

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CRIMINAL MISCELLANEOUS NO. HAM 226 OF 2019**  
**(High Court Case No. 161 of 2019)**

**BETWEEN** : **MOHAMMED RAHEESH ISOOF**

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

**Counsel** : **Mr I Khan for the Applicant**  
**Mr S Babitu for the State**

**Date of Hearing** : **19 November 2019**

**Date of Ruling** : **12 December 2019**

**RULING**

- [1] The Accused seeks bail pending trial. He is charged with the murder of five people and an attempted murder of an infant. All victims were from the same household. Their bodies were found at a secluded location in the Nausori Highlands on 26 August 2019. The Accused became a person of interests for Police on that same afternoon.
- [2] The prosecution case against him is solely based on circumstantial evidence. The prosecution alleges that all five deceased died of poisoning after consuming some form of pesticide. The prosecution says that although at this stage they are not able to identify the pesticide that killed the victims but the toxicology tests have revealed presence of pesticide residue in their bodies. The prosecution also says that Police found certain pesticide chemical at the alleged crime scene and that they can link the Accused to that chemical by leading evidence from a shop in Nadi where he had made enquiries about the availability of that chemical on a date before the bodies were discovered. The prosecution

also says that the mobile phone of the adult male victim was discovered in the vehicle of the Accused on the same day after the bodies were discovered.

- [3] In his caution interview, the Accused admitted dropping off the victims at the Nausori Highlands and returning to his home in Legalega, Nadi on the day the bodies were discovered. He denied any responsibility for their deaths. He has given an innocent explanation for driving the family to the Nausori Highlands saying he was having an affair with the daughter of the couple. The prosecution says that they can lead evidence that the explanation regarding the affair is not true and that the family was killed due to some financial motive.
- [4] The prosecution objects to the granting of bail saying that the Accused is unlikely to turn up for his trial due to the strong case they have against him and that he is likely to interfere with their witnesses.
- [5] The governing principles for bail determination are contained in the Bail Act 2002 (the Act). There are two overarching principles. Firstly, there is an entitlement to bail unless it is not in the interests of justice to grant bail as provided by section 3 (1) of the Act. An entitlement to bail is reflective of the presumption of innocence that is enshrined in the Constitution. Secondly, there is a presumption in favour of the granting of bail provided by section 3 (3) of the Act. However, that presumption is rebuttable under certain circumstances provided by section 3 (4) of the Act. None of those circumstances apply to the Accused.
- [6] The primary consideration is the likelihood of the Accused appearing in court to answer the charges against him. The court may also take into account the time he may have to spend in custody before trial if bail is not granted. If bail is not granted, he may have to spend about 12 to 18 months in custody on remand before trial.
- [7] Section 19 (1) of the Act sets out the factors that the court must consider when deciding whether an accused will turn up for his trial.
- [8] The Accused is 62 years old and a permanent resident of New Zealand. He was a bus driver in New Zealand before his arrest in Fiji. He says his passport is with the police

and that there is a stop departure order against him. He is willing to abide by stringent bail conditions including posting cash bail.

- [9] Stringent bail conditions may eliminate the risk of interference with the prosecution witnesses but would they also eliminate the risk of absconding?
- [10] Although the Accused is a Fiji citizen, his current family and employment ties are in New Zealand. The allegations against him are grave. I am mindful that the incriminating evidence has not been tested yet but I cannot ignore he is facing a potentially strong prosecution case, and if he is found guilty, he is facing life in jail.
- [11] Another matter that is of concern to the court is the evidence of the investigating officer at the bail hearing. According to the officer, the Accused entered New Zealand after changing his name by Deed Poll following a deportation from Australia. This evidence was elicited by counsel for the Accused in cross-examination. The only challenge to the evidence was that the officer did not put that evidence in his affidavit. There was no suggestion made to the officer that the evidence of changing name by Deed Poll following a deportation from Australia was not true.
- [12] All these factors lead me to conclude that there is a real possibility that the Accused is not going to turn up for his trial if he is released on bail. The prosecution has rebutted the presumption in favour of the granting of bail.
- [13] Other considerations provided by section 19 (1) (b) and (c) are not relevant in light of the conclusion reached by this court that the Accused pose a flight risk if granted bail.
- [14] The application for bail is refused.



A handwritten signature in blue ink, consisting of a stylized 'D' followed by a long horizontal line that ends in a small flourish.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Iqbal Khan & Associates, Barristers & Solicitors for the Accused

Office of the Director of Public Prosecutions for the State