

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION
CRIMINAL MISCELLANEOUS CASE NO: HAM 168 OF 2015

BETWEEN : KELEPI RATU

Applicant

AND : STATE

Respondent

Counsel : Applicant in Person
Mr. Nath for the Respondent

Date of Hearing : 08th October, 2015
Date of Ruling : 09th October, 2015

BAIL RULING

1. This is a bail application filed by the Applicant who is charged with one count of Aggravated Robbery.
2. The State has filed its response by way of an affidavit of DC 4206 Semi Vuniwai of Namaka Police Station in order to rebut the presumption in favour of bail. The State is objecting to bail to the accused on the grounds stated in the affidavit.
3. The presumption in Section 3 (3) of the Bail Act in favour of granting of bail can be displaced only when there are valid grounds for detention.
4. According to Section 3 (1) of the Bail Act, every accused has a right to be released on bail unless it is not in the interests of justice that bail should be granted.

Likelihood of the Accused Person Appearing in Court

5. According to Section 17 (2) of the Bail Act, the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charge laid against him.

6. The charge against the accused is serious. However, seriousness of the offence *per se* does not preclude this Court from releasing an accused person on bail pending trial.
7. Applicant has denied the charge and asserted that the case against him is unfounded and no credible evidence has been presented to Court against him. He relies heavily on the presumption of innocence as a ground for him to be at liberty pending trial.
8. Investigating Officer DC 4206 Semi Vuniwai in his affidavit has not disclosed any evidence that the State is intending to present at the trial for me to assess the strength of the case against the Applicant. Applicant has challenged the statement of the cautioned interview and has tendered a medical report to support his version of Police assault. In these circumstances, reliance on the cautioned interview statement itself to assess the strength of the case is not prudent.
9. DC 4206 Semi Vuniwai has denied having obtained CCTV footage from the crime scene. If the CCTV footage is to be material evidence against the Applicant, the Police should have disclosed same to the Applicant. So far, availability of such evidence has not been disclosed.
10. Proving the charge against the Applicant is a trial function. Court is not supposed, at this stage, to evaluate evidence against the Applicant. Said that, Courts must, however, when considering bail, be satisfied whether a strong case is made out against the accused so as to justify denial of his right to liberty enshrined in the Constitution.
11. I am of the view that the material placed so far before this court is not sufficient to conclude that there is a strong prima face case against the Applicant.


Interest of the Accused

12. As regards the interests of the Accused person, the Applicant states that he was assaulted by the Police on his arrest and detention and is in need of medical care and treatments. The medical examination form supports the Applicant's claim. The medical assessment dated 12th August 2015 indicates that the Applicant is a patient with hemorrhoids.
13. According to Section 17(1) of the Bail Act, when deciding whether to grant bail to an accused person, Court must take into account the time the person may have to spend in remand before trial, if bail is not granted. The Applicant has so far been in remand for nearly three months. Information and disclosures are yet to be filed. No immediate trial date is possible. I am of the view that granting of bail would be in the best interest of the Applicant.

Public Interest and the Protection of the Community

14. The State is heavily relying on the criminal record of the Applicant. It shows that the Applicant has number of previous convictions during the period of past ten years. Except five, all other sentences are dated 19.12.2008. There are no previous convictions after 2008. Applicant has maintained a clear record after 2008 and has demonstrated his propensity to rehabilitate. Applicant has admitted having a pending matter in Nadi Magistrate Court in respect of a crime allegedly committed in 2012. However, in that matter, he has been enlarged on bail and has relied on presumption of innocence.
15. I am of the view that imposition of strict bail conditions is sufficient to safeguard the interests of the public.
16. For foregoing reasons, the application for bail pending trial is allowed.
17. I order the release of the Applicant subject to following bail conditions:
- a) Personal surety bond for FJD 1,000.00 (non-cash)
 - b) Surety bond for FJD 2,000.00 with one surety (non-cash)
 - c) Reporting to the Tavakubu Police Post on every Saturday between 8.00 a.m. and 6.00 p.m.,
 - d) Providing the address to court where the Applicant is intending to reside. Applicant must confine himself to that address until the conclusion of this case,
 - e) Not to interfere with prosecution witnesses.
 - f) Curfew to be imposed from 6.00 p.m. to 6.00 a.m.
 - g) Not to reoffend whilst on bail.




Aruna Aluthge
Judge

At Lautoka
9th October, 2015

Solicitors: Applicant in Person
Office of the Director of Public Prosecution for the Respondent