

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 147 OF 2018

BETWEEN: RAJNEEL KAVITESH RAO

Applicant

AND:

STATE

Respondent

Counsel : Applicant in Person

Ms. R. Uce for Respondent

Date of Hearing : 10 September 2018

Date of Ruling : 18 September 2018

RULING ON BAIL VARIATION

1. The Applicant Mr Rajneel Kavitesh is charged in the Magistrates Court at Sigatoka with one count of Attempt to Commit Rape under Section 208 of the Crimes Act 2009.

2. On the 6th of July, 2017, the Applicant was first produced before the Sigatoka Magistrates Court. He was granted bail with the following bail conditions:
 - To sign fresh Court bail of \$1,000.00 with Vitogo Lewerava as surety of like amount.
 - To report at the Kavanagasau Community Post once every week, that is Fridays between 7 am to 7 pm.
 - Not to commit any offence whilst on bail.
 - Not to interfere and to stay at distance of 100 meters away from the victim at all times.

3. On the 27th of November, 2017, the Applicant failed to appear in Court and a bench warrant was issued for his arrest.

4. The Applicant was arrested and produced before the Court on the 11th of June, 2018 whereby his bail was revoked and he was remanded in custody.

5. On the 9th of July, 2018, the Applicant was granted bail with the conditions imposed earlier, however, he was ordered in addition to pay \$1,000.00 cash bail.

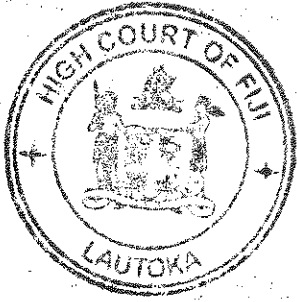
6. The Applicant filed this application on the 23rd of August, 2018, for variation of the said cash bail condition seeking an order that cash bail condition be substituted with a surety bail bond of \$1,000.00 with two sureties.
7. It appears that the Applicant was initially granted bail with strict conditions. The said cash bail condition was imposed only when the Applicant failed to adhere to his bail conditions by failing to appear in Court after bail was revoked.
8. The State argues that that the imposition of the cash bail is reasonable considering the fact that the Applicant had breached bail by failing to appear in Court. In the circumstance that the initial bail bond amount has not been forfeited, the State argues, that it is only reasonable for the Learned Magistrate to impose stricter conditions when bail is being granted for the second time to the Applicant who had been on a bench warrant for sometimes.
9. The court accepts the fact that imposition of stricter bail condition is warranted when an accused had been on a bench warrant for sometimes having violated bail conditions.
10. However, it appears that the Learned Magistrate, for facts placed before him, was basically satisfied that the attendance of the Applicant in court could be secured by imposing stricter bail conditions. The issue is whether the amount of \$1,000.00 cash bail imposed by the Learned Magistrate is reasonable and appropriate in the circumstances of this case.
11. Article 13 (1) of the Constitution states:

Every person who is arrested or detained has the right

(h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

12. Section 22 of the Bail Act 2002 also states that if security is imposed as a condition for bail then the Court must ascertain, under oath if necessary, the ability of the accused person or his surety to provide the security. In addition, the security amount must not be an unreasonable impediment to the granting of bail.
13. There is nothing in the Court record to indicate that the Learned Magistrate had conducted a means test to ascertain whether the Applicant was able to provide a cash bail of \$1,000.00 or any other amount.
14. In his affidavit, the Applicant has deposed that he is unemployed and he or his family is not in a position to provide cash bail of \$1,000.00. His claim is further reinforced by the fact that the Applicant has been in remand for more than two months after he was granted bail on 9th of July, 2018.
15. Therefore, the cash bail condition imposed by the Learned Magistrate has virtually led to a denial of his right to be released on reasonable conditions.
16. Therefore, it is fair and reasonable in this case for this Court to rescind the cash bail condition imposed by the Learned Magistrate and impose bail conditions that meet the ends of justice.
17. Therefore, following orders are made:

- I. The Application for bail variation is allowed.
- II. The cash bail condition imposed by the Learned Magistrate at Sigatoka is set aside.
- III. The Applicant is released on a surety bail bond of \$ 1000 with two suitable sureties in addition to the existing surety bail bond.





Aruna Aluthge

Judge

At Lautoka

18th September, 2018

Solicitors: Applicant in person

Office of the Director of Public Prosecutions for the Respondent