

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 245 OF 2023

BETWEEN: **RONEEL KUMAR** **APPLICANT**

AND : **STATE** **RESPONDENT**

Counsel : Applicant in Person
Mr. Lal for Respondent

Date of Hearing : 16 January 2024

Date of Ruling : 30 January 2024

REVIEW ON BAIL RULING

1. This is an application for review of the Bail Ruling of this Court dated 31 August 2023 refusing bail to the Applicant. An affidavit of the Applicant supports the bail review application.
2. In the substantive matter, the Applicant is charged with one count of Aggravated Burglary and one count of Theft with his co-accused Guston Kean. The Applicant has been in remand since 1 June 2023.
3. The Respondent (State) objects to bail on the basis that the Applicant has not shown any change in circumstances since the previous bail determination. According to the Bail

3. The Respondent (State) objects to bail on the basis that the Applicant has not shown any change in circumstances since the previous bail determination. The Applicant must satisfy the Court that there are special facts or circumstances that justify a review.
4. The Applicant in his affidavit appears to have advanced three grounds. The first ground is that the condition of the remand centre is so inhumane that it violates his rights; he is not provided with proper bedding, food, and proper medical treatments and is denied visitations by his family. The second ground is that he is diagnosed with a medical condition that requires an immediate operation. The long remand period is the third ground which he claims is so long that his right to a speedy trial has been denied.
5. Except for his affidavit, there is no evidence adduced by the Applicant to show that he was denied his basic accommodation facilities, meals, medical or sanitary facilities etc. It must be accepted that the remand centres are not hotels and are overcrowded in Fiji. The situation in the remand centres across the country are the same and the remandees can't expect the facilities that are available in the prisons in developed countries. If bail is granted on this ground, this will open floodgates and all other remandees will want to seek bail on the same ground.
6. The Applicant claims that he recently developed a medical condition with abdominal pain which urgently requires an operation. He further claims that he has lost weight and runs a risk of falling into depression and that the condition of the prison is the major contributing factor to his medical condition. He has attached medical reports to substantiate his claim.
7. The claim of the Applicant on losing weight is self-evident on his appearance over time. The radiology report dated 19 September 2023 indicates the following:
 - gall bladder contraction,
 - Irregularity in both renals,
 - Moderate hydronephrosis

Bladder-appears irregular with multiple echogenic foci seen at lateral wall, suggestive of YPS.

8. The doctor who had examined the Applicant on 13 October 2023 at the Lautoka hospital has noted in his suspected diagnosis a urinary incontinence and bladder polyps (Abnormal growths in the bladder lining that may be benign or cancerous as per medical dictionary).
9. In my previous bail determination, I observed as follows: *As regards the interests of the accused person, the length of time the Applicant is likely to remain in custody before the case is heard will depend on various factors which include case management expediencies. Once the investigation, perhaps the recovery of stolen items, is complete and the pre-trial issues are sorted out, the substantive matter could be tried without delay. If there exists an inordinate delay, the Applicant is free to make a fresh application for bail.*
10. The Applicant has already been in remand for approximately 8 months. A trial date is yet to be fixed. The pre-trial documents are to be finalized before a Pre-trial conference could be held. My trial diary is fully booked until September 2024. In this context, the Applicant's right to have his trial begin and conclude without unreasonable delay is likely to be in jeopardy so is the right to be presumed innocence until proven guilty.
11. Under Section 13(h) of the Constitution, the Applicant has the right to be released on bail pending trial unless the interests of justice otherwise require. Section 3(1) of the Bail Act is to the same effect. The interest of justice requires a right balance to be struck between the rights and the interests of the accused and those of the public and the protection of the community.
12. The previous application for bail was refused mainly to protect the community because the court had found that the Applicant was likely to commit an arrestable offence whilst on bail. This finding was based on his 20 previous convictions with two active previous convictions. However, it was later revealed that the last two (active) previous

convictions reflected in the PCR had been quashed by the High Court and the Court of Appeal.

13. In the circumstance of this case, an order for continuous remand pending trial would be a disproportionate means to achieve the intended objective (protection of the community). The concern of the State that the Applicant is likely to commit an arrestable offence whilst on bail could be addressed by imposing strict bail conditions.
14. The three grounds advanced by the Applicant for a review, if taken individually, would not be sufficient to grant bail to the Applicant. However, the combination effect of all three grounds is that bail should be granted.
15. The application for bail review is allowed. The Applicant is released on bail on following bail conditions:
 - i. Surety bail bond for FJD 500 with two sureties acceptable to Court
 - ii. Not to re-offend whilst on bail
 - iii. Reporting to Lautoka Police Station on every Saturday between 8 am and 4 p.m.
 - iv. A curfew will be in force from 6 p.m. through 6 a.m.
16. Application for bail is allowed.



31 August 2023

At Lautoka

Aruna Aluthge

Judge

Counsel:

- Applicant in Person
- Office of the Director of Public Prosecution for Respondent