

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

Criminal Misc. No. HAM 92 of 2018

BETWEEN : **JEKE VOLI**

APPLICANT

A N D : **THE STATE**

RESPONDENT

Counsel : Ms. J. Singh for the Applicant.
: Ms. R. Uce for the Respondent.

Date of Hearing : 12 September, 2018

Date of Ruling : 26 September, 2018

RULING

[Application for reinstatement of bail pending trial]

1. The applicant seeks bail pending trial after his bail was revoked by this court on 8 June, 2018. The applicant filed his application from the Corrections Centre via the Bail Application Form.

2. The application is opposed, State has filed the affidavit of WDC 5341 Barbara Salele sworn on 19 July, 2018. The applicant filed his affidavit in reply sworn on 23 August, 2018.

BACKGROUND INFORMATION

3. The applicant is charged with five (5) others for a count of rape in criminal action no. HAC 132 of 2017. When the applicant was produced in the Magistrate's Court he was granted conditional bail on 26 June, 2017.
4. On 9 May, 2018 the applicant did not appear in this court and a bench warrant was issued. The State submits on 4 June, 2018 the applicant was arrested when he came to the Lautoka Police Station. He was subsequently charged with the offence of absconding bail condition.
5. The bench warrant issued on 9 May, 2018 was pending until the applicant was arrested on 4 June, 2018.
6. On 8 June, 2018 the applicant's bail was revoked by this court. The applicant has been in custody for about 3 months now.

REASONS FOR NOT APPEARING IN COURT

7. The applicant deposes in his affidavit in reply that he did not appear in court on 9 May, 2018 because he was in Suva attending a funeral, he was informed by his aunty about his matter being called in court.
8. The applicant did not have money to immediately return to Lautoka so he came to Lautoka with his family the next day that is 10 May, 2018. Thereafter he went to Lautoka Police Station with his father and was

charged for absconding bail condition. The applicant maintains that he went voluntarily to the Lautoka Police Station.

9. At paragraph 18 of his affidavit in reply the applicant states that he was charged and convicted for absconding bail and has been tried for it.

LAW

10. Section 3 of the Bail Act states that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. The State must rebut this presumption when bail is objected to. The presumption in favour of the granting of bail inter alia gets displaced where the person seeking bail has previously breached a bail undertaking or bail condition.
11. The relevant considerations which the court must take into account when determining whether bail is to be granted or not is mentioned in section 19 of the Bail Act. The three broad categories are:
 - a). the likelihood of surrender to custody and appearing in court;
 - b). the interest of the accused person,
 - c). the public interest and protection of the community
12. Section 19 (2) of the Bail Act states a police officer or court must have regard to all the relevant circumstances and in particular-
 - (a) *as regards the likelihood of surrender to custody –*
 - (i) *the accused person's background and community ties (including residence, employment, family situation, previous criminal history);*

- (ii) *any previous failure by the person to surrender to custody or to observe bail conditions;*
 - (iii) *the circumstances, nature and seriousness of the offence;*
 - (iv) *the strength of the prosecution case;*
 - (v) *the severity of the likely penalty if the person is found guilty;*
 - (vi) *any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);*
- (b) *as regards the interests of the accused person-*
- (i) *the length of time the person is likely to have to remain in custody before the case is heard;*
 - (ii) *the conditions of that custody;*
 - (iii) *the need for the person to obtain legal advice and to prepare a defence;*
 - (iv) *the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependants);*
 - (v) *whether the person is under the age of 18 years (in which case section 3(5) applies);*
 - (vi) *whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;*
- (c) *as regards the public interest and the protection of the community-*
- (i) *any previous failure by the accused person to surrender to custody or to observe bail conditions;*
 - (ii) *the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person;*
 - (iii) *the likelihood of the accused person committing an arrestable offence while on bail.*

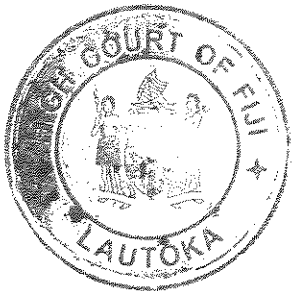
DETERMINATION

13. There is no doubt that the applicant was granted conditional bail which he breached by not appearing in court as required. The applicant was arrested and produced in court for the breach of his bail condition.
14. If what is deposed by the applicant in his affidavit is correct that he had arrived in Lautoka after the funeral (next day) on 10 May, 2018, he only surrendered himself on 4 June, 2018 after about 3 weeks. There is no reason given for the delay and what the applicant was doing from 10 May, 2018 to 4 June, 2018 when he decided to surrender.
15. The applicant also deposed in his affidavit that he has been convicted for absconding bail in the Magistrate's Court and the matter was finalized. A check with the Magistrate's Court Registry reveals that the applicant is yet to take his plea to the charge. It appears that the applicant has deliberately tried to mislead this court in respect of this issue.
16. This court is mindful of the Constitutional right of the applicant that the presumption of innocence is in favour of the applicant, however, the applicant has brought this situation upon himself. By his conduct the applicant has indicated to this court that he is a flight risk which is further strengthened by the fact that a conviction in the substantive matter means he will spend a long term imprisonment.
17. The reasons given by the applicant are not satisfactory the substantive matter has completed Pre Trial Conference and is ready for a trial date to be assigned.

18. It is not in the interest of justice that the applicant be granted bail. The application for reinstatement of bail pending trial is refused. The applicant is unlikely to surrender to custody if bail is granted.

ORDERS

1. The application for reinstatement of bail is refused.
2. The prosecution to ensure that the substantive matter is entered for trial as soon as possible.
3. 30 days to appeal to the Court of Appeal.



Sunil Sharma

Judge

At Lautoka

26 September, 2018

Solicitors

Office of the Legal Aid Commission for the Applicant.

Office of the Director of Public Prosecutions for the Respondent.