

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASES NO. HAM 217, 226 and 229 OF 2017S

BETWEEN

ARVIND CHAND

FIRST APPLICANT

AND

JONETANI ROKOTUINASAU

SECOND APPLICANT

AND

LIVAI DRIGITA

THIRD APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Mr. J. Dinati for First Applicant
Second Applicant in Person
Mr. L. Qetaki for Third Applicant
Mr. T. Tuenuku for Respondent

Hearings : 8 June and 27 July, 2018

Ruling : 05th September, 2018

Written Reasons: 28th December, 2018

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 362 of 2017S, all three applicants were jointly charged with two "aggravated robbery" charges contrary to section 311(1) of the Crimes Act 2009; one "aggravated burglary" charge, contrary to section 313 (1) (a) of the Crimes Act 2009,

and one "theft charge", contrary to section 291 (1) of the Crimes Act 2009. It was alleged that the three applicants, on 15 November 2017, at Nausori in the Central Division, forcefully robbed two complainants and their properties, as itemized and alleged in counts no. 1 and 2, and also committed aggravated burglary and theft on the third complainant, as alleged in count no. 3 and 4.

2. All three applicants had been remanded in custody ever since their first appearance in the Nausori Magistrate Court on 26 September 2017. They had been in custody since then, that is, approximately 1 year 3 months 2 days ago. On 8 December, 2017, Applicant No. 2 applied for bail pending trial, using the standard High Court bail application form for unrepresented accused. Applicant No. 3 followed Applicant No. 2 on 13 December 2017. Applicant No. 1 filed a notice of motion and affidavit in support on 14 December 2017. The state replied with an affidavit against all applicants on 16 February 2018. Applicant No. 1 filed another affidavit on 28 June 2018.
3. On 8 June 2018, I heard Applicant No. 2 and 3's bail application. Both the applicants and the state said they relied on the papers they had filed. On 27 July 2018, I heard Applicant No. 1's bail application. Like Applicant No. 2 and 3, the parties said, they relied on the papers they filed. I had carefully considered their written and verbal submissions. On 5 September 2018, I denied all applicants' bail application and said I would deliver my reasons later. Below are my reasons.
4. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for granting bail, was whether or not the accused will turn up on the trial date to take his trial. In considering the above issue, the court was duty bound to consider the factors outlined in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused Surrendering to Custody

5. Applicant No. 1 is 40 years old, married with 2 young children. He is a carpenter and driver by profession. He lives at Narere with his family. The prosecution said they had a strong case against him. The applicant was allegedly found in his car, near the crime scene, at about 5 am on 15 November 2017. The complainants' stolen items were found in his car, at the time. The complainants had just been violently robbed of their items a few hours prior to that. If found guilty after trial, applicant no. 1 faced a possible prison sentence of 12 years and up.

6. As for Applicant no. 2, he is 30 years old, married with two children. He reached Form 6 education at St. John's College, Cawaci. He worked as a carpenter and earns \$150 to \$200 per week. The prosecution said their case against applicant no. 2 was strong. They said, he was allegedly caught fleeing from applicant 1's car, early in the morning on 15 November 2017. It was alleged that the complainant's stolen items were found in the car. Applicant no. 2 was later arrested by police. If found guilty after trial, Applicant no. 2 faced a possible sentence of 12 years imprisonment and up.
7. As for Applicant No. 3, he is 24 years old and married. He is unemployed and resided at Kalekana, Lami. According to prosecution, their case against him was strong. He also allegedly fled with applicant no. 2 from applicant no. 1's car, early morning on 15 November 2017. He was later chased and arrested by police. If found guilty after trial, he faced a possible sentence of 12 years imprisonment and up. For all applicants, under this heading, their chances of bail are slim.

Factor No. 2: the Accused's Interest

8. The three applicants will be tried from 17 to 28 June 2019. That is approximately 6 months away. By trial time, they would have been in custody for approximately 1 year 9 months. The court is empowered to hold people in remand for 2 years prior to trial. In any event, if found guilty after trial, time spent in custody while in remand, will be deducted from their final sentence. They are housed at the new Suva Remand Centre. Applicant no 1 and 3 are represented by lawyers. They can visit them in custody to prepare their defence as and when they pleased. There does not appear to be any valid reason for them to be liberty for other lawful reasons. Applicant no. 2 appeared to be representing himself. His right to counsel was put to him on 7 December 2017, and by conduct, he appeared to have found no one. Under this heading, the accused's chances of bail are slim.

Factor No. 3: Public Interest and Protection of the Public

9. The allegations against the three applicants are very serious. It was alleged that they broke into various people's homes early morning on 15 November 2017 and stole their properties. Although they are presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it is in the public interest and the protection of the community that they be remanded in custody until further orders of the court. Under this heading, their chances of bail are slim.

Conclusion

10. It was for the above reasons that I refused the applicants' bail on 5 September 2018.




Salesi Temo
JUDGE

Solicitor for First Applicant : **A.K. Singh, Barristers & Solicitors, Nausori.**

Solicitor for Second Applicant : **In Person.**

Solicitor for Third Applicant : **Office of Legal Aid Commission, Suva.**

Solicitor for Respondent : **Office of the Director of Public Prosecution, Nausori.**