

IN THE HIGH COURT OF FIJI
AT LAUTOKA
IN THE WESTERN DIVISION
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO.: HAM 69 OF 2017

BETWEEN : RIMAKSHNI RANIGAL

APPLICANT

AND : STATE

RESPONDENT

Counsels: Mr I. Khan for the Applicant
Ms S.Kiran for the Respondent

Date of Hearing : 15thMay,2017

Date of Ruling : 23rd May,2017

RULING

[1] This is an Application for variation of bail conditions.

[2] The Applicant together with two others were charged with one count of Money Laundering contrary to Section 69 (2) (a) and (3) (e) of the Proceeds of Crime Act 1997 as amended by Section 25 of the Proceeds of Crime

(Amendment) Act 2004. This is a serious offence for which upon conviction there is a maximum penalty of up to 20 years' imprisonment.

- [3] Bail was granted to the Applicant and the other accused on the same conditions that included, amongst others, that each accused surrender all travel documents to the court and stop departure orders were granted.
- [4] An application for variation of bail conditions has been filed seeking a bail variation to allow her to travel to Australia to be with her husband who is domiciled in Australia and return back to Fiji in September 2017 to face her trial already fixed from 30th October, 2017.
- [5] In determining an application for variation of bail conditions this court is expected to exercise a discretion and required to consider the relevant provisions set out in the Bail Act 2002. Primary purpose of imposing bail conditions is to ensure accused's attendance in court to face his or her trial.
- [6] The discretion to vary any bail condition could only be exercised in a manner that ensures that the Applicant surrenders herself into custody and appears in court to face the trial.
- [7] The reason for seeking a bail variation to enable the Applicant to travel to Australia could not be described as necessary or essential. The bank statements of Applicant's husband tendered to this court clearly indicate that he (her husband) has done transaction in Fiji (Lautoka, Nadi) between January and February 2017. The Applicant in her affidavit in response has admitted that her husband was with her in Fiji during that period. Therefore, Applicant has most recently spent time with her husband.

- [8] The Applicant claims that she has been denied her right to be with her husband and in her four years of marriage life she had only spent less than 6 months together.
- [9] According to the marriage certificate tendered to this Court, her marriage has taken place on 20th April 2014, that is after she was indicted in the substantive matter and even after the bail condition barring her from travelling abroad has been imposed. She and her husband must have been quite aware that this case would restrict her free movements.
- [10] Applicant's husband has permanent resident status in Australia. The applicant can easily apply for permanent residency on the strength of her husband's status in Australia. In this context, the Respondent casts serious doubts on the nature of their relationship and is concerned that she will not return to Fiji to face trial in October, 2017.
- [11] The public interest in ensuring that the Applicant attends at court when called upon outweighs any desire on the part of the Applicant to be with her husband in Australia.
- [12] In response to the objection raised by the State, the Applicant's father has offered to deposit a certificate of title in respect of a quarter acre land as a surety bond for Applicant. He deposes that a 4 bedrooomed house has been built on this land valued at \$ 300,000.00. However there is no clear certificate of title or valuation report acceptable to this Court.
- [13] Given Applicant's strong family ties in Australia and the nature of the charge I am not satisfied that the security undertaking given by the Applicant

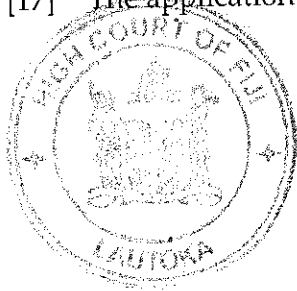
represents a sufficient guarantee that she would return to Fiji and honour the bail variation conditions if the application is to be granted.

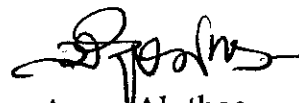
[14] The risk of Applicant not returning to Fiji and hence the object of the bail condition being frustrated is considerable and cannot be outweighed by the security undertaking offered by the Applicant and her father.

[15] Her right to remain indefinitely in Australia as a wife of a resident cannot be ignored. The fact that she entered into wedlock with full knowledge of bail condition gives rise to suspicion that she might use her status to remain in Australia. It would be irresponsible for this Court to disregard that fact.

[16] Primary object of imposing Bail conditions (securing the attendance of an accused) will not be achieved by a forfeiture of a bail bond. On the other hand forfeiture of a bail bond by this Court will not considerably affect the Applicant. Neither the sureties nor the security undertakings in this case provide the basis that is necessary to vary the bail conditions and allow the Applicant to travel to Australia.

[17] The application for bail variation is dismissed.




Aruna Aluthge
Judge

At Lautoka
23rd May, 2017

Solicitors: Iqbal Khan Associates for Applicant
Office of the Director of Public Prosecution for the Respondent