

**SLAMET HARYONO v STATE**

HIGH COURT — MISCELLANEOUS JURISDICTION

5 SHAMEEM J

30, 31 December 2003

[2003] FJHC 233

10 **Criminal law — bail — bail pending trial — murder — Applicant free to practice religion — real risk that Applicant will not appear to trial if granted bail — bail not granted.**

15 Applicant sought bail pending trial and alleged that a trial date has not been set, he has no previous convictions and that the conditions of his custody were such that he was unable to practice his religion. The State opposed the appeal.

20 **Held** — Applicant was free to practice his religion while in prison and that his cleansing rituals were also possible there. There was a real risk that Applicant will not appear to stand trial if granted bail and that he will not be able to support himself financially while awaiting trial. The State had rebutted the presumption in favour of bail.

Bail disallowed.

**No case cited.**

25 *B. Malimali* for the Applicant.

*P. Bulamainivalu* for the State.

**Shameem J.** The Applicant is charged with the Murder of one Agus Sunarto. He was charged on the 2nd of August 2003 and has been in custody since then.  
30 He applied for bail pending trial.

The grounds on which he relies are that a trial date has not been set, he has no previous convictions and that the conditions of his custody are such that he is unable to practice his religion. In particular he complains that he cannot wash before prayers and that his food is unsuitable for Muslims. He says in his affidavit  
35 that if he is released he would stay with his friends Nise Loga and Tevita Loga at Delainavesi. Counsel for the applicant said that interpretation problems were creating a difficulty in the obtaining of proper instructions from the Applicant while he is in custody.

The Atate opposes the appeal. It filed the affidavit of Aisea Taoka,  
40 Commissioner of Prisons, in response to the affidavits of the Applicant, Tevita Loga, Nise Loga and Lesi Buloudigi. The affidavit states that the Applicant is free to practice his religion, that he has access to water at all times, that the water is suitable for human consumption and cleansing and that the Applicant has never complained about the food at the Remand Center. It further states that Tevita  
45 Loga and Lise Loga has never visited the Applicant in prison and that Lesi Buloudigi has only visited occasionally.

The Bail Act provides that all persons have a right to bail. The presumption in favour of bail is rebutted where the Applicant has been in breach of bail conditions or a bail undertaking. In deciding whether or not to grant bail, the  
50 court must consider the likelihood of appearance at trial, the interest of the accused and the public interest.

There is no doubt at all that the Applicant is facing a most serious charge, one which leads, after conviction, to life imprisonment. However the seriousness of the charge is no longer sufficient on its own to justify the refusal of bail. All other relevant matters must be weighed up to decide whether the State has rebutted the  
5 presumption in favour of bail.

In this case the State says that the Applicant is a foreign seaman with no personal ties in Fiji. Although his passport has been surrendered he may still be able to leave the country through his sea-faring links.

A matter of great concern is the Applicant's ability to support himself while  
10 awaiting trial. His lack of means was clearly the basis of the grant of legal aid. He will not be able to work prior to trial. His friend, Lesi Buloudigi is employed as a waitress, Tevita Loga is a minibus driver and Nise Loga is a flea market vendor. None has undertaken to support him financially in his or her affidavit (although counsel for the Applicant told me from the Bar table that they would  
15 support him).

Having read the affidavit of Aisea Taoka, I am satisfied that the Applicant is free to practice his religion while in prison and that his cleansing rituals are also possible there. No doubt, his solicitor can inform the commissioner of his preferred diet I consider that the Applicant's trial can be heard by July of 2004  
20 by which time he would have spent 11 months in custody.

I further consider that there is a real risk that the Applicant will not appear to stand trial if granted bail and that he will not be able to support himself financially while awaiting trial. As for preparation for trial, I suggest that the Legal Aid Commission contacts the Indonesian Embassy for assistance in  
25 obtaining instructions while the Applicant is in custody. I make no comment about the strength of the Prosecution case, other than to say that the depositions contain a confession as the stabbing with knowledge that death would be caused.

In all the circumstances I consider that the State has rebutted the presumption in favour of bail, and that bail should not be granted in this case.

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*Bail disallowed.*

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