

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

*Criminal Case No. 1774 of 2019*

STATE

v.

MELI CAMA

**For the State:** Inspector J. Singh

**For the Defence:** Mr. L. Cati, *of counsel*, instructed by **Law Solutions**

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**BAIL RULING**

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1. You are charged with **ROBBERY** contrary to section 310 (1)(a) of the **CRIMES ACT 2009** in that you “on the 26<sup>th</sup> day of November 2019 at Suva in the Central Division robbed one **KAMLA WATI** and (stole) 1 x Gold chain valued at \$2000.00 before committing theft, uses force on the said **KAMLA WATI** (*sic*).”
2. You were produced in Court on 29 November 2019. On that day, you applied for bail. Your bail hearing was conducted over 29 November 2019 and 4 December 2019. Mr. Rabuku, *of counsel*, who had appeared for you over these days, offered detailed oral and written submission on your behalf.
3. In accordance with his duty to you, your counsel then pleaded the fact that you had no history of absconding bail and the presumption of innocence as reasons for why you ought to be granted bail, notwithstanding the fact that you had been charged with a separate but similar criminal offence re *Criminal Case No. 1704 of 2017*.
4. This Court, *albeit* differently constituted, denied bail. In his detailed and considered ruling, the learned Magistrate who heard your first bail application, held that it was not in the interests of justice to grant you bail. Bail was denied and in answer to the concern raised that you would languish in remand, the Court observed, “*It is a*

*constitutional right of an Accused and a fundamental judicial practice to take up the Trials of Accused persons who are in remand. This court is well aware of the situation and it is in a position and shall take all necessary steps to prioritize and take up the trial of the Applicant, if he is remanded pending the trial.”*

5. Your counsel now, Mr. Cati pleads the same fact and asks that the Court give pre-eminent consideration to the fact that you are not a flight risk and the fact that you are presumed innocent in respect of both events as reason for why you ought to be granted bail now.
6. Pursuant to section 14 of the **Bail Act 2009**, you are entitled to apply for bail as many times as you like. Pursuant to section 30 (7) of the **Bail Act 2009**, I have the power to hear a fresh application under section 14 (1) of the **Act** but if I am not satisfied that there are special facts and circumstances that justify the making of a fresh application, I may refuse to hear the application.
7. I asked your counsel what special facts and circumstances exist to justify your fresh application for bail. Your counsel, in accordance with your instructions, indicated that your incarceration has negatively impacted on your relationship with your wife. She no longer visits you. You are worried about the impact your absence from home over this important period (it being Christmas soon) will have on your marriage and on your young family. Your counsel further pleads with the Court to consider the fact that you have no history of prior violence and for that reason, asks the Court to hold that you are not a flight risk, not a threat to the community and that it is in your best interests that you be permitted on bail.
8. First, I remind myself and you that bail is an administrative matter and that the requisite standard for a bail determination is the balance of probabilities *i.e.* is it more likely than not that you are a flight risk, *or* is it more likely than not in your best interests that you be granted bail, *or* it is more likely than not to be against the public interest that you be released on bail. As was held by Goundar J. in **Wakanivasi v. State** [2010] FJHC 20; HAM 120/2009 (29 January 2010), “all three grounds need not exist to justify the refusal of bail. The existence of any one ground is sufficient to refuse bail.”
9. Let me first deal with the special circumstances raised by you in order to ground your new application for bail.
10. The decision of the learned Goundar J. in **Robert William Stoman v. State**, Criminal Misc. Case No. HAM 140 of 2019 (unreported, 6 September 2019) is equally instructive. At paragraph [4], his Lordship held:

*“[4] The test for a subsequent application for bail after it has been refused is more stringent. The test is whether there are special facts or circumstances to revisit an earlier decision refusing bail. The court will reconsider granting bail after it has initially refused only if there is a change in facts or circumstances that are exceptional or unusual.” (Underline added).*

11. You say that you are facing personal hardship as a result of your remand. The High Court of Fiji per Goundar J. in ***Rokobolou v. State***, Criminal Miscellaneous Case No. HAM 397 of 2019 had this to say:

*“[5] Section 14 (1) of the Bail Act (the Act) permits an accused to make any number of applications to a court for bail. However, the Court has power to summarily dismiss frivolous or vexatious applications pursuant to section 14 (2) of the Act. Section 30 (7) of the Act requires an accused to establish special facts or circumstances in a renewed application for bail.*

*[6] The fact that the Accused's family may be facing hardship due to his incarceration is not peculiar to his family only. Incarceration adversely affects the families of all remandees. The Accused has not shown any special fact or circumstances for this Court to reconsider its earlier decision refusing bail.*

*[7] I have come to the conclusion that this application is frivolous because it is bound to fail.”*

12. Let me be clear, while I commend your counsels for their diligence in following your instructions for bail and for the clarity in the positions they have pressed, I agree entirely with the learned Resident Magistrate who initially denied you bail, that bail ought to be denied.

13. I note the point made by your counsel that this and other pending matters are merely allegations and that the presumption of bail ought to trump the existence of these allegations. I appreciate that this is an important consideration. For the purposes of bail, however, it is not the only consideration. As the learned Resident Magistrate Wickaramasekara held and as was succinctly articulated by Goundar J. in ***Kenawai v. State*** [2019] FJHC 257; HAM 322.2018 (27 March 2019):

*“The presumption of innocence fails if it is not in the interests of justice that bail should be granted.”*

14. As his Lordship held in ***Rahman v. State*** [2019] FJHC 258; HAM053.2019 (28 March 2019) at [3] and [4]:

*“[3] The discretion to grant or refuse bail is of the court. The principles are governed by the common law and the Bail Act. There are two overarching principles. The first is the entitlement to bail provided by section 3 (1) of the Bail Act. This entitlement is based on the presumption that an accused is innocent until proven guilty by the prosecution. The presumption of innocence is protected by the Constitution. However, that entitlement will fail if it is not in the interests of justice that bail should be granted.*

*[4] The second is the presumption in favour of the granting of bail provided by section 3 (3) of the Bail Act. That presumption is rebuttable if it can be shown that the Accused has previously breached a bail undertaking or bail condition...”*

15. You are produced in Court for committing another offence while on bail for a similar crime. The Prosecution indicate that the evidence they have against your client is strong - *to wit:*


- (i) *Confessions, and*
- (ii) *Recent Possession via the Recovery of Stolen Items found in your possession one day after the commission of the alleged offence.*

16. This is sufficient to satisfy me *on the balance of probabilities* that it is not in the public interest to grant you bail. In *Bataka v. State* [2018] FJHC 382; HAC 44.2018 (8 May 2018), Aluthge J. observed:

*"The bail system does not function properly if an accused commits crimes while on bail. While it is impossible to make exact predictions about recidivism and future dangerousness, exact predictability of future dangerousness under the Bail Act is not mandated. It is sufficient that the bail system establish a likelihood of dangerousness."*

17. Your application for bail is denied. I reiterate what my very learned colleague, Resident Magistrate Wickramasekara indicated. The Court knows its duty. Since bail has been refused, all necessary steps will be taken to prioritize and take up your trial.

18. You may apply for bail afresh if you like pursuant to section 14 (1) of the **Bail Act 2002** but I invite you to carefully read the provision at section 14 (2) of the said **Act**. Moreover, you may apply for a review of this decision before another Magistrate pursuant to section 30 (1) of the **Bail Act 2002** or before a Judge of the High Court but you must bear in mind the proviso at section 30 (7) of the said **Act 2002**. In addition, you may also appeal this bail decision to the High Court within 28 days.

  
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Seini K Puamau  
**RESIDENT MAGISTRATE**



Dated at Suva this 20<sup>th</sup> day of December 2019.