

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

Criminal Misc. No. HAM 154 (B) of 2019

BETWEEN : **SAVENACA VUNISA**

APPLICANT

A N D : **THE STATE**

RESPONDENT

Counsel : Applicant in person.
: Ms. R. Uce and Mr. S. Seruvatu for the Respondent.

Dates of Hearing : 21, 27 November and 13 December, 2019

Date of Ruling : 13 December, 2019

RULING

[Application for reinstatement of bail pending trial]

1. The applicant makes this application for the reinstatement of his bail pending trial supported by his affidavits sworn on 9th and 30th August, 2019 respectively.

2. The application was initially opposed by the State they relied on the affidavit of Detective Constable Saiyasi Muturugu sworn on 3rd October, 2019, however, during the hearing on 27th November Mr. Seruvatu indicated to court that they are not objecting to bail being granted. The applicant also filed his affidavit in reply sworn on 23rd October, 2019.

BACKGROUND INFORMATION

3. The applicant is charged with another for four counts of aggravated robbery contrary to section 311 (1) (a) and (b) of the Crimes Act. The substantive matter is pending in this court under criminal case no. HAC 13 of 2018. The applicant also has two counts of aggravated robbery pending in Magistrate's Court, Nadi which was remitted by this court to be tried under the extended jurisdiction of the High Court.
4. The applicant was granted conditional bail by this court on 11th May, 2018. On 15th February, 2019 he did not appear because he was remanded by the Nadi Magistrate's Court for the breach of his bail conditions in the matter pending in Nadi Magistrate's Court. Upon being made aware of this information, this court adjourned the matter to 1st March, 2019 for mention.
5. On 1st March, 2019 the applicant appeared in court and stated that he had breached the conditions of his bail in this court by changing his residential address without seeking the approval of the court and had failed to report to Lautoka Police Station twice because he had gone to Serua for employment purposes. On this day the applicant's bail was revoked.

APPLICANT'S SUBMISSIONS

6. The applicant submits that he did not appear in this court on 15th February, 2019 because he was remanded in custody by the Magistrate's Court at Nadi for the breach of his bail conditions for a matter pending in that court. The applicant accepts that he breached his bail conditions in this court as well by leaving for Serua to work for a logging company without informing the court or seeking a bail variation. The State Counsel submits that the applicant had also breached his curfew hours as a result.
7. The applicant further states that he regrets what he had done and he promises not to breach any orders of the court should he be granted bail. He has been in remand for the past 8 months which has taught him a lesson. As a result of his remand his defacto wife and infant daughter are suffering.
8. The applicant further submits that the facilities at the remand centre are not conducive to allow him to prepare for his defence since he is unrepresented he needs access to a law library to do his research as well.
9. Finally, the applicant assures the court that he is ready and willing to abide by any strict bail conditions that may be imposed.

LAW

10. Section 3 of the Bail Act states that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. The prosecution must rebut this presumption when bail is objected to. The presumption in favour of the granting of bail inter alia

gets displaced where the person seeking bail has previously breached a bail undertaking or bail condition.

11. The relevant considerations which this court must take into account when determining whether bail is to be granted or not is mentioned in section 19 of the Bail Act. The three broad categories are:

- a). the likelihood of surrender to custody and appearing in court;
- b). the interest of the accused person,
- c). the public interest and protection of the community

12. Section 19 (2) of the Bail Act states a police officer or court must have regard to all the relevant circumstances and in particular-

(a) as regards the likelihood of surrender to custody –

- (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);*
- (ii) any previous failure by the person to surrender to custody or to observe bail conditions;*
- (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 indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);*

(b) as regards the interests of the accused person-

- (i) the length of time the person is likely to have to remain in custody before the case is heard;*
- (ii) the conditions of that custody;*

- (iii) *the need for the person to obtain legal advice and to prepare a defence;*
 - (iv) *the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependants);*
 - (v) *whether the person is under the age of 18 years (in which case section 3(5) applies);*
 - (vi) *whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;*
- (c) *as regards the public interest and the protection of the community-*
- (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 arrestable offence while on bail.*

DETERMINATION

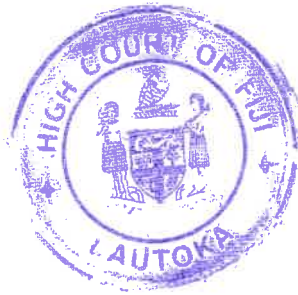
13. There is no doubt that the applicant breached his bail conditions by not informing this court about the change of his residential address when he went to Serua without informing this court, not reporting to the Lautoka Police Station twice and by breaching his curfew hours. Fortunately, for the applicant he has not been charged for the breach of his bail conditions in this court.
14. A perusal of the court file shows that the applicant was represented by the Legal Aid Commission, however, he has terminated their services. The applicant still has an opportunity to re-engage legal aid services if he so wishes. This court does not accept that the remand centre does not

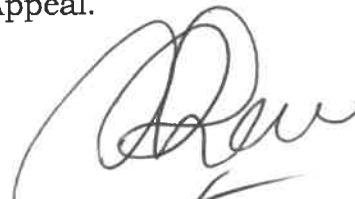
provide reasonable opportunity and facilities for a remand prisoner to prepare for his defence.

15. The applicant has brought this situation upon himself he knew about the consequences of his actions. However, it is noted that the applicant takes responsibility for his actions and has expressed regret for what he had done. After the applicant was charged for the breach of his bail conditions he pleaded guilty in the Magistrate's Court and I also accept that the reason why he breached his bail condition was employment related so as to earn to feed his family.
16. The revocation of the applicant's bail and his subsequent remand period has also taught him a valuable lesson which is to follow his bail conditions strictly. The applicant has also been sentenced by the Magistrate's Court in respect of his breach of bail conditions whereby his remand period was taken as sentence served. The substantive matter is not likely to be heard next year since the co-accused is challenging his confession and the prosecution is in the process of serving the necessary disclosures therefore it is in the interest of justice that the reinstatement of the accused bail be allowed. Furthermore, the prosecution has now decided not to oppose this application as well.
17. In view of the above this court is only allowing bail to the applicant on the basis that the applicant had breached his bail conditions in pursuit of genuine employment and that he has not been charged for the breach of his bail conditions for the matter pending in this court. The applicant has also shown genuine remorse for his mistake and has pleaded guilty to the offence of breach of bail condition for which he has been punished.

18. The applicant's interest in the circumstances outweighs the public interest consideration since the imposition of strict bail conditions will justify the reinstatement of bail to the applicant.
19. The applicant is granted fresh bail upon the following terms and conditions:
 - a) The applicant is granted bail in the sum of \$2,000.00 with two sureties bonded in the like sum;
 - b) The applicant is to pay the sum of \$1,000.00 being cash bail and is also to comply with all the under mentioned bail conditions before he is released from the remand centre. This cash bail will be forfeited by the applicant if he breaches any of his bail conditions otherwise this amount will be released to the applicant upon the determination of the substantive matter;
 - c) The two proposed sureties are to provide an affidavit stating their willingness to act as sureties in the matter with evidence that they are in a sound financial position to sign a bond of \$2,000.00 each;
 - d) Upon receipt of the affidavits the prosecution is to carry out a criminal records check with the Criminal Records Office in respect of both the proposed sureties;
 - e) The applicant is to reside with one of the surety's and is not to change his address, without the approval of this court;
 - f) The applicant is to report to his nearest Police Station or Police Post every Saturdays and Wednesdays between 6am and 6pm;

- g) The applicant is put on a curfew from 8 pm to 6 am daily;
 - h) A Stop Departure Order is imposed immediately on the applicant who is also not to apply for any travel documents;
 - i) The usual terms and conditions of bail also apply.
20. 30 days to appeal or review by the Court of Appeal.




Sunil Sharma
Judge

At Lautoka

13 December, 2019

Solicitors

Applicant in person.

Office of the Director of Public Prosecutions for the Respondent.