

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 160 OF 2015**

**BETWEEN** : **AMINIO TURAGAVA**

**Applicant**

**AND** : **STATE**

**Respondent**

**Counsel** : **Applicant in Person**  
**Ms. L. Latu for the Respondent**

**Date of Hearing** : **25<sup>th</sup> September, 2015**

**Date of Ruling** : **02<sup>nd</sup> October, 2015**

**BAIL RULING**

1. The Applicant who is charged with Murder contrary to Section 237 of the Crimes Decree No 44 of 2009 has filed this bail application seeking bail pending trial.
2. This is his second bail application, the first being rejected by my predecessor on the grounds stated in his Bail Ruling dated 25th March 2015.
3. The Applicant has been in remand since October 2014.
4. The State has filed its response supported by the affidavit of Detective Inspector Jai Singh of Lautoka Police Station. The State is objecting to bail to the Applicant on the grounds stated in the affidavit.
5. According to Section 14 (1) of the Bail Act, an accused can make any number of bail applications. However, power to review an existing bail order should be exercised only if the Court is satisfied that there are special facts or circumstances that justify a review.

6. According to Section 30 (7) of the bail Act, Court which has power to review a bail application 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 a fresh application, refuse to hear the review or application.
7. On a second or subsequent application for bail, Courts need only ask first whether there had been a material change in circumstances since the original order. If there had been no change, there was no need to look at the facts underlying the previous refusal of bail.
8. The two issues that this Court is required to address at this point are that:
  - I. Has there been a change in circumstances since the last bail ruling?
  - II. Are there new considerations which were not before the Court when the accused was last remanded in custody? (See: **Regina v Nottingham Justices, ex parte Davis**; QBD (1981) QB.38,71 Cr.App.R.178 DC).

The Applicant has failed to adduce any new facts or new grounds that justify a review.

9. The State's objection to bail is substantially based upon the Applicant's failure to abide by bail conditions imposed in case No.CF 460/14. According to Detective Inspector Jai Singh's affidavit, the Applicant has violated a DVRO when he went to the deceased *de facto* wife and allegedly assaulted her to death. Applicant is alleged to have committed an offence involving domestic violence. Presumption in favour of bail is displaced when a previous bail condition has been violated and also when there is an allegation involving domestic violence.
10. Applicant has denied the charge and asserted that the case against him is unfounded and no credible evidence has been presented to Court against him. He relies heavily on the presumption of innocence as the ground for him to be at liberty pending trial. However, in his cautioned interview, he has admitted assaulting his *de-facto* partner. The cautioned interview statement is tendered as part of the affidavit. Statements recorded from eye witnesses, tendered marked AT6 to AT 10, indicate that there is a strong case against the Applicant.
11. Proving the charge against the Applicant is a trial function. Court is not supposed, at this stage, to evaluate evidence against the Applicant. Said that, Courts must, however, when considering bail, be satisfied if there is a strong case made out against the accused so as to justify denial of his right to liberty enshrined in the Constitution. I am satisfied that there is a strong case against the Applicant.

### **Interest of the Accused**

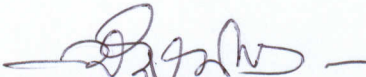
12. As regards the interests of the Accused, the Applicant states that he has two children and they are now living with his brother and sister-in-law. Being a father of two children is not an exceptional circumstance.
13. According to Section 17(1) of the Bail Act, when deciding whether to grant bail to an accused person, the court must take into account the time the person may have to spend in remand before trial, if bail is not granted. The Applicant has so far been in remand for nearly one year. However, Bail Act permits detention of an accused pending trial for up to two years when circumstances justify such a detention. Applicant's trial is already fixed for first week of February 2016. There is no impediment for him to prepare for his trial and seek legal aid whilst in remand.

### **Public Interest and the Protection of the Community**

14. The State, for its objection to bail, is heavily relying on Applicant's tendency to interfere with State witnesses. Applicant has already violated bail conditions and, according to his cautioned interview statement he has tried to reconcile with his *de facto* wife while a DVRO is in place. Most of the eye witnesses are closely related to the Applicant. The concern on the part of the State seems justifiable.
15. I am of the view that imposition of strict bail conditions is not sufficient to guard against interference with witnesses. Interest of the public would be at risk if bail is granted to the Applicant.
16. For foregoing reasons, the application for bail review is refused.



**At Lautoka**  
**2nd October, 2015**

  
**Aruna Aluthge**  
**Judge**

**Solicitors: Applicant in Person**  
**Office of the Director of Public Prosecution for the**  
**Respondent**