

IN THE HIGH COURT

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAC 113 OF 2017

BETWEEN : ARE AMAE

APPLICANT

AND : STATE

RESPONDENT

Counsel : Applicant in Person

Mr. S. Babitu for Respondent

Date of Hearing : 14<sup>th</sup> July, 2017

Date of Ruling : 14<sup>th</sup> July 2017

## **BAIL RULING**

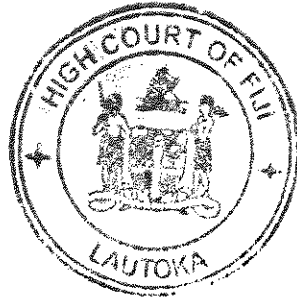
1. The Applicant applies for bail pending trial.
2. Applicant is charged with two counts of Aggravated Robbery.
3. This is his third bail application filed in this Court. He applied for bail previously on two occasions. Court refused bail on the basis that Applicant posed a potential threat to the interests of public and protection of community.


4. Applicant has been in remand for approximately 10 months now.
5. Applicant filed hand written application and applies for bail on following grounds:
  - I. Overcrowding condition of the Natabua Remand Centre,
  - II. Delay in his trial,
  - III. The presumption of innocence
6. The State opposed the application on the grounds that there is no change in circumstances from his previous bail applications and that the grounds advanced by the Applicant are outweighed by the need to protect the community and their property.
7. According to the affidavit filed by the State, the Applicant has been transferred to the new wing of the Natabua Remand Centre where basic facilities are provided. This new wing is not overcrowded. Therefore first ground is no longer a valid basis to grant bail to the Applicant.
8. Inordinate delay in fixing a hearing date after the first bail determination has been considered by this court as a 'change in circumstances'. Exceptional circumstances in which bail has been granted in Fiji have centered on the issue of delay. Upon being confronted with fundamental right to the presumption of innocence, courts have to undertake a delicate balancing act. In doing so, Courts need to follow the provisions of the Constitution.
9. In his previous bail applications, the Court relied on the record filed by the State on previous convictions to form the view that the Applicant will commit other similar offences if bail is granted and that he will pose a potential threat to the interests of the public and protection of the community.
10. The Applicant disputed two of his alleged active previous convictions (11/5/2009; 12/3/10). The State Counsel later confirmed that one such previous conviction (12/3/10) had been quashed in appeal and a retrial ordered. With regards to the other disputed previous conviction, the State called a clarification report from the relevant authority. However, so far they have failed to file any report in this regard.

11. It should be acknowledged that there has been a change in circumstances after Applicant's previous bail applications. The information (previous conviction report) that provided the basis for this Court to form the opinion that Applicant would be a potential threat to the community is no longer valid.
12. Trial date has not yet been fixed in Applicant's substantive matter. Trial Diary of this Court is almost full until June, 2018 having been filled with trials fixed back to back. Given the existing backlog, it is highly unlikely that Applicant's substantive case can be taken up for hearing in the year 2018.
13. Article 14 (2) (g) of the 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].
14. In *Sailasa Naba & Ors v State* (2001) HAC 0012/00L (4 July 2001) the Court considered the enforcement provisions of the then Constitution and found there was no adequate alternative remedy, except to consider bail, where the Applicants have been remanded for a long time, and were unlikely to be assigned a trial date until a year hence. The Court granted bail on strict conditions.
15. I am of the view that strict bail conditions can ensure that Applicant does not pose a threat to public interests and protection of the Community. For reasons given, I have decided to grant bail to Applicant.
16. Applicant is released on bail on following conditions:
  - i) On his own recognisance for the sum of \$1000.00, with two sureties each for \$1000.00; one surety must be from the Western Division.
  - ii) Applicant is to report to Samabula Police Station once a week; (Saturday between 8 a.m. and 4 p.m.)
  - iii) Applicant resides at a fixed address provided to this Court. He is not to change his residence without informing the police;
  - iv) Applicant is not to reoffend whilst on bail;

- v) Applicant to surrender any passport or travel documents to Court;
- vi) A curfew is imposed from 6 p.m. to 6 a.m.

17. Application for bail is allowed.



  
Aruna Aluthge  
Judge

At Lautoka  
14<sup>th</sup> July, 2017

Solicitors: Applicant in Person  
Office of the Director of Public Prosecution for the Respondent