

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 62 of 2014

BETWEEN: **THE STATE**

AND: **DONASIO GADEINIUSILADI**

Counsel: Mr. S. Vodokisolomone for the State
 Ms. M. Tarai (Duty Solicitor) for the Accused

Date of Hearing : 10th September, 2014
Date of Sentence : 10th September, 2014

BAIL RULING

1. Mr. Donasio Gadeiniusiladi, the accused is been charged with one count of murder and was enlarged on Bail by a learned Magistrate sitting in Labasa Magistrate's Court on 19th August 2014, on following Bail conditions.

“Having heard the submission of the Prosecution and counsel for the accused, I consider that the prosecution has not rebutted the presumption in favour of bail.

Accordingly I admit the accused to bail, in the sum of \$2000 on the following conditions.

- 1) Reside at Salusalu Street with Ratu Osea, Labasa and not to change place of residence without leave of the Court.
- 2) Not to leave Vanua Levu during the pendency of this matter.
- 3) Not to set foot on Taveuni without leave of the Court.
- 4) Not to contact or in any way interfere with the prosecution witness.
- 5) Not to commit any arrestable offence on bail."

2. The alleged offence had taken place on 10th of August 2014. The accused was produced before the learned Magistrate on 15th of August 2014. The police Prosecutor who was appearing in court had objected to Bail on following grounds.

"Tension is high in Naselesele, Taveuni, where this offence was allegedly committed. Investigation Officer has asked for accused to be remanded for his own safety. He has made admissions in caution interview statement. Victim was drinking at bar and when he came out, Accused punched him, causing him to fall into the drain. He was rushed to hospital but it was too late.

Has 4 previous convictions – 3 spent and 1 current none for escaping or absconding."

3. The learned Duty Solicitor, who represented the accused in the lower court had requested Bail on the basis that the "accused has no intention of returning to Taveuni. He intends to stay with his wife's uncle in Salusalu Street. Has previous convictions for assaulting his wife. He has no passport and isn't a flight risk. Never absconded."
4. When the police prosecutor informed court that they have no objection for bail if the accused "furnishes a surety", the learned Duty Solicitor had told court that there is "no need for a surety. He has no history of absconding. Primary consideration for the accused is whether he will attend Court".
5. It is in this context the learned Magistrate granted Bail to the accused four (04) days after him been produced in court.

6. When the accused appeared before this court on 09th of September 2014 for the first time, concerns were raised over the Bail conditions imposed by the learned Magistrate. Today, 10th of September 2014, the learned prosecutor made a formal application to review the Bail Ruling of the lower court. His main concern is the too lenient Bail conditions.
7. The Bail Act empowers the High Court to review Bail orders of the Magistrates and Police Officers (Section 30 (3)) at the request of Director of Public Prosecutions. (Section 30 (8) (d) of the Bail Act).
8. In terms of section 3(1) of the Bail Act 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. Therefore, a favourable presumption is there for granting bail to an accused person unless that presumption is been rebutted by the person/party who opposes it. (Section 3(3) of the Bail Act).
9. Section 17 of the Bail Act stipulates two conditions to be considered when granting Bail to an accused person pending his trial. Firstly, the time the person may have to spend in custody before trial and secondly, the likelihood of the accused person appearing in court to answer the charges laid against him.
10. The Criminal Case pending against the accused is based on an indictable offence, which could only be tried by the High Court. The learned Magistrate has no clue of the High Court trial diary and thus, possibly unaware as to how long would it take to conclude the trial. Therefore, her decision has to be based only on the consideration of accused's likelihood of appearing in higher court to answer the charges against him.
11. On the other hand, according to section 19 of the Bail Act, an accused person must be granted bail unless in the opinion of the court that;
 - a) he is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b) the interests of the accused person will not be served through the granting of bail or;
 - c) granting of bail to the accused person would endanger the public interest or make the protection of the community more difficult.

12. When considering the likelihood of the accused to surrender to custody, following factors are to be taken into account. (Section 19 (2) (a))
- (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);*
13. Upon perusing the journal entries of the Magistrates Court proceedings, all this court sees is that the learned Magistrate had not paid any attention to the majority of the above factors. Instead, the lower court has based or seems to have based its decision solely on the "interests of the accused person".
14. Time and again the higher courts have stressed that the discretion to grant bail or refuse solely rests on the judicial officer. That judicial discretion is not to be surrendered to anybody. It has to be exercised judicially, balancing the interests of the public and accused according to the clear guidelines laid down in the Bail Act without making any arbitrary or capricious moves.
15. It is unfortunate that the Magistrates Court proceedings do not reflect whether the learned Magistrate considered the accused's background, especially the "assaulting" history with four previous convictions; the circumstances, nature and seriousness of the offence for the tension in Naselesele, Taveuni to rise high; the strength of the prosecution case with the admissions of the accused in his caution interview statement; the severity of the likely penalty if the accused is found guilty and whether the accused surrendered to police or evaded, before granting him bail. It would have been more desirable for the learned Magistrate to have equipped with more material before rushing to grant bail to

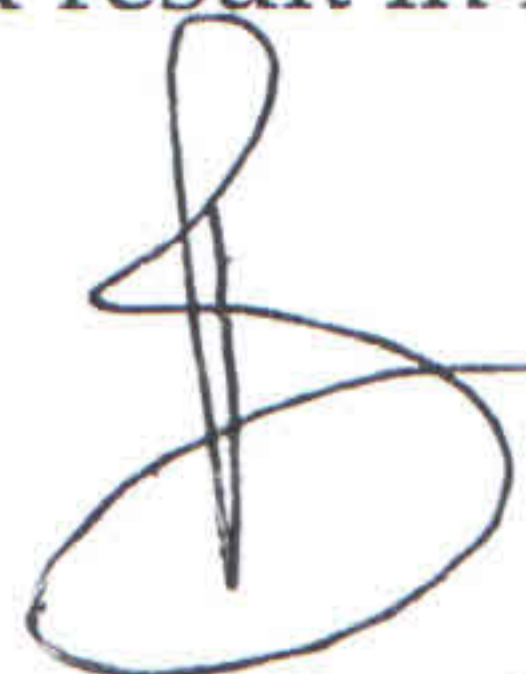
the accused, especially having considered the fact that the accused is been charged with an indictable offence.

16. The ultimate result is that the accused had been enlarged on bail with totally unsatisfactory conditions. It is not disputed that the criminal courts have always honoured the "presumption of innocence" when dealing with issues pertaining to Bail. Nevertheless, it is the paramount duty of the court to make sure to impose Bail conditions to assure the presence of the accused back in court whenever needed. Here, in this instance, the accused was enlarged on Bail without a surety and any reporting conditions. That is not acceptable.
17. After having considered the existing back ground, this court would not interfere to cancel the Bail ordered by the learned Magistrate. Instead, the accused should sign a fresh Bail Bond with the following conditions.

Accused should;

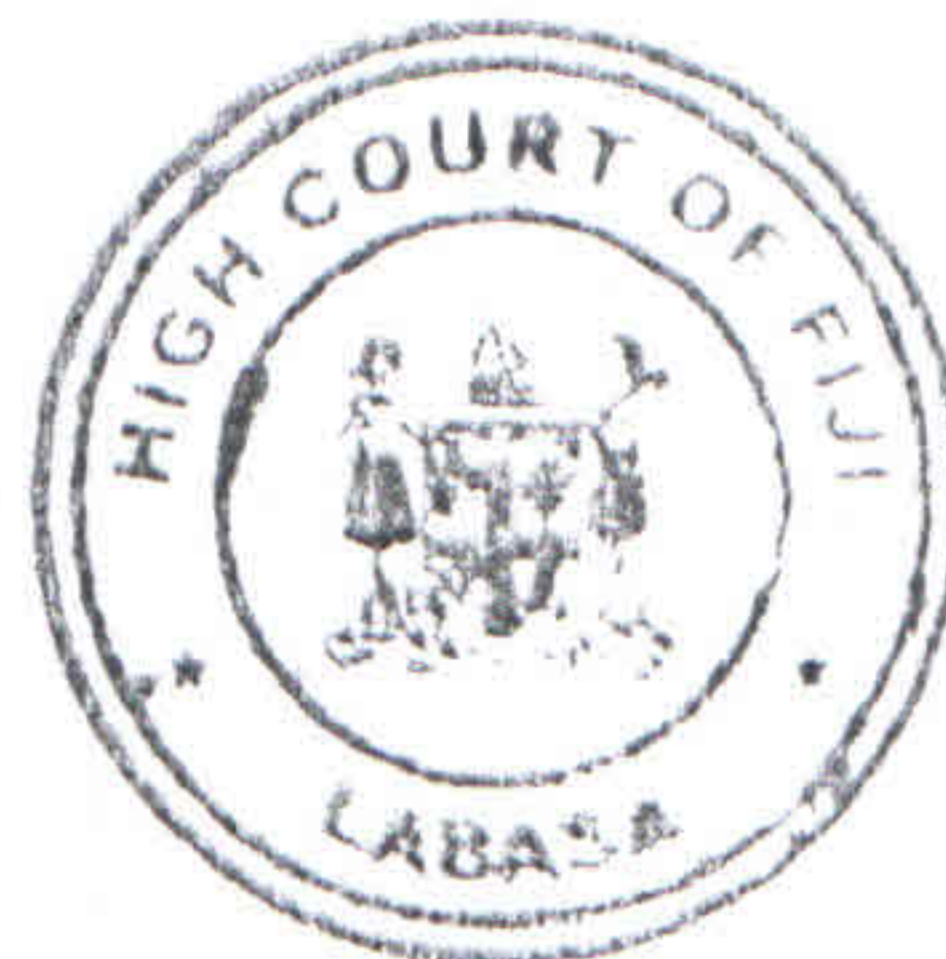
1. produce two sureties to sign a Bond of \$500 each with proof of their financial capability to meet the Bond in case of confiscation;
2. report to Labasa Police Station on every Saturday between 9am – 5pm commencing from 13th September 2014;
3. provide details of his residence in Vanua Levu and should that not leave without the permission of court;
4. not at any time go to Taveuni Island without the permission of court;
5. not leave Vanua Levu without the prior permission of court;
6. not interfere with any of the prosecution witnesses either directly or indirectly;
7. not commit any arrestable offence whilst on Bail.

18. Violation of any of the above conditions would result in immediate cancellation of Bail.



Janaka Bandara
Judge

At Labasa
10 September 2014



Office of the Director of Prosecution for State
Office of the Legal Aid Commission for Accused