

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 66 OF 2017

BETWEEN : JOSAIA MOCESARA LEONE

Applicant

AND : STATE

Respondent

Counsel : Applicant in person  
Mr. A.Singh for Respondent

Date of Hearing : 12<sup>th</sup> May, 2017

Date of Ruling : 22<sup>nd</sup> May, 2017

BAIL REVIEW RULING

1. The Applicant is charged in the Magistrates Court at Lautoka with five counts of Aggravated Robbery and one Count of Theft.

2. The Applicant applied for bail in the Magistrates Court. His bail application was refused by the learned Magistrate by his Ruling dated 10<sup>th</sup> February, 2017 on the basis that the Applicant had been charged with the present allegation whilst he was on bail in another two pending matters before the Magistrates Court at Lautoka. In view of these cases, the learned Magistrate formed the view that there was a likelihood of Applicant committing further offences if released on bail.
  
3. It is against this bail Rulings that the Applicant has filed this notice of motion seeking a bail review on following grounds:
  - (i) That the Learned Magistrate erred in law by failing to consider the presumption of innocence of the Applicant in the determination of Bail.
  - (ii) That the Learned Magistrate erred in law when he considered the issues of likelihood of the Applicant committing an arrestable offence whilst being on bail to justify concern of public interest when there is no evidence placed before the Court for that effect.
  - (iii) That the Learned Magistrate erred in law in putting too much emphasis on the pending cases to assist him in the determination of bail.
  - (iv) That the Learned Magistrate erred in law by failing to effectively canvass the grounds of bail of the Applicant thereby encumbering the right to Bail pending trial.
  - (v) That the Learned Magistrate erred in law by failing to consider and properly analyse the applicable laws and case authorities that support the interest of the Applicant.
  - (vi) That the Learned Magistrates' decision to refuse bail is unfounded biased and improperly analysed.

4. This application is made pursuant to Section 30 (3) of the Bail Act 2002. The Section 30 (7) states:

*“A court which has power to review a bail determination, or to hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application”*

5. Section 30 (9) states: the power to review a decision under this Part includes the power to confirm, reverse or vary the decision.
6. The Respondent has filed objections to the application supported by an affidavit of Investigating Officer, DC Silio Finau. Both parties made submissions at the hearing and they rely on the same.
7. The Bail Act 2002 provides for a presumption in favour of granting bail pending trial. The party opposing bail carries the onus to rebut the presumption on the balance of probability. Bail should be granted unless the Court is satisfied of any one or more of the considerations set out in Section 19(1). They are:
  - (a) *That the accused is unlikely to surrender to custody and appear in court.*
  - (b) *The interest of the accused will not be served through granting bail.*
  - (c) *Granting bail would endanger the public interest or make the protection of the community more difficult.*

8. The State, in the Magistrates Court, relied on the third limb (c) to oppose granting of bail to the Applicant. In considering the protection of the community

factor, the Court ought to have been satisfied as to the real likelihood of the accused person committing offences while on bail.

9. The Applicant had not disputed the fact that two cases were pending before the Lautoka Magistrates Court when the charge against him was brought in the present matter. The question is whether the learned Magistrate's finding was justified when he formed the view that the Applicant posed a potential threat to the protection of the community and public interest.
10. There can be no doubt that the fact that new offences appear to have been committed whilst on bail would be a factor of considerable importance. It was held in *R v Crown Court at Harrow* [2003] 1 WLR 2756, at 2778 that:

*"the fact that new offences appear to have been committed whilst on bail is likely to be a factor of considerable importance against the defendant when deciding whether there is substantial grounds for believing that, if released, he would commit a further offence while on bail."*

11. It is true that all three grounds set out in Section 19(1) of the Bail Act need not to exist and existence of any one ground is sufficient to justify refusal of bail (*Isimeli Wakaniyasi v State* (2010) FJHC 20 (20<sup>th</sup> January 2010)). However, courts should exercise extreme caution when the bail decision is solely based on this consideration (existence of pending cases) to avoid manipulation of the court process by police. Presumption of innocence should always be in mind and be given primary consideration. The learned Magistrate's decision was founded on the mere fact that two cases were pending before the Magistrates Court. He ought to have considered the nature of pending cases and the evidential basis upon which those cases was founded before coming to the conclusion that the accused would pose a real threat to public interest and protection of the community.

12. Remand prisons should not be used as a means to protect the public due to the fear of the accused re-offending. In *State v Tak Sang Hao* HAM 3/2001s Justice Fatiaki observed:

*“Needless to say the laying of criminal charges ought not to be allowed to become any easy means of depriving or prejudicing a person’s liberty.”*

13. In considering whether or not to admit the accused to bail, careful balance should be struck between the two principles, and this boils down to the interest of the accused versus the public interest. Whilst the accused is entitled to his liberty which flows from his constitutional presumption of innocence, it is in the public interest that offenders are brought to court and tried for their offences. The basic purpose from society's point of view of the procedure known as bail is to strike a balance between two competing interests - the liberty of the accused, and the requirement of the State that he stand trial to be judged and that the administration of justice be safeguarded from interference or frustration.
14. In this respect, steps should be taken to ensure that the accused is available for trial when he is so required and also to obviate the probability of the accused interfering with prosecution witness or destroying evidence. This may justify the pre-trial incarceration of the accused despite his constitutional presumption of innocence. However, mere allegations or suspicions against an accused arising from a pending case, standing alone, should not in my opinion be the basis in forming the opinion that he is likely to commit another crime whilst on bail.
15. A judicial officer determining bail must be satisfied that the deprivation of personal liberty is the only option available and resorting to that option is not disproportionate to the objective to be achieved thereby. If the concerns of public interests and protection of the community can be addressed by imposing stringent bail conditions, courts must not resort to curtail personal liberty, since

the primary consideration in determining bail is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.

16. The Applicant has been in remand for approximately 10 months since 11th of August, 2016. Although courts are possessed of a discretion to order a detention of an accused person in remand for a period of up to two years, that discretion must be exercised judiciously having regard to provisions of the Bail Act and the Constitution. Bail should be denied for a valid reason or reasons that would justify a detention.
17. Section 14 (2) (g) of the present Constitution states: *every person charged with an offence has the right to have the case determined within a reasonable time*. When deciding whether to grant bail to an accused person, Courts must take into account the time the accused may have to spend in custody before trial if bail is not granted [ Section 17.-(1) of the Bail Act].
18. Courts are bound to uphold the Constitution and the provisions of the Bail Act when called upon to determine bail. When a court decides, for whatever reason, to refuse bail to an accused person it must expeditiously deal with the matter and ensure a speedy trial. If the court is overburdened with backlogs, the case flow of the court must be managed to give priority to those cases where accused are in remand.
19. It appears from the record that even *voir dire* disclosures had not been served by the time the bail application was refused. There is no time frame fixed within which the matter may be disposed of. Therefore, it is not reasonable to keep the Applicant in remand for an uncertain period of time without a trial.

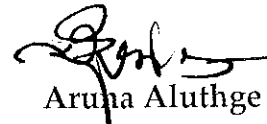
20. Order

For the reasons given, Ruling of the learned Magistrate is rescinded and reversed.

21. Applicant is granted bail on following bail conditions.

- [1]. Personal bail of \$1000.
- [2]. Surety bail of \$1000 with two sureties.
- [3]. Reporting to Nadi Police Station on every Saturday between 8 a.m. and 4 p.m.



  
Aruna Aluthge  
Judge

At Lautoka

22<sup>nd</sup> May, 2017

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for Respondent