

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 190 OF 2016

BETWEEN : **ALEXIO MOLI JUNIOR**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in Person**
Mr. A. Singh for Respondent

Date of Hearing : **02nd December, 2016**

Date of Ruling : **14th December, 2016**

BAIL RULING

Background

1. This is an application for bail pending trial.
2. The Applicant is charged with two count of Aggravated Robbery contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009. According to the charge sheet, the total value of the items and cash stolen was \$203,652.00.

3. Information is yet to be filed by the Director of Public Prosecution and no trial date is fixed yet.
4. The application is based on the following grounds:
 - a. Presumption of innocence
 - c. Family ties, personal circumstances of the Applicant and need to prepare for his defence
 - d. His strong likelihood to abide by bail conditions / no previous bail violations
 - e. Injuries sustained whilst in police custody
 - f. likely length of delay to start the trial
5. The State is objecting to bail. D/A Cpl. Sunil Dutt, the Investigating Officer of Applicant's substantive case, has filed an affidavit stating the grounds of objection.
6. Opposition to bail is based on following grounds:
 - a. Charge against the Applicant is serious and entails a severe punishment, if found guilty.
 - b. Case against the Applicant is strong and therefore likelihood of not appearing in Court to face trial is high.
 - c. Safety of the community and public interest.

The Law Relating to Bail

7. There is a presumption in favour of the Applicant's innocence until the charge is proved. There is also a presumption in the Bail Act in favour of granting of bail. That presumption is however displaced when there are valid grounds for detention in the interest of the justice.

8. Section 3(1) of the Bail Act provides:

“Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted”.

9. The Constitution of the republic of Fiji provides:

“Every person who is arrested or detained has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require; [Section 13 (1)]; to have the trial begin and conclude without unreasonable delay [14 (2) (g)]; Every person charged with an offence has the right to be presumed innocent until proven guilty according to law [14(1) (a)];”

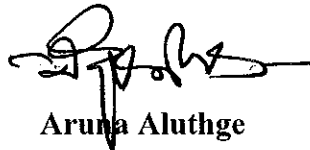
Analysis

10. The Respondent argues that the charge against the Applicant is serious and it entails a severe punishment if found guilty and therefore, it is highly likely that he would not surrender and appear in Court to face trial if bail is granted.

11. The Respondent, based on the affidavit filed by the Investigating Officer, argues that there is a strong case against the Applicant because some of the stolen items were recovered from Applicant's possession.

12. At the trial stage, the prosecution is required to prove the guilt of the accused beyond a reasonable doubt. That standard of proof has no application at the bail stage where guilt or innocence is not determined and where punishment is not imposed. The presumption of innocence is a principle of fundamental justice which applies at all stages of the criminal process, but its procedural requirements at the bail stage are satisfied whenever the requirements in the Bail Act are satisfied.
13. Seriousness of the charge of itself is not a valid basis to refuse bail. However, to assess the Applicant's likelihood of absconding, seriousness of the charge, probable penalty it entails and the strength of the prosecution case are relevant considerations. *Vide*: Section 19 (2) iii, iv.
14. The main concern of the Respondent is the safety and protection of the community. The "public safety" component is constitutionally valid. The offence with which the Applicant is charged generally endangers the protection of the community. The criminal record of the Applicant is so bad that it is likely that his release from custody would endanger the public safety. He has 62 previous convictions and of which 25 had been recorded within the past ten years. Most of them are of similar nature. He had also been sentenced for Resisting Arrest and Escaping from Lawful Custody.
15. Remand prisons should not be used to protect the public due to fear of the accused reoffending. If the concerns of public safety and protection of the community can be addressed by imposing stringent bail conditions, courts must not resort to curtail personal liberty. Bail is denied only for those who pose a "substantial likelihood" of committing an offence or interfering with the administration of justice, and only where this "substantial likelihood" endangers "the protection or safety of the public". Moreover, detention is justified only when it is "necessary" for public safety. The bail system does not function properly if an accused interferes with the administration of justice or commits crimes while on bail. While it is impossible to make exact predictions about recidivism and future dangerousness, exact predictability of future dangerousness under the Bail Act is not mandated. It is sufficient that the bail system establish a likelihood of dangerousness.

16. It appears from the medical report that the Applicant has received some injuries whilst he was in police custody. However there is no evidence that he is in a position as at present to be treated at a hospital. There is no impediment to get medical treatment or access legal aid scheme whilst being in the correction centre. If his constitutional rights have been violated he can invoke the jurisdiction of this Court by way of a constitutional redress application.
17. When considering the past criminal record of the applicant, I am satisfied that there is a real likelihood that the Applicant will re-offend while on bail. The seriousness of the offence and the past criminal record of the Applicant should be taken into account in protecting the public and ensuring their safety and security.
17. For the reasons given, I refuse to grant bail to the Applicant.
18. Order- Bail refused.
19. 28 days to appeal.


Aruna Aluthge
Judge



At Lautoka

14th December, 2016

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for the Respondent