

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

**CRIMINAL MISCELLANEOUS NO. HAM 209 OF 2019**  
**(High Court Case No. 076 of 2019)**

**BETWEEN** : **JUSTIN HO**

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

**Counsel** : **Mr M Naivalu for the Applicant**  
**Ms P Lata for the State**

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

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

**RULING**

- [1]. This is a third application for bail pending trial. The Applicant and his co-accused are charged with one count of an attempt to export cocaine. Both have been in custody on remand since 5 April 2019.
- [2]. The Applicant applied for bail, and on 6 June 2019, Wimalasena J held that it was not in the interests of justice to grant bail and dismissed the application. After the refusal of bail, the Applicant was hospitalized for back pain affecting his mobility. He made a second application for bail on the grounds that Wimalasena J allegedly made an error in his ruling and that his medical condition justified releasing him on bail. This Court found the grounds did not constitute special circumstances to grant bail and dismissed the application.

[3] This third application for bail was filed on 11 September 2019 through a new counsel with limited instruction to seek bail. The application is supported by an affidavit from the Applicant. The grounds for bail are set out in paragraph 10 of the affidavit as follows:

‘I therefore humbly seek that bail be granted to me not on ‘special facts of circumstances’ but on rather an exception to the rule or as the law puts it, ‘some other consideration’ which I humbly submit are the following:

- (i) That on 2 searches on separate occasions executed at my premises by Police revealed absolutely nothing.
- (ii) That the 2 witnesses relied on by the State are subject to cross-examination.
- (iii) That I stand to serve a long custodial sentence should I be found guilty and therefore it is only fair that I be allowed unhindered, undisturbed, unrestricted, uncurtailed, unlimited access to the best legal assistance my financial circumstances can allow. This honorable court will realize that I am helpless towards my predicament as well as hopeless in salvaging my grave position whilst in remand unless I am bailed.
- (iv) That further that in my caution interview whilst it was centered around the period 1 September 2018 to 1 December 2018 my particulars of offence centered alone on 23 December 2018 therefore raising serious doubts of the veracity and ultimately the fairness of my interview after all. This anomaly was not disclosed to the honorable court in my previous appearances including my bail hearings. With this new development, surely the Honourable court must at least give some credit where it is due and in this instance in my favour and grant me bail.
- (v) That I am further aware that the presumption of bail is displaced where previous bail conditions have been breached. Simply put, I don’t not have history of absconding or breaching bail conditions as I have been advised that in my not having any previous convictions makes me a person of good character.

[4] Section 14(1) of the Bail Act (the Act) permits an accused to make any number of applications to a court for bail. However, the court has power to summarily dismiss frivolous or vexatious applications pursuant to section 14(2) of the Act.

[5] Section 30(7) of the Act sets out the test for a renewed application for bail as follows:

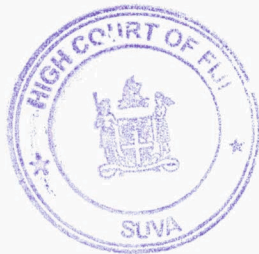
‘A court which has power to review a bail determination, or to hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application’.

[6] It is clear that the Applicant is not relying upon special facts or circumstances to seek bail. He is relying upon ‘some other consideration’ in this renewed application.

[7] The application cannot succeed for two main reasons. Firstly, the Act requires the Applicant to establish special facts or circumstances and not some other considerations. If I consider other considerations, I would be embellishing the statutory test and falling in error. Secondly, the other considerations relied upon by the Applicant are issues relating to evidence not relied upon by the prosecution. For example, the prosecution is not relying upon the Applicant's caution interview or results of search at his residence. The prosecution is relying upon direct evidence of witnesses implicating the Applicant to a parcel that allegedly contained cocaine.

[8] The Court is mindful that the Applicant is to be treated like any other accused. He is innocent until proved guilty. However, he is facing a serious charge with potentially strong prosecution case. The restriction on his personally liberty is reasonable in the circumstances. Unless he can establish special facts or circumstances, he will remain in custody on remand pending trial.

[9] The application for bail is refused.



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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Law Naivalu, Barristers & Solicitors for the Accused  
Office of the Director of Public Prosecutions for the State