

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

CRIMINAL CASE NO: 34 of 2013

BETWEEN : **ALUSIO ELDER**

APPLICANT

AND : **THE STATE**

RESPONDENT

Applicant in person

Mr. A. F. Paka for State

Date of Ruling : 11 April 2013

RULING ON BAIL

1. The applicant is charged in this Court for the following offences.
 - a. One count of Aggravated Burglary contrary to section 313 (1) (a) of the Crimes Decree
 - b. One count of Theft contrary to section 291(1) of the Crimes Decree

2. The High Court gave extended jurisdiction to hear this case on 01 March 2013 and the applicant applied bail from this court on 15 March 2013. The reasons for bail are as follows.
 - a. That he is determined to appear in the court
 - b. That remand center is over crowded
 - c. That he is 16 years old
 - d. That he needs legal help
 - e. That he is not a threat to the public

3. The State objected this application for following grounds.
 - a. The likelihood of the applicants surrendering to custody
 - b. The interest of the applicants
 - c. Public interest

4. Section 03 of the Bail Act provides that the accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. The presumption of granting bail to a person could be rebutted by the party who oppose to it and in this case the State has to rebut that.

In State v Sinha [2008] FJHC 336; HAM107.2008 (2 December 2008) Hon Justice **Daniel Goundar** noted that

“The Bail Act 2002, in accordance with s. 27(3)(c) of the Constitution provides for a right to bail. The State must rebut that presumption when bail is objected to, and in considering bail, the relevant considerations for the courts are those set in s.19 of the Bail Act. The three categories of criteria are: the likelihood of surrender to custody and appearing in court; the interest of the accused person; and the public interest.”

5. The applicant is a juveniles and section 3(5) of the Bail Act also applies.

Bail must be granted to an accused person under the age of 18 years, unless-

- (a) the person has a previous criminal conviction;
- (b) the person has previously breached a **bail** undertaking or **bail** condition; or
- (c) the offence in question is a serious one.

6. In State v Albertino Shankar & Narayan Criminal Case HAM 14 of 2003 His Lordship Justice Gates (as he then was) stated that **“The primary consideration in this decision process is the likelihood of the Accused person appearing in court to answer the charge. [Section 17 (2)].”**
7. Section 19(1) of the Bail Act outlines the reasons for refusing bail and they are as follows:-
 - a. **The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;**
 - b. **The interest of the accused person will not be served through the granting of bail; or**
 - c. **Granting bail to the accused would endanger the public interest or make protection of the community more difficult**
8. In Isimeli Wakaniyasi v State (2010),FJHC 20;HAM 120/2009 (29th January 2010), His Lordship Justice Gounder held that **"All three grounds need not exist to justify refusal of bail, existence of any one grounds is sufficient to refuse bail"**.

9. The State in their objections submitted that the applicant escaped from lawful custody whilst being remanded for some other case and committed these offences. Also he has made a confession and there is high likelihood of him re- offending.
10. Therefore the State submitted that in the event if bail is granted the applicant is unlikely to appear in the Court and also granting bail would endanger the public interest.
11. I have carefully considered the bail application as well as objections raised by the State.
12. The applicant is charged with serious offences. Also the applicant has made a confession in his caution statements. The State is going to rely on this which would strengthen the prosecution's case. After considering these I believe the applicant is unlikely to surrender to custody if granted bail in this case.
13. The respondent also submitted that granting bail would endanger the public interest. I agree with the State submission with that ground too. He was remanded by this Court in Boys Center for another offence. Police have informed this Court that he escaped with some other juveniles from there and alleged to have committed these offences. This points that there is a high likelihood that in the event if bail is granted he would re-offend.
14. Now I will consider the applicant's grounds. He has indicated that Suva remand is overcrowded. The court is mindful of that. But I do not believe that is a good ground for granting bail. The Court had to remand him there because he escaped from the Boys Center.
15. The applicant also stated that he wants to get Legal aid in this case. I do not think bail need to be granted for him to apply for Legal aid. As indicated by the State the Legal Aid is regularly visiting the correction centers and he can apply through them. Also the applicant is no stranger to this Court with number of pending cases and is fully aware about how to get the Legal Aid.
16. Therefore the applicant is advised to apply for the Legal aid in this case and the court is prepared to grant earliest hearing date after that.
17. For above mentioned reasons, I decide that granting of bail to the applicant would endanger the public interest and the applicant may be unlikely to surrender to custody and appear in court to the charges laid against him if granted bail. Therefore I refuse granting bail to the applicant.
- 18 28 days to appeal
11 April 2013

H.S.P.Somaratne

Resident Magistrate, Navua

