

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO: HAM 213 of 2017

BETWEEN : **KRITESH KUMAR** **APPLICANT**

AND : **THE STATE** **RESPONDENT**

Counsel : Ms. L. Goundar for the Applicant
: Mr E. Samisoni for the State

Date of Hearing : 19th December 2017

Date of Ruling : 19th January 2018

BAIL RULING

Introduction

1. The Applicant files this Notice of Motion pursuant to Section 3 of the Bail Act, seeking following orders *inter alia*:
 - i) *Bail be granted to the Applicant,*
 - ii) *The Applicant to provide two sureties to the Court,*
 - iii) *The Cost of this application be cost in the cause.*

2. The Notice of Motion is being supported by an affidavit of the Applicant, explaining the reasons and background of this application. The Applicant deposed in his affidavit that he was taken into police custody by the police officers from Valelevu Police Station on the 30th of October 2017. He was then charged and produced in the

Magistrate's Court in Nasinu on the 2nd of November 2017. He has been in remand custody since then. The Applicant further stated that he is a widower with two young daughters. Both of them are looked after and supported by the Applicant. According to the affidavit deposed by the Applicant, he had fully cooperated with the police during the investigation. The Applicant states that he seeks bail as he wants to continue his employment in order to look after his two little daughters and also to obtain proper legal assistance for the substantive matter.

3. The Respondent filed an affidavit of Detective Constable Eloni Sorowaqa on the 1st of December 2017, stating that the State has no objection for the bail on the grounds that the Applicant has no previous convictions and no risk to the community. Subsequently DC Eloni Sorowaqa filed a supplementary affidavit on the 6th of December 2017, stating that the Applicant has been recently convicted and sentenced for two offences, similar to the charges that he is facing in this matter, by the Magistrate's Court in Nasinu. DC Eloni Sorowaqa in his affidavit further said, that considering his previous convictions, there is a likelihood that the Applicant committing an arrestable offence if he is granted bail.
4. The Applicant in his affidavit in reply has admitted that he has previous convictions. However, he reiterated about his family circumstances, seeking an order to grant him bail.
5. Subsequent to filling of the respective affidavits of the parties, the matter proceeded to hearing on the 19th of December 2017, where the counsel for the Applicant and the Respondent made their oral submissions. Having carefully considered the Notice of Motion, the respective affidavits and oral submissions of the parties, I now proceed to pronounce my ruling as follows.

Background

6. The Applicant has been charged with one count of Unlawful Possession of an Illicit Drug, contrary to Section 5 (a) of the Illicit Drugs Control Act. The Prosecution alleges that the Applicant was found in possession of 1.4 Kilograms of Methamphetamine on the 30th day of October 2017. He was first produced in the Magistrate's Court in

Nasinu on the 2nd of November 2017. Having heard the bail application made by the Applicant, the learned Magistrate has refused to grant bail on the ground that he has a previous conviction of similar nature. The matter was then transferred to High Court. The matter was first called in the High Court on the 24th of November 2017. Meanwhile, the Applicant filed this Notice of Motion pursuant to Section 3 of the Bail Act.

Law and Analysis


7. In pursuant of Section 13 of the Constitution and the Section 3 (1) of the Bail Act, every person has a right to be released on bail unless it is not in the interest of justice.
8. The primary consideration in granting bail is the likelihood of the accused person appearing in court. Section 18 (1) of the Bail Act has stipulated that a person making an application against the presumption in favour of bail must deal with the following grounds, that:
 - i) *The likelihood of the accused person surrendering to custody and appearing in Court,*
 - ii) *The interest of the accused person,*
 - iii) *The public interest and the protection of the community,*
9. Section 19 (2) (a) and (c) stipulates some of the circumstances that the court may have to consider in order to determine the issue of likelihood of surrender to custody, and public interest, where it states, that:
 - (a)
 - i) *The accused person's background and community ties,*
 - ii) *Any previous failure by the person to surrender to custody or to observe bail condition,*
 - 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 indication,*

(c)

- 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 arrest able offence while on bail.*

10. The Applicant has been charged with a serious offence, which carries a maximum penalty of life imprisonment or fine of \$1,000,000. The State claims that the Prosecution has a strong case against the Applicant. The Applicant is adversely recorded with a previous conviction for two offences similar to the offences of this matter.
11. Having considered the seriousness of the offence, the severity of the punishment if he is found guilty, and the previous conduct of the accused, I find that there is a substantial ground to believe that the applicant is more likely to commit an offence while on bail and also he may abscond from appearing in court if bail is granted.
12. In view of these reasons, I refuse this application for bail on the grounds of unlikelihood of appearing in court, the seriousness of the offence, the public interest and the protection of the community.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva

19th January 2018

Solicitors

Leena Goundar Lawyers for the Applicant.

Office of the Director of Public Prosecutions for the Respondent