

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAA 36 OF 2015

BETWEEN : NAPOLIONI TUIVAWA

APPELLANT

AND : THE STATE

RESPONDENT

Counsel : Appellant in Person
Ms. Kiran .S. for the Respondent

Date of Hearing : 9th of April 2015

Date of Judgment : 17th of April 2015

JUDGMENT

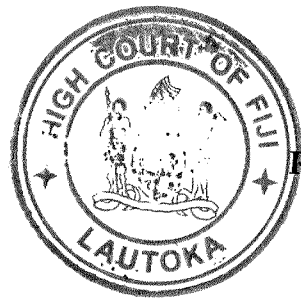
1. The appellant file this appeal against the bail ruling of the Magistrate Court Lutoka dated 20th of January 2015. This appeal is filed pursuant to section 30 of the Bail Act (hereinafter referred as the Act).
2. According to the notice of appeal, it appears that this appeal founded on the ground that the learned magistrate erred in law by refusing bail on the ground of public interest and the protection of the community. The appellant contends that the learned magistrate has erroneously considered the issues of


likelihood of committing an offence while on bail and the seriousness of the offence in order to form his conclusion of public interest and protection of the community. He further contends that the learned magistrate has erroneously considered the section 17 of the Bail act without giving consideration to the presumption of his innocent until proven guilty.

3. The respondent filed their written submissions, which was followed by the reply submissions of the appellant. The matter was then fixed for the hearing on 9th of April 2015, where both parties informed the court that they wish to rely on their written submissions. Having considered the notice of appeal, and respective submissions of the parties, I now proceed to pronounce my ruling as follows.
4. It appears that the learned magistrate has refused the bail of accused on the ground of public interest and the protection of the community. His finding of public interest and the protection of the community is based on his conclusion that the likelihood of the accused committing an offence while on bail and the seriousness of the offence.
5. The court is not required to be satisfied that the conclusions made in respect of the issues stipulated under section 19 (2) of the Act will actually occur in the event of bail being granted. It is sufficient for the court to satisfy that there are substantial grounds for believing that they would occur.
6. The learned magistrate correctly and appropriately have considered the back ground of the accused, the nature of five pending criminal actions against the accused in reaching his conclusion that there is a likelihood of the accused committing an offence while on bail. This conclusion essentially

relevance to determine the issue of public interest and the protection of the community pursuant to section 19 (2) (c) (iii) of the Bail Act.

7. I do agree with the appellant that the seriousness of the offence is not a ground alone to refuse bail, however it is an essential factor to consider the behavioural conduct of the accused during the cause of the action. The serious nature and the strength of the prosecution case would be a factor for him to abscond the hearing or interfere with the course of justice.
8. In view of the reasons set out above, I find the grounds advanced by the appellant in this appeal have no merit. I accordingly refuse and dismiss this appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
17th of April 2015

Solicitors : Office of the Director of Public Prosecutions
Appellant in person