

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 341 of 2018
[High Court Criminal Case No. HAC 332 of 2018]

BETWEEN : ILAI TUINASAVUSAVU

AND : STATE

Counsel : Mr L. Ratidara for the Accused
Mr Z. Zunaid for the State

Date of Hearing : 06 December 2018

Date of Ruling : 11 December 2018

RULING

1. The Accused filed a bail application on 15 November 2018 seeking bail pending trial. He is charged with one count of attempted aggravated robbery allegedly committed on 19 August 2018. The Accused was produced before the Magistrate's Court in Nasinu on 21 August 2018 and he has been in remand custody since then.

2. The accused has stated the following in his bail application:
 - a. He has been in remand custody since 21 August 2018
 - b. He has been falsely charged
 - c. His family is facing financial difficulties
 - d. He has a 1 year old son
 - e. He was a security officer
 - f. His mother and father will stand as sureties for him

3. Section 3(1) of the Bail Act provides that every person has a right to be released on bail unless it is not in the interest of justice that bail should not be granted. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.

4. However, the presumption is rebuttable and the Bail Act provides for instances where the presumption is displaced as per Section 3(4) in any of the following circumstances;
 - a) The person seeking bail has previously breached a bail undertaking or bail condition;
 - b) The person has been convicted and has appealed against the conviction;
or
 - c) The person has been charged with a domestic violence offence.

5. In considering bail the court must also take into account the time that the accused person may have to spend in custody before trial if bail is not granted. Section 17(2) of the Act provides that the primary consideration in deciding whether to grant bail is likelihood of the accused person appearing in court to answer the charges laid against him or her.

6. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;
 - a. The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b. The interests of the accused person will not be served through granting of bail;

- c. Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or
 - d. The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.
7. According to His Lordship Justice Goundar in **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) existence of any one ground is sufficient to refuse bail. In light of the above discussed provisions in the Bail Act I will now consider the material placed before this court in relation to the bail application made on behalf of the Accused.
8. The Prosecution has tendered an affidavit in response to the bail application. It appears that the Accused has two pending cases in the Nasinu Magistrate's court. In one case he is charged with one count of robbery and in the other, he is charged for aggravated robbery. There is no contention that the Accused is innocent until proven guilty. However, nothing precludes the court from looking into the history and the behavior of the Accused to ascertain whether there is any likelihood of him not surrendering to custody or not appearing in court to answer the charges.
9. It appears that the Accused had been on bench warrant since 18 August 2017 in case No CF 1324/16 of Nasinu Magistrate's Court. According to the Prosecution the Accused had been absconding court in that matter for almost a year when he was arrested for allegedly committing the offence in the present case. Therefore, it appears that the Accused has a history of not honouring bail undertakings. Further it appears that the Accused has allegedly re-offended while on bail in the other two matters pending against him. In view of section 3(4) of the Bail Act the presumption for bail is thus displaced since he has a history of breach of bail undertakings.
10. Even if the presumption is displaced it does not mean that bail should be necessarily refused. I have considered whether there are compelling grounds which justify the Accused to be released on bail. But the Accused has not submitted any compelling grounds apart from stating that his family is facing financial difficulties.

11. The Accused has already absconded bail in another pending case and I have reasons to believe that he may not comply with bail conditions again if he is released on bail. Further I have considered the fact that the Accused is charged with a serious offence and the severity of punishment may tempt him to abscond bail. Also, I am satisfied that he may interfere with witnesses including a juvenile accomplice of the alleged offence, who has later turned a state witness if the Accused is granted bail.
12. I am mindful of the fact that the court has to consider the time that he will be spending in custody pending trial. Given the manner in which the current trial listings are managed in the High Court of Suva, the chances are high that this case will be fixed for hearing within the first half of next year. Therefore, I do not have any reason to believe that the Accused will have to spend a prolonged period in custody pending trial.
13. In the circumstances I am satisfied that it is not in the interest of justice to grant bail in this matter. Bail is refused.



A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the left.

Rangajeewa Wimalasena

Acting Judge