

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISC. CASE NO: HAM 215 OF 2010**

**Between** :

WONG KENG LAM

**Applicant**

**And** :

THE STATE

**Respondent**

Hearing : 24<sup>th</sup> September 2010

Ruling : 28<sup>th</sup> September 2010

Counsel: Mr. A. Naco for Applicant  
Mr. S. Vodokisolomone for State

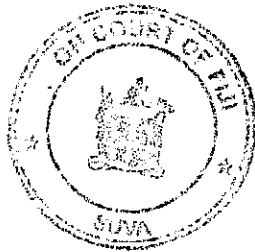
**R U L I N G**

- [1] The applicant is charged with Importation of Controlled Chemicals contrary to section 6 of the Illicit Drugs Control Act 2004. He applies for bail pending trial.
- [2] The allegation is that he with others imported into Fiji controlled chemicals namely 128,000 Capsules of Pseudoephedrine Hydrochloride weighing approximately 107.52 kilograms without lawful authority.

- [3] The applicant is a Chinese national. He arrived in Fiji from Hong Kong on 25 June 2010. According to the applicant's travel history he had earlier been in Fiji on 23 May 2010 and he departed on 29 May 2010. The first trip was for "business" and the second trip was for "holiday". He was expected to depart Fiji on 10 July 2010.
- [4] The alleged illegal substance was found in a container on 14 July 2010 upon inspection by Customs Officers. On 25 July 2010, the applicant was interviewed under caution. The applicant admitted importing the alleged illegal substance into Fiji from China.
- [5] In his affidavit in support, the applicant states that the authorities in Fiji have seized his travelling documents and that his visa expired on 22 July 2010. The applicant states that he cannot leave Fiji without his travelling documents. A local businessman has offered to be his surety.
- [6] The State relies on the affidavit of Sergeant Joape Ravunibola to oppose bail.
- [7] Sergeant Ravunibola highlights the strength of evidence against the applicant and the seriousness of the charge to oppose bail. He states that the applicant has no legal status in Fiji after expiration of his visa and therefore he is a flight risk.
- [8] The principles governing bail pending trial are contained in the Bail Act. Section 3(1) provides that an accused has the right to be released on bail unless it is not in the interests of justice that bail should be granted. Consistent with this right, section 3(3) of the Act declares that there is a presumption in favour of the granting of bail to an accused, but a person who opposes the granting of bail may seek to rebut the presumption. In determining whether a presumption is rebutted, the primary consideration in deciding whether to grant bail is the likelihood of the accused appearing in court to answer the charges against him.

- [9] Bail can be opposed on three grounds provided by section 18(1) of the Act. Section 19(1) provides for three grounds for refusing bail. Section 19(2) sets out a series of considerations a court must take into account in determining the three grounds. In broad terms, bail can be refused if the accused is a flight risk or if it is not in his interest to be released on bail or it is not in the public interest to grant bail.
- [10] There is no doubt that the applicant is charged with a seriousness offence. The offence carries a maximum penalty of life imprisonment. If convicted, the applicant is facing a prison sentence. However, the seriousness of the charge is not a pre-dominant factor to refuse bail. Seriousness of the charge must be weighted with the evidence against the applicant.
- [11] The strength of the evidence against the applicant is therefore relevant. Under caution, the applicant made a full admission that he imported the alleged illegal substance into Fiji from China. If the admission of the applicant is proven to have been made freely and voluntarily, then he is facing a strong prosecution case.
- [12] The applicant arrived in Fiji as a visitor. He allegedly committed the offence with others. Others have not been charged. He appears to have some contacts with Fiji nationals. The applicant made two trips to Fiji within a short span of time. He gave different reasons for his trips. These are unusual circumstances.
- [13] I cannot accept the defense submission that seizure of the travelling documents does not make the applicant a flight risk. Judicial experience shows that people abscond on false travelling documents.
- [14] The applicant managed to engage counsel whilst in custody on remand after being charged. His contacts in Fiji can continue to assist him with liaising with his family in China.

- [15] The applicant in his affidavit states that his remand conditions are inhumane. There is no evidence that the conditions of the remand centre in Fiji are inhumane.
- [16] In my opinion, the seriousness of the charge, the strength of evidence and the expiration of the applicant's visa make him a flight risk. I am satisfied that it is not in the interests of justice to grant bail.
- [17] Bail is refused. The case will be given priority trial date.



  
Daniel Goundar  
**JUDGE**

At Suva  
28<sup>th</sup> September 2010