any case authority or any previous judicial precedents of allowing or considering an application of this nature.
5. Having considered the nature of this application, I find this application is founded on the Applicant's confusion in understanding his rights as a detained and arrested person, which is sometimes referred as "prisoner's dilemma". Accordingly, the determination of this application is founded on the understanding of the nature of the modern Nation State and the functional behaviours of its structures, systems and procedures with the citizen of the nation.

6. According to social contract theory, one of the oldest and widely acclaimed theoretical explanations of the moral, ethical and legal understanding of modern Nation States, human beings are self-interested and rational. They individually attempt to enhance, develop, and furtherance their self-interests in a "state of nature" as described by Thomas Hobbes. The process of individual attempt of enhancement of self-interest has adversely altered the "state of nature", making anarchy with adversaries, competitions, violations of freedom and rights. This led to the creation of a social contract among the human beings and also with the state. This social contract is the foundation of modern Nation State.
7. It is a social contract of how people are to treat each other. The main aim of the contract is to create a social order, ending the anarchical state of nature and making it possible for people to advance the social goods. The human beings agreed to create a State with the mechanism of protecting the life and property, rules to secure the benefit of social living, protection from outside threats. This contract has further defined the rights of the citizen of the state and its application and limits in order to secure the wider interest of the society. Accordingly, the State has a legitimate obligation to protect the rights and freedom of the society and their collective social living. In doing so, it is imperative for the State to limit the certain personal liberties and rights of certain individuals in order to fulfil its legitimate obligation in a legitimate manner.
8. Many Nation States have codified this social contract between the people and the state and also among the people in a document referred as the Constitution. The Constitution of Fiji Islands is also founded on such a social contract as its preamble states that it is the people of Fiji who establish the Constitution of the Republic of Fiji.

9. Section 2 of the Constitution states that the supreme law of the state is the Constitution. The Constitution has stipulated a bill of rights under chapter 2 in order to achieve and fulfil the legitimate benefits of social and individual living base on moral and ethical values.
10. Turning into this instant application, the Applicant is being remanded by this court subsequent to charging him for an offence under the Illicit Drugs Control Act. He made several bail applications. However, the court has refused them and denied him bail. The Applicant in this application claims that he is denied to exercise his right to prepare his defence stipulated under Section 14 (2)(c) of the Constitution as a consequent of being remanded by the court. He states that the inadequate facilities in the remand centre have prevented him freely consult his Solicitor in order to prepare his defence. As such, he seeks orders as mentioned in the Notice of Motion to prepare his defence with his Solicitor.
11. Section 6 (5) of the Constitution states that;

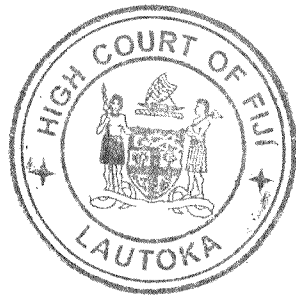
“The rights and freedoms set out in this Chapter apply according to their tenor and may be limited by—

- a. limitations expressly prescribed, authorised or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;*
- b. limitations prescribed or set out in, or authorised or permitted by, other provisions of this Constitution; or*
- c. limitations which are not expressly set out or authorised (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorised or permitted by a law or by actions taken under the authority of a law. (6) Subject to the provisions of this Constitution, this Chapter applies to all laws”.*

12. Accordingly, it appears that the freedom and the rights stipulated under the Bill of Rights should apply according to their meaning and could be limited under the circumstances stated in Section 6(5) (a) – (c).
13. Section 9 (e) of the Constitution allows to limit or deprive the “right to personal liberty” of a person, if he is reasonably suspected of having committed an offence. This allows the State to detain or arrest a person on the ground of reasonable suspicion of having committed an offence. Furthermore, Section 13 of the Constitution has provided a set of rights for the detained and arrested persons. The detained and arrested persons are allowed to exercise and enjoy these rights stipulated under Section 13 subject to the limitation of their personal liberty.
14. It is a right of arrested or detained person to be released on reasonable terms and condition. However, this right may be limited on the ground of interests of justice.
15. The Applicant has been arrested and detained on the reasonable suspicion of committing an offence under the Illicit Drugs Control Act. Subsequently, his bail applications were refused on the ground of interest of justice. Hence, the Applicant could exercise his right to prepare his defence subject to the limitation and rights stipulated under the Bill of Right for a detained or arrested person.
16. Section 13 (1) (c) of the Constitution has provided a right to the detained or arrested persons to communicate with a legal practitioner of his choice in private in the place where he is detained. The learned counsel of the Prosecution tendered a copy of a letter of Supervisor Western of Fiji Corrections Service dated 17th of June 2015, stating that the Prison will be able

to provide facilities for the Appellant to consult his Solicitor in private according to the rights stipulated under Section 13 (1) (c) of the Constitution.

17. Under such circumstances, I do not find the reasons deposed by the Appellant in his affidavit and the learned counsel in his oral submissions are compelling enough for me to form a conclusion that the Appellant's right to prepare for his defence is being denied consequent to his incarceration. Thus I do not find any sufficient grounds to alter the remand condition of the Appellant as prayed in the Notice of Motion. I accordingly hold that this application has no merit. Wherefore, I refuse this application and dismiss it accordingly.



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

19th of June 2015

Solicitors : Messrs Iqbal Khan & Associates for Applicant
Office of the Director of Public Prosecutions