

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Criminal Misc. Application No. HAM 222 of 2022
Criminal Case No. HAC 246 of 2022

BETWEEN : **SOLOMONE BALE**

AND : **THE STATE**

Appearances : Mr. Varinava, T for the Applicant
: Ms. Naidu, M for the State

Date of Ruling : 19 September 2022

RULING

1. The Applicant is jointly charged with three others for aggravated burglary, theft and damaging property. He was arrested on 17 July 2022 and has been in remand since.
2. He brings this application now for bail saying he is the sole breadwinner looking after his two daughters, his brothers and his elderly mother. His wife is working in Sigatoka and his two daughters are being looked after by his mother in Raiwaqa. Prior to his arrest, he had been working as a sales assistance at RC Manubhai. He has no history of breaching or absconding bail or of escaping from lawful custody. He has engaged assistance from the Legal Aid Commission but owing to restrictions at the remand facility, he has not been able to meet his counsel as much as he would like. He intends to reside at Vunidawa Lane, Bryce Street, Raiwaqa, and willing to report to the Raiwaqa Police Station and abide by any curfew conditions of bail.

3. The State objects to bail and filed an affidavit deposed by IP Asipeli Waqa, the investigating officer for this case.
4. The Inspector deposes that the Applicant faces serious charges. He says there is strong circumstantial evidence in the form of DNA evidence and CCTV footage as proof of the Applicant's presence at the alleged crime scene at the material time. The Applicant is a first offender and has no other pending cases against him in any of the Courts in Fiji. The evidence against the Applicant and the likelihood of an imprisonment sentence upon conviction makes him a flight risk. On the public interest and protection of the community, IP Waqa swears that burglary and theft are prevalent offences and the Applicant should be remanded to protect the public interest. The fact that he is a sole breadwinner should not be given any weight.

Analysis

5. Bail is determined pursuant to the governing provisions of the Bail Act. The Act provides that every accused person has a right to be released on bail. The exception is where it is not in the interests of justice to do so. (Section 3 (1)) There is a presumption in favour of bail. (Section 3 (3)) The presumption is displaced if any of the grounds in section 3 (4) exists.
6. The primary consideration for bail is the likelihood of the accused person appearing in court to answer the charges laid against him. (Section 17 (2)) Bail may be refused if any of the circumstances in section 19 (1) (a) – (c) exists. In assessing these circumstances, the Court must consider the factors in section 19 (2).
7. The Applicant has strong community ties in his wife, daughters, mother and brothers. Prior to being remanded, he was the sole breadwinner. If bailed, he says he will stay with both sureties.
8. The Prosecution relies on DNA evidence. Though reliance is also placed on CCTV footage, counsel for the State says the Accused persons were masked.

9. Burglary and theft are serious offences. If convicted, the Applicant is likely to face an imprisonment sentence. This may be an incentive to not appear in Court.
10. The Applicant has no previous convictions. There is no history of a failure to surrender to custody or to observe bail conditions. Apart from this case, there are no pending criminal charges or proceedings against him. There is nothing before the Court suggesting that granting bail to him would endanger the public interest or make the protection of the community more difficult.
11. On the whole, I do not consider the Prosecution has rebutted the presumption in favour of bail. Seriousness of offence does not automatically lead to a refusal of bail. In *Tak Sang Hao v The State* Miscellaneous Action No: HAM 0003 of 2001S, Shameem J stated:

The seriousness of the offence is relevant but not the predominant factor.

12. For all of the above reasons, I consider that bail should be granted on strict conditions. The Applicant is to sign a bail bond in the sum of \$1000 (non-cash). He must provide 2 sureties in the sum of \$500 each. He must reside at Lot 45 Vunidawa Lane, Bryce Street, Raiwaqa and must not change his residential address without leave of the Court. He must report at the Raiwaqa Police Station three times a week on Mondays, Wednesdays and Fridays between the hours of 6am and 6pm. His passport must be surrendered to the High Court Registry within 48 hours and he is not to apply for a new passport during the pendency of these proceedings. He is not to commit an arrestable offence whilst on bail, and he must attend Court on all mention and trial dates in this matter. These are the conditions of his bail.




Stainiu F. Bull
Acting Puisne Judge

Solicitors:

Legal Aid Commission for the Applicant
Office of the Director of Public Prosecutions for the State