

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 079 OF 2016S

BETWEEN

SENITIKI NABULU

APPLICANT

AND

THE STATE

RESPONDENT

Counsel : Mr. K. Maisamoa for Applicant
Mr. R. Kumar for Respondent
Hearing : 20 May, 2016
Ruling : 3 June, 2016
Written Reasons : 8 July, 2016

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 310 of 2015S, the applicant (accused) faced the following information:

Statement of Offence

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

Particulars of Offence

SENITIKI NABULU on or about the 6th day of January, 2012 at Gasele Village in Kadavu in the Eastern Division, without lawful authority, cultivated 59.5 kilograms of Cannabis Sativa, an illicit drug.

2. The accused's case was first called in the High Court on 2 October 2015. The accused did not attend and a bench warrant was issued. He turned up in court on 10 October 2015, and the bench warrant was cancelled and bail granted. The case was called 5 times between 2 November 2015 and 14 April 2016 and the accused turned up. He failed to attend on 21 April 2016 and a bench warrant was issued against him.
3. On 21 April 2016, the applicant applied for cancellation of bench warrant. The court treated this application as an application for bail. The applicant filed an affidavit in support. On 20 May 2016, I heard the parties. On 3 June 2016, I denied the accused's application for bail. I took judicial notice of the matters contained in the substantive file ie. Suva High Court Criminal Case No. HAC 310 of 2015S. I said, I would give my written reasons later. Below are my reasons.
4. It is well settled that an accused person is 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 arranged to take his trial. In considering the issue, the court was 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:

5. The accused is 39 years old, married with 3 young children. He resided in a village in Kadavu, and is a farmer by profession. He plants yaqona, dalo, cassava and other crops. According to the prosecution, they had a strong case against the accused. He allegedly confessed to the police when cautioned interviewed in January 2012. If found guilty after trial, the accused faced a possible prison sentence of 14 years and up. Also, the accused had been subjected to two bench warrants in the past, for failing to attend court. Under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused's Person:

6. The accused will probably be tried in three weeks time, that is, from 1 to 5 August 2016, although the trial is set from 19 to 23 September 2016. The accused had been remanded in custody for approximately 4 months. However, if found guilty after trial, time spent in remand while awaiting trial will be deducted from his final sentence. He is remanded at the new Suva Remand Centre. He is represented by counsel, and his counsel can visit him in custody as and when they pleased to prepare his defence. There is no need for the accused to be at liberty for

other lawful purpose. He is not incapacitated. Under this head, in my view, his chances of bail are slim.


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

7. The allegation against the applicant was very serious. It was alleged he cultivated 59.5 kilograms of cannabis sativa plants, an illicit drug, at Kadavu on or about 6 January 2012. The evils of drugs in a community had been highlighted in various publications and I do not wish to repeat them here. Although the applicant 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:

8. It was for the above reasons that I refused the applicant's bail application on 3 June 2016.




Salesi Temo
JUDGE

Solicitor for Applicant : Maisamoa, Barrister and Solicitor, Suva.
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva.