

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 11 of 2019
[High Court Criminal Case No. HAC 05 of 2019]

BETWEEN : SEMESA BOKINI

AND : STATE

Counsel : Ms Vuli for the Applicant
Ms Naibe for the State

Date of Hearing : 25 February 2019

Date of Ruling : 01 April 2019

RULING

1. The Applicant has filed his bail application in person. Later he applied for Legal Aid assistance and he was represented by a counsel at the bail hearing.

2. The Applicant is indicted for aggravated robbery contrary to Section 311(1)(b) of the Crimes Act, attempt to commit rape contrary to Section 208 of the Crimes Act and for murder contrary to Section 237 of the Crimes Act.
3. I have considered the bail application tendered by the Applicant. He has stated the following in his bail application form:
 - a. He is a first offender
 - b. His parents are elderly and sickly
 - c. He is the only one to support them and they are facing difficulties as he is in remand custody
4. The Respondent objects for bail on the following grounds;
 - a) The Applicant has four pending matters in Tavua Magistrate's court.
 - b) He will commit other offences while on bail given the history of the Applicant.
 - c) He is charged with serious offences.
 - d) The prosecution has a strong case.
 - e) Given the severity of the punishment it is likely that he will not appear in court.
 - f) He may interfere with witnesses as he is closely related to some prosecution witnesses and they all are from the same settlement.
5. Section 3(1) of the Bail Act provides that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.
6. However, the Section 3(4) of the Bail Act provides for instances where the presumption is displaced;
 - a) The person seeking bail has previously breached a bail undertaking or bail condition;
 - b) The person has been convicted and has appealed against the conviction;
or
 - c) The person has been charged with a domestic violence offence.

7. Further Section 17(2) of the Act provides that the primary consideration in deciding whether to grant bail is likelihood of the accused person appearing in court to answer the charges laid against him or her.
8. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;
 - a. The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b. The interests of the accused person will not be served through granting of bail;
 - c. Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or
 - d. The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.
9. According to His Lordship Justice Goundar in **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) existence of any one ground is sufficient to refuse bail.
10. In light of the above discussed provisions in the Bail Act I will now consider the material placed before this court in relation to the bail application made on behalf of the Applicant. The Prosecution has tendered a supplementary affidavit confirming that the Applicant has four pending cases in Tavua Magistrate's court. In two of those cases the Applicant is ordered not to re-offend as bail conditions. But the Applicant has allegedly committed the offences in this case while he was on bail for the other matters.
11. There is no contention that the Applicant is innocent until proven guilty. However, nothing precludes the court from looking into the history and the behavior of the Applicant to ascertain whether there is any likelihood of him not surrendering to custody or breaching bail conditions.

12. It appears that the Applicant has breached his bail conditions by allegedly re-offending. In view of section 3(4) of the Bail Act the presumption for bail is thus displaced.

13. Even if the presumption is displaced it does not mean that bail should be necessarily refused. I have considered whether there are compelling grounds which justify the Applicant to be released on bail. But I do not find any compelling grounds to consider bail for the Applicant.

14. I have reasons to believe that he may not comply with bail conditions again if he is released on bail and he could pose a threat to the protection of the community.

15. Further I have considered the fact that the Applicant is charged with serious offences and the severity of punishments may tempt him to abscond bail.

16. In the circumstances I am satisfied that it is not in the interest of justice to grant bail in this matter. Bail is refused.



Rangajeeva Wimalasena
Acting Judge

Solicitors:

Legal Aid Commission for the Applicant

Office of the Director of Public Prosecutions for the Respondent