

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 243/2013

BETWEEN : **SATISH LAL**
APPLICANT

AND : **THE STATE**
RESPONDENT

COUNSEL : **Mr A Vananalagi for the Applicant**
Mr Vosawale for the State

Date of Hearing : **15/11/2013**

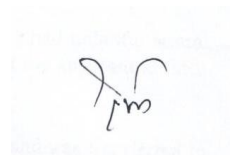
Date of Ruling : **25/11/2013**

BAIL RULING

- [1] The Applicant **SATISH LAL** had applied for bail pending trial for the third time.
- [2] The applicant has been charged with one count of Aggravated Robbery Pursuant to Section 311(1) (a) and one count of Theft Pursuant to Section 291 of Crimes Decree No: 44 of 2009.
- [3] It was alleged that the Applicant on 04th day of July 2011 at Nasinu, being armed with a cane knife, robbed one Mohammed Shahim of the properties valued at \$1547.00 and stole \$1000.00 from the property of Nazmun Begum.
- [4] Applicant's main grounds of Bail are as follows:
1. That due to long period of incarceration he fears for his family's wellbeing and safety.
 2. That he is the sole bread winner in his family.
 3. That the Constitution gives the Applicant a right to be released on bail.
 4. That the only evidence is an unfairly obtained confession.

- [5] Section 3 (1) of the Bail Act states that an accused has a right to be released on bail unless it is in the interest of justice that bail should not be granted. Consistent with this principle, Section 3 (3) of the act provides 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. In determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her. (17 (2)
- [6] Where bail is opposed, Section 18 (1) requires that the party opposing bail addresses the following considerations:
- (a) the likelihood of the accused person surrendering to custody and appearing in court;
 - (b) the interest of the accused person:
 - (c) the public interest and the protection of the community.
- [7] Section 19 (1) of the bail act provides that an accused person must be granted bail by court unless:
- (a) the accused person is unlikely to surrender to court custody and appear in court to answer charges laid;
 - (b) the interest of the accused person will not be served through the granting of bail; or
 - (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.
- [8] Section 19(2) of the Act sets out a series of considerations that the court must take into account in determining whether or not any of the three matters mentioned in Section 19(1) are established. These matters are:
- (a) as regards the likelihood of surrender to custody-
 - (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;

- (vi) 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.
- [9] State opposing to bail being granted submitted that the Applicant was arrested by Taveuni Police after a bench warrant was issued by the High Court when he fled from Court during the adjournment of the trial on 2nd of July 2012.
- [10] Further Applicant had not taken any endeavour to surrender himself before any police station.
- [11] The applicant committed a serious offence which carries maximum 20 imprisonments if convicted. The Applicant in this case if found guilty is likely to serve a custodial sentence.
- [12] That accused is 45 years old and has a large family to support.
- [13] The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer charges laid against him.
- [14] In this case the Applicant had fled from the court. The trial could not be taken up due to his absence. He was at large for nearly one year. He did not take any interest of his pending case.
- [15] Considering all these factors into account, especially escaping from lawful custody, it is not in the interest of justice to grant bail to the Applicant. Bail refused.



P Kumararatnam
JUDGE

At Suva
25/11/2013

