

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 005 OF 2016S

BETWEEN

JOSAIA VUSUYA

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Ms. P. Lal for Applicant
Mr. Y. Prasad for Respondent
Hearing : 21 March, 2016
Ruling : 22 April, 2016

RULING ON BAIL PENDING TRIAL

1. In Suva High Court Criminal Case No. 261 of 2015S, the applicant (accused) faced the following count:

FIRST COUNT

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

JOSAIA VUSUYA, KELEPI SAMUTA QAQA and TEVITA DAKUITURAGA on the 18th day of July 2015 at Nausori, in the Central Division, murdered EPINERI WAQAWAI.

2. The applicant first appeared in the Nausori Magistrate Court on 23 July 2015. He had been remanded in custody since then. He had been in custody for the previous 9 months. On 26 January 2016, he applied for bail. He filed a notice of motion with two affidavits in support. The State had already filed an affidavit on 9 October 2015 and the full disclosures on the same date. The State opposed the bail application. I heard the parties on 21 March 2016, and adjourned to 22 April 2016 for ruling.
3. It was well settled that an accused person had a right to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will turn up in court on the date arranged for his trial. In deciding the above, the court is duty bound to consider the factors laid out in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrender to Custody:

4. The accused is 29 years old, married with two young children. He reached Form 4 level education, and sells food at Nausori Town for a living. According to the prosecution, they had a strong case against the accused. He allegedly confessed to the crime. He allegedly admitted punching the deceased to the ground, and the others stomped on the deceased's head, wherein he later suffered head and brain injuries, resulting in his death on 20 July 2015. If found guilty after trial, he will be given the mandatory life imprisonment. Under this head, the accused's chances of bail are slim.

Factor No. 2: Interest of the Accused:

5. The trial of the accused will be done before July 2017. He had been remanded in custody for 9 months. By the time the trial is done, he would be in custody for less than 2 years. The court is empowered to hold people in remand for 2 years before trial. However, if he's found guilty as charged, time spent in remand will be deducted from his final sentence. He is presently remanded at the new Suva Remand Centre. He is represented by Legal Aid counsel and they can visit him in custody, as and when they please. There does not appear to be any need for the accused to be at liberty for any other lawful purpose. He is not incapacitated. Under this head, the accused's chances of bail are slim.

Factor No. 3: Public Interest and Protection of the Community:

6. The allegation against the accused was serious. He allegedly punched the deceased to the ground wherein he later died from his brain injuries. Murder and/or manslaughter are serious

crimes. Although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it is in the public interest and the protection of the community that the accused be remanded in custody, until further orders of the court. Under this head, the accused's chances of bail, are slim.

Conclusion:

7. Because of the above, I deny the accused's bail application. He is remanded in custody, until further orders of the court.



A handwritten signature in blue ink, consisting of a large, stylized letter 'S' with a loop at the top and a tail that curves downwards and to the right.

Salesi Temo
JUDGE

Solicitor for Applicant : Legal Aid Commission, Suva
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva.