

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**MISCELLANEOUS CASE NO: HAM 155 of 2018**

**TAITUSI QOLI**

**V**

**STATE**

**Counsel** : Mr. Lisiate Qetaki for the Applicant  
Ms. Wakesa Elo for the Respondent

**Hearing** : 10 August 2018

**Ruling** : 16 August 2018

### **BAIL RULING**

1. This is an application for bail pending trial. The Applicant is the accused in HAC No. 343/2017.
2. As per the Information filed by the Director of Public Prosecutions ("DPP") in the substantive matter, the Applicant is charged with one count of Aggravated Robbery, contrary to Section 311 (1) (a) of the Crimes Act No. 44 of 2009 ("Crimes Act").
3. The full details of the Information reads as follows:

#### **FIRST COUNT**

##### ***Statement of Offence***

**AGGRAVATED ROBBERY:** Contrary to Section 311 (1) (a) of the Crimes Act 2009.

### *Particulars of Offence*

**TAITUSI QOLI** on the 15<sup>th</sup> day of September 2017 at Damodar City, Raiwai in the Central Division, in the company of others unknown, robbed **RADHA MANI** of cash in the sum of \$113,000.00, 1 x Black Knapsack valued at \$80.00 and 2 x USB – Silver and Black in colour valued at \$90.00, all to the total value of \$113,170.00.

4. When the substantive matter was called before me on 14 December 2017, the State filed the Information and Disclosures relevant to the case. On 18 January 2018, the Applicant was ready to take his plea. Accordingly, he pleaded not guilty to the charge.
5. This application was instituted by way of a Notice of Motion for bail, which was supported by an Affidavit of the Applicant.
6. This is the second application for bail pending trial made by the Applicant. His first application (HAM 10 of 2018) was refused by this Court on 15 March 2018.
7. The Applicant has been in remand custody since 12 November 2017.
8. An Affidavit has been filed by Detective Sergeant 2876 Shomas Chand, Police Officer, of the Raiwaqa Police Station, in Opposition to this application for bail. DC Chand is the Investigating Officer in the substantive matter and strongly opposes the granting of bail to the Applicant.
9. The Officer deposes that there are no change in circumstances for this Court to consider bail. He reiterates that the Applicant is charged with a very serious offence which has become a growing problem in society today.
10. The State submits that they have a strong case against the Applicant based on circumstantial evidence, including the use of his voluntary admissions made by him during his caution interview. Further, it is stated that upon gathering evidence it was noted that the victims in this case were traumatized by the events which took place.
11. It is further submitted that the Applicant has active previous convictions against his name, which include property offences, as well as the forfeiture of Bail Bond.

12. In terms of section 3(1) of the Bail Act No. 26 of 2002 ("Bail Act"), *"Every accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted."*
13. Section 3(3) of the Bail Act provides that: *"There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption."*
14. In terms of Section 17(2) of the Bail Act the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer the charges laid against him or her.
15. Section 18 (1) of the Bail Act stipulates that a person making submissions to a court against the presumption in favour of bail must deal with-
  - (a) *the likelihood of the accused person surrendering to custody and appearing in court;*
  - (b) *the interests of the accused person;*
  - (c) *the public interest and the protection of the community.*
16. Section 19(1) of the Bail Act (as amended by the Domestic Violence Act No 33 of 2009), provides for grounds for the Court to refuse to grant bail. The sub section is reproduced below:

*"An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-*

  - (a) *the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;*
  - (b) *the interests of the accused person will not be served through the granting of bail;*
  - (c) *granting bail to the accused person would endanger the public interest or make the protection of the community more difficult;*  
*or*



*(d) the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted."*

17. In forming the opinion required by subsection (1), section 19(2) of the Bail Act stipulates that Court must have regard to all the relevant circumstances, and in particular to the circumstances enumerated in the said sub section.
18. It must be stated that provisions of Section 19 (1) (d) are not relevant or applicable in the instant case. What is relevant and applicable in relation to the instant case are the provisions of Section 19 (1) (a), (b) and (c).
19. Section 30 (7) of the Bail Act provides that:

*"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 fresh application, refuse to hear the review or application."*

20. In the case of *Regina v Nottingham Justices, ex parte Davis*; QBD (1981) QB.38,71 [1980] Cr.App.R.178 DC

The Lord Justice Donaldson stated thus;

*"...The Court considering a fresh the question of bail is both entitled and bound to take account not only of the change in circumstances which has occurred since the last occasion but also all circumstances which, although then existed, were not brought to the attention of the Court. To do so is not to impugn the previous decision of the Court and is necessary in justice to the accused. The question is a little wider than 'Has there been a change? It is are there new considerations which were not before the Court when the accused was last remanded in custody?..."*

21. During the hearing of this application, the Learned Counsel for the Applicant submitted the following factors as special facts or circumstances that justify a review of this matter.

- (1) The Applicant has now been in remand custody for nine months (since 12 November 2017).
- (2) The substantive matter has been fixed for trial from 14 October 2019-25 October 2019. Therefore, at the time the substantive matter is taken up for trial the Applicant would have been in custody for nearly two years (23 months).
- (3) It is submitted that if released on bail Taukeinikoro Enterprises, which is a General Haulage Transport and Building Construction Company, is willing to employ the Applicant. It is said that the Applicant was previously employed by the company from 2016 until the date he was remanded for this case. The Applicant has also provided an affidavit deposed by Tevita Taukeinikoro the Managing Director of the Company, who is also the father-in-law of the Applicant.
- (4) The Applicant submits that in the event of him being granted bail, his father-in-law will also stand as one of his sureties.

22. Court is in agreement that there are change in circumstances. However, considering all the facts and circumstances of this case, I am of the view that the said change in circumstances do not justify a review of this matter.

23. The Respondent is still strongly opposing bail being granted to the Applicant. This Court agrees with the contention of the Respondent. The Applicant is charged with a very serious offence of Aggravated Robbery which has become very prevalent and a growing menace in our society today. Furthermore, the Applicant has several active previous convictions against his name, which includes property offences as well. There is also a previous conviction for Forfeiture of Bail Bond (Magistrate's Court Nasinu Case No. 475/2010).

24. This Court is of the opinion that granting bail to the Applicant would endanger the public interest and make the protection of the community more difficult. Since the Applicant

is charged with a serious offence, there is a high likelihood that he would fail to appear in Court if granted bail.

25. Therefore, taking into consideration all the circumstances of this case, I am of the view that the presumption in favour of granting of bail to the Applicant has been rebutted by the State.
26. Accordingly, I refuse this application for bail and the application is dismissed.



*Riyaz Hamza*

Riyaz Hamza

JUDGE

HIGH COURT OF FIJI

AT SUVA

Dated this 16<sup>th</sup> Day of August 2018

Solicitors for the Applicant : Office of the Legal Aid Commission, Suva.  
Solicitors for the Respondent : Office of the Director of Public Prosecutions, Suva.