

IN THE HIGH COURT OF FIJI
AT LAUTOKA

CRIMINAL MISCELLANEOUS CASE NO. HAM 175 OF 2017

(High Court Case No. HAC 133 of 2014)

BETWEEN: **AMINIO VUKICIGAU SAROGO**

APPLICANT

AND: **THE STATE**

RESPONDENT

Counsel: **Ms V Narara for the Applicant**
 Ms L Latu for the Respondent

Date of Hearing: **18 December 2017**

Date of Ruling: **28 December 2017**

RULING

- [1] This is a renewed application for bail pending trial.
- [2] The applicant is charged with rape. The offence was allegedly committed on 16 October 2014 at Del Cowrie Hotel, Sigatoka. The complainant is an adult female. She is not related to the applicant but according to her police statement she had known him. The applicant was arrested on the day the allegation arose and interviewed under caution. He admitted sexual intercourse but claimed it was consensual.

- [3] On 17 October 2014, the applicant was charged and produced in the Magistrates' Court. He was remanded in custody and his case was transferred to the High Court.
- [4] On 3 November 2014, the applicant appeared in the High Court. His remand was extended.
- [5] On 4 November 2014, the applicant applied for bail (Miscellaneous No. HAM 257/14). The State did not oppose the application for bail.
- [6] On 24 November 2014, the applicant was granted conditional bail.
- [7] On 20 January 2015, the applicant was arraigned on the charge. He pleaded not guilty.
- [8] On 5 June 2015, the High Court issued a warrant of arrest when the applicant failed to appear in court. Thereafter the case was called on numerous occasions to check whether the warrant had been executed.
- [9] After 10 months, on 27 April 2016, the appellant was arrested on Koro Island. He was produced in court and his bail was revoked.
- [10] On 18 May 2016, the applicant applied for bail for the second time (Miscellaneous No.HAM92/16). He justified absconding bail on the ground that he was grounded on the island after the cyclone. The State opposed the application for bail.
- [11] On 22 May 2016, the court fixed the case for trial on 17 October 2016.
- [12] On 22 June 2016, the applicant was granted conditional bail. Reasons were not given for that decision.
- [13] On 17 October 2016, the applicant did not appear for his trial and the case was adjourned for police to arrest and produce the applicant in court.

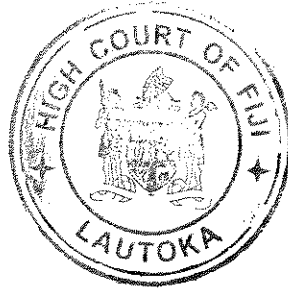
- [14] On 22 May 2017, the applicant was arrested and produced in court. His bail was revoked and he was remanded in custody.
- [15] On 26 June 2017, the case was fixed for trial on 12 March 2018.
- [16] On 7 July 2017, the applicant applied for bail for the third time (Miscellaneous No. HAM126/17). The State opposed the application.
- [17] On 29 August 2017, the High Court refused the application for bail. In his ruling, the learned High Court judge referred to section 17(2) of the Bail Act 2002 and concluded that the applicant had absconded bail twice and if granted bail will not appear for his trial.
- [18] This application was filed on 2 November 2017. The applicant's main ground for bail is that he financially supports his younger siblings. The State opposes the application.
- [19] In *State v Takiveikata* [2008] FJHC 31; HAM107.2007 (4 March 2008), I said the test for a renewed application for bail is whether there is a change in circumstances from the last decision on bail or are there circumstances which, although they then existed, were not brought to the attention of the court (*Nottingham Justices, ex parte Davies* [1981] QB 38).
- [20] The fact that the applicant has siblings who are financially depended on him is not a change in circumstances that will reduce the risk of him not appearing for his trial. The applicant absconded bail twice. Trial is scheduled to commence in early March 2018. The delay is not unreasonable. The applicant remains a flight risk. I am satisfied that the applicant will not appear for his trial if granted bail.

Orders of the Court:

- [21] The renewed application for bail is refused.

[22] The applicant is to remain in custody on remand pending trial.

[23] Any further application for bail if shown to be an abuse of process will be summarily dismissed.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Legal Aid Commission for the Applicant

Office of the Director of Public Prosecutions for the Respondent