

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 148 OF 2017

BETWEEN : AVIYASHNI VANDHANA NAIDU
Applicant

AND : STATE
Respondent

Counsel : Ms. V. Narara for Applicant
: Ms. S. Kiran for Respondent

Date of Hearing : 11th October, 2017

Date of Ruling : 18th October, 2017

BAIL REVIEW RULING

Background

1. The Applicant is charged in the Magistrates Court at Lautoka with one count of Escaping from Lawful Custody contrary to Section 196 of the Crimes Act 2009.
2. The Applicant applied for bail in the Magistrates Court. Her bail application was refused by the learned Magistrate by his Ruling dated 3rd July, 2017 on the basis

that if the Applicant is granted bail there is a high likelihood that she may not appear in Court which would only delay the hearing. Further, the learned Magistrate was of the view that the Applicant should not be released on bail as she was in the habit of re-offending whilst on bail.

3. It is against this Bail Ruling that the Applicant has filed a Notice of Motion seeking bail review.
4. The Applicant filed following amended grounds for review:
 - (i) *THAT the Learned Magistrate erred in law and in fact when he only considered the medical report of a forensic registrar when the medical conditions of the Applicant were related to her mental health.*
 - (ii) *THAT the Learned Magistrate erred in law and in fact when he used the medical report that was purportedly used in Case No. 121/15 instead of ordering for a new report for this present substantive matter.*
 - (iii) *THAT the Learned Magistrate erred in law and in fact when he failed to consider that the Applicant had been in remand for over two years.*
5. The Respondent filed objections to the application. In addition to written submissions filed, both Counsel, at the hearing, made oral submissions which I appreciate.

The Law

6. 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”
7. Section 30 (9) states: the power to review a decision under this Part includes the power to confirm, reverse or vary the decision.

Analysis

8. The Applicant's main grounds for bail at the magistracy appear to be that the time she had spent in remand and her medical condition. The same grounds are brought forward in this review application. However, she submits as a change in circumstances the fact that she was in remand for more than two years hence she is entitled to be released on bail.

Ground (i) THAT the Learned Magistrate erred in law and in fact when he only considered the medical report of a forensic registrar when the medical conditions of the Applicant were related to her mental health.

Ground (ii) THAT the Learned Magistrate erred in law and in fact when he used the medical report that was purportedly used in Case No. 121/15 instead of ordering for a new report for this present substantive matter.

9. In paragraph 11 of the Ruling the learned Magistrate's, stated;

"I have considered the medical conditions stated by the Accused as well as the difficulties she has stated. This Court called for a comprehensive medical report for all her cases as the accused was habitually claiming about her ill health. In case number 121/15 a comprehensive nine page medical report was received after the examining of the Accused by a panel of Doctors. It should be noted that the medical officer who is a forensic registrar has assessed the accused in detail even by using a test to ascertain competency in trial."

10. It appears that the learned Magistrate has taken into account her medical condition of the Applicant. The Applicant submits that learned Magistrate only considered the medical report of a forensic registrar when the medical conditions of the Applicant were related to her mental health. She further says that the learned Magistrate relied on the findings of a forensic registrar who did not have the expertise on psychiatry and knew nothing about the history of her mental illness because she was examined to ascertain whether she was fit to stand trial.
11. In page 29 of the Copy Record, the Applicant, at paragraphs 8, 9, 10 and 11 of her affidavit deposed that she was suffering from numerous medical conditions

including disorderly mental condition. In support, she annexed relevant medical reports.

12. In page 32 of the Copy Record, the Medical Superintendent of the St Giles Hospital in his report mentioned that the Applicant;

“is client with a well-established diagnosis of Bipolar Affective Disorder.....the client can better be prepared to participate in her Court proceedings when she is mentally alert. This can be achieved if she is allowed to get some decent rest and relaxation. This can be done if she was at home.”

13. The Medical Superintendent had not stopped there. He appears to have gone beyond his limit as a medical expert and virtually taken up the role as a counsel for Applicant’s bail application when he said:

“Ms Naidu complained of increased stress while in remand due to the increased number of women either in remand or prison at the facility. This, she claimed, got her mind stressed due to the excessive noise as well as the harassment from fellow inmates or detainees who constantly swear and harass her verbally.

Ms Naidu was aware that one of her cases from the Magistrates Court in Lautoka had been decided and her sentence reduced, thus allowing her to get out of jail in the beginning of April 2017. Therefore, this is a letter of support for Ms Naidu’s application for bail as she is not a threat to society and that she is not a flight risk. Ms Naidu is aware of the consequences of not adhering to her bail conditions and promises that should one be afforded to her, she will adhere to its conditions and attend to her Court hearings as schedule.

The client can better be prepared to participate in her Court proceedings when she is mentally alert. This can be achieved if she is allowed to get some decent rest and relaxation. This can be done if she was at home. Therefore, this is to lend support on her application for bail by humbly requesting for your kind consideration in granting her bail in order to have her get her mind mentally fit prior to her next Court hearing. Your consideration is greatly appreciated”.

14. The learned Magistrate’s decision not to attach any weight to the Medical report of the Superintendent of the St Giles Hospital is quite justified as the report is

obviously based on the history given by the Applicant and it had not expressed an unbiased medical opinion based on his medical expertise.

15. Furthermore, this report does not say that the medical condition of the Applicant is so grave that she cannot be treated while in remand or that she is in her last stages or that her condition was incurable. See: *Singh v State* [2010] FJCA 53; AAU0083.2010 (16 December 2010). In my opinion, Applicant can be given all necessary care and attention at the remand centre.
16. The learned Magistrate took judicial notice of nine page medical report that was filed in Case No. 121/15. It appears that this report had been received by Court after a thorough examination done by a panel of Doctors. Even if a fresh report was called, there wouldn't have been any difference because she was just one person appearing for separate cases during the same period. Therefore, the learned Magistrate did not fall into error when he used a medical report filed in another case. I am satisfied that the medical condition was taken into account by the learned Magistrate in deciding bail.

Ground (iii) - That the Learned Magistrate erred in law and in fact when he failed to consider that the Applicant had been in remand for over two years.

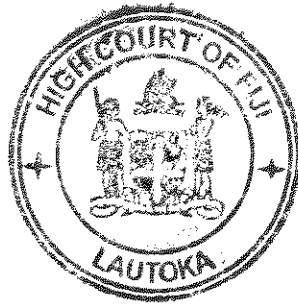
17. This is the material change in circumstance the applicant has raised in this application.
18. The State Counsel has filed a comprehensive report on the time spent in remand by the Applicant in the substantive matter. As is evidenced from the Copy Record, the Applicant was remanded for this matter on the 1st of July 2015. Around the same time she had been appearing before the Chief Magistrate at the Suva Magistrates Court for another case. She was granted bail for that matter sometimes around February 2016 and had failed to appear in the Lautoka Magistrates Court although she knew that she was not granted bail for this matter. A bench warrant was issued against her. She then appeared before the Lautoka Magistrates Court sometimes in May 2016 and informed court that she had been granted bail in all her matters which the court found to be untrue when

got it clarified from the Suva Magistrates Court. Eventually, she was remanded in this matter from the 19th of May 2016.

19. Since the 19th of May 2016, the Applicant has been in remand for this matter.
20. However from the 27th of October 2016, the applicant was also convicted and sentenced for another Escaping offence for a period of 10 months. This sentence was reduced to 8 months on appeal on the 9th of February 2017. Therefore, with remissions, the applicant would have spent about 5 to 6 months as a serving prisoner.
21. These 5 to 6 months cannot be added to the remand period otherwise it would defeat the purpose of her being punished for an offence proved against her and for which was required to serve.
22. Therefore, from July 2015 to February 2016, she was in remand for about 7 months. From May 2016 to October 2016, she was in remand for about 5 months. She was released from prison after serving the sentence in April 2017. Till September 2017 she would have been in remand for another 5 months.
23. According to the report filed by the State, the Applicant has been in remand for this matter only for 17 months and not for more than 2 years.
24. The Learned Magistrate commented that he had reasons to believe that the Accused may not appear in Court if she is granted bail. Further, the learned Magistrate was of the view that the Applicant had a habit of re-offending whilst on bail. There was a reasonable basis for him to form that view in light of the previous escape conviction and her re-offending whilst on bail.
25. The Applicant had not offered acceptable reasons as to why she was not able to attend Court. The fact that she was in Suva and could not travel to Lautoka was not a good excuse.
26. When this matter was taken up for hearing, the state Counsel informed this Court that the Applicant had been convicted in the substantive matter. The Applicant does not dispute this fact. In light of this conviction, the presumption in favour of bail is now displaced. This is a material change in circumstance

occurred after the first bail application. There is a high likelihood that Applicant will not turn up for sentence if bail is granted.

27. For reasons given, application for bail review is dismissed. The Bail Ruling of the learned Magistrate is affirmed.
28. 30 days to appeal to the Court of Appeal.




Aruna Aluthge

Judge

At Lautoka

18th October, 2017

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for Respondent