

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 04 OF 2015

BETWEEN : **RUSIATE T. ULUIBAU**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in person**
Mr. J. Niudamu for Respondent

Date of Hearing : **12 February 2015**

Date of Ruling : **17 February 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 fourth bail application of this Applicant, where all of his previous applications were refused and dismissed.
2. This application is mainly founded on the ground that the Applicant has secured a job which he needs to commence in order to financially support his mother and also to obtain the service of a lawyer to defend his case in the trial. The Respondent filed their objections in the form of an affidavit of DC 2019 Sunil Kumar, which was followed by the responses filed by the Applicant. Subsequently this matter was set down for hearing on 12th of February 2015, where both parties informed the court that they rely only on their respective documents filed in the application and do not wish to make any oral submissions. Having considered the bail application, the

objection of the Respondent and the response of the Applicant, I now proceed to pronounce my ruling as follows.

3. The objections of the Respondent is mainly founded on the ground that there is no change of circumstances from his previous three bail applications, which have been refused by this court. Moreover, the Respondent submitted that the Applicant is having two pending criminal actions in the Lautoka Magistrate court for similar offences as of this case. Furthermore, the prosecution has a strong case against the Applicant and the offences charged in this action are serious in nature.
4. The Applicant in his reply to the Respondent's objection extensively elaborated his rights for bail and the difficulties that his mother and grandmother are facing due to his incarceration.
5. Having briefly outline the procedural background and the respective contentions of the Applicant and the Respondent, I now draw my attention to discuss the applicable provisions in the Bail Act (hereinafter referred as "the act") for this application,
6. Section 14 (1) of the Bail Act allows an accused person to make any number of applications 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 subsequent to the 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.
7. The Applicant's main ground for this application is that his employment which he has secured and need to commence forthwith. The Applicant has been in remand since early 2014. The Applicant has not taken up this issue of employment in any of his previous bail applications. Moreover, he has not provided any information to explain the court that under which circumstances he managed to secure this employment

while he is in remand for nearly a year. The alleged letter of the employer that he annexed to his reply to the objections has no official letter head of Water Authority of Fiji or any subsidised authority of it. In the absence of such evidence or information, I do not find the ground of employment is compelling enough to consider as a special fact or circumstances pursuant to section 30 (7) of the Bail Act.

8. Other grounds of this bail application are that the Applicant needs to secure this employment in order to look after his mother and also to obtain the service of a lawyer to defend his case. I do not wish to discuss these two grounds in details as they have already being discussed and considered in his previous bail applications. He is represented by a lawyer from the Legal Aid and if he is finding any difficulties to communicate with that lawyer, he could seek assistance of the prison authority to contact the legal aid. This ground indeed is not a special fact or circumstances that could fall within the meaning of section 30 (7) of the Act.
9. Having considered the reasons set out above, I refuse and dismiss this bail 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
17th February 2015

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