

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION
CRIMINAL MISCELLANEOUS CASE NO: HAM 171 OF 2019

Between :

PENIONI NAKAVULEVU

Applicant

And :

STATE

Respondent

Counsel :

A.K. Singh for Applicant

S. Komaibaba for Respondent

Date of Ruling :

17 July 2019

BAIL RULING

1. The Applicant has filed this application seeking bail pending trial.

2. The Applicant is charged with Aggravated Robbery under Section 311(1) (a) of the Crimes Act 2009.
3. It appears that this is not the first bail application filed by the Applicant in this court. He had filed a previous bail application in this court before Morais J. By a Ruling dated 11th September, 2018, that application has been dismissed. The Applicant in his affidavit or his counsel in his submissions has not revealed the fact that this is the second bail application and his previous bail application was refused.
4. Instead of filing an appeal or a review application against the bail determination of this court, the Applicant has filed a 'fresh bail application' on almost the same grounds which were considered by Morais J.
5. The refusal was substantially on the basis that the Applicant, in view of his adverse criminal record, will reoffend and pose a real threat to the community. The Applicant has 2 previous convictions and 7 pending cases in the magistracy, most of them are of similar nature. One previous conviction is for escaping from lawful custody. He also has one pending matter for violation of bail conditions. Furthermore, his Lordship took the view that the Applicant has violated bail conditions by allegedly committing fresh offences whilst on bail.
6. The Respondent has not filed an affidavit in reply and seeks a dismissal of the application on the basis that there is no change in circumstances from the previous bail determination.
7. The test for a renewed application for bail is that whether there is a change in circumstances from the last decision on bail or are there circumstances which, although they then existed, were not brought to the attention of the court (*State v Takiveikata* [2008] FJHC 31; *HAM 107.2007* (4 March 2008), *Nottingham Justices, ex parte Davies* [1981] QB 38).

8. The Applicant has a right to file any number of bail applications. However, a renewed bail application can be considered only if there is change in circumstances from the last bail decision or there are circumstances which, although they then existed, were not brought to the attention of the court.
9. In the present application, the Applicant has not shown that he has fresh grounds for bail that were not considered by this court.
10. The Counsel for Applicant in his submission has raised delayed prosecution of his case whilst the Applicant is in remand for nearly one year.
11. If there is an inordinate delay in prosecution of the case from the previous bail determination, such delay might be considered as a new ground for bail. However the delay is not due to a fault of the court. Having considered the long remand period, the substantive matter was fixed for trial in June 2019. The Counsel of his 'own choice' was engaged in another trial and, on the request of the Applicant, the trial had to be vacated. The delay is due to Applicant's insistence on a counsel of his 'own choice'. The trial of the Applicant is never a complex one. If the Applicant wanted to have his case disposed of expeditiously, he could have retained another counsel who can defend him on the date assigned by the court.
12. The Applicant has failed to satisfy this court that he has new grounds for bail that were not considered by a court of law.

Order

13. Application for bail is dismissed.



At Suva

17th July, 2019

A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

Solicitors: A.K Singh Law for Applicant

Office of the Director of Public Prosecution for Respondent