

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL MISCELLANEOUS NO. HAM 112/18
[High Court Criminal Case No. HAC 039 of 2018]

BETWEEN : 1. AMANI MASIKEREI
2. SAMUELA NATOKALAU

AND : STATE

Counsel : Mr K Maisamoa for the Applicants
Ms S Tivao for the State

Date of Hearing : 11 June 2018

Date of Ruling : 15 June 2018

RULING (No. 2)

- [1] This is a renewed application for bail pending trial. The applicants are jointly charged with unlawful cultivation of marijuana. The prosecution alleges that the applicants cultivated over 1 ton of marijuana in a remote farm on the island of Kadavu. The applicants have pleaded not guilty to the charge.
- [2] On 29 March 2018, this Court refused bail to both applicants. In the ruling the Court made the following determination at [5] – [6]:
- [5] In determining the likelihood of the two Accused appearing for trial, I have considered their background and community ties. Both Accused are unemployed and reside at a remote part of Kadavu. They have offered to reside with their relatives in Suva if they are released on bail. The gravity of the allegation is serious. The case involves the largest quantity of marijuana cultivation to come before the courts in

Fiji. The prosecution evidence is strong. The offence was allegedly committed in the plain view of the police officers. The maximum penalty prescribed for the offence is life imprisonment. If the Accused is found guilty, a long prison sentence is inevitable. These factors provide a strong incentive for both Accused not to appear for their trial.

[6] For these reasons, I am satisfied that it is not in the interests of justice to release both Accused on bail. Both are to remain in custody pending trial. A priority trial date will be assigned to this case due to the Accused being remanded in custody pending trial.

[3] The trial is scheduled to commence on 8 October 2018. The renewed application was filed on 16 May 2018 by the applicants' new counsel. Counsel for the State opposes the application saying there is no change in circumstances to grant bail.

[4] In *State v Takiveikata* [2008] FJHC 31; HAM 107.2007 (4 March 2008), the Court said the test for a renewed application for bail is whether there is a change in circumstances from the last decision on bail or are there circumstances which, although they then existed, were not brought to the attention of the court (*Nottingham Justices, ex parte Davies* [1981] QB 38).

[5] The renewed application is founded on the claim that the applicants are not a flight risk because they do not have passport to travel overseas.

[6] But this Court made a determination that the applicants were unlikely to appear for trial due to the following reasons:

- (1) The applicants are unemployed.
- (2) They lacked strong community ties.
- (3) The charge is serious – involves largest quantity of marijuana cultivation to come before the courts in Fiji.

- (4) The prosecution case against the applicants is strong.
- (5) If convicted, the applicants are facing a long jail sentence.
- [7] Nothing has been presented in the renewed application to show that there is a change in circumstances from the decision refusing bail or that there are circumstances which, although they have existed, were not brought to the attention of the Court.
- [7] The applicants remain at risk of not appearing for trial if released on bail.
- [8] The renewed application for bail is refused.
- [9] The applicants are to remain in custody on remand pending trial.
- [10] Any further application for bail if shown to be an abuse of process will be summarily dismissed.



A handwritten signature in blue ink, appearing to be "D. Goundar", with a horizontal line extending to the right.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Maisamoa & Associates for the Applicants
Office of the Director of Public Prosecutions for the State