IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 62 OF 2016

BETWEEN : PRANEEL CHANDRAN REDDY

Applicant

AND : STATE

Respondent

Counsel : Mr. N.S. Khan for Applicant

Mr. A. Singh for Respondent

Date of Hearing : 12th of May 2016

Date of Ruling : 20th of May 2016

BAIL RULING

1. The Applicant filed this notice of motion seeking an order that the Applicant be released on bail. This is the fourth bail application of the Applicant. The first application for bail was refused on the grounds of unlikelihood of surrendering in custody. The second and third applications have been refused by the court on the absence of any special facts or circumstances to make afresh bail application pursuant to Section 30 (7) of the Bail Act.

2. The notice of motion is being supported by an affidavit of the Applicant stating the grounds for this application. The Applicant deposed that his wife has given birth to their third child and his family needs him for support. Moreover the Applicant states that his elderly father is resigning from his job as he is sick and

that will put extra financial difficulties to his family. The Applicant stated that these are the special facts and circumstances which have not been considered by the court in previous bail applications.

3. The Respondent filed an affidavit of D/Corporal Isireli Waqairalia, stating their objections. He annexed the affidavit filed by the Respondent in the first bail application of the Applicant and stated that the issue of his wife's pregnancy and his father's conditions have been already considered in the first and second bail applications by the court. The Respondent urged that there is no special facts or circumstances to justify the making of afresh bail application.

4. Section 14(1) of the Bail Act allows an accused person to make any number of bail applications. However, if the court is of the view that such application is vexatious and frivolous, the court could refuse to entertain such an application pursuant to Section 14(3) of the Bail Act.

5. Moreover, Section 30 (7) of the Bail Act states that if the court is not satisfied that there are special facts or circumstances that justify making a bail application afresh under Section 14(1) of the Bail Act, the court could refuse to hear such application.

6. Accordingly, the rights given to the accused under Section 14(1) of the Bail Act to make any number of bail applications has been subjected to the provisions of Section 14(3) and Section 30 (7) of the Act.

7. The Applicant urged that the birth of his new child and the health condition of his father are genuine changes of circumstances since the last bail application.

8. Having carefully considered the bail ruling of Justice Fernando dated 2nd of September 2015, it appears that his lordship's ruling on refusing bail is founded on the grounds of strength of the prosecution case, and likelihood of the applicant absconding from court if bail is granted. His lordship has considered the family background of the Applicant including the sickness of his father and pregnancy of his wife.

9. Donaldson LJ in **Regina v Nottingham Justices, Ex Parte Davies (1980) 2 All ER 775** has discussed the applicable principles pertaining to the issue of subsequent bail application in an inclusive manner, where his lordship expounded that;

> *"However, this does not mean that the justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a schedule 1 exception was made out. if it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This "satisfaction" is not a personal intellectual conclusion by each justice. It is a finding by the court that schedule 1 circumstance then existed and is to be treated like every other findings of the court. It is res judicature or analogous thereto. It stands as a finding unless and until it is overturned on appeal. An Appeal is not to the same court, whether or not of the same constitution, on a later occasion.....*

10. In view of the observation made by Donaldson LJ in **Nottingham Justices (supra)** it is my opinion that a judge of the high court is not allowed to revisit or to give a different consideration to the same facts that has previously been considered and determined by another judge of the high court in relation to an

application for bail. A decision of a judge is not his own individual decision, it is a decision of the High Court.

11. Donaldson LJ in **Nottingham Justices (supra)** went further and discussed the scope of the subsequent application of bail, where his lordship found that;

> *"The starting point must always be the finding of the position when the matter was last considered by the court. I would inject only one qualification to the general rule that justices can and should only investigate whether the situation has changed since the last remanded in custody. The finding on that occasion that schedule 1 circumstances existed will have been based upon matters known to the court at that time. The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since that last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in justice to the accused. The question is a little wider that "has there been a change?". It is "Are there any new considerations which were not before the court when the accused was last remanded in custody?"*

12. Accordingly, the court is required to consider an application of this nature only when there are any other new facts or circumstances that were not brought before the court in the previous application of bail.

13. The Applicant has not provided any particulars of his father's employment or his resignation from his employment. The Applicant has provided a letter from a Doctor stating that his father is suffering from severe mental stress and

depression. However, I find that the same Doctor has provided a character reference for the Applicant in his first bail application. The Applicant had stated in his second bail application that his father is suffering from knee problem. The same Doctor has provided a letter that was annexed to his second bail application stating that the father of Applicant is suffering from Osteoarthritis. Accordingly, I find that there is no specific information before me about the actual medical condition of the father of the Applicant in order to satisfy that he has or is going to resign from his employment due to any illness.

14. Furthermore, I find that the second bail ruling deliver by Justice Fernando on the 4th of November 2015, has specifically found that the reason given by his lordship in his first bail ruling overrides the need for him to be with his wife and parent for their comfort and assistance. Justice Fernando has already considered the pregnancy of the wife of Applicant and the medical condition of the father of the Applicant in that second bail application. Hence, find that the need of the Applicant to be with his family including his parents have been already considered and decided by justice Fernando in his first and second bail rulings. Hence, I do not find that the Applicant has satisfy the court in this instant application that there are special facts and circumstances that have not been previously considered by the court in respect of bail.

15. I do not wish to discuss the comment made by the learned counsel of the State in the substantive matter, saying that they are after the big fish, as it is completely irrelevant for this bail consideration. It is my opinion that the comment made by the learned counsel for the State at this stage of the proceedings is highly inappropriate. However, the matter has to be decided on the material evidence and not on the comments made by the counsel of the State.

16. Accordingly I am satisfied that this application for bail is frivolous and vexatious pursuant to Section 14 (3) of the Bail Act. Moreover, it is my opinion that the applicant has failed to satisfy the court that there are special facts and circumstances to justify the making of a bail application afresh pursuant to Section 30 (7) of the Bail Act. Hence, I refuse and dismiss this notice of motion filed by the applicant.

17. Furthermore, I advise the learned counsel for the Applicant that the court will fix this matter for the hearing either on August or September depending on the availability of the counsel.

18. Thirty (30) days to appeal to the Fiji Court of Appeal.

R. D. R. Thushara Rajasinghe

Judge

At Lautoka

20th of May 2016

Solicitors : **Nazeem Lawyers for the Applicant**

Office of the Director of Public Prosecutions