

IN THE HIGH COURT
AT LAUTOKA
MISCELLANEOUS JURISDICTION
CRIMINAL MISCELLANEOUS CASE NO. HAC 44 OF 2018

BETWEEN : NACANIELI BAKATA

APPLICANT

AND : STATE

RESPONDENT

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

Date of Hearing : 7th May, 2018

Date of Ruling : 8th May, 2018

BAIL RULING

1. The Applicant with another is charged with one count of *Aggravated Burglary*, *Aggravated Robbery* and *Theft* contrary to Sections, 313 (1) (a),(b), 311(1) (a), (b), 291(1) respectively of the Crimes Act. The substantive matter HAC 21 of 18 was remitted to the Magistrate Court at Sigatoka in extended jurisdiction. However, Madigan J has decided to try this matter in the High Court.
2. This bail application has been filed by the Applicant seeking bail pending trial. In his bail application (which is not supported by an affidavit), Applicant seeks bail on the grounds that evidence against him is weak and therefore presumption of innocence be given due weight, that his safety at the remand centre is at risk and his familial obligations.
3. The State objects to the bail on the grounds that the Applicant has previous convictions within the operational period and also pending cases both in the


magistracy and High Court of similar nature and that he, when he was arrested in connection with the present matter, is in breach of bail violation. They argue that the Applicant is likely to commit similar offences and therefore poses a potential threat to the public if he is released on bail.

4. The State submits that there is strong evidence against the Applicant. Since the Applicant is profoundly contesting the evidential basis of his charges in his substantive matter and also other pending matters, I closely scrutinized the martial placed before me by the State.
5. Disclosures filed in the substantive matter reveal that the robbers were armed with an offensive weapon and that they had threatened one of the complainants with death. The Applicant has made a confession to the police during his caution interview from Q & A: 43 – 55. The Applicant challenges the contents and claims that the caution interview was fabricated by police. It appears that the Applicant has refused to sign the caution interview. However, there is no evidence that officers of the Fiji Police Force are having a grudge against the Applicant to fabricate evidence against him.
6. The State has drawn attention of this Court to the witness statement of Taitusi Delai marked as 'AS 3' implicating the Applicant in the robbery. There is evidence of Taitusi Delai that Applicant was part of the group of men that robbed Rites Prasad and his family at Kulukulu, Sigatoka on 9th of September 2017.
7. An affidavit deposed by Josaia Dobui, the Co- Accused in the substantive matter HAC 21/18 was filed by the Applicant with the permission of the Court after today's further hearing. In that affidavit, Dobui acknowledges that he is guilty of the charges filed against him in HAC 21/18 (substantive matter). Having said that Dobui states that he was tortured threatened and also promised an inducement by police to falsely implicate the Applicant. He further states that the Applicant is innocent and he was never a party to the robbery.
8. However, Taitusi Delai in his statement has clearly states that he drove the Applicant and Dobui to Kulukulu where the robbery took place and he was given \$ 50 by the Applicant and \$ 30 by Dobui upon sharing the robbed money at Nawaka.

9. The investigating officer's affidavit reveals evidence of recoveries made by the police linking the Applicant to the alleged offences. The Applicant said during the hearing that the recoveries were made from the car.
10. I am satisfied that, for the purpose of this bail application, there is prima facie evidence against the Applicant.
11. The Applicant has a considerable number of pending matters and previous convictions of similar nature during the operational period of past 10 years. The Applicant has not filed an affidavit to support his bail application and also not completed his bail application form in regards to any pending cases in other courts around Fiji. He has thereby suppressed material facts which would have been crucial in deciding his bail.
12. According to the affidavit filed by the State, there is a pending matter against the Applicant of Harboring Prisoner (Criminal Case No.: CF 50/17) in Nadi Magistrate Court 2. He has another pending matter of Aggravated Robbery (Criminal Case No.: CF 1492/17 extended jurisdiction) in Nadi Magistrate Court 3. He has another pending matter of Aggravated Robbery (Criminal Case No.: HAC 300/17) in Suva High Court 1 for which he is still in remand.
13. The Applicant has disputed the evidence presented by police in those matters. However, by looking at the material placed before this Court by the State, I am satisfied that there is prima facie evidence against the Applicant in those matters.
14. The Applicant concedes that he has a total of 25 previous convictions and 11 of which are within the operational period of 10 years. Most of them are of similar nature or relevant to a bail determination. Robbery with Violence (2), Forfeiture of bail bond (2), Escaping from lawful custody (3), Absconding (1), Resisting Arrest (1), Throwing Object (1) and Damaging Property (1).
15. The Applicant's previous convictions of similar offences and his disobedience to court orders indicate that he is not worthy of being released on bail at this juncture. The offences of Aggravated Robbery, Aggravated Burglary and Theft are prevalent in our society and have posed a considerable threat to the tranquility of law abiding innocent civilians of this country. People live in fear and are virtually caged themselves in their own houses in expectation of possible invasions by robbers.

16. On the evidence presented before this Court, I take the view that it is likely that the Applicant will re-offend if the Court grants him bail. I also form the view that the Applicant is a threat to the community if he is at large.
17. There is no evidence that his security and safety is at risk whilst being remanded in the Remand Centre. There is no evidence of exceptional familial obligations which are in jeopardy whilst he is in remand.
18. Bail is denied only for those who pose a "substantial likelihood" of reoffending and only where this "substantial likelihood" endangers public interest. The bail system does not function properly if an accused commits crimes while on bail. While it is impossible to make exact predictions about recidivism and future dangerousness, exact predictability of future dangerousness under the Bail Act is not mandated. It is sufficient that the bail system establish a likelihood of dangerousness.
19. When considering the past criminal record of the Applicant coupled with his previous bail violations, I am satisfied that there is a real likelihood that the Applicant will reoffend while on bail. The seriousness of the offences and the past criminal record of the Applicant should be taken into account in protecting the public and ensuring their safety and security.
20. For the reasons given, I refuse to grant bail to the Applicant.
21. Order- Bail refused.
22. 28 days to appeal.




Aruna Aluthge
Judge

At Lautoka
8th May, 2018

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