

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

Criminal Miscellaneous Case No. HAM 110 of 2019
[High Court Criminal Case No. HAC 195 of 2016]

BETWEEN : ASELAJ WAQANIVALU

AND : STATE

Counsel : Applicant in person
Mr Seravatu for the State

Date of Hearing : 26 July 2019

Date of Ruling : 23 September 2019

RULING

1. The Applicant has filed his bail application in person.
2. The Applicant is indicted for two counts of aggravated robbery contrary to Section 311(1)(b) of the Crimes Act.
3. I have considered the bail application tendered by the Applicant. He has stated that he has a wife and a child to look after. Apart from that the Applicant has not submitted any other ground to consider bail.
4. The Respondent objects for bail on the following grounds;

- a) The Applicant has 20 previous convictions.
 - b) He will commit other offences while on bail given the history of the Applicant.
 - c) He was granted bail earlier on strict bail conditions and he failed to appear in Court.
 - d) Although checks were made the Applicant could not be located at his last known address to execute the bench warrant.
 - e) The Applicant's mother was his surety before, and she sought permission to withdraw as the Applicant had threatened her.
 - f) He is charged with serious offences.
5. Section 3(1) of the Bail Act provides 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. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.
6. However, the Section 3(4) of the Bail Act provides for instances where the presumption is displaced;
- a) The person seeking bail has previously breached a bail undertaking or bail condition;
 - b) The person has been convicted and has appealed against the conviction; or
 - c) The person has been charged with a domestic violence offence.
7. Further Section 17(2) of the Act provides that the primary consideration in deciding whether to grant bail is likelihood of the accused person appearing in court to answer the charges laid against him or her.
8. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;

- a. The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b. The interests of the accused person will not be served through granting of bail;
 - c. Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or
 - d. The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.
9. Initially the Applicant had been granted bail in this matter on strict bail conditions. Among other bail conditions, the Applicant had been ordered to report to the nearest Police station once a week, to reside at a fixed address, not to change the residence without informing the Police and he is imposed with curfew from 6pm to 6 am.
10. It does not appear that the Applicant was attending Court regularly after he was granted bail. Finally, from 18th February 2019 the Applicant failed to appear in Court and notices were issued on the sureties. On 15 April 2019 the two sureties appeared in Court and sought a long a date to look for the Applicant.
11. Later the Applicant was arrested by the Police and was produced to Court on 29 April 2019. The two sureties sought leave from the Court to withdraw saying that they do not have any control over the Applicant. One of the sureties was the mother of the Applicant. She said that the Applicant had even threatened her.
12. Obviously during the period that the Applicant was absconding Court he was not residing at a fix address, he has not informed the Police about any change of his address and has not reported to the nearest Police Station. The affidavit of Detective Cpl 3018 Bimlesh reveals that the Applicant was not to be located at the last known address upon numerous checks. Therefore, it is very clear that not only the Applicant failed to appear in Court without a justifiable reason, but he has breached the other bail conditions as well.

13. In any event on 29 April 2019 when the Applicant was produced to Court. The Applicant said that due to bad weather he could not come to Court from Suva. Since his excuse was not reasonable enough to explain his absence for the entire period that he was absconding, his bail was revoked, and the sureties were released.
14. It appears that the Applicant has breached his bail conditions by not attending Court and obviously by not adhering to other bail conditions as well. In view of section 3(4) of the Bail Act the presumption for bail is thus displaced.
15. Even if the presumption is displaced it does not mean that bail should necessarily be refused. I have considered whether there are compelling grounds which justify the Applicant to be released on bail. But I do not find any compelling grounds to consider bail for the Applicant.
16. I have reasons to believe that he may not comply with bail conditions again if he is released on bail and he could pose a threat to the protection of the community. Further I have considered the fact that the Applicant is charged with serious offences and the severity of punishments may tempt him to abscond bail.
17. In the circumstances I am satisfied that it is not in the interest of justice to grant bail in this matter. Bail is refused.



Rangajeeva Wimalasena
Acting Judge

At Lautoka

23 September 2019

Solicitors:

The Applicant in person

Office of the Director of Public Prosecutions for the Respondent