

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 068 OF 2016S

BETWEEN

1. SULIASI BOLA
2. ALISEO TUKANA
3. MIKAELE RAIVASI

APPLICANTS

AND

THE STATE

RESPONDENT

Counsels : Ms. C. Choy for all Applicants
Mr. T. Qalinauci for Respondent

Hearing : 3 June, 2016

Ruling : 23 June, 2016

Written Reasons : 2 September, 2016

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 106 of 2016S, the three applicants (accuseds) 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

SULIASI BOLA, ELISEO TUKANA and MIKAELE RAIVASI,

between 01 July 2015, and 04 December 2015, at Kadavu in the Eastern Division, without lawful authority, cultivated 969 plants of cannabis sativa, an illicit drug, weighing a total of 134.2 kilograms.

2. All applicants (accuseds) first appeared in the Suva High Court on 18 March 2016. Because of the seriousness of the charge, all accuseds were remanded in custody. They had been in custody for the previous 5 months 2 weeks. On 11 April 2016, the accuseds applied for bail pending trial, in a letter they jointly wrote to the court. On 12 May 2016, the State replied with an affidavit in reply. They opposed the application. I heard the parties on 3 June 2016. On 23 June 2016, I denied the accuseds' bail applications, and I said, I would give my written reasons later. Below are my reasons.
3. It is well settled that, an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for granting bail, was whether or not the accused will turn up in court, on the date arranged for his trial. In deciding the above issue, the court is duty bound to consider the factors laid down in Section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accuseds' Surrender to Custody:

(a) Suliasi Bola (Applicant No. 1):

4. Mr. Bola is 30 years old, married with four children. He reached class 8 education, and is a subsistence farmer and fisherman. He resided in Rakiraki village, Kadavu. According to the prosecution, they had a strong case against him. He allegedly confessed to the police when they caution interviewed him on 4, 5 and 6 December 2015. If found guilty after trial, he faced a possible prison sentence of 14 years and up. Under this head, the accused's chances of bail are slim.

(b) Eliseo Tukana (Applicant No. 2):

5. Mr. Tukana is 40 years old, married with two young children. He reached class 8 education, and appeared to be a subsistence farmer and fishes for his family. He resided at Rakiraki village, Kadavu. According to the prosecution, they had a strong case against him. He allegedly confessed to the police, when they caution interviewed him on 4, 6 and 8 December 2015, at Kadavu Police Station. If found guilty after trial, he faces a prison sentence of 14 years and up. Under this head, the accused's chances of bail are slim.

(c) Mikaele Raivasi (Applicant No. 3):

6. Mr. Raivasi is 30 years old, married with children. He reached class 6 education. The accused is a subsistence farmer and fishes to support his family. He resided in Rakiraki village, Kadavu. According to the prosecution, they had a strong case against him. He allegedly confessed to the police when they caution interviewed him in December 2015. If found guilty after trial, he faces a possible prison sentence of 14 years and up. Under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accuseds' Persons:

7. Under this head, I will deal with all three applicants together. The applicants will be tried from 31 July to 11 August 2017, that is, approximately 11 months away. They had been remanded in custody since 18 March 2016, that is, 5 months 2 weeks ago. So, they would be in custody for approximately 1 year 4 months 2 weeks by trial time. The court had the power to hold people in custody for two years prior to trial. Nevertheless, if found guilty after trial, the time spent in remand will be deducted from his final sentence, as time already served. They are remanded in the new Suva Remand Centre. They are represented by counsel, and they are at liberty to visit the accused while in remand, to prepare their defence, as and when they pleased. There is no need for them to be at liberty for other lawful purpose. They are not incapacitated. Under this head, the applicants' chances of bail, are slim.

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

8. The allegations against the applicants were very serious. It was alleged that they were cultivating 969 cannabis sativa plants, weighing a total of 134.2 kilograms, between 1 July and 4 December 2015, at Kadavu. The evils of drugs had been highlighted in various publications and I do not need to repeat them here. The amount of drugs allegedly involved in this case is one of the biggest to ever come before the courts. It is in the public interest and the protection of the community that alleged drug offenders be remanded in custody. In my view, although the accuseds are presumed innocent until proven guilty beyond a reasonable doubt in a court of law, it is in the interest of justice that they be remanded in custody, until further orders of the court. Under this head, their chances of bail are slim.

Conclusion:

9. It was for the above reasons that I refused bail to the applicants on 23 June 2016.



Salesi Temo
JUDGE

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