

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 139 OF 2016

BETWEEN : PRANEEL CHANDRAN REDDY

Applicant

AND : STATE

Respondent

Counsel : Mr. V. Pillai for Applicant

Mr. A. Singh for Respondent

Date of Hearing : 29th of August 2016

Date of Ruling : 30th of September 2016

BAIL RULING

1. The Applicant files this Notice of Motion seeking following orders *inter alia*;

i) The Applicant be released on bail pending trial,

ii) Alternatively, the Applicant be released on conditional bail from 6.00 a.m. to 6 p.m. daily and/ or as necessary and/or as the court deems fit to allow the Applicant to prepare his defence for trial and/or to discharge his lawful duties,

iii) Any other orders and/or relief as this court may deem fit,

2. The Notice of Motion is being supported by an affidavit of the Applicant stating the grounds of this application. Furthermore, the Applicant filed affidavits of Mr. Suresh Prasad and Mr. Krishna Pillai, stating their intention to be surety for the Applicant if he is granted bail.
3. The Respondent filed an affidavit of Detective Corporal Isireli, stating the objection of the state for this application. Subsequently, the matter proceeded to the hearing on the 29th of August 2016. The learned counsel for the Applicant made his oral argument and submissions during the hearing. However, the learned counsel for the Respondent informed the court that the state relies on the affidavit of Corporal Isireli and do not wish to make any submissions. The Applicant then filed an affidavit of Reema Singh, the wife of the Applicant to confirm her present employment.
4. Having considered the amended information filed by the Prosecution and the fact that none of the parties made any submissions in to that effect, the court invited the counsel for the respective parties to make submissions on the issues whether the amendment of the information would amount to a special circumstances which was not previously considered by the court in determining bail. The parties then filed their respective supplementary submissions as per the invitation.
5. Having considered the respective affidavits and the submissions of the parties, I now proceed to pronounce my ruling as follows.
6. This is the fifth bail application of the Applicant. The first application for bail was refused on the ground of unlikelihood of surrendering to custody. Justice P.

Fernando in his bail ruling delivered on 2nd of September 2015 has refused the bail of the Applicant on the ground of likelihood of absconding from court. His lordship has considered the seriousness of the offence, strength of the prosecution case and the severity of the possible penalty if convicted in reaching his lordship's above conclusion. The second, third and fourth applications have been refused by the court in the absence of any special facts or circumstances to justify making a bail application afresh pursuant to Section 30 (7) of the Bail Act.

7. This application for bail is mainly founded on the following grounds, that;
 - i) The hearing date of this matter has now been vacated and shifted to May and July of 2017,
 - ii) The condition of the remand centre,
 - iii) Personal and family circumstances of the Applicant,
8. Section 14(1) of the Bail Act allows an accused person to make any number of bail applications. However, if the court is of the view that such application is vexatious and frivolous, the court could refuse to entertain such an application pursuant to Section 14(3) of the Bail Act.
9. Moreover, Section 30 (7) of the Bail Act states that if the court is not satisfied that there are special facts or circumstances that justify making a bail application afresh under Section 14(1) of the Bail Act, the court could refuse to hear such application.

10. Accordingly, the rights given to the accused under Section 14(1) of the Bail Act to make any number of bail applications has been subjected to the provisions of Section 14(3) and Section 30 (7) of the Act.
11. I now draw my attention to consider whether the amended information filed by the prosecution on the 30th of May 2016 constitute a special factor or circumstances as stipulated under Section 30 (7) of the Bail Act.
12. Donaldson LJ in Regina v Nottingham Justices, Ex Parte Davies (1980) 2 All ER 775 has discussed the scope of an application of this nature in an inclusive manner, where his lordship expounded that;

"The starting point must always be the finding of the position when the matter was last considered by the court. I would inject only one qualification to the general rule that justices can and should only investigate whether the situation has changed since the last remanded in custody. The finding on that occasion that schedule 1 circumstances existed will have been based upon matters known to the court at that time. The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since that last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in justice to the accused. The question is a little wider than "has there been a change?". It is "Are there any new considerations which were not before the court when the accused was last remanded in custody?"

13. In view of the above observation of Donaldson LJ in Nottingham Justices (supra), the special facts or circumstances as stipulated under Section 30 (7) of

the Bail Act constitute the facts and circumstances that has not been previously considered by the court in determining bail.

14. The last amended information was filed on 30th of May 2016, that was after the refusal of the last bail application of the Applicant. The last of the previous four bail applications was refused on the 20th of May 2016. Initially, the Applicant was charged in the Magistrate's court in Suva for one count of Unlawful Importation of Illicit Drugs contrary to Section 4 (1) of the Illicit Drugs Act, which carries a maximum punishment of life imprisonment or a fine not exceeding \$ 1, 000 000 or both. The matter was then transferred to the High Court of Suva. Justice Fernando made his first bail ruling on the 2nd of September 2015 and has considered the charge filed in the Magistrate's court in his ruling as no information had been filed by then.
15. On the 24th of September 2015, the Prosecution filed an information containing one count of Attempted Unlawful Importation contrary to Section 4(1) of the Illicit Drugs Act and Section 44 (1) of the Crimes Decree and alternatively one count of Attempt Unlawful Importation contrary to Sections 4(1) and 9 of Illicit Drugs Control Act. The information was amended on 4th of November 2015 to one count of Attempted Unlawful Importation contrary to Sections 4(1) and 9 of the Illicit Drugs Control Act. The last amended information also carries the same offence against the Applicant. The maximum punishment for this offence is a fine not exceeding \$500,000 or imprisonment not exceeding 14 years or both.
16. Justice Fernando in his second bail ruling dated 4th of November 2015, has considered the amended information. Hence, it is my opinion that the amended

information and the likely punishment if found guilty has already been considered by the court in its previous bail application.

17. I now turn onto the issue of change of hearing dates.
18. The court initially proposed to have the hearing of this matter in the month of September, 2016. However the learned counsel for the first accused informed the court that it was not suitable for him as he is engaged in another trial. The court then fixed the matter for hearing in the month of November 2016. However, it has now changed and shifted to the months of May and June 2017, due to the reasons that the prosecution is still waiting for certain disclosures from their counterparts in New Zealand and United State of America. Hence, it is my opinion that the change of hearing dates is a special circumstances that has not previously been considered by the court.
19. Article 9 (3) of the International Covenant of Civil and Political Rights (ICCPR) has recognised the rights of the accused to be produce before a court promptly, to have the trial within a reasonable time and be released on bail pending trial. Article 9 (3) of ICCPR states;

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”

20. Accordingly, it is not a general rule to remand a person awaiting his trial. The principles derive from Article 9 (3) have been incorporated into the present constitution, where Section 13 (1) (h) states that;

“to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

21. In line with the said international and constitutional approaches, Section 3 of the Bail Act has recognised that every accused person has a right to be released on bail unless interest of justice suggests otherwise. Section 3 (3) of the Bail Act states that;

“There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption:

22. Section 18 (1) of the Bail Act states that if someone wishes to displace the presumption in favour of bail, must deal with the following grounds that;

i) The likelihood of the accused person surrendering to custody and appearing in court;

ii) The interests of the accused person;

iii) The public interest and the protection of the community.

23. Section 19 (2) (a) of the Bail Act has given factors that should be considered in determining the likelihood of the accused person surrendering to custody and appearing in court if bail is granted. They are that;

- i) The accused person's background and community ties (including residence, employment, family situation, previous criminal history);*
- ii) Any previous failure by the person to surrender to custody or to observe bail conditions;*
- iii) The circumstances, nature and seriousness of the offence;*
- iv) The strength of the prosecution case;*
- v) The severity of the likely penalty if the person is found guilty; any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);*

24. The learned counsel for the Respondent conceded in the written submissions that the state does not consider the Applicant is a flight risk person. He is a Fijian Citizen and has a family and residence in Fiji. The Applicant deposed in his affidavit that he has not obtained citizenship or permanent residency in any other foreign country. The Respondent does not claim that the Applicant has been adversely recorded with any previous failure to surrender to custody or breaching of bail conditions. The Applicant claims that he voluntarily surrendered to the police and accommodated with the police during the course of the investigation. The Prosecution alleges that the Applicant is a consignee of this alleged shipment, in which the authorities in New Zealand detected this alleged illicit drugs while the shipment was transiting via New Zealand.

25. Section 19 (2) (b) of the Bail Act states that the court could consider the following grounds in order to consider the interest of the accused person in determining bail, they are;

i) The length of time the person is likely to have to remain in custody before the case is heard;

ii) The conditions of that custody;

iii) The need for the person to obtain legal advice and to prepare a defence;

iv) The need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependants);

26. The Applicant contends that he has to spend another eight months for his hearing if the bail is refused. The change of the hearing date was due to the delay of obtaining certain disclosures from New Zealand and United States Of America. The Applicant further deposed in his affidavit in support that he has been denied his rights to consult his lawyers in private due to the prolonged remand custody. The opportunities given to him by the prison to meet and consult his lawyers are limited and not conducive. He further stated that the condition of the remand centre is inhuman and degrading. However, the State denies the allegation and states that the prison has adequate facilities to provide the Applicant opportunity to consult his lawyer in private.

27. The learned counsel for the Respondent in his supplementary submissions stated that the Applicant will not be able to interfere with the witnesses of the prosecution as majority of the prosecution's witnesses are police officers from

abroad and Fiji. Accordingly, the objection of the Respondent for granting of bail is mainly founded on the contention of unlikelihood of surrendering to custody if bail is granted. The Respondent is heavily relied on the ground of seriousness of the offence and the severity of the punishment in order to substantiate their objection.

28. Having considered above discussed grounds, I now draw my attention to consider the approaches adopted by the courts in Fiji in granting bail for the offences of similar nature. The Court has generally refused to grant bail for the suspects who had been charged for the offences under the Illicit Drugs Control Act. Xhemali v State (2011) FJHC 148; CRC 050.2011 (8 March 2011), Kreimanis v State (2012) FJHC 1316; HAM86.2012 (6 September 2012), Kai v State [2015] FJHC 456; HAM86.2015 (19 June 2015),
29. The above mentioned cases were not similar to this instant application. The suspects of those matters were foreigners and were charged with the offences of either importation or possession of illicit drugs. However, the Applicant is a Fijian Citizen and the Respondent conceded that he is not a flight risk. Moreover, the Respondent conceded that he will not interfere with the witnesses of the prosecution if bail is granted. Hence, I find the Applicant's community ties are strong than of the suspects of the above mentioned cases. Respondent does not claim that he is a flight risk. He has neither been recorded with any previous failure of absconding to custody nor breaching of bail conditions. The period that he has to remain in remand custody till the hearing of this charge is substantially protracted if bail is refused. In view of these grounds as considered above, it is my opinion that any possible risk of unlikelihood of surrendering to custody due to the seriousness of the offence and the severity of likely punishment could be

properly and appropriately addressed by imposing strict bail condition on the Applicant.

30. Having considered above findings, I grant the Applicant bail on the following conditions:
- i) To furnish cash bail bond of \$ 5000,
 - ii) To provide two suitable sureties in the similar amount (\$ 5000),
 - iii) To live at the given address in the bail bond and not to move without leave of the court,
 - iv) To report to nearest police station four times a week (Monday, Wednesday Saturday, and Sunday),
 - v) Not to leave Viti Levu until the trial is finished,
 - vi) Not to travel abroad without obtaining prior approval and permission of the court,
 - vii) To surrender all the travel documents to the Registry of the High Court before being released on bail,
 - viii) The Deputy Registrar of the High Court is directed to obtain a letter from the Director Immigration confirming the details of the travel documents issued to the Applicant before he is being released on bail,

ix) The Deputy Registrar of the High Court is directed to inform and serve the copy of this order to the Immigration and all other relevant authorities forthwith,

x) To Provide two telephone numbers for contact at any given time,

xi) Not to reoffend,

xii) Not to interfere with any prosecution witnesses,

xiii) The Respondent is ordered to tendered a progressive report of the bail adherence of the Applicant on the next mention date of the substantive matter,

31. Thirty (30) days to appeal to the Fiji Court of Appeal.



R. D. R. Thushara Rajasinghe

Judge

At Lautoka

30th of September 2016



Solicitors : Messrs Gordon & Co for the Applicant

Office of the Director of Public Prosecutions