

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

HAM NO. 50 OF 2016

BETWEEN : ARON AJAY SINGH

*Applicant*

AND : STATE

**Respondent**

Counsel : Miss S. Nasedra for the Applicant

Mr. S. Babitu for Respondent

Date of Hearing : 19th of April 2016

Date of Ruling : 6th of May 2016

**Bail Ruling**

1. The Applicant files this notice of motion invoking the jurisdiction of this court pursuant to Section 30 (3) of the Bail Act to review the ruling delivered by the learned Magistrate of Lautoka, refusing the bail of the Applicant on 9th of February 2016.
2. The notice of motion is being supported by an affidavit of the Applicant, stating the grounds for this application. The Respondent filed an affidavit of D.C. Mohammed Shamim, in opposition to this application. The Applicant then filed

an affidavit in response to the Affidavit of D.C. Mohammed Shamim. The Applicant then filed his submissions. However, the learned counsel for the Respondent advised the court that he does not wish to make any submissions and relies on the affidavit. Having carefully considered the respective affidavits and submissions of the Applicant, I now proceed to pronounce the ruling as follows.

3. The Applicant is being charged with four counts of "Obtaining Property by Deception" contrary to Section 317(1) and (3) of the Crimes Decree. The Applicant sought bail before the learned Magistrate on 30 of October 2015 on the same grounds as of his application for bail in CF 702 of 2015. The learned Magistrate having considered the submissions of the both parties, refused bail of the Applicant on the following grounds, inter alia;
  - i) Unlikelihood of Appellant appearing in court if bail is granted as he has already being charged for absconding bail for a long period of time.
  - ii) Interest of justice, and
  - iii) Interest of public,
4. The Applicant made another bail application in the Magistrate's court on 16th of November 2015. The learned Magistrate in his ruling dated 09th of February 2016, refused the bail of the Applicant on the ground that there was no special circumstances or facts that justify a review or the making of afresh application pursuant to Section 30 (7) of the Bail Act. The Applicant now files this application to review the said ruling of learned Magistrate dated 9th of February 2016.

5. In view of the affidavit of Applicant, it appears that this application is founded on the following grounds, that;

i) Delay of fixing a hearing date,

ii) Family background, specially the education of the children,

iii) Effect on his business,

iv) Health conditions of the Applicant,

6. Section 14(1) of the Bail Act allows an accused person to make any number of bail applications. Section 30 (3) of the Bail Act has given the jurisdiction to the High Court to review the decision made by a Magistrate in relation to bail. However, Section 30 (7) of the Act states that if the court is not satisfied that there are special facts or circumstances that justify a review, the court could refuse to review the previously made bail ruling. Section 30 (10) has stipulated the scope of the bail review hearing, where it states that;

*“The review must be by way of a rehearing, and evidence or information given or tamed on the making of the decision may be given or obtained on review”*

7. Having carefully considered the rulings of learned Magistrate dated 30th of October 2015 and 9th of February 2016 respectively, I find that the learned Magistrate has correctly concluded that there is no special facts or circumstances to justify the making of afresh bail application. The Appellant has not provided any special circumstances before this court, apart from stating the same grounds that the Learned Magistrate has considered in his ruling.

8. D.C. Mohammed Shamim in his affidavit in opposition states that the Applicant had been constantly absconded bail. The Applicant was subsequently charged for two counts of absconding bail in the Magistrate's court, where he was found guilty and fined. In view of these facts, it appears that the presumption of bail in favour of the Applicant has been displaced pursuant to Section 3 (4) (a) of the Bail Act. Hence, I conclude that there are no special facts or circumstances to justify the making of this review application pursuant to Section 30 (7) of the Bail Act.
9. I accordingly refuse this application and dismiss it accordingly. I further direct the Learned Magistrate to provide him early hearing date as the Applicant has been in remand since 30th of October 2015.
10. Thirty (30) days for appeal to the Fiji Court of Appeal.



**R. D. R. Thushara Rajasinghe**

**Judge**

**At Lautoka**

**6th of May 2016**



**Solicitors : Office of the Director of Public Prosecutions  
Office of Legal Aid Commission**