

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: HAA 47 OF 2017

BETWEEN: MELVIN ATISH RAM

Appellant

A N D: STATE

Respondent

Counsel: Mr. P. Kumar for Appellant
Mr E. Samisoni for Respondent

Date of Hearing: 12th February 2018

Judgment: 16th February 2018

JUDGMENT

Criminal Action 492 of 2016

1. The Appellant has been charged in the Magistrate's Court in Nasinu, in the Criminal Case No 492 of 2016, for one count of Indecently Insulting or Annoying Any Person, contrary to Section 213 (1) (a) of the Crimes Act. The Appellant was granted bail by the Police. The matter was first called in the Magistrate's Court in Nasinu on the 26th of April 2016. Then the matter was adjourned till 20th of June 2016. The Appellant had failed to appear in court on the 20th of June 2016 and also on the 19th of September 2016. The learned Magistrate had accordingly issued a bench warrant against the Appellant. On the 2nd of January 2017, the Appellant was brought before the court. Accordingly, he was remanded in custody till 6th of January 2017.

2. However, on the 6th of January 2017, the learned Magistrate was on leave. The Appellant was also not present on that day. According to the record of the proceedings, the matter was adjourned till 20th of January 2017. On the 20th of January 2017, the learned Magistrate was still on leave. The Appellant was present on that day. The matter was adjourned till 3rd of February 2017.
3. On the 3rd of February 2017, the appellant was not present. Accordingly, the learned Magistrate had issued a bench warrant. The matter had then been adjourned on several occasions as the Appellant had failed to appear in court. Finally, the Appellant had appeared in court on the 25th of October 2017. He was then remanded in custody. The learned Magistrate in his ruling dated 27th October 2017 had refused to grant bail and remanded the Appellant in custody.

Criminal Action No 562 of 2017

4. The Appellant has been charged in the Magistrate's Court in Nasinu in the Criminal Case No 562 of 2017 for one count of Criminal Trespass, contrary to Section 387 (1) (a) of the Crimes Act. He was first produced in the Magistrate's Court on the 1st of June 2017. On the 2nd of June 2017, the Appellant was granted bail. The matter was then adjourned till 1st of August 2017. The learned Magistrate was on leave on the 1st of August 2017. The matter was again adjourned till 4th of September 2017. Again, the learned Magistrate was on leave on the 4th of September 2017. The matter was adjourned till 11th of November 2017. There is no information in the record of the proceedings whether the Appellant appeared in court on the 1st of August 2017 and / or on 4th of September 2017.
5. Regardless of the directives given on the 4th of September 2017, the matter was called on the 26th of September 2017. According to the record of the proceedings, the Appellant was not present in court on that day. The learned Magistrate had adjourned the matter till 19th of January 2018. Despite of the said adjournment, the matter was called again on the 27th of October 2017. The Appellant was present on that day. The learned Magistrate in his ruling dated 27th of October 2017, refused to grant bail and remanded the Appellant.

Aggrieved with the said ruling of the learned Magistrate, the Appellant appeals to this court pursuant to Section 31 of the Bail Act on the following grounds, *inter alia*,

- a) *The Learned Magistrate erred in Law by failing to consider the presumption of innocence of the appellant/applicant in the determination of Bail.*
- b) *The Learned Magistrate erred in Law when he considered the issues of likelihood of the appellant/accused committing an arrestable offence whilst being on bail to justify concern of public interest when there was no evidence placed before the court to that effect.*
- c) *The Learned Magistrate erred in Law by failing to assess the alleged reoffending whilst on bail being inconsistent and unjust with the protection of the public from potential reoffenders.*
- d) *The Learned Magistrate erred in Law by failing to effectively canvass the grounds of bail of the appellant/accused thereby encumbering the right to Bail Pending Trial.*
- e) *The Learned Magistrate erred in Law by failing to consider and properly analyse the applicable laws and case authorities that support the interest of the Appellant/accused.*
- f) *The Learned Magistrate erred in Law by failing to consider that three Bench Warrant were issued for the arrest of the appellant/accused of which two were issued whilst he was in remand pending bail before Chief Magistrate in Court 1 at Suva.*
- g) *The Learned Magistrate erred in Law by failing to analyse the strength of prosecution case.*

- h) The Learned Magistrate erred in Law by failing to make proper assessment on the balance of probability in relation to the public interest and the interest of the accused persons.*
 - i) The Learned Magistrate erred in Law by failing to consider the appellant/accused's Constitutional rights of a fair trial within a reasonable time.*
 - j) The Learned Magistrate erred in fact by failing to consider that no hearing dates have been set on the matters pending before him.*
 - k) The Learned Magistrate erred in fact by putting too much emphasis on the matters pending before him and other courts to assist him in the determination of Bail.*
 - l) The Learned Magistrate erred in fact and Law by failing to make proper assessment to the Strict Bail Conditions granted by the Chief Magistrate on 0th November 2017.*
 - m) The Learned Magistrate erred in fact and in Law by failing to consider that the accused's substantive matter is set for trial in January 2018 thus the accused ought to prepare his defence.*
6. Section 31 of the Bail Act has given the jurisdiction to the High Court to hear the appeals, that have filed against the decision or the ruling of the Magistrate's court pertaining to Bail, where it states that:
- i) All grants or refusals of bail and all orders, conditions or limitations made or imposed under this Act are appealable to the High Court upon the application either of the person granted or refused bail or of the Director of Public Prosecutions,*
 - ii) The High Court may-*

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

b) on an appeal under subsection (1), confirm, reverse or vary the decision appealed from.

iii) This section is in addition to section 22(8) (as to the acceptance of sureties or security) and section 30 (as to review of bail decisions).

7. The learned Magistrate in his ruling dated 27th of October 2017 has refused the bail on the grounds of public interest and protection of the community. The learned Magistrate had taken into consideration the reoffending nature of the Appellant in reaching such a conclusion.
8. I first draw my attention to Criminal Case No 492 of 2016. On the 2nd of January 2017, the Appellant was remanded in custody till 6th of January 2017 by the learned Magistrate. The learned counsel for the Appellant in his supplementary submissions, submitted that the Appellant was granted bail and released from the remand custody on the 6th of January 2017 in respect of another criminal matter that is also pending in the Magistrate's court in Nasinu. However, he failed to appear in this matter on the same date. The learned Magistrate was having his annual leave on the 6th of January 2017. The court registry had adjourned the matter till 20th of January 2017.
9. On the 20th of January 2017, the learned Magistrate was not present as he was still on his annual leave. The Appellant was present on that day. The matter was adjourned till 3rd of February 2017 by the Court Registry.
10. According to the record of the proceedings, the Appellant was not present on the 3rd of February 2017. The learned Magistrate had then issued a bench warrant against the Appellant. The Appellant was subsequently produced in Court on the 25th of October 2017. He was then remanded in custody till 27th of October 2017. The learned Magistrate in his ruling dated 27th of October 2017, has refused to grant bail.

11. In view of the above discussed chronological background of the Case No 492 of 2016, the Appellant was released from the remand custody on the 6th of January 2017, though he was not granted bail for this matter. The Appellant was aware of this pending matter. However, he chose not to appear for this matter on the 3rd of February 2017, 21st of April 2017, 18th of July 2017, 01st September 2017 and 20th of October 2017 respectively.
12. The learned counsel for the Appellant in his submissions stated that the Appellant was arrested on the 31st of August 2017 on a bench warrant issued by the Magistrate's Court in Suva in respect of another Criminal Action that is pending in the Magistrate's Court in Suva. Having submitted that, the learned counsel submitted that the non-appearance of the Appellant in the proceedings in the Magistrate's Court in Nasinu was due to his arrest on the 31st of August 2017, which I do not accept as the Appellant had failed to appear in this matter since 3rd of February 2017. The Appellant has not provided any valid reason or any excuse for his non-appearance on more than three occasions in this Criminal Action No 492 of 2017. Therefore, it is my opinion that there are sufficient grounds to positively conclude that there is a likelihood that the Appellant may not appear in court if he is granted bail.
13. The learned counsel for the Appellant submitted in his submissions that there is a possibility that none of these two matters will get an early hearing date due to the heavy workload in the Magistrate's Court in Nasinu. If the hearings of these two cases are delayed, the Appellant has to spend time in remand custody, exceeding the appropriate sentencing tariff limits of the offences that he has been charged with.
14. The court is required to consider the interest of the Appellant with the interest of justice. As discussed above, the Appellant has failed to appear in court on number of occasions without giving any proper or valid excuse. Even after he was arrested and remanded on the 31st of August 2017 for another matter, it was the duty of his sureties to inform the court about his situation. In view of these reasons, I do not find the possible delay of the hearing is not a sufficient ground to grant the Appellant bail. It is the duty of the learned Magistrate

to take this issue into consideration and fix these two matters for hearing on an earliest possible date.

15. In conclusion, I refuse and dismiss this Petition of Appeal. I further direct the learned Magistrate to take the hearings of these two Criminal Actions (492 of 2016 and 562 of 2017) on an earliest possible date.

16. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Rajasinghe
Judge

At Suva
16th February 2018

Solicitors
Nands Law for the Appellant
Office of the Director of Public Prosecutions for the Respondent.