

**IN THE HIGH COURT OF FIJI**

**AT LABASA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL MISC. CASE NO. HAM 25 OF 2020**

**BETWEEN** : 1. ARE KAKANU  
2. ESALA DAU  
3. MAIKELI DAWAI  
4. ISOA TAMANI [J]  
5. BOB JOHN MAISAMOA

**AND** : THE STATE

**Counsel** : Mr A Sen for the Accused  
Ms A Vavadakua for the State

**Date of Hearing** : 26 August 2020

**Date of Ruling** : 28 August 2020

**RULING**

[1] On 30 July 2020, the four Accused and a juvenile were charged with one count of attempted murder and one count of criminal intimidation and produced in the Magistrates' Court at Savusavu. They were further remanded in custody and their case was transferred to the High Court.

[2] On 7 August 2020, the four Accused and the juvenile filed a joint application for bail through counsel of their choice. On 11 August 2020, the juvenile was released on bail by the High Court. On 26 August 2020, the application for bail by the four adult Accused was heard. The State had no objection to the granting of bail to Esala Dau and Bob John

Maisamoa saying they did not have significant involvement in the commission of the alleged crimes. Esala Dau and Bob John Maisamoa were released on bail.

[3] The State objected to the granting of bail to Are Kakanu and Maikeli Dawai saying they are the principal suspects.

[4] The nature and circumstances under which the allegations arose are set in the affidavit of the investigating officer, Cpl Seganavuna:

1. **THAT** the evidence collected shows that Are Kakanu and Maikeli Dawai gave instructions and led the violence against the complainant in this case.

2. The video clips obtained from Are Kakanu's wife by the Police has been shown to the complainant who has now given a statement which has confirmed the involvement of the Applicants in this case:-

a. **Isoa** – Juvenile currently on bail – son of Are Kakanu – already granted bail.

b. **Bob John** – one of the person taking the videos in this case.

c. **Are Kakanu** – he was the one that ordered the complainant to board his car. Once the complainant got into the car, he realized that **Esala** was at the rear passengers' seat. [Esala is Are Kakanu's son]. The complainant's cousin brother witnessed this and has also given a police statement.

d. **Are Kakanu**, without the complainant's consent, took the complainant to his house at Waisagavuna. As soon as complainant got into the car, **Are Kakanu** began threatening the complainant and questioning him why he had told the Police about his farm.

e. **Are Kakanu** after getting off his car, called by the boys who had already gathered to take the complainant. Thereafter the complainant was pulled by

the boys and the complainant was punched on his stomach, his ribs and fell to the ground.

- f. Apart from the men and boys that were attacking the complainant, there was no one else around.
- g. Thereafter **Esala Dau** and another then forced the complainant up the hill, where they were later joined by **Are Kakanu** and his younger son, **Isoa**.
- h. **Are Kakanu** then told his sons to dig a pit. Thereafter **Bob John**, took a rope that was used to tie goats and tied the complainant's hands with it. They then forced the complainant into the pit but when he stood the pit was up to his waist.
- i. **Are Kakanu** forcefully pushed the complainant's shoulders down so that he would sit in the pit, and they continued to threaten him that if he screamed for help, they would kill him. Are Kakanu then told him that they were going to bury him alive. Thereafter he sat still inside the pit and they brought goat dung for him to swallow but he spat it out and was then punched by **Esala Dau**.
- j. **Are Kakanu** then instructed his son **Isoa** [the Juvenile on bail] to use a cane knife to cut the complainant's hair. **Isoa** did as his father had instructed, pulled the complainant towards him and cut his hair with a cane knife.
- k. The continued to keep his hand tied and took him to Are's house again.
- l. They continued to punch the complainant's ribs and stomach. **Maikeli Dawai** returned from the farm and saw the complainant. **Maikeli Dawai** then allegedly started sharpening his cane knife and brought the sharp edge of the blade to the complainant's neck and threatened to kill him.
- m. Are Kakanu's wife returned around 5.30p.m., and that was when the Applicants stopped torturing and threatening the complainant.

- n. The complainant was then told not to return to his home that night and not to reveal the incidents to anyone. He was then told to drink grog with them.
- o. The next day, the complainant's brother came to the Are Kakanu's house and asked for the complainant. The complainant then returned home with his brother and told his family what he had been through – thereafter the matter reported to the Savusavu Police Station.

[5] As for the public interest, Cpl Seganavuna stated that:

- 1. **THAT** there is a lot of tension in the village of Tacilevu concerning Are Kakanu and Maikeli Dawai to the extent that the villagers of Tacilevu and the Cakaudrove Provincial Office have forwarded their letters to say that they do not want Are Kakanu and Maikeli Dawai to stay in Tacilevu due to the fear, intimidation that they have caused to the Vanua Tacilevu. These letters are also contained in the Police Docket.
- 2. **THAT** all the Applicants actively participated in the abduction and the torture of the complainant according to the complainant.
- 3. **THAT** the safety of the complainant and the prosecution witnesses cannot be guaranteed if the Applicants, particularly Are Kakanu and Maikeli Dawai are released on bail.

[6] The Bail Act 2002 (the Act) codifies much of the law relating to bail. Part II of the Act contains provisions of general application. The Act provides for two presumptions. An accused has an entitlement to bail (s 3(1)). This does no more than reflect the principle of the presumption of innocence, which is also stated in the Constitution. The entitlement will fail if it is not in the interests of justice that bail should be granted. Secondly, there is a presumption in favour of the granting of bail (s 3(3)). However, that presumption is rebuttable if it can be shown that the accused has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction, or has been charged with a domestic violence offence (s 3(4)).

[7] Section 17(2) of the Act states that the primary consideration in determining whether to grant bail is the likelihood of the accused appearing in court to answer the charge. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. If this case is heard in the High Court it very likely that the trial will be heard within the next 12-18 months.

[8] Apart from the likelihood of the accused person appearing in court to answer the charge (s 17(2), the court may refuse bail if the interests of the accused person will not be served through the granting of bail or the granting of bail would endanger the public interest or make the protection of the community more difficult (19(1)).

[9] In considering these issues the court is guided by the nature and gravity of the allegations and the circumstances surrounding the allegations as outlined in the affidavit of the investigating officer. As the Court of Appeal said in *Seru v State* Cr App No. AAU0152 of 201 at [12]:

“When considering an issue relating to bail, there is no requirement for formal evidence to be given. It is well established that the bail jurisdiction was not equivalent to a criminal charge, the rules of evidence need not apply, and a court may rely on written hearsay evidence provided it was properly evaluated. In **In re Moles** [1981] Crim LR 170 the Divisional Court stated that strict rules of evidence were inherently inappropriate when deciding a bail issue. In **R v Mansfield Justices, Ex p Sharkey** [1985] QB 613, 626, Lord Lane CJ stated that in a bail hearing the relevant material can be presented by a police officer. Also, under the Bail Act 2002 Forms have been prescribed to provide the relevant information to the courts from the Bar table.”

[10] The likelihood of the Accused persons not appearing in court to answer the allegations is slim. They have no history of absconding bail. However, the circumstances and nature of the allegations are indeed serious. A civilian who assisted the police with detection of alleged drug cultivation was allegedly confronted and punished by the Accused persons

for being a police informer. The complainant is a relative of the Accused. He fears for his safety and security. The community in which the alleged incident occurred fears further reprisals if bail is granted to Are Kakanu and Maikeli Dawai. I am satisfied that it is not in the interests of justice to grant bail to them. Their applications for bail are refused.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a dotted line.

Hon. Mr Justice Daniel Goundar

**Solicitors:**

Maqbool & Company for the Accused

Office of the Director of Public Prosecutions for the State