

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 191 OF 2015S

BETWEEN

MESAKE TABAKA

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Ms. T. Kean for Applicant
Ms. S. Serukai for Respondent
Hearing : 7 March, 2016
Ruling : 29 April, 2016

RULING ON BAIL PENDING TRIAL

1. In Suva High Court Criminal Case No. HAC 082 of 2015S, the applicant (Accused) faced the following information:

FIRST COUNT

Statement of Offence

UNLAWFUL POSSESSION OF ILLICIT DRUGS: Contrary to
Section 5 (a) of the Illicit Drugs Control Act 2004.

Particulars of Offence

MESAKE TABAKA on the 9th day of January, 2014 at Delasese
Settlement, Wainibuka Tailevu, in the Central Division, without

lawful authority, had in his possession 35 kg of Cannabis Sativa or Indian Hemp, an illicit drug.

SECOND COUNT

Statement of Offence

ESCAPE FROM LAWFUL CUSTODY: Contrary to Section 196 of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MESAKE TABAKA on the 9th day of January 2014 at Delasese Settlement, Wainibuka Tailevu, in the Central Division, being in lawful custody of S/Cpl 2243 Samisoni Madigikula, escaped from the said lawful custody.

2. The applicant first appeared in the Nausori Magistrate Court on 16 February 2015. He had been remanded in custody since then. So, he had been in custody for approximately 1 year 2 months 13 days. On 8 December 2015, the applicant applied for bail. He filed a notice of motion with an affidavit in support. The State opposed bail. They filed an affidavit in reply on 22 February 2016. On 7 March 2016, I heard the parties. I adjourned to today for a ruling.
3. It was well settled that an accused person was entitled 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 set for his trial. In deciding the above issue, the court was 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 applicant is 33 years old, married with one child. He reached Form 6 level education at Ratu Kadavulevu School. He is a farmer by profession. He plants cassava, dalo and yaqona. According to the prosecution, they had a strong case against the accused. The police uprooted 72 plants of cannabis sativa from his farm. The plants were alleged to be his and weighed 35 kg. If found guilty, he faced a possible sentence of 14 years imprisonment and up. He had been on the run from the police for 1 year. Under this head, the chances of bail for the accused are slim.

Factor No. 2: The Interest of the Accused:

5. The applicant will be tried from 29 August to 2 September 2016, that is, 4 months away. By that time, he would have been remanded in custody for approximately 1 year 7 months. A court is empowered to hold a person in remand for 2 years prior to trial. In any event, if found guilty after trial, time spent in custody while on remand will be deducted from his final sentence. He is remanded at the new Suva Remand Centre. His counsel can visit him in custody to prepare his defence, as and when they pleased. There is no reason for him to be at liberty for other lawful reasons. He is not incapacitated. In my view, under this head, his chances of bail are slim.

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

6. The allegations against the accused are very serious. He allegedly cultivated 25 kg of cannabis sativa plants, and escaped from police for about a year. The evils of drugs had been highlighted in various publications. 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 he be remanded in custody until further orders of the court. Under this head, the accused's chances of bail are slim.

Conclusion:

7. It is for the above reasons that I deny bail. Accused is remanded in custody, until further orders of the court.




Salesi Temo
JUDGE

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