

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

HAM NO. 47 OF 2015

BETWEEN : TEVITA YABAKIVOU

Applicant

AND : STATE

Respondent

Counsel : Applicant in person

Ms. L. Latu for Respondent

Date of Hearing: 31st of March 2015

Date of Ruling: 10th of June 2015

BAIL RULING

1. The applicant files 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 on 24th of December 2014. The applicant's application for review is founded on following grounds inter alia;

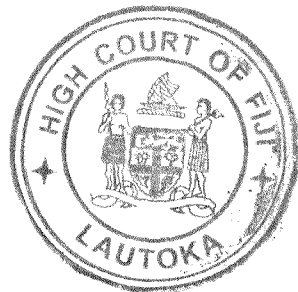
- i. Presumption of innocent,*
- ii. The right to liberty,*
- iii. Right of a child,*
- iv. Equality before the law,*


2. Upon being served with this application, the respondent appeared before the court on 31st of March 2015. Both parties were given directions to file their respective submissions, which they filed accordingly. Having carefully considered the application, and respective submissions and objections of the parties, I now proceed to pronounce my ruling as follows.
3. The high court is vested with jurisdiction to review any decision made by a magistrate or a police officer in relation to bail pursuant to section 30 (3) of the Bail Act.
4. 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".
5. 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".
6. In view of section 30 (7) and (10) of the Bail Act, it appears that the hearing of a review application constitutes two stages. Firstly, the applicant is required to satisfy the court the existence of any special facts or circumstances to justify the making of the review application. The court, having satisfied the existence of such special facts or circumstances, then could proceed to hear the review application as stipulated under section 30 (10) of the Bail Act.

7. I now turn on to this instant case. The learned magistrate has refused the bail application of the applicant on the ground of unlikelihood of surrender to the custody and on the interest of justice.
8. It appears from the findings of the learned magistrate and the case record of the magistrate's court, the applicant has already breached his bail conditions twice in this action. The court has generously granted him bail on those two earlier occasions. In spite of the generosity extended to him by the court, the applicant once again failed to appear in court on 29th of January 2014. Accordingly, the court issued a bench warrant against the applicant. He was arrested on the said bench warrant on 24th of November 2014.
9. Section 3 (4) of the Bail Act states that the presumption in favour of bail is displaced, if the person seeking bail has previously breached a bail undertaking or bail conditions. In this instant case, the applicant has already breached his bail condition. Wherefore, the presumption in favour of granting bail for the applicant has been displaced, which was correctly and accurately considered by the learned magistrate in his bail ruling dated 24th of December 2014. Accordingly, I do not find any compelling reasons to intervene with the findings and the ruling of the learned magistrate.
10. I accordingly, refuse this bail review application of the applicant.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
10th of June 2015

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