

IN THE RESIDENT MAGISTRATE'S COURT OF FIJI
AT NAVUA

CRIMINAL CASE NO: 74 of 2013

BETWEEN : **DAVID BLACK, TEVITA SAUSAU AND ALUSIO ELDER**

APPLICANTS

AND : **THE STATE**

RESPONDENT

Applicants in person

Mr. A. F. Paka for the State

Date of Ruling : 11 April 2013

RULING ON BAIL

1. The applicants are 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 applicants are in remand custody and the High Court gave extended jurisdiction to hear this case on 01 March 2013.
3. The applicants filed bail applications asking for bail on 15 March 2013. The reasons for bail are as follows.

1st Applicant

- a. That his parents are worried about him
- b. That he is studying in FNU
- c. That the Suva remand center is over crowded

2nd Applicant

- a. That he is a first offender
- b. That remand center is over crowded
- c. That he is 17 years old
- d. That his family his worried about him

3rd Applicant

- 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
4. The State filed their objection on 04 April 2013. The respondent objected to all these applications based on following grounds.
 - a. The like hood of the applicants surrendering to custody
 - b. The interest of the applicants
 - c. Public interest
 5. Applicable law could be found in Bail Act of 2002. Section 03 of the said 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.”**

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. All the applicants are juveniles and section 3(5) of the Bail Act also needs to be considered.

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.

8. 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**
9. 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**".
10. The respondent submitted that all the applicants escaped from lawful custody whilst being remanded for some other cases and committed these offences. The applicants have made confessions and there is high likelihood of them re- offending if granted bail.
11. Therefore the State submitted that if they are granted bail the applicants are unlikely to appear in the Court and also granting bail would endanger the public interest.
12. I have carefully considered all the bail applications as well as objections raised by the State.
13. Section 19(2) (a) of the Bail Act set down the factors that the Court can consider as regard to likelihood of the accused person to surrender to custody. They are as follows:
- (i) The accused person's background and community ties (including residence, employment, family situation, previous criminal history);
 - (ii) Any previous failure by the person to surrender to custody or to observe bail conditions;
 - (iii) The circumstances, nature and seriousness of the offence;
 - (iv) The strength of the prosecution case;
 - (v) The severity of the likely penalty if the person is found guilty;
 - (vi) Any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country)
14. The applicants are charged with serious offences. All the applicants have made confessions in their caution statements. The State is going to rely on these which strengthen the prosecution case. After considering these I believe the applicants are unlikely to surrender to custody if granted bail in this case.
15. The respondent also submitted that granting bail would endanger the public interest. I agree with the State submission regarding that. Third applicant was remanded by this

Court in Boys Center for another offence. Police have informed this Court that he escaped with other applicants from there and alleged to have committed these offences. This indicates that in case if bail is granted they would re-offend again.

16. Now I will consider the applicants grounds. All have 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 applicants were earlier remanded in Boys center considering their age. All of them escaped from that place. Therefore the Court does not have any choice than keeping them in Suva remand center.

17. Second applicant has already waived right to counsel and first and third applicants have indicated that they want Legal Aid for this case. They have not applied for that yet. As soon as they get the Legal Aid the Court will give the earliest hearing date for this case. Therefore all the applicants have to apply for the legal Aid and prison authorities need to assist them with that.

18. For above mentioned reasons, I decide that granting of bail to the applicants would endanger the public interest and the applicants may be unlikely to surrender to custody and appear in court to the charges laid against them if granted bail. Therefore I refuse granting bail to all the applicants.

19. 28 days to appeal

11 April 2013

H.S.P.Somaratne

Resident Magistrate, Navua