

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 98 OF 2018**

**BETWEEN** : **SAIYAD FAIZAL ASLAM KHAN**  
**Applicant**

**AND** : **THE STATE**  
**Respondent**

**Counsel** : **Applicant in Person**  
: **Ms. A. Singh for Respondent**

**Dates of Hearing** : **31 July 2018, 10 August 2018**

**Date of Ruling** : **10 August 2018**

**BAIL REVIEW RULING**

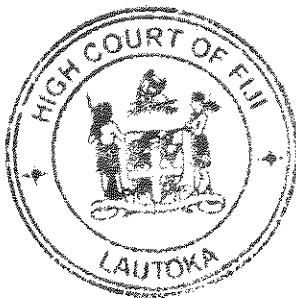
1. The Applicant is charged in the Magistrates Court at Lautoka in criminal case No. 113 of 2018 with two counts of Conspiracy to Defeat Justice, Interference with Witnesses contrary to Section 190 (a) of the Crimes Act 2009 and one count of Breach of Bail Conditions contrary to Section 25 (1) and 26(1) of the Bail Act of 26 of 2002.


2. The Applicant applied for bail in the Magistrates Court on the 2<sup>nd</sup> of February, 2018. His bail application was refused by the learned Magistrate on the same day. Subsequently, the Appellant filed a bail review application in the High Court at Lautoka. This application was also refused on the 19<sup>th</sup> of February, 2018.
3. The Applicant filed another bail review application in the High Court through his Counsel which was also refused on the 26<sup>th</sup> of March 2018.
4. The Applicant then filed a bail review application in the Magistrates Court at Lautoka. The learned Magistrate by his Ruling dated 29<sup>th</sup> March 2018 granted bail to the Applicant.
5. The State then filed a bail review application challenging the said Ruling of the learned Magistrate at Lautoka. Having considered this application the bail determination of the learned Magistrate was rescinded by this Court and the Applicant was remanded in custody from 25<sup>th</sup> June, 2018.
6. The Applicant then filed a renewed application for bail. In the current application for bail review, the Applicant has advanced following two grounds to justify his release from remand:
  - (i) that he is a renowned businessman and his business will be severely affected by his incarceration.
  - (ii) that he is a father of 3 daughters and they are mentally and emotionally distressed.
7. The State objects to bail on the ground that the current application does not have any merits and it should be dismissed as the Applicant has not shown any change in circumstance to convince the court to allow him to be granted bail.
8. In *State v Takiyeikata* [2008] FJHC 31; HAM 107.2007 (4 March 2008), the Court 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).

9. The grounds advanced in the current application have already been considered by this Court and are not sufficient enough to change the circumstances that had prevailed at the time the first Ruling was made.
10. After the current application was filed, the Applicant has complained to the Magistrate at Lautoka that, on the 6<sup>th</sup> July 2018, he was assaulted by a prison officer by the name of Baka Rau at the Natabua Remand Centre. He was then referred by the learned Magistrate at Lautoka to a medical examination at the Lautoka Hospital. The medical report dated 10<sup>th</sup> July, 2018 is filed of record. It shows that the Applicant had received injuries (blunt force trauma) in his left eye region consistent with the allegation he made in court.
11. Again on 25<sup>th</sup> July, 2018, the Applicant informed this Court that he was brutally assaulted by another prison officer and he tendered two photographs showing two injuries in his genital area. The Officer-in-Charge of the Natabua Remand Center was ordered by this Court to refer the Applicant to a doctor at the Lautoka Hospital for a medical examination. When the Applicant appeared before Sharma J on the 31<sup>st</sup> July, 2018, it was informed that the said Court Order was not complied with.
12. Then the Court ordered the Applicant to be escort to the Lautoka Police Station to lodge his complaint and thereafter to the Lautoka Hospital for a medical check- up. The Court also ordered the original medical report to be forwarded to the High Court within 24 hours.
13. The medical report dated 31<sup>st</sup> July 2018 was filed in Court after the medical examination. It confirms that the Applicant had two injuries on his penis as a result of a trauma caused by a sharp object.
14. The Applicant further says that his lawyer Mr. Ravneet Charan who had come to visit him to receive his legal instructions was not allowed to see him at the Natabua Remand Centre.

15. The reluctance on the part of the prison authorities to refer the Applicant to a medical examination even after a court order was issued and the medical reports filed thereafter indicate that there is substance in the allegation of ill treatment in the remand centre.
16. For all aforementioned reasons, I am satisfied that the further detention of the Applicant in the remand centre is detrimental to the interest of the Applicant in preparing for his defence at trial which is scheduled for next week. I take the view that the facts unfolded in court which have not been disproved by the State constitute new circumstances which were not considered by this Court earlier.
17. The Applicant has not absconded on previous occasions. The concern of the state that he will interfere with witnesses of the State can be addressed by imposing stringent bail conditions.
18. For reasons given, I decide to grant bail to the Applicant on following bail conditions.
- (1). Cash bail of FJD 1000/-
  - (2). Surety bail of FJD 1000/- with two sureties.
  - (3). Applicant must refrain from interfering in any form with witnesses either directly or indirectly.
  - (4). Applicant must reside at the address provided to this Court.
  - (5). Applicant must report to Lautoka Police Station on every Saturday between 8 am and 4 pm.
19. Application for bail is allowed.



  
Arun Aluthge  
Judge

**At Lautoka**

**10<sup>th</sup> August, 2018**

**Solicitors: Applicant is in Person**

**Office of the Director of Public Prosecution for Respondent**