

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 46 OF 2015

BETWEEN : VOATE RADREKUSA

Applicant

AND : STATE

Respondent

Counsel : Applicant in person

Ms. L. Latu for Respondent

Date of Hearing: 11th of May 2015

Date of Ruling: 3rd of June 2015

BAIL RULING

1. The applicant makes this application pursuant to section 30 (3) and (8) of the Bail Act, to review the bail ruling delivered by the learned resident magistrate of Rakiraki. His grounds for this application are inter alia;

- i. *The length of the time the accused spent in custody,*
- ii. *The strength of the prosecution case,*
- iii. *Care of dependents,*
- iv. *The right to a private counsel and prepare a defence,*
- v. *The circumstances, nature, and seriousness of the offence,*

- vi. *Public interest and community protection,*
- vii. *Presumption of innocent,*
- viii. *Interest of justice and equality before the law.*

2. Upon being served with this application, the respondent appeared before the court on 31st of March 2015, where both parties were given directions to file their respective submissions, which they have filed as per the directions. Having carefully considered the application, and respective submissions and objections of the parties, I now proceed to pronounce my ruling as follows.

3. Section 30 (7) of the Bail Act states that;

"A court which has power to review a bail determination, or to hear a fresh application under section 14 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application".

4. Section 30 (10) of the Bail Act states that;

"The review must be by way of a rehearing, and evidence or information given or tamed on the making of the decision may be given or obtained on review".

5. In view of section 30 (7) and (10) of the Bail Act, it appears that the hearing of review of bail application constitute two components. The applicant is first required to satisfy the court that there are special facts or circumstances to justify the making of review application. The court if satisfied the first component, would then proceed to hear the review application as a rehearing as stipulated under section 30 (10) of the Bail Act.

6. Donaldson L.J. in Regina v Nottingham Justices (1981) OB 38, 71 Cr.App R 178 DC) has discussed the scope of "special facts or circumstances", where his lordship found that;

"the court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since the last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not impugn the previous decision of the court and it is necessary in justice to the accused. The question is little wider than "has there been a change". It is "are there any new consideration which were not before the court when the accused was last remanded in custody?"

7. In view of Donaldson L.J's observation and the section 30 (7) of the Act, it appears that the court is not only required to look into change in circumstance which has occurred since the last decision, but also other special facts and circumstances, which were not presented or had not considered by the court in previous bail applications.
8. Once the court is satisfied that there are special facts and circumstance that justify the making of the review of bail application, the court then could proceed with the review hearing. The scope of the review hearing has stipulated under section 30 (10) of the Bail Act. Accordingly, the court must conduct the review by way of a rehearing.
9. The applicant's application is founded on the bail ruling delivered by the learned magistrate of Rakiraki on 5th of March 2015. The learned magistrate has already considered the grounds stipulated by the applicant in this application. The family background, the need of the dependents of the applicant, the seriousness of the offence that he is charged with, the strength

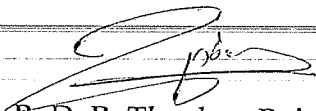
of the prosecution case, the applicant's previous convictions and pending matters, previous instances of breach of bail conditions, have been considered in the ruling of learned magistrate. Having considered the grounds mentioned above, the learned magistrate has correctly concluded to refuse your bail on the ground of public interest. His finding has mainly founded on the ground of the likelihood of committing another offence if released on bail.

10. The applicant has not provided any special facts or circumstances, which were not considered or not presented before the learned magistrate. Moreover, he has not specified any change of circumstances or facts since the ruling of learned magistrate on 5th of March 2015. Accordingly, it is my conclusion that the applicant has not satisfied the court that there are special facts or circumstances that justify the making of this review of bail application pursuant to section 30 (7) of the Bail Act.

11. I accordingly, refuse this bail review application of the applicant.



At Lautoka
3rd of June 2015


R. D. R. Thushara Rajasinghe
Judge

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