

JESE TUILAUCALA v STATE

HIGH COURT — MISCELLANEOUS JURISDICTION

5 SHAMEEM J

23, 24 May 2002

[2002] FJHC 64

10 **Criminal law — bail — application for bail — interests of justice — whether bail be granted in the High Court exercising concurrent jurisdiction — Penal Code (Cap 17) ss 292, 293 — Criminal Procedure Code s 108(4) — Constitution s 27(3)(c).**

15 Jese Tuilaucala (the Applicant) was charged with first count for Unlawful Use of Motor Vehicle and second count for Robbery with Violence. The Applicant applied for bail pending his trial. The State strongly opposed the application because of the seriousness of the charge, the large sum of money involved, the alleged use of a firearm and a knife, the need to ensure the Applicant's presence for trial and because the investigations as to the whereabouts of the stolen money were continuing.

20 **Held—** (i) The burden of showing the court that the interests of justice require continued detention is on the State. Firearms and cane knives were used in the robbery, that there was a degree of premeditation and that most of the \$100,000 alleged in the charge has not been recovered. It is undoubtedly in the public interest, that persons charged with committing such a serious offence, appear in court for the trial.

25 (ii) The prospect of persons suspected of committing a crime not appearing for their trials and bench warrants which are issued but not executed, is a daunting one, not only for the justice system, but also for public confidence in the justice system. The fact that much of the stolen money is still unrecovered and is still being traced by the police is an important public interest factor in favour of remand pending trial.

30 Bail refused.

No cases referred to.

E. Veretawatini for the Applicant.

S. Shah for the Respondent.

35 **Shameem J.** This is an application for bail by the Applicant Jese Tuilaucala, pending his trial on the following charges:

First Count*Statement of Offence*

40 **UNLAWFUL USE OF MOTOR VEHICLE:** Contrary to s 292 of the Penal Code Cap 17.

Particulars of Offence

45 Jese Tuilaucala, Semi Dalituicama, Semiti Cagi, Leone Salauca, Matia Tabumasi on the 22nd day of April 2002 at Suva in the Central Division, without colour of right but not to be guilty of stealing unlawfully used a private Toyota Kijang Reg. DL805 the property of Peter Macoy.

Second Count*Statement of Offence*

ROBBERY WITH VIOLENCE: Contrary to s 293 of the Penal Code, Cap 17.

Particulars of Offence

50 Jese Tuilaucala, Semi Dalituicama, Semiti Cagi, Leone Salauca, Matia Tabumasi and Maciu Jiuta, on the 22nd day of April 2002 at Nasinu in the Central Division, robbed

Satendra Kumar the Manager of ANZ Bank \$109,157.00 and before and after such did use the said violence on Satendra Kumar the Manager of ANZ Bank, Laucala Beach.

Bail has been refused thrice in the Magistrates' Court. This is the first application for bail in the High Court in respect of this case. The application, which is made by notice of motion and affidavit of Luseyani Manuqali (the Applicant's wife) is not made in the High Court's appellate jurisdiction, but in its concurrent jurisdiction in respect of bail. Section 108(4) of the Criminal Procedure Code (as amended by Act No 37 of 1998) provides:

The High Court may —

(1) in its original jurisdiction grant or refuse bail upon such terms as it considers just;

The Applicant applies for bail on the ground that he has been in custody since 22nd April 2002, that no hearing date has been set because investigations are continuing, that his wife and baby are left with no source of income, and that he is prepared to abide by strict reporting conditions to ensure his attendance at trial.

In her affidavit the Applicant's wife referred to a previous decision of the resident magistrate to grant bail on condition that a cash bail of \$5000 was paid into court which condition "the Applicant cannot afford to pay the said sum as we do not have that much money in our savings". She annexes a ruling of the learned magistrate dated 21st May 2002 in which bail was refused on the ground that the continued remand of the Applicant and his co-accused persons, was justified in the public interest.

The State strongly opposes this application. State counsel submitted that bail should be refused because of the seriousness of the charge, the large sum of money involved, the alleged use of a firearm and a knife, the need to ensure the applicant's presence for trial and because the investigations as to the whereabouts of the stolen money were continuing. She also submitted that there was a real danger that witnesses might be interfered with. Finally she said that a trial date would be set on the next mention date, on 29th May 2002.

In considering bail pending trial, s 27(3)(c) of the Constitution is relevant. That section provides that:

Every person who is arrested for a suspected offence has the right:

... (c) to be released from detention on reasonable terms and conditions pending trial, unless the interests of justice otherwise require.

The burden of showing the court that the interests of justice require continued detention is on the State. Relevant considerations, in addition to the presumption of innocence, are whether the accused will appear to stand trial, whether there has been an earlier refusal of an application for bail, the seriousness of the charge, the nature of the prosecution's case, the likelihood of reoffending, the accused's character and antecedents, any prejudice in the preparation of the defence, and the likelihood of further charges being laid.

There is no evidence before me, as to the Applicant's character or antecedents or as to the likelihood of reoffending. Nor is it suggested that the preparation of his defence will be prejudiced by his continued remand. Nor has the State filed an affidavit as to the nature of its evidence, or as to the likelihood of interference with prosecution witnesses. However in her ruling, the learned magistrate accepted the State's submissions that firearms and cane knives were used in the robbery, that there was a degree of premeditation and that most of the \$100,000 alleged in the charge has not been recovered.

This is clearly an allegation which is very serious indeed. An armed robbery of this kind is one of the most serious of its kind in this country. It is undoubtedly in the public interest, that persons charged with committing such a serious offence, appear in court for the trial. The prospect of persons suspected of committing crime failing to present themselves for their trials and of bench warrants which are issued but not able to be executed, is a daunting one, not only for the justice system, but also for public confidence in the justice system. Further, the fact that much of the stolen money is still unrecovered and is still being traced by the police is an important public interest factor in favour of remand pending trial.

The State now says that a hearing date will be set on the next mention date, and that the continuing investigation will be hampered if the applicant is released.

The Applicant has a right to bail unless the State shows that he should be remanded pending trial. After taking all the circumstances into account including his family, the alleged offence, the presumption of innocence and the public interest, I consider that bail should be refused. If the hearing date set is further adjourned or the prosecution continues to show lack of readiness for trial, then this decision can be revisited in either court. Bail is refused.

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Bail refused.

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