

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[MISCELLANEOUS JURISDICTION]

MISCELLANEOUS CASE NO: HAM 195 of 2022

BRADLEY ROBERT DAWSON

V

STATE

Counsel : Mr. Iqbal Khan with Mr. Samuela Heritage for the Applicant
Mr. Alvin Singh for the Respondent

Date of Hearing : 29 December 2022

Ruling : 20 January 2023

BAIL RULING

1. This is an application for bail pending trial. The Applicant is the accused in High Court Lautoka Criminal Case No. HAC 107 of 2022.
2. As per the Information filed by the Director of Public Prosecutions (“DPP”) in the substantive matter, the Applicant is charged with one count of Murder, contrary to Section 237 of the Crimes Act No. 44 of 2009 (“Crimes Act”). The Information reads as follows:

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence

BRADLEY ROBERT DAWSON, on the 9th day of July 2022, at Turtle Island Resort, in the Western Division, murdered **CHRISTE JIAO CHEN**.

3. On 1 September 2022, the Applicant's plea was taken and he pleaded not guilty to the charge.
4. The Applicant is an American Citizen. The deceased in the substantive matter is his newly married wife.
5. This is the second application made by the Applicant seeking bail.

Previous Application Made by the Applicant seeking Bail

6. The first application for bail was filed by way of a Notice of Motion for Bail, which was supported by an Affidavit in Support deposed to by the Applicant, on 27 July 2022 [High Court Lautoka, Miscellaneous Case No. HAM 128 of 2022]. The said application was refused by this Court on 14 September 2022.

The Current Application Made by the Applicant

7. This application for bail was filed by way of a Notice of Motion for Bail Pending Hearing, which was supported by an Affidavit in Support deposed to by the Applicant, on 28 November 2022.
8. Therein, the Applicant deposes that he is 38 years of age and an American citizen with an American passport, residing at Middle Town, New York and works as an Information Technology and System Administrations Officer in Youth Villagers. He was said to be visiting Fiji for vacation purposes.
9. He submits that he was residing with his elderly and sickly mother in America and came to Fiji for holidays when this incident happened. His continued detention is said to be affecting his mother mentally and emotionally.
10. He further submits that he has no other charges or investigation of any criminal offence pending against him either here or in America.
11. The Applicant deposes that 99% of the disclosures disclosed by the State does not implicate him whatsoever in the murder. The only evidence the State has against him is said to be circumstantial evidence which is weak.
12. The Applicant has been in remand custody since the date of his arrest on 10 July 2022.
13. Since this is his second application for bail, the Applicant has outlined the following which he claims are change of circumstances:

- (a) That he will change his place of residence from Legalega, Nadi to Field 40, New Sub Division, Lautoka, which is within the vicinity of this Court. His sureties and his Counsel's Associate Mr. Heritage also live in the vicinity of the flat.
 - (b) He proposes to rent at Flat 2, 13 Homel Crescent, New Sub Division, Lautoka, which he states is a flat on its own with all modern facilities. During the Hearing of this matter, Counsel for the Applicant submitted to Court a copy of the proposed Rental Agreement/Lease Agreement for the said premises.
 - (c) He proposes two sureties who are reputable members of society. The first surety is Pastor Immanuel Reuben (who is said to have got to know the Applicant from his visits to the Lautoka Remand Centre) and resides at Maravu Street, Lautoka; and the second surety is Ashish Priyesh Sharma (who is said to be a friend of the Applicant), and resides at Bekana Lane, Lautoka. Affidavits deposed to by the said two sureties have been filed in Court.
14. The Applicant undertakes to report to the Lautoka Police Station at whatever hours that this Court determines just and necessary in the event of being granted bail.

The Affidavit in Opposition filed by Acting Detective Sergeant 4943 Netava Yalayala in Opposition to this Application

- 15. A/D/SGT Yalayala is a Police Officer based at the Criminal Investigations Department of the Lautoka Police Station and is the Investigating Officer in the substantive matter. He strongly opposes this application for bail.
- 16. A/D/SGT Yalayala deposes that the Applicant is charged with the offence of Murder of his wife Christe Chen. The Applicant was born on 11 October 1983 (thus he is now 39 years of age), and is a national of the United States of America (USA).
- 17. The Applicant got married to Christe Chen in the month of February 2022. The couple had arrived into Fiji from USA on 7 July 2022, to spend their honeymoon at the Turtle Island Resort. The Turtle Island Resort is said to be a luxury 5 star resort located approximately 190 kilometers from Nadi Airport.
- 18. A/D/SGT Yalayala deposes that the body of the deceased Christe Chen was discovered inside Bure 15 at the Turtle Island Resort, on 9 July 2022. The Officer further deposes that the Applicant had fled from the Turtle Island Resort in a kayak on the night of 9

- July 2022. The Applicant had been arrested the next day on another island, namely Matacawalevu, which is located several kilometers away from the Turtle Island Resort.
19. At the time of his arrest, the Applicant was found with his black wallet, passport, driving licenses of both himself and the deceased, a Visa card in the name of the deceased, several Visa cards and Master cards in his name and USD currency notes and coins amounting to \$1,093.00.
 20. A/D/SGT Yalayala deposes that the Applicant had all necessary items in his possession to enable him to leave the country.
 21. The Officer further deposes that the State has strong circumstantial evidence against the Applicant in this case that will draw the indisputable and undeniable conclusion that the Applicant has committed the offence that the State is alleging. There is strong evidence to establish that the Applicant and the deceased entered Bure 15 of the Turtle Island Resort on the night of 8 July 2022. The cause of death certificate confirms that the deceased's cause of death was due to severe traumatic head injury and multiple traumatic injuries caused by blunt force trauma to the head.
 22. A/D/SGT Yalayala further submits that the Applicant is a foreigner and has means to leave the country using other modes of transport. Therefore, that the sureties proposed will not have control on the Applicant.
 23. The Officer deposes that the Applicant is charged with the serious offence of Murder and, if found guilty, the Applicant is likely to be imposed a mandatory sentence of imprisonment for life. The Applicant has family and employment ties in the USA. The Applicant works as an Information Technology and System Administrations Officer in the USA. The Applicant has no family or financial interest in Fiji.
 24. A/D/SGT Yalayala further submits that the Applicant has failed to provide the nature of relationship with the two proposed sureties and the two sureties have failed to provide satisfactory explanations as to how they came to know the Applicant.
 25. The Officer further deposes that this application for bail be refused as there are no change in circumstances in the matter.

The Bail Hearing

26. The Counsel for the Applicant filed detailed written submissions, also making reference to several case authorities, which I have had the benefit of perusing.

27. This matter was taken up for hearing before on 29 December 2022. During the hearing both Counsel for the Applicant and the Respondent were heard.

The Law

28. In terms of section 3(1) of the Bail Act No. 26 of 2002 (“Bail Act”), *“Every accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted.”*

29. Section 3(3) of the Bail Act provides that: *“There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.”*

30. In terms of Section 3(4) of the Bail Act, as amended by the Domestic Violence Act No 33 of 2009 (“Domestic Violence Act”), the presumption in favour of granting of bail is displaced in the following circumstances:

- a) the person seeking bail has previously breached a bail undertaking or bail condition; or*
- (b) the person has been convicted and has appealed against the conviction; or*
- (c) the person has been charged with a domestic violence offence.*

31. Since there is a domestic relationship between the Applicant and the deceased in the substantive matter (who was his wife), the presumption in favour of granting bail is displaced in this case.

32. In terms of Section 17(2) of the Bail Act the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer the charges laid against him or her. Section 17 (1) of the Bail Act states, that when deciding whether to grant bail to an accused person, the Court must take into account the time the person may have to spend in custody before trial if bail is not granted.

33. Section 18 (1) of the Bail Act stipulates that a person making submissions to a court against the presumption in favour of bail must deal with-

- (a) the likelihood of the accused person surrendering to custody and appearing in court;*
- (b) the interests of the accused person;*

(c) *the public interest and the protection of the community.*

34. Section 19(1) of the Bail Act (as amended by the Domestic Violence Act), provides for grounds for the Court to refuse to grant bail. The sub section is reproduced below:

"An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-

(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 the 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."*

35. In forming the opinion required by subsection (1), Section 19(2) of the Bail Act stipulates that Court must have regard to all the relevant circumstances, and in particular to the circumstances enumerated in the said sub section.

36. Since this is an application made for bail review Section 30 of the Bail Act would be applicable. Section 30 (7) of the Bail Act provides that:

"A Court which has power to review a bail determination, or to hear a fresh application under Section 14 (1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of fresh application, refuse to hear the review or application."

37. In the case of ***Regina v Nottingham Justices, ex parte Davis***: QBD 1980; [1980] 71 Crim. App.R.178; [1981] 1 QB 38.

The Lord Justice Donaldson stated thus;

"...The Court considering a fresh the question of bail is both entitled and bound to take account not only of the change in circumstances which has occurred since the last occasion but also all circumstances which, although then existed, were not brought to the attention of the Court. To do so is not to impugn the previous decision of the Court

and is necessary in justice to the accused. The question is a little wider than 'Has there been a change? It is Are there new considerations which were not before the Court when the accused was last remanded in custody? ..."

Analysis

38. It is trite law that 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 Court.
39. Therefore, the primary consideration in this case is whether there is a change in circumstances from the last decision refusing bail to the Applicant.
40. The primary reason this Court refused bail in the first application was due to the fact that there was flight risk, especially due to the fact that the Applicant is a foreign national with sufficient financial means. The Applicant has all family and employment ties in the USA. He works as an Information Technology and System Administrations Officer in the USA and has no family or financial interest in Fiji.
41. The other reason this Court refused bail was due to the fact that Court was not satisfied with the sureties proposed by the Applicant.
42. It is true that the Applicant has now proposed two fresh sureties and also undertaken to reside at a flat at Homel Crescent, New Sub Division, Lautoka. Court may be satisfied with the first surety, who is said to be Pastor and who is said to have got to know the Applicant from his visits to the Lautoka Remand Centre. However, this cannot be said of the second surety who is merely said to be a "friend" of the Applicant. This surety has deposed that he has agreed to act for the Applicant as he has no immediate friends or family in Fiji.
43. However, even if Court were to be satisfied with both the sureties and accept them, the primary concern of the Court is that the Applicant would still be a flight risk. This is so due to the fact that he is an American national with sufficient financial means. He has no family or financial interests in Fiji. There is absolutely no guarantee that the sureties would be able to prevent the Applicant from leaving the shores of Fiji if he desires to do so.
44. In terms of Section 17(2) of the Bail Act the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer the charges laid against him or her. As per Section 19(1) of the Bail Act Court can refuse bail

where the accused person is unlikely to surrender to custody and appear in court to answer the charges laid against him.

45. In forming the opinion required under Section 19 (1), Section 19(2) of the Bail Act stipulates that Court must have regard to all the relevant circumstances, and in particular to the circumstances enumerated in the said sub section. This includes the circumstances, nature and seriousness of the offence; the strength of the prosecution case and the severity of the likely penalty if the person is found guilty.
46. As stated earlier, the Applicant in this case is charged with one count of Murder and if found guilty the Applicant is likely to be imposed a mandatory sentence of imprisonment for life, with a judicial discretion to impose a minimum term to be served before a pardon maybe considered. Therefore, this Court is of the opinion that since the Applicant is charged with a serious offence, there is a high likelihood that he would fail to appear in Court if granted bail.
47. In the circumstances, this Court is not satisfied that there are special facts or circumstances (change in circumstances) that justify a review of the order made by this Court refusing bail to the Applicant on 14 September 2022.
48. Accordingly, this application for bail pending trial is refused.
49. Since Court is again refusing the application for bail made by the Applicant, it will endeavor to assign an early trial date in the substantive matter.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 20th Day of January 2023

Solicitors for the Applicant : **Messers Iqbal Khan & Associates, Lautoka.**
Solicitors for the Respondent : **Office of the Director of Public Prosecutions, Lautoka.**