

IN THE HIGH COURT

AT LAUTOKA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 12 OF 2018

BETWEEN : MAIKA TOVAGONE
APPLICANT

AND : STATE
RESPONDENT

Counsel : Applicant in Person
Mr. S. Babitu for Respondent

Date of Ruling : 28th February, 2018

BAIL RULING

1. This is an application for bail pending trial.
2. The Applicant is charged with two counts of Aggravated Robbery. This is his third bail application.

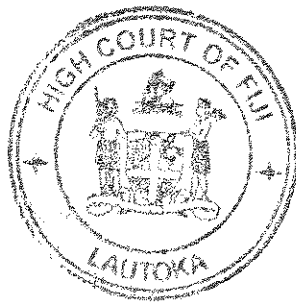
3. A fresh affidavit dated 22nd January, 2018 was filed by the Applicant when he was informed by this Court that his bail application will be considered only if he had new grounds for bail which was not considered in his previous bail application.
4. In his fresh affidavit, Applicant applies for bail on following grounds:
 - I. His father has passed away and his mother is the sole bread winner;
 - II. He has siblings that need his support;
 - III. Intends to continue his education in the Matua Program;
 - IV. Co-accused have been granted bail;
 - V. He has been in remand since September, 2016;
 - VI. Trial date is yet to be fixed;
 - VII. The evidence against him is not sufficient.
5. The State objects to Bail on the basis that Applicant poses a potential threat to the interests of public and protection of community and that he will abscond if bail is granted. They further submit that there is no change in circumstances from his previous bail application.


Analysis

6. The first three grounds the Applicant has advanced do not reveal exceptional circumstances. According to the death certificate, and the letter tendered by Applicant's mother, Applicant's father had passed away a long time ago in 2004.
7. 2nd and 3rd grounds are based on his personal difficulties. The Court has taken into consideration the fact that Applicant is the eldest of the family of four children, one of whom is handicapped and suffering from down syndrome. However, there is no evidence that Applicant's siblings are suffering without the assistance of the Applicant. They have been living without Applicant for the past 18 months. There are no exceptional circumstances that would justify granting of bail on these grounds.

8. Applicant's desire to continue his education has already been considered in his previous bail application.
9. The fact that his co-accused have been granted bail will not support his argument for bail. Each accused's case is assessed on its own merits.
10. 5th and 6th grounds deal with delayed prosecution of his case. Applicant has been in remand since September, 2016, for approximately 18 months now. So far, the State has not been able to serve a complete set of *void dire* disclosures to the Applicant. Even if disclosures are filed on the next date, it is highly unlikely that the hearing will take place during this year because the Trial Diary of this Court is fully booked until June 2019.
11. Section 14 (2) (g) of the Constitution states: '*every person charged with an offence has the right to have the case determined within a reasonable time*'. When deciding whether to grant bail to an accused person, Courts must take into account the time the accused may have to spend in custody before trial if bail is not granted [Section 17.-(1) of the Bail Act].
12. This Court is of the view that the delay that may cause in the substantive matter is prejudicial to the Applicant's interests and his constitutional right to a speedy trial. Inordinate delay in filing disclosures and having an early trial will be prejudicial to the Applicant. Therefore, when balancing the rights of the Applicant with interests of the community, this Court is of the view that keeping the Applicant in remand until conclusion of the trial is not warranted.
13. Courts, in determining bail, must be satisfied that the deprivation of personal liberty is the only sensible option available and that resorting to that option is not disproportionate to the objective to be achieved thereby. If the concerns of public interests and protection of the community can be addressed by imposing stringent bail conditions, courts must not resort to curtail personal liberty, since the primary consideration in determining bail is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.

14. The risk of re-offending can be avoided if not minimized by imposing stringent bail conditions.
15. Having considered the above mentioned factors, I am of the view that imposition of strict bail conditions is sufficient to ensure that no further offences are committed by the Applicant while on bail.
16. For the reasons given, application for bail pending trial is allowed.
17. Applicant is granted bail on following bail conditions.
 - [i]. Personal bail bond for \$1000 (non-cash).
 - [ii]. Surety bail bond for \$1000 with two sureties (non-cash). At least one surety must have his fixed abode in the Western Division.
 - [iii]. Not to reoffend whilst on bail.
 - [iv]. Reporting to Samabula Police Station on every Saturday between 8 a.m. and 4 p.m.
 - [v]. A curfew between 8 pm. to 8 am is imposed. This condition is not applicable when attending court proceedings.




Aruna Aluthge
Judge

At Lautoka

28th February, 2018

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for the Respondent