

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO: HAM 029 OF 2014

MISCELLANEOUS CASE NO: HAM 035 OF 2014

BETWEEN : JOSESE RAKUITA

AND : STATE

Counsel : Mr. Toganivalu D for the Applicant
: Mr. Qalinauci for the State

Date of Ruling : 08th July 2014

BAIL RULING

1. Mr. Josese Rakuita, the applicant has filed the two Bail Applications above mentioned on the following grounds; that he:
 - was employed as a Quality Assurance Manager with Cleveland Limited (Solander Fishing since 2013);
 - currently awaiting to be employed by the School of Maritime;
 - is 48 years of age and have five (5) children to support and care of and
 - strongly denies the allegation of being in possession of drugs as his brother's son has already confessed that he brought the drugs to his home.
2. The applicant is having two (2) pending criminal matters before this court. One is for being in possession of 918.899 grams of Amphetamine, an illicit drug on 27th of January 2014 at Lami, without any lawful authority. (Contrary to section 5 (a) (b) of the Illicit Drugs Control Act 2004). The other is 'Assessory after the Fact' contrary to section 388 of the Crimes Decree No. 44 of 2009.

3. The two charges, though in two separate Informations right now, (HAC 40/14 and HAC41/14) the Director of Public Prosecutions is contemplating of consolidation. On the other hand, the grounds averred by the two Bail applications by the applicant are also similar in context. Thus, this Bail ruling will focus both the Bail Applications and thus, will apply to both.
4. The Respondent, the Director of Public Prosecution opposes granting bail to the applicant in the interest of public and the protection of community.

5. Section 3 (1) of the Bail Act reads:

"Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted."

6. The main concern of this court is the allegation of illicit drugs. An alarming increase of illicit drug related offences around the country came into light during the last several months. The quantity of which the applicant is accused of is definitely not a "user quantity". This is one of the rare occasions that this jurisdiction is experiencing an illicit drug of this kind. The quantity, of course, must be in the scales of 'trafficking'.
7. It has to be stressed that the constitutional guarantee to the applicant of been presumed innocent until proven guilty is not shaken even a single inch with the above comment on the nature and the quantity of the 'illicit drug'. It is this background which attracts section 19 (2) (a) (iii) of the Bail Act, the circumstances, nature and the seriousness of the offence. The severity of the likely penalty (section 19 (2)(a)(v) of the Bail Act) if the applicant found guilty, is also a matter of concern. It runs up to a fine of 1 million dollars and/or life imprisonment.
8. The personal grievances of the applicant have to be viewed in this context. I note that the applicant has been in remand custody since February 2014, for over 4 months. He has got the leave of a Magistrate's Court in Suva, when he was produced before a learned Magistrate in relation to another offence on 14th March 2014, to be taken to CWM hospital over a chest pain. Then he had been kept in the custody of Totogo Central Police Station till 20th March 2014, without any plausible reason or justification and in fact without a proper or

valid court order to do so. From 20th of March 2014 to 7th of May 2014 the applicant had been in the ANZ ward, a paying ward in CWM hospital. According to the Officer-in-Charge of the Suva Remand Centre, the applicant had been handed over to the Police escort officers on 28th of February 2014 and did not return to the Remand Centre by the time they wrote to Court on 23rd April 2014. There seems to be something suspicious of the sequence of events when analyzed since 28th February 2014 to 7th May 2014. Nevertheless, after 7th May, this court did not receive any complaint of the applicant's health condition.

9. On the other hand, according to the Investigating Officer's affidavit, three (3) children of the applicant are currently employed whilst two younger children are still schooling. Detective Sergeant 1888 Mosese had deposed that there was no person employed in Cleveland Limited or Solander Pacific by the name of the applicant and there is no evidence to prove that the applicant is waiting for his employment with the School of Maritime. This affidavit of the Investigating Officer was never been challenged by the applicant. In this back drop, the Respondent has positively challenged the first three grounds of the applicant's bail application. The fourth ground for Bail would have been considered by the Respondent before filing the Information. On the other hand, paragraphs 6 and 7 of this Ruling negate the validity of the claim.
10. In the light of the above discussed facts, this court is of the view that the Respondent has successfully rebutted the presumption in favour of granting bail to the applicant. Hence, both the Bail applications of the applicant are refused accordingly. Nevertheless, if the applicant is ready to proceed with the substantive matters, this court is ready to accommodate such a move by fixing those cases for trial within the first quarter of the next calendar year.



Janaka Bandara
Judge

At Suva

Toganivalu Law for the Applicant
Office of the Director of Prosecution for State