

IN THE HIGH COURT OF FIJI
CRIMINAL JURISDICTION
AT LAUTOKA

CRIMINAL CASE: HAM 91 OF 2015

BETWEEN : AZAM ALI
IMRAN ALI AZAM

Applicants

AND : STATE

Respondent

Counsel : Mr. Iqbal Khan for Applicants
Mr. Babitu for the Respondent

Date of Hearing : 23rd June 2016

Date of Ruling : 07th of July 2016

RULING

I. The two Applicants filed this notice of motion pursuant to Section 30 (3) of the Bail Act, seeking following orders *inter alia*;

- i) *That the ruling delivered by Magistrate Rangajeeva Wimalasena on 25th of April 2016 be reviewed,*
- ii) *That our bail condition be therefore varied, so as to allow us to relocate back to our residential address at Tokovuci Settlement, Tomuka, Lautoka,*

iii) *That the time for service of this motion be abridged,*

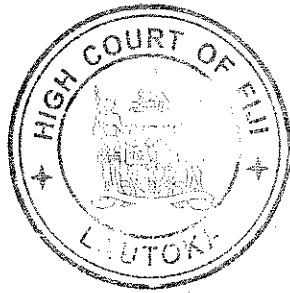
iv) *Any other order or orders that this Honourable Court Deems just,*


2. This application is being supported by an affidavit of Azam Ali, stating the grounds of this application. The Respondent filed an affidavit of DC Vimal Pillay, stating the objection of the state for this application. Mr. Azam Ali then filed an affidavit in response to the said objections. This matter was set down for hearing on the 23rd of June 2016. The learned counsel for the Applicants and the Respondent informed the court that they rely on their respective affidavits and do not wish to make any submissions. Having carefully considered the respective affidavits filed by the parties, and the record of the proceedings in the Magistrates' court, I now proceed to pronounce my ruling as follows.
3. The two applicants have been charged in the Magistrates' court for one count of "Act with Intent to Cause Grievous Harm" contrary to Section 255 (a) of the Crimes Decree. They were first produced in the Magistrates' court on the 21st of August 2015. Having considered the submissions made by the parties, the learned Magistrate has refused bail for the two Applicants on the 21st of August 2015.
4. The two Applicants have then been granted bail by the High Court on the 4th of September 2015. The Respondent had made an application in the Magistrates' court for the variation of the bail conditions on the 4th of April 2016. Having heard the submissions made by the both parties, the learned Magistrate in his ruling dated 25th of April 2016, ordered the two Applicants to relocate from Tokovuci, Tomuka Lautoka to elsewhere.
5. The two Applicants in this application state that they have been relocated to a house at Tavakubu, back road, which is owned by his older brother. The Applicants claim that his brother is going to sell the said house, hence they have no other place to reside apart from their family house in Tokovuci. They further state that the second applicant is the sole breadwinner of their family, hence if the house that they are residing at the moment is sold, they have no place to reside.

6. The Respondent claims that the Applicants and their family members have been harassing and causing trouble to the complainant. Their conduct has petrified the community as they fear that something more serious could occur if the problem between the Applicant's family and the Complainant's family continue.
7. In this instant case, the learned magistrate in his ruling dated 25th of April 2016 has found that the Applicants have breached their bail conditions. Having found that, the learned Magistrate ordered the two Applicants to relocate from their family house.
8. Section 30 (3) of the Bail Act has conferred the High Court with jurisdiction to review any decision made by a magistrate in relation to bail. However, Section 30 (7) of the Bail Act requires the Applicant to satisfy the Court that there are special facts or circumstances that justify a review. Section 30 (7) of the Bail Act states that;

"The 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 afresh application, refuse to hear the review or application".
9. This application of review is not founded on the issue of the correctness of the order of the learned Magistrate. The Applicants' main contention is founded on the ground that the house that they have relocated pursuant to said order is now going to be sold.
10. However, I do not find any material evidence presented by the Applicants in order to establish that the house is going to be sold. It is my view that in order to satisfy the court that there is a special circumstance or fact to justify the review, the Applicants have to provide material evidence to establish that the house is going to be sold.
11. Other grounds adduced by the Applicants have already been considered by the learned Magistrate in his said ruling. The difficulties faced by the Applicants and the family due to the relocation have already been considered by the learned Magistrate.

12. In the absence of any special facts or circumstances to justify the review as required under Section 30 (7) of the Bail Act, I refuse this applicant and dismiss it accordingly.
13. Thirty (30) days for appeal to the Fiji Court of Appeal.




R. D. R. Thushara Rajasinghe
Judge

At Lautoka
07th of July 2016

Solicitors : Iqbal Khan & Associates for the Applicants
Office of the Director of Public Prosecutions for the Respondent