

IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

HAM NO. 123 OF 2016

BETWEEN : JOVILISI GODROVAI

Applicant

AND : STATE

Respondent

Counsel : Mr. M Fesaitu for the Applicant

Mr. S Babitu for Respondent

Date of Hearing : 5th of August 2016

Date of Ruling : 31st of August 2016

Bail Ruling

1. The Applicant files this application for bail on the ground that he needs to support his parent. Pursuant to the service of this application, the Respondent filed an affidavit of Inspector Tuitai, stating the objection of the state. The matter then set down for hearing on the 5th of August 2016. Both the counsel informed the court that they do not wish to make any submissions. Accordingly, I now proceed with the ruling as follows.

2. The Appellant has been charged with one count of murder contrary to Section 237 (1) of the Crimes Decree, and one count of Aggravated Robbery contrary to Section 311 (1) of the Crimes Decree.
3. In pursuant of Section 13 of the Constitution and the Section 3 (1) of the Bail Act, every person has a right to be released on bail unless it is not in the interest of justice.
4. The primary consideration in granting bail is the likelihood of the accused person appearing in court. Section 18 (1) of the Bail Act has stipulated that a person making an application against the presumption in favour of bail must deal with the following grounds, that;
 - i) *The likelihood of the accused person surrendering to custody and appearing in Court,*
 - ii) *The interest of the accused person,*
 - iii) *The public interest and the protection of the community,*
5. Having considered the objections and the submissions filed by the respondent, it appears that objections are founded on the grounds of unlikelihood of appearing in court and of the public interest and the protection of the community.
6. Section 19 (2) (a) and (c) stipulates some of the circumstances that the court must have to consider in order to determine the issue of likelihood of surrender to custody, and public interest, where it states, that;

(a)

- i) *The accused person's background and community ties,*
- ii) *Any previous failure by the person to surrender to custody or to observe bail condition,*
- iii) *The circumstances, nature and seriousness of the offence,*
- iv) *The strength of the prosecution case,*
- v) *The severity of the likely penalty if the person is found guilty,*
- vi) *Any specific indication,*

(c)

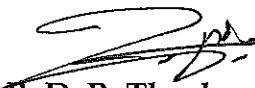
- i) *Any previous failure by the accused person to surrender to custody or to observe bail conditions,*
- ii) *the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person,*
- iii) *the likelihood of the accused person committing an arrest able offence while on bail.*

7. The Applicant has been adversely recorded with twenty one (21) previous convictions. Most of them are offences committed against persons and their properties.

8. I am mindful that the court is not required to satisfy that the circumstances stipulated under Section 19 of the Bail Act will actually occur in the event of bail is being granted. The court is only required to satisfy that there are substantial grounds to believe that they would occur.
9. In view of the adverse record of the previous conviction of the Applicant and the seriousness of the offences that he is charged with, I find that there is a substantial ground to believe that the Applicant is more likely to commit an offence while on bail and also he may abscond from appearing in court if bail is granted.
10. Accordingly, I refuse this bail application on the grounds which I discussed above. The Applicant is free to make afresh bail application pursuant to Section 14 (1) and 30 (7) of the Bail Act.
11. Thirty (30) days to appeal to the Fiji Court of Appeal.

At Lautoka
31st of August 2016




R. D. R. Thushara Rajasinghe
Judge

Solicitors : Office of Legal Aid Commission
Office of Director of Public Prosecution