

IN THE HIGH COURT

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NOS. HAM 51/2017; 52/2017 AND 56/2017

BETWEEN : 1. ISAAC MATTHEW JAMES
 2. TOMASI QANIUCI
 3. ASELAI WAQANIVALU

APPLICANTS

AND : STATE

RESPONDENT

Counsel : Applicants in Person
 Mr. S. Babitu for Respondent

Date of Hearing : 8th May, 2107

Date of Ruling : 10th May 2017

BAIL RULING

1. The Applicants, all charged with Aggravated Robbery, applied for bail in separate bail applications. They had applied for bail previously on two occasions. This Court refused bail on the basis that Applicants posed a potential threat to the interests of public and protection of community.
2. This is their third bail application filed in this Court. Applicants have been in remand for approximately 8 months.

3. Applicants filed hand written applications and affidavits detailing the conditions of the remand centre, and relied on delays in their trial, the presumption of innocence and, inhumane and degrading condition of remand.
4. The State opposed the application on the grounds that there is no change in circumstances from their previous bail applications and that the grounds advanced by the Applicants are outweighed by the need to protect the community and their property. There was no response to the claim of inhumane and degrading condition of remand.
5. The submission filed by Tomasi Qaniuci states as follows:

"I also wish to highlight as special circumstances the Natabua Remand Centre overcrowding situation and in particular the segregation block which I am currently kept. In a nutshell, the remand block has 18 cells and designed for one inmate per cell. The block now holds 37 remand prisoners and each cell containing 3-4 prisoners with the toilet in our midst where we relieve ourselves. There is no electricity on every cells and the current practice now is to have our meals served in our cells and the only time allowed out of our cells is shower time or for Court attendance. In light of the current overcrowding, the preparation of our defence is absolutely impossible. The conditions are inhumane, degrading and of grave human indignity. Section 19 (2)(b)(ii) of the Bail Act says that in considering the interests of an accused person in custody, the Court must also have regard to "the conditions of that custody". The overcrowding and inhumane condition of the Remand Centre at

Natabua is a special circumstance that has not been canvassed by the Court in the last two bail applications.

6. In view of the new grounds for bail advanced by the Applicants, particularly the condition of remand, I was compelled to call a report from the Officer in Charge (OIC) of the Natabua Correction Centre and the Chairman of the Human Rights and Anti-Discrimination Commission (HRADC) before I make the bail determination. Accordingly, the Court sent a request to the Chairman of the Human Rights and Anti- Discrimination Commission and Officer in Charge of Natabua Remand Centre and solicited their observations on the claim that Applicants were being held in overcrowded remand cells under inhumane and degrading conditions.
7. I have received no report from the OIC Natabua Correction Centre thus far, despite request. He has neither denied nor admitted the assertions of Applicants. The Chairman of the HRADC had taken the matter seriously and personally visited the remand centre with his officers on 26th of April, 2017 and has sent a comprehensive report compiled by the Commission. He should be commended for his effort.
8. Following observations were made by the Commission:-

The Natabua Remand Centre currently has 163 inmates and 1 detainee.

1. Observation: Overcrowding

The sleeping accommodation for an individual under Rule 12(1) and (2) of the minimum standards set out in Standard Minimum Rules for the

Treatment of Prisoners is that each prisoner shall occupy by night a cell or room by himself. Rule 12 stipulates:-

“Overcrowding

12. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.”

Finding: There were a total number of 70 inmates kept in two separate blocks. In block number 4, a total number of 45 inmates were kept and a total of 25 inmates in block number 5. Based on the observation, it is concluded that the blocks were overcrowded, hence inhumane.

2. Observation: Accommodation

The accommodation for an inmate under Rule 13 of the minimum standards set out in Standard Minimum Rules for the Treatment of Prisoners that each inmate sleeping accommodation shall meet all requirements of health. Rule 13 stipulates:-

"13. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

Finding:

- (i) Ventilation: was unreasonable.
- (ii) Cell block: no proper carpeting.

3. Observation: Sanitation

All inmates are entitled to adequate sanitation to enable them to comply with the needs of nature when necessary and in a clean and decent manner with adequate bathing and shower installations. Rules 15 and 16 of the minimum standards set out in Standard Minimum Rules for the Treatment of Prisoners stipulates:-

"15. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

16. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate."

Finding: Shower and bathroom: The bathroom was big enough to fit only two inmates to have shower. The inmates used buckets to have their shower.

4. Observation: Clothing and bedding

Every prisoner is allowed to adequate clothing and bedding suitable for the climate to keep him or her in good health. Rule 19(1), (2) and (3) of the minimum standards set out in Standard Minimum Rules for the Treatment of Prisoners stipulates:-

“19. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.”

Finding: Shirt and pants (uniforms) appeared to be dirty and the beddings were not adequate enough to cover the inmates.

5. Observation: Separate beds

Every prisoner shall be provided with clean and separate beddings and kept in good order and changed to maintain cleanliness. Rule 21 of the minimum standards set out in Standard Minimum Rules for the Treatment of Prisoners stipulates:-

"21. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness."

In addition, section 40 of the 2013 Constitution stipulates:

"40.—(1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section."

Finding:

- (i) There were no beds provided to the inmates in the remand blocks; only mattresses were provided to them.
- (ii) Pillows: pillow cases were old.

09. The Commission in its final remarks stated:

"The team concludes that some of the conditions currently do not comply with the minimum standards set out in Standard Minimum Rules for the Treatment of Prisoners and the rights under Chapter 2 'Bill of Rights' provisions of the 2013 Constitution of the Republic of Fiji breaches the rights of a detained person. Overcrowding is an issue leading to inhumane environment and the general hygienic conditions do not meet minimum standards".

10. With the commissioning of the new wing, the Commission expressed its optimism and stated:

"Having said the above and based on the observations, the Human Rights & Anti-Discrimination Commission is satisfied with the facilities provided in the new complex and anticipates that overcrowding and other issues shall eventually be minimized and resolved once the inmates are transferred to the new complex on Monday 1st of May 2017".

11. I had the opportunity to visit the Natabua Remand Centre on 29th April, 2017 with other judicial officers of this Court to attend the commissioning of the new wing of the remand center by the Chief Justice. The new wing had been built spending a colossal amount of money with basic facilities including CCTV cameras to meet UN Standard Minimum Rules. It can accommodate approximately 250 inmates. Unfortunately, I did not have time to observe the condition of the old wing where the Applicants were being held. Therefore, I place reliance on the report filed by the Chairman of the HRADC on the condition of the remand facility.
12. In view of the commissioning of the new wing and optimism expressed by the HRADC, I reserved my ruling in these bail matters in the hope that the Applicants would be transferred to recently commissioned wing and provided with better facilities.

13. When these bail matters were mentioned in this Court on 8th May, 2017 Applicants complained that they were still being detained in the old wing under same conditions. I advised the Registry of this Court to inquire from OIC Natabua Correction Centre about the current status of the Applicants. The OIC had confirmed that Applicants had not been transferred to the new wing.

14. In *State v Ram* [2001] FJ Law Rp 75; [2001] 2 FLR 300 (24 August 2001) it was held:

“The Standard Minimum Rules apply to Fiji’s prisons. In considering minimum standards and requirements the Courts are not calling for the provision of any luxuries, but the need to provide the basic needs, and facilities which are clean and hygienic. Compliance with UN Minimum Standards cannot be met by an argument of resources constraints. It has been shown that when required by the law to comply, authorities can meet minimum requirements. Any detention of persons who are presumed to be innocent is in effect a punishment, especially in the conditions pertaining in remand block 1. But where no adequate alternative remedy is available to the Court, given the response of the authorities concerned, the only alternative is to consider bail pending trial”.

15. Having perused the report filed by the HRADC, and submissions filed by Applicants, I find that the detention of the Applicants under inhumane and degrading conditions in Natabua Correction Centre constitutes an unremitting violation of their human rights guaranteed under the Constitution of the Republic of Fiji.

16. Exceptional circumstances in which bail has been granted in Fiji have centred on the issue of delay. Upon being confronted with fundamental rights to the presumption of innocence and freedom from cruel, inhumane or degrading treatment, courts have to undertake a delicate balancing act. In doing so, Courts need to follow the provisions of the Constitution itself.
17. Trial Diary of this Court is almost full until February, 2018 having been filled with back to back trials. It is highly unlikely that Applicant's substantive case can be taken up for hearing in the year 2018 given the existing backlog.
18. Article 14 (2) (g) of the Constitution states: *every person charged with an offence has the right to have the case determined within a reasonable time*. 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].
19. In *Sailasa Naba & Ors v State* (2001) HAC 0012/00L (4 July 2001) the Court considered the enforcement provisions of the Constitution and found there was no adequate alternative remedy, except to consider bail, where the Applicants have been remanded for more than 2 years, and were unlikely to be assigned a trial date until a year hence. The Court granted bail on strict conditions.
20. It is clear that in the applications before the Court no adequate alternative remedy is available given the response of the authorities concerned. The only

alternative is to consider bail pending trial. In considering the issue of remedies, even where none are available, the then Chief Justice in State v Mool Chand Lal Cr Case No 3 of 1999, Labasa, stated:

"I accept that it is the Court's responsibility to provide remedies for breaches of the Bill of Rights provisions where none exist". (p 17).

21. In relation to breach of constitutional rights in Fiji Pain J. in State v Felix Keith Vusonitokalau Cr. Case HAC0005 of 1996S clearly articulated the position of the courts:

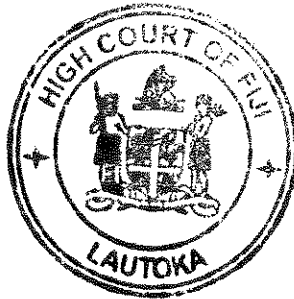
"There has been a clear breach of the accused's constitutional right. That should not be condoned or exacerbated by the Court. The Court has a duty to remedy the situation immediately. The violation of a citizen's constitutional right for a period of only one day would still be a day too long. The accused is entitled to an immediate release on bail".


22. For reasons given, I have decided to grant bail to Applicants in case Nos. HAM 51/2017, HAM 52 /2017, HAM 56/2017. Applicants are released on bail on following conditions:

- i) Each Applicant is granted bail on his own recognisance for the sum of \$1000.00, with two sureties each for \$1000.00;
- ii) Each applicant is to report to his nearest police station once a week;
- iii) Each is to reside at a fixed address - to be provided to this Court. They are not to change their residence without informing the Police;

- iv) They are not to communicate with or interfere with any Prosecution witnesses;
- v) They are not to reoffend whilst on bail;
- vi) They are to surrender any passport or travel documents to Court;
- vi) A curfew is imposed from 6 p.m. to 6 a.m

Application for bail allowed.




Aruna Aluthge
Judge

At Lautoka

10th May, 2017

Solicitors: Applicants in Person

Office of the Director of Public Prosecution for the Respondent