

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 187 OF 2016

BETWEEN : **SEMI WAQAVONOVONO**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in Person**
Mr A. Singh for Respondent

Date of Hearing : **25th November, 2016**

Date of Ruling : **30th November, 2016**

BAIL RULING

Background

1. This is an application for bail pending trial.
2. The Applicant is charged with one count of Aggravated Robbery contrary to Section 311 (1) (b) of the Crimes Decree 44 of 2009.

3. Information is yet to be filed by the Director of Public Prosecution and no trial date is fixed yet.
4. The grounds for bail application are set out in the affidavit filed by the Applicant. Application is based on the following grounds:
 - a. Presumption of innocence
 - b. Denial of allegation
 - c. Personal circumstances of the Applicant and need to prepare for his defence
 - d. Strong likelihood to abide by bail conditions
 - e. Injuries sustained whilst in police custody
 - f. Projected length of delay to start the trial.
5. The State is objecting to bail. D/A Cpl. Sunil Dutt, the Investigating Officer of Applicant's substantive case, has filed an affidavit stating the grounds of objection.
6. Opposition to bail is based on following grounds:
 - a. Charge against the Applicant is serious and entails a severe punishment, if found guilty.
 - b. Case against the Applicant is strong and therefore likelihood of not appearing in Court to face trial is high.
 - c. Safety of the community and public interest.

The Law Relating to Bail

7. There is a presumption in favour of the Applicant's innocence until the charge is proved. There is also a presumption in the Bail Act in favour of granting of bail. That presumption is however displaced when there are valid grounds for detention in the interest of the justice.

8. Section 3(1) of the Bail Act provides:

“Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted”.

9. The Constitution of the republic of Fiji provides:

“Every person who is arrested or detained has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require; [Section 13 (1)]; to have the trial begin and conclude without unreasonable delay [14 (2) (g)]; Every person charged with an offence has the right to be presumed innocent until proven guilty according to law [14(1) (a)];”

Analysis

10. The charge against the accused is serious and entails a severe punishment if found guilty. However, seriousness of the charge alone is not a sufficient ground to refuse bail pending trial.
11. The Respondent, based on the affidavit filed by the Investigating Officer, argues that there is a strong case against the Applicant because some of the stolen items were recovered from Applicant’s possession. Respondent denies the allegation and claims that the so called recovered items were in the list of items mentioned by the complainant to have been found in the nearby garden after the alleged robbery.
12. Even if the claim of the Investigating Officer is true, the evidence of recovery of stolen items from Applicant’s possession *per se* does not constitute a strong case in an Aggravated Robbery case. Therefore, it is only suffice to say at this stage that there is some evidence against the Applicant. Existence of some evidence against the Applicant in my opinion would not motivate the Applicant to abscond court proceedings to answer the charge.
13. The Respondent does not dispute that there are no previous bail violations or previous convictions recorded against the Applicant. There is no evidence that the Applicant had been involved in an offence of similar nature for the past ten years. Main concern of the Respondent is the interest of the public as the nature of the offence generally endangers

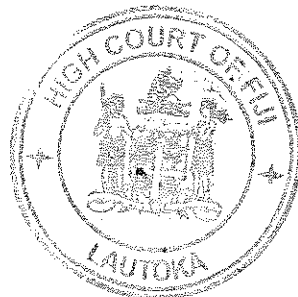
the protection of the community. However, there is no concrete evidence that Applicant's release from remand would endanger public protection.

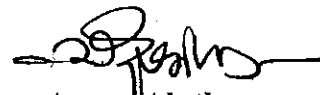
14. Before coming to a decision to deprive personal liberty of a person, interests of the Applicant and concerns for public protection must be rightly balanced. The former were the presumption of innocence, right to security of the person, the right to liberty, and the right to a fair trial. As to the latter, there is a societal interest in bringing to trial those accused of offending against the law. Furthermore, undue interference with witnesses and the administration of justice process, free movement of people having criminal background offend the public interests. Here there is a tension between the Applicant's interests and those of the community. In balancing those competing interests, courts must also be mindful of the primary consideration in determining bail; that is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.
15. Having given due consideration to above, Courts in determining bail must be satisfied that the deprivation of personal liberty is the only option available and resorting to that option is not disproportionate to the objective to be achieved thereby. Laying of criminal charges ought not to be allowed to become an easy means of depriving personal liberty nor should it be used to facilitate incomplete police inquiries unless there are substantial and real grounds to suspect interference with safety of the public. Remand prisons should not be used to protect the public due to fear of the accused reoffending. If the concerns of public interests and protection of the community can be addressed by imposing stringent bail conditions, Courts must not resort to curtail personal liberty.
16. In *Bechu and Another v. R.* 8 FLR 240 MacDuff C.J. correctly espoused the 'primary test' in the exercise of the court's discretion to grant or refuse bail when he said at p.241:

"..... the discretion must be exercised judicially in the light of the paramount principle that an accused person is presumed innocent until he has been found guilty. For that reason he should not be deprived of his liberty merely because he is accused of a crime if he can satisfy the test that in all the circumstances he will appear to stand his trial on that accusation."
17. Applicant is willing to give a strong undertaking to abide by any bail condition to be imposed by this Court. He does not have a passport and therefore, he is not a flight risk.
18. Applicant has strong community ties. He has a fixed address and is permanently employed as a caretaker in a private company in Denarau. He looks after his family with

two children, and resides with his *de facto* partner. He needs to be on bail not only to work but also to ably prepare for his defence and adequately instruct his Counsel.

19. When deciding whether to grant bail to an accused person, Courts must take into account the time the accused may have to spend in custody before trial if bail is not granted [Section 17.-(1) of the Bail Act].
20. Information is yet to be filed by the State. Trial diary of this Court is full until August 2017. It will take a considerable time to dispose of the case of the Applicant. Prolonged pre-trial detention without trial will violate the Applicant's Constitutional Rights.
21. For the reasons given in this Ruling, application for bail pending trial is allowed. Applicant is granted bail on following bail conditions.
 - I. Personal bail bond for \$ 1500.
 - II. Surety bail bond for \$1000 with two sureties.
 - III. Not to reoffend whilst on bail.
 - IV. Applicant must reside in the given address until conclusion of this case.
 - V. Applicant must report to Nadi Police Station on every Saturday between 8 am. and 4 p.m.




Aruna Aluthge
Judge

At Lautoka
30th November, 2106

Solicitors: **Applicant in Person**
Office of the Director of Public Prosecution for the Respondent